IN THE MATTER OF	Resource Management Act 1991
AND	
IN THE MATTER OF	Proposed Plan Change 14 Housing and Business Choice pursuant to Part 5, subpart 5A and Part 6 of Schedule 1 of the Resource Management Act 1991

RECOMMENDATIONS REPORT: PART 4 - RELEVANT RESIDENTIAL ZONES INCLUDING MEDIUM DENSITY RESIDENTIAL ZONE AND HIGH DENSITY RESIDENTIAL ZONE, RESIDENTIAL HILLS ZONES AND HILL PRECINCTS AND ALTERNATIVE ZONES, SUNLIGHT ACCESS QM, LOW PASSENGER TRANSPORT ACCESSIBILITY AREA QM, CHRISTCHURCH INTERNATIONAL AIRPORT NOISE INFLUENCE AREA QM

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1. SCOPE OF THIS PART

[1] This part of our Report relates to:

(a) the spatial extent of, and the provisions within, the proposed Medium Density Residential Zone (MRZ) and the High Density Residential Zone (HRZ). This Part should also be read in conjunction with:

(i) Part 1 which sets out our findings on the relevant statutory requirement and;

(ii) Part 3 of the Report[1]at which sets out the Independent Hearings Panel (the Panel) recommended spatial extent of the National Policy Statement on Urban Development (NPS-UD) Policy 3(c)(ii) walkable catchment from the edge of the City Centre Zone (CCZ); and the NPS-UD Policy 3(d) "commensurate" catchments adjacent to other centres, within which we recommend HRZ, and MRZ as the appropriate intensification response.

(b) Changes proposed to the Transportation chapter of the District Plan relating to vehicle crossings;

(c) The proposed Residential Hills zones (RHZ) and hill precincts and alternative zones in response to the Low Passenger Transport Accessibility Area (LPT) Qualifying Matter (QM), and

(d) The scope and merits of the following QMs;

(i) Sunlight Access

(ii) Low Public Transport Accessibility Area

(iii) Christchurch International Airport Noise Influence Area.

[2] The Panel records, that in relation to the Christchurch International Airport Noise Influence Area (Airport Noise) QM, only Commissioners Robinson, Munro and Coutts heard and deliberated on that issue due to prior disclosure of conflicts of interest by Commissioners McMahon and Matheson.

[3] All other qualifying matters related to residential zones are found in Part 5 of the Report.

[1] Part 3 of the Report at [252]-[255] and [302]-[307]

Summary of Recommendations

[4] The Panel recommends that:

For Relevant Residential Zones

(a) the MRZ and HRZ should both be accepted as the principal zones to deliver the Medium Density Residential Standards (MDRS) and additional height and density of urban form near to the CCZ and other commercial zones (with any qualifying matters applying only to the extent necessary to accommodate the qualifying matter – as recommended later in this part of the Report and in Parts 4 and 5), and subject to our recommendations regarding the restructuring of Chapter 14 in light of our findings on the scope of an IPI, and the effect of the *Waikanae* decision on status quo enablement.

(b) proposed changes to the transportation provisions governing vehicle crossings should be deleted. As a consequence of our findings on the requirement to maintain existing Plan enablements, including existing vehicle crossing rules, it is inefficient and ineffective to unnecessarily duplicate that with a slightly different set of requirements simply because development on a site extends beyond the relevant existing standards of the Operative Plan to the new MRZ or HRZ ones.

(c) in relation to the Council's proposed response to residential intensification within the Residential Hills Zone (RHZ), as amended in the Reply, we have found that the revised approach fails to differentiate and recognise that there are at least three different types of residential zones of varying densities within the RHZ, which each require a different response. In particular that:

    (i) most parts of the RHZ are insufficiently distinguishable from typical suburban zones in the hills and are clearly "relevant residential zones". These must incorporate the MDRS (subject only to being qualified to the extent necessary to accommodate an identified qualifying matter). In these areas, the MRZ should apply;

    (ii) there are other areas on the hills where submitters raised concerns about a range of development constraints including accessibility for emergency services, "3 waters" and other infrastructure, and slope instability/loess soils, which in combination may make those areas unsuitable for MDRS. Such areas are a "relevant residential zone" and hence the Council is obliged to

incorporate the MDRS (subject only to being qualified to the extent necessary to accommodate an identified qualifying matter. However, noting that we separately recommend the Council reject the proposed LPT QM, we recommend that the Council zone the land MRZ at this time and undertake further analysis of the Residential Hills-area to identify and correctly evaluate whether appropriate qualifying matter(s) might apply to parts of those areas that are based on and reflect the specific limitations and characteristics of the RHZ landform; and

(iii) there are areas of the RHZ which have bespoke outline development plan and overlay provisions (such as Redmund Spur) which are a mix of lot sizes, clustered development around certain features and constraints that means that they present more like a Large Lot Residential Zone (LLRZ), despite those areas having the zone title "Residential Hills" those areas are not in fact a relevant residential zone, and we recommend the Council exclude those locations from Proposed Plan Change 14 (PC 14) (i.e. they would remain in their Operative District Plan (ODP) state, and subject to their existing outline development plan densities).

[5] Unlike our recommendations in relation to other provisions proposed to be changed in PC 14 and requested in submissions, the Panel has not been able to recommend a full suite of changes to the spatial extent of, and the provisions within, the proposed MRZ and the HRZ to match our recommendations to accept or reject submissions in Chapter 14.

[6] That is because the Panel found that the Council approached the drafting of changes to the notified PC 14 version and Reply version of Chapter 14, from the starting position that *Waikanae* was wrongly decided, and that the Council was entitled "without limitation" to amend provisions in Chapter 14 so as to achieve a well-functioning urban environment. This included amendments that affected the consenting status and matters of control and discretion for existing land uses. This has resulted in a set of provisions that the Panel is unable to unpick so that they meet the legal requirements of s80E and s77G, as we have interpreted them to be in Part 1 of the Report, and as they have been interpreted by the High Court in *Waikanae.*

[7] Therefore, the Panel recommends that the Council redraft Chapter 14 to recognise pre-existing development enablements. The Panel recommends that this should be done by

providing a framework within the structure of the Plan that offers applicants three development pathways as follows:

(a) Pathway A development that complies with the relevant ODP development standards (i.e. existing development enablements), including activity classifications and matters of control and discretion;

(b) Pathway B development not complying with the relevant ODP development standards but complying with the relevant MRZ / HRZ development standards (as we have recommended them); and lastly

(c) Pathway C development not complying with the relevant MRZ or HRZ standards (as we have recommended them).

[8] As part of that exercise, we recommend that the Council revisit, and in some cases reinstate the ODP version, the definitions proposed to be changed by PC 14.

[9] We have provided more detailed instructions and examples in Appendix G in Part 8.

Sunlight Access, Low Public Transport and Airport Noise Qualifying Matters:

[10] The Panel recommends that:

(a) The Sunlight Access QM, be rejected by the Council

(b) The Low Public Transport QM, be rejected by the Council.

(c) In relation to the Airport Noise QM, that it be accepted in part, except that the relevant residential zones shall be rezoned MRZ and HRZ and incorporate the MDRS, and provide for the NPS-UD Policy 3 heights and densities to enable one to three new residential units, qualified by a requirement for acoustic insulation and ventilation, and in the case of four or more new residential units a restricted discretionary activity with the Councils discretion limited to matters related to managing reverse sensitivity effects on the Christchurch International Airport, and acoustic insulation and ventilation.

[11] In terms of the submissions on the MRZ, HRZ the Panel recommends that:

(a) Those submissions opposed to the MRZ and housing intensification within all relevant residential zones are rejected except where they related to the operative

RHZ in specific locations that also contain outline development plans, which are accepted in part.

(b) Those submissions opposed to a greater enablement of housing intensification than the MDRS / MRZ in areas identified by the Council as a response to NPS-UD, Policy 3 within a walkable catchment of the CCZ and adjacent to other commercial zones (i.e. the HRZ) are rejected. The exception to this is submissions that oppose housing intensification in the areas between the Councils identified walkable catchment of the CCZ and commensurate catchments of other commercial centres where our recommendations in Part 3 of our Report have determined that a lesser area than the Council had identified, where those submissions opposed to greater enablement than the MDRS/MRZ are accepted in part.

(c) Those submissions in support of, including those that requested amendments to, the notified MRZ and the HRZ as the case may be, are accepted in part to the extent that we support the broad thrust of each zone as proposed by the Council (excluding those provisions that removed existing plan enablements). Those submissions that sought existing Plan enablements to be maintained are accepted.

(d) Those submissions that sought the operative RHZ in specific locations that also contain outline development plans and overlays to be retained in their current form and not incorporate the MDRS are accepted. In those areas not subject to outline development plans and overlays, we accept in part the submissions opposed to the MDRS in the RHZ to the extent that we recommend the Council undertake further zone-specific analysis to consider whether a valid Qualifying Matter may be justifiable. In the meantime, however, that land must fall to be zoned MRZ.

[12] In terms of the submissions on the Sunlight Access QM and the LPT QM the Panel recommends that submissions that opposed the Sunlight Access QM and LPT QM are accepted, and those that supported the QM are rejected.

[13] In terms of submissions on the Airport Noise QM the Panel recommends that submissions that supported the QM are accepted in part, and those that opposed the QM are also accepted in part.

2. STRUCTURE OF THIS PART

[14] This part of our Report addresses the MRZ and the HRZ. Qualifying Matters (QMs), which can justify a reduction in development enablement otherwise determined in the MRZ or HRZ are largely addressed in other parts of our Report; notably Part 5, albeit that the following three QMs are addressed in this Part:

(a) Sunlight Access

(b) Low Passenger Transport Accessibility Area

(c) Christchurch International Airport Noise Influence Area

[15] For completeness, we record that the Cathedral Square Interface, Victoria Street Height, Central City Heritage Interface (for sites adjacent to the Arts Centre and New Regent Street), heights within the Heritage Settings of the Arts Centre and New Regent Street and Radio Communication Corridor, which principally affects the CCZ, are dealt with in Part 3 of this Report.

3. MRZ AND HRZ

Introduction

[16] The MRZ is the Council's proposed default approach for incorporating the MDRS into all relevant residential zones as directed by s77G(1) of the Act.

[17] The HRZ is the Council's proposed zone for land subject to the NPS-UD Policy 3 enabled intensification (RMA s77G(2)).

[18] Although not expressly stated in the RMA, it was generally understood by the Council, submitters and the Panel that all relevant residential land was to have the MDRS applied to it and then, in an additive-only way, any relevant NPS-UD Policy 3 response overlain on "top of that". It is not, as we see it, permissible for a NPS-UD Policy 3 response to result in a lesser enablement than the MDRS would have allowed for in the first place. But this does not necessarily mean that the precise development standards that might come to be most appropriate in the HRZ are to also mirror the MDRS. The question was one of overall development enablement being provided including as a Permitted Activity (PA).

[19] In both the MRZ and HRZ, a specific matter of interest to us was the restrictions of discretion that would apply to proposals for 4-or-more dwellings. Although the RMA requires incorporation of the MDRS, it leaves entirely open to Councils what restrictions of discretion would be appropriate and generally what framework should apply to non-permitted RMA Schedule 3A development (i.e., 4 or more dwellings on a site). At one extreme, it would be possible to specify the MDRS for permitted activities as required by the RMA, but then have an entirely different set of standards and other consent requirements applying for non-permitted developments, in particular, 4 or more units on a site.

[20] However, in doing so, and to comply with the legal limitations of an Intensification Streamlined Planning Process (ISPP) as set out in Part 1 of the Report, existing development enablements must be maintained. This relates in particular to currently enabled intensification on residential sites less-than the level that the MDRS would provide for, and which in some instances are currently controlled activities or which otherwise are restricted discretionary activities but subject to materially narrower restrictions of discretion than have been proposed by the Council in PC 14 for the MRZ and HRZ.

[21] A key aspect of the HRZ and NPS-UD Policy 3 response is the relationship between each area of HRZ and an adjacent centre zone. We refer to Part 3 of the Report where we determined our recommendations for where the HRZ should apply spatially. That aspect of the HRZ, and particularly Plan enablements that should apply within those spatially defined HRZ areas within the central city, is dealt with in this part of the Report.

PC 14 as Notified

[22] As notified, PC 14 included a widespread area of MRZ across the City. This enabled the MDRS set out in Resource Management Act 1991 (RMA), Schedule 3A to be incorporated into the Plan. The only relevant residential zones where the MRZ did not apply were:

(a) where the Council proposed a QM and where that QM was in the Council's view so incompatible with the MDRS that an operative (or derivative of an operative) zone was required to be retained; or

(b) where the Council identified NPS-UD Policy 3 applied and in that case the proposed HRZ (providing greater development height and scale than the MRZ) was proposed.

[23] The Council identified that the RHZ was something of a "mix". In places it was proposed to be subject to the MDRS via MRZ as a relevant residential zone, in others it proposed a MRZ plus a QM so as to reduce development enablement largely back to the operative status quo, and in others it proposed formally re-zoning the RHZ to Large Lot Residential zone as it stands in the ODP.

[24] The Council's s32 evaluation report[2] summarised the situation as follows:

> MDRS set minimum standards and objectives and policies that are required to be applied to all relevant residential zones, with Policy 3 of the NPS-UD requiring further intensification at a scale commensurate with activities and services provided within commercial centres, with intensification around the City Centre specifically specified in the NPS. For the purposes of this evaluation, MDRS has therefore been considered as the minimum baseline for assessment as density standards automatically override commensurate Plan controls in relevant residential zones. Analysis has been completed that the following operative District Plan zones are considered to be within scope of Plan Change 14, being representative of relevant residential zones:
>
> - Residential Suburban
> - Residential Banks Peninsula (Lyttelton Township, only)
> - Residential Suburban Density Transition
> - Residential Medium Density
> - Residential Central City
>
> The residential response to s77G is to apply MDRS through National Planning Standards by rezoning applicable areas (not subject to scale qualifying matters) to being either MRZ or HRZ OR HDRZ. Greater levels of intensification are provided for within HRZ as a response to the Policy 3 direction, with various Precincts proposed to manage building heights. A single Precinct is also used within MRZ to provide for a lesser response for smaller commercial centres. Overall building heights are proposed as follows:
>
> - MRZ: as per MDRS, being 11m + 1m for roofing;
> - MRZ, with Local Centre Intensification Precinct: 14m;
> - HRZ, with Large Local Centre Intensification Precinct or Town Centre Intensification Precinct: 14m permitted and up to 20m enabled via resource consent;
> - HRZ, with no Precinct: 14m permitted and up to 32m enabled via resource consent.
>
> Applying MDRS and the NPS-UD has also resulted in a number of operative Plan features from being removed due to their inconsistency with this intensification direction. This includes changes and deletions to zoning, objectives, policies, notification clauses, and standards.

[25] Incorporating the MRZ and HRZ included a combination of adding new provisions and amending the ODP text. All new and amended text was explained in the s32 evaluation

[2] s32 Report, Part 3 - Residential (District Plan Chapter 14)

and justified, although we acknowledge that in terms of the starting point of each of the MRZ and HRZ, the RMA directed that the MDRS *must* be incorporated in all relevant residential zones, and that a NPS-UD Policy 3 response *must* also be incorporated into the District Plan (with the focus of the s32 evaluation being more about the mechanics of "how" to most appropriately achieve those).

[26] PC 14 also included relevant changes to other parts of the ODP including definitions and around notification of resource consent applications.

[27] In terms of alternatives, the s32 report was founded upon an approach that "simply inserting Schedule 3A [of the RMA]" is not a workable option[3]. Rather, the s32 report identified:

(a) A "do minimum" (our term) implementation of the MDRS via a new MRZ zone. This was referred to as Option 1 in the evaluation.

(b) A "do more" (our term) implementation that proposed a new MRDZ, HRZ, and supporting plan provisions. This was referred to as Option 2 in the evaluation.

[28] Option 2 was preferred by the Council, largely because Option 1 was acknowledged as not satisfactorily meeting the NPS-UD requirements. In these respects, the Council effectively only identified one fundamentally workable option.

[29] Following on from the above, the Council evaluation then tested in greater detail the NPS-UD Policy 3(c) (City Centre Zone) and 3(d) (neighbourhood, local and town centre zones or equivalent) requirements.

[30] In terms of NPS-UD Policy 3(c), the Council identified four options:

(a) 6-storeys within 800m of the CCZ;

(b) 10-storeys within 800m and then 6-storeys for another 1km;

(c) 6-storeys within 1.2km and 10-storeys in proximity to the CCZ; and

(d) 6-storeys within 1.2km and 10-storeys in close proximity to the CCZ.

[3] Ibid, at Issue 1, p 46.

[31] The fourth option was the Council preferred one on the basis that it would be the most appropriate solution for Christchurch noting that the 1.2km area equated to a 15-minute walk for an able-bodied adult.

[32] In terms of NPS-UD Policy 3(d), the Council identified three options that were all variants of a similar theme; proposing a tiered enablement of heights and walking distance from the relevant centre zone based on the size of each centre and their position in the planning centres hierarchy. The preferred option resulted in differentiation of particularly large town centres of Riccarton, Hornby and Papanui from others, and similarly for local centres, it differentiated the approach based on the size of the local centre.

[33] The Council also included additional precincts within the MRZ and the HRZ; being:

(a) the MRZ *Local Centre Intensification Precinct* (proposed around some Local Centre zones as part of a Policy 3(d) NPS-UD response);

(b) the HRZ *Central City Residential Precinct* (proposed around the CCZ as part of a Policy 3(c) NPS-UD response); and

(c) a *Riccarton Residential Intensification Precinct*, presented as an adjunct to the relevant NPS-UD Policy 3(d) enablement but ultimately an attempt to "relocate" potential intensification that would be foregone as a result of the Council's proposed Airport Noise QM, and because of the importance attached to Riccarton by the Council in terms of envisaged future passenger transport facilities.

[34] The evaluation considered complementary methods including assessment matters, in the context of a wider framework of not only the MDRS and NPS-UD, but also the Canterbury Regional Policy Statement (CRPS) and other ODP provisions seeking a high-quality environment.

Submissions and Section 42A Report Recommendations

[35] The Council's s42A report was authored by Mr Kleynbos[4], although this excluded the proposed Future Urban Zone (which was addressed by Mr Bayliss[5] and in our Report at Part 7). Mr Kleynbos identified that relevant expert evidence relied on in his analysis were from Mr Hattam[6] (urban design); Ms Blair[7] (resource consents); Ms Allen[8] (high

[4] s42A Report of Ike Kleynbos, 11 August 2023
[5] s42A Report of Ian Bayliss, 11 August 2023
[6] Statement of Evidence of David Hattam, 11 August 2023
[7] Statement of Evidence of Hermione Blair, 11 August 2023
[8] Statement of Evidence of Ruth Allen, 11 August 2023

density feasibility); Mr Heath[9] (economics); Mr Osborne[10] (economics); and Mr Green[11] (wind).

[36] As part of summarising the status quo situation, Mr Kleynbos helpfully explained the ODP make-up of residential zoned land in Christchurch, reproduced as Figure 1[12] (below).

Figure 1 – Operative residential zones in Christchurch City, taken from Evidence of Mr Kleynbos, 11 August 2023, page 17.

Zone	Proportional make-up (%)	General location/use within urban environment
Residential hills (**RH**)	10%	Exclusively located on northern and eastern slopes of the Port Hills.
Residential suburban (**RS**)	58%	Established residential areas, mostly distant from larger commercial centres.
Residential Banks Peninsula (**RBP**) [Lyttelton Township]	1.3%	Sloped residential enclave immediately adjacent to the Lyttelton Port.
Residential suburban density transition (**RSDT**)	7.2%	Established residential areas that mostly lie between medium and suburban density areas.
Residential new neighbourhood (**RNN**)	14.7%	Greenfield areas mostly with outline development plans for future development, or undergoing development.
Residential medium density (**RMD**)	8%	Denser residential areas surrounding the city centre and other larger commercial centres.
Residential city centre (**RCC**)	0.8%	Higher density central city living within the four Avenues: Bealey, Fitzgerald, Moorhouse, and Deans.

[9] Statement of Evidence of Timothy Heath, 11 August 2023
[10] Statement of Evidence of Philip Osborne, 11 August 2023
[11] Statement of Evidence of Michael Green, 11 August 2023
[12] s42A Report of Ike Kleynbos, 11 August 2023 at 5.1.14.

[37] Mr Kleynbos also identified that[13] (footnote references removed):

> 5.1.15 While PC 14 seeks to make amendments to the Residential Large Lot Zone, this is not a relevant residential zone under s2 of the Act and is therefore not required to incorporate the MDRS (per s77G). These changes are instead proposed to better address National Planning Standards and provide clarity to the Plan user, no changes are proposed to provisions themselves.
>
> 5.1.16 An eighth zone, known as "Residential guest accommodation zone" is also defined as a residential zone and is therefore relevant to PC 14, but only within Policy 3 settings as this does not meet the definition of a relevant residential zone under section 2 of the Act.

[38] Mr Kleynbos identified there were in total 292 MRZ-related submitter requests, 421 HRZ-related requests, and 181 requests related to other zones. He provided an assessment of each of these, and we refer to those being Appendix D (MRZ), Appendix E (HRZ) and Appendix F (other) of his s42A report.

[39] Mr Kleynbos identified that the submissions could be summarised into the numerous topics, which we agree with and accept except where his analysis also included QM issues, which we have addressed in separate reports. These are set out at 6.1.109 – 6.1.155 of the s42A report.

[40] Having evaluated the submissions, Mr Kleynbos recommended that most be rejected. He did however recommend numerous refinements to the notified provisions but remained, overall, supportive of the Council's approach.

[41] Submissions, on both the MRZ and HRZ, addressed the full spectrum of opposition to the proposed provisions through to requests for greater enablements being provided than had been proposed, and those opposed to the MDRS, MRZ and HRZ Several submissions also sought confirmation that existing enablements within the ODP would be retained.

[42] A specific group of submissions related to parts of the operative RHZ. This is a specific zone responding to areas of Christchurch located on the slopes of the Port Hills from Westmorland in the west to Scarborough in the east. It provides for low density residential development that recognises the landscape values of the Port Hills and that may also be subject to various development constraints. The use of Outline Development Plans, overlays and comprehensive planning allowing "clustering" of development, at different densities in specific locations of the zone, is a key differentiator of this zone from other residential zones. Within these Outline Development Plan areas, outside of the identified housing "clusters", land is generally clear of buildings. Those

[13] s42A Report of Ike Kleynbos, 11 August 2023 at 5.1.15 and 16.

parts of the operative RHZ that are not subject to Outline Development Plan or overlay development guidance, are suburban residential in character, generally with a larger site density (650m^2).

[43] There were also a number of submissions challenging the Council's application of the MDRS in the RHZ alongside the proposed Low Public Transport Accessibility Area QM ("LPT QM") and the "loess soil/stormwater" QM sought by Canterbury Regional Council/ Environment Canterbury (Environment Canterbury). That effectively excluded what those submitters felt was a reasonable response to residential development within this zone. This applied to both the areas that present as essentially suburban and those areas with a range of physical and other constraints.

[44] Related to the MRZ and HRZ, submissions were also received challenging the Council's proposed amendments to existing vehicle crossing requirements both in terms of a reduction of existing enablements and in terms of technical merit and workability.

[45] In response to the s42A report, expert evidence was received from several parties including Ara Poutama Aotearoa The Department of Corrections #259 #911 [14]; Carter Group Limited #814 #824 #2045[15]; Danne-Mora Limited $903 #2066 and Milns Park Limited #916 #2073[16]; Kāinga Ora – Homes and Communities #834 #2082 #2099[17]; Kauri Lodge Rest Home 2008 Limited #2059[18]; KiwiRail Holdings Limited #829 #2055[19]; Retirement Villages Association of New Zealand Incorporated #811 #2064 #2096[20]; and Scenic Hotel Group Limited #809[21]. It is fair to summarise that much of the expert evidence related to proposed QMs (as captured in Parts 3 and 5 of this Report and later in this part too), with relatively little evidence other than from planners generally focussing on the proposed underlying MRZ and HRZ frameworks and plan provisions.

[14] Statement of Evidence of Maurice Dale, 19 September 2023, and Statement of Evidence of Andrea Millar, 20 September 2023
[15] Evidence relating to the residential zone outcomes was from: Statement of Evidence of Jeremy Phillips, 20 September 2023; Statement of Evidence of Dave Compton-Moen, 20 September 2023, and Statement of Evidence of Lisa Williams, 20 September 2023
[16] Statement of Evidence of Andrew Mactier, 20 September 2023; Statement of Evidence of Jamie Verstappen, 20 September 2023; and Statement of Evidence of Ian Thompson, 20 September 2023
[17] Evidence relating to the residential zone outcomes: Statement of Evidence of Brendan Liggett, 22 September 2023; and Statement of Evidence of Jonathan Clease, 20 November 2023
[18] Statement of Evidence of Kim Seaton, 20 September 2023
[19] Statement of Evidence of Lynda Heppelthwaite, 20 September 2023; Statement of Evidence of Michelle Grinlinton-Hancock, 20 September 2023; and Statement of Evidence of Stephen Chiles, 20 September 2023
[20] Statement of Evidence of Richard Turner, 20 September 2023; Statement of Evidence of Professor Ngaire Kerse, 20 September 2023; and Statement of Evidence of John Collyns, 20 September 2023
[21] Statement of Evidence of Samantha Kealey, 20 September 2023

[46] In response to this (and expert conferencing as set out below), the Council filed rebuttal evidence from Mr Hattam[22] that directly related to this topic.

[47] At the hearing, the Council presented its case and confirmed that it remained closely-aligned with the notified PC 14 (although in the detail of the Plan provisions numerous minor adjustments and refinements had been agreed to).

[48] We asked questions of all of the Council's witnesses and our questions tested scenarios of both more, and less, than PC 14 proposed. We also tested with the witnesses their understanding of the RMA's requirements for this particular planning process and the meaning of various provisions across the RMA and NPS-UD.

[49] We heard MRZ and HRZ-related submissions from many parties at the hearing, across the full range of support and opposition to PC 14.

[50] The submissions we heard could be broken into the following principal groupings:

(a) Submitters opposed to the MDRS and intensification required by the RMA. A representative example was Margaret Stewart #755. In her presentation to us she explained her many concerns that the process being imposed on Christchurch was unfair and likely to be detrimental to the long-term amenity values of Christchurch.

(b) Submitters accepting the MDRS but seeking it apply only to the minimum extent required, including in terms of the extent of HRZ adjacent to commercial centre zones. A representative example was Robert Manthei #200 In his presentation to us he explained why he felt the process was flawed and rushed, and that this in itself justified us only recommending the absolute minimum changes necessary to achieve statutory compliance. In this respect, he also sought numerous amendments to the MDRS that underpinned the proposed MRZ, including considerably lesser building height limits, greater landscaping requirements, and a level of site-to-site sunlight access that was equivalent to a typical Auckland site. A notable sub-group within this group of submissions were those that were accepting of the MRZ, but had fundamental concerns with the proposed HRZ (and in turn, generally more of a NPS-UD Policy 3(d) objection). A representative example of this was the Deans Avenue Precinct Society #222 (represented by Claire Mulcock and Grant Read). They disagreed with the vertical heights and extent of adjacent land around the Riccarton Town Centre, and also a Council

[22] Rebuttal Evidence of David Hattam, 9 October 2023

proposal to provide greater height in part of the identified catchment as a catchment-compensation for land elsewhere affected by the Airport Noise QM, Remodelled Outer Envelope Airport Noise Contour.

(c) Submitters seeking more enablement than proposed by the Council: A representative example was Jono de Wit #351, #1053. He explained to us in his presentation that many proposed QMs should be deleted, and that areas around some centres additional density and enablement should be provided (he spoke specifically in terms of Riccarton and the Greater Christchurch Spatial Plan's vision for it). He disagreed with comments expressed by other submitters that people wishing a high-density apartment-based lifestyle would only want it in the Central City. Instead, he favoured accommodating individual choice (whether that be for small apartments or large houses) in as many locations as possible.

(d) Some submitters proposed specific or "mechanical" amendments or alternative plan standards, metrics, or consent requirements. A representative example was New Zealand Institute of Architects #762 represented by Daniel Sullivan. Mr Sullivan is a registered architect and he explained several design-based reasons why the proposed PC 14 provisions could be improved on. He also spoke about the importance of architects being free to pursue what they felt as best for each site, with more of an emphasis on design principles and frameworks than definitive standards being most appropriate.

(e) Some submitters were concerned that there may be procedural or jurisdictional issues where the Council has sought to add to or broaden existing discretions and in so doing, by creating less certainty for a resource consent applicant (and more pathways for refusal of consent), were removing pre-existing plan enablements. A representative example was Carter Group Limited #814 #824, and the evidence of its planner Mr Phillips. Mr Phillips itemised several provisions, explained what he considered to be defective, and provided marked-up proposals that were in his opinion more appropriate.

(f) Lastly, we heard issue-specific submissions that were focused on very specific matters. A representative example was from Ara Poutama Aotearoa | Department of Corrections #259. Its planning expert Mr Dale spoke to his expert evidence and summarised reasons why custodial housing as a specific type of residential activity warranted a more enabling approach than the Council had proposed.

Joint Witness Statements

[51] A Joint Witness Statement (JWS) on Urban Design and Architecture, 5 October 2023[23] included a session on the residential zones that included Mr Hattam (CCC), Mr Clease (Kainga Ora), and Mr Compten-Moen (Carter Group, The Catholic Diocese, and LMM Investments Ltd).

[52] A separate JWS on Retirement Village controls, 22 April 2024,[24] attended by Mr Kleynbos (CCC), Ms Styles (Summerset Group Holdings Limited #443 #2022), Mr Turner (Retirement Villages Association of New Zealand Inc #811 #2064 #2096), Ms Seaton (Kauri Lodge Limited #2059), Ms Dale (Winton Land Limited #556 #2029), and Ms Glenda Dixon (CCC, for minute-taking purposes only), worked through proposed standards and policies recording agreement and disagreement.

[53] An "informal" JWS between Architects, Architectural Designers, and Urban Designers dated 2 May 2024 was produced.[25] This was not signed by all participants. It included a Joint Statement of "Architect Submitters and Christchurch City Council Urban Designers" dated 5 April 2024. This recorded very little agreement.

Issues

[54] Aside from the above JWS's received in between the hearings, the Council's Reply and final provisions included numerous additional refinements to the PC 14 provisions in the context of what was overall its consistent position in broad support of the notified PC 14. Based on the overall bundle of information before us, we find that the key issues that should be determined are (noting that this is all exclusive of the question of what and where specific QMs might then also apply):

(a) MRZ:

(i) Where should the MRZ apply?

(ii) What should the MRZ policy framework be?

(iii) What should the MRZ standards be?

(iv) What should the MRZ consent assessment framework be?

[23] Joint Expert Witness Statement of Urban Design and Architecture Experts, 5 October 2023
[24] Joint Witness Statement of Planning Experts on Retirement Village Controls, 22 April 2024
[25] Record of Informal Conferencing, Architects and Designers, 11 December 2023 filed as a Supplementary Statement from David Hattam, 2 May 2024

(b) HRZ:

(i) Where should the HRZ apply?

(ii) What should the HRZ policy framework be?

(iii) What should the HRZ standards be?

(iv) What should the HRZ consent assessment framework be?

(c) Other matters.

[55] Our findings, which follow, generally adopt the above issues framework.

Findings and Evaluation

Overall Findings

[56] In summary, we find in broad agreement with the Council's proposed approach excluding the matters of pre-PC 14 ODP development enablements, and management of the RH zone. Before we provide a more detailed breakdown of that, we have the following very high-level reasons for the degree of agreement we have reached with the Council's proposal:

PC 14 not a full plan review

[57] To the extent that PC 14 is not a full plan review, we accept the Council's proposition that unless a matter can be reasonably associated with the requirement to incorporate the MDRS and NPS-UD Policy 3 into the District Plan, PC 14 is not the appropriate vehicle to consider general re-zoning or ODP amendment suggestions, even if at face value they might appear reasonable. There is nothing about the ISPP instrument that limits ongoing use of the standard RMA Schedule 1 process to change District Plans, evidenced directly by the Council's own promotion of Proposed Heritage Plan Change (PC 13) alongside PC 14. Submissions that did not reasonably relate to the purpose of PC 14, and that we were not persuaded were relevant to our statutory obligations, are recommended to be rejected.

MDRS incorporation is mandatory

[58] The function of PC 14, following on from the directions within the RMA, is that the MDRS *must* be applied in *all relevant residential zones*. Other than via a QM, the RMA provides no leeway in this requirement and there is no valid means to otherwise temper, adjust or reduce the MDRS. We refer to the QMs addressed later in this report and also Part 5 (and to a lesser extent Part 3) of this Report which address other QMs. But to the extent that submissions sought to apply the MRZ in locations other than those described within the RMA or otherwise amend the MDRS without a valid QM, those are also recommended to be rejected.

Waikanae, existing enablements, and new proposed provisions

[59] Referring to our Part 1 Report and our approach to the *Waikanae* issue of not removing status-quo enablements, we find the issue of restrictions in matters of discretion highly nuanced. At face value an amended or new restriction of discretion giving the Council greater opportunities to refuse consent than it previously held could be seen as a reduction in enablement to the extent that the Council could now take into account matters that it had previously excluded itself from. We find that this would only be the case if the relevant underlying ODP enablements in terms of activity status and applicable standards had also not changed. However, PC 14 does change, in both the MRZ and HRZ, the status quo in all instances so as to allow more development including as a permitted activity than previously.

[60] We are satisfied that where a permitted level of development has been increased from the status quo, amended or additional restrictions of discretion (or assessment matters) *may* be able to be added in a manner that still satisfies the boundary of not removing status-quo levels of enablement. Taking this view, we have reviewed each proposed amended and additional restrictions of discretion in the MRZ and HRZ, and record our general agreement with the Council's justifications for each as they relate to development beyond existing ODP enablements. For the case of development to a level *less* than the MDRS or Policy 3 response, which is currently enabled and which we find must be retained. We found that Councils proposed use of the definition of "residential intensification" which we accepted, in the case of Chapter 5, Natural Hazards, may have utility elsewhere in Chapter 14, and we have referred to that in our directions to changes to Chapter 14 below and in Part 8 of the Report, Appendix G.

Three Development Pathways Should Be Provided For

[61] Based on the above, we recommend the Council amend the District Plan as follows, to provide landowners or developers with three consent pathways to choose from on residential-zoned land that is subject to PC 14:

Pathway A – Existing enablement that complies with the ODP Development Standards

(a) This corresponds to development that is consistent with the definition of "residential intensification" which was suggested by the Council during the hearing and has subsequently been recommended by the Panel to be introduced to Chapter 5 *Natural hazards* of the District Plan, This pathway provides for development on a site that is in line with what the ODP already provides for, but is less than the proposed MRZ / HRZ would enable.

(b) This applies to existing enablements within the ODP including activity status, built form standards and the existing suite of restrictions in matters of discretion (or reservations of control where an application be controlled activity). Despite the additional enablements provided by the MRZ and HRZ, it remains open for a person to seek development that corresponds to the existing levels provided in the ODP – for example in the Residential Suburban zone, building height to 8m or less (even if for multiple dwelling units on a site as a specific activity provided for).

(c) None of the additional or "new" controls or restrictions of discretion proposed via PC 14 would apply to this pathway.

(d) PC 14 does not provide for this pathway, particularly in terms of the Council's proposed removals of controlled activities and material broadening of restrictions in matters of discretion. The Panel did query Counsel for the Council as to whether this pathway might be applied for Chapter 14 provisions not just where those provisions intersect with Natural Hazards overlays, but the response was not enthusiastic. Effectively this pathway would have a similar effect to the Panel's suggestions the hearing. We have not been able to "unpack" the operative restrictions of discretion and activity classifications from the Council's modified PC 14 versions and for this reason we recommend the Council re-introduce the necessary Plan provisions to provide for this pathway. This may need to include some of the ODP objectives and policies as appropriate.

(e) We find that there is no other way to provide for the requirements set out in *Waikanae* than to maintain this opportunity.

Pathway B – Development that complies with the Activity and Development standards proposed for the MRZ or HRZ as the case may be

(a) This would apply to development beyond the ODP activity and development standards but that complied with the new MRZ / HRZ standards (i.e., in the MRZ, a building height of 11m plus 1m for roof form). This includes development that does not comply with the existing development standards that apply to Pathway A.

(b) This pathway would be subject to the PC 14 standards, activity classifications, and restrictions in the matters of discretion proposed by the Council for the MRZ / HRZ (except where we have otherwise recommended amendments to those).

(c) No changes to the proposed PC 14 provisions are otherwise required to provide for this pathway.

Pathway C – development that does not comply with the Development Standards proposed for the MRZ or HRZ as the case may be.

(a) This would apply to development beyond the MRZ / HRZ standards (i.e. in the MRZ, a building proposed at 16m height).

(b) This pathway would be subject to the activity classifications and restrictions in the matters of discretion proposed by the Council for the MRZ / HRZ specifically in instances where standards have not been complied with (except where we have otherwise recommended amendments to those).

(c) No changes to the proposed PC 14 provisions are otherwise required to provide for this pathway.

[62] As part of that exercise, we recommend that the Council revisit, and in some cases reinstate the ODP version, the definitions proposed to be changed by PC 14 as set out in the section 32 Report, Part 3 at 3.3.8 so that they do not remove existing development rights. By way of an example of the issue, the changes proposed to the definition of 'building' to align with the NPS definition, although it appears the Council has intended to ring fence these to the MRZ and HRZ, because of the wide-ranging changes to the provisions in those newly labelled zones, they also impact existing development rights.

Care will need to be taken to separate out the application of amended definitions to the three pathways we have identified above.

[63] In respect of the above solution, we recommend that in providing for Pathway A, the Council have regard to the overall usability of the Residential Chapter and whether consequential editing of the Chapter's structure so as to make navigation between the three pathways as simple for users as possible is appropriate (especially given the different standards, activity classifications, and assessment matters that would apply between the different pathways). Provided that the meaning and effect of the provisions did not change, the Panel confirms its view that this would be an appropriate action.

[64] In respect of the above solution and so as to make it functional, we recommend that where the Council has proposed MRZ or HRZ, it retain as an overlay the extent of the operative zone extents so that users are able to find the correct operative provisions that apply should they wish to use Pathway A.

Council MRZ and HRZ Proposals are Appropriately Enabling

[65] The RMA provides the Council with considerable flexibility in whether and how it might enable more development than required by the MDRS, and what plan provisions it seeks to manage non-permitted MDRS development (particularly 4 or more dwellings on a site). Although we heard from submitters that sought a more permissive approach, greater enablements, and a simpler assessment framework (i.e. less Council matters of discretion), we prefer the Council's assessment of foreseeable development issues, relevant effects to be managed, and extent and depth of s32 analysis (and s32AA analysis) of the overall package of zone provisions in each of the MRZ and HRZ.

[66] In terms of NPS-UD Policy 3, this does not of itself oblige a Council to provide more enablement than the MDRS on residential-zoned land identified as being adjacent to a commercial centre zone (except in the case of the City Centre zones via NPS-UD Policy 3(c)), but we find that it cannot be less-enabling than the MDRS other than via a QM. Although we refer separately to our recommendations in Part 3 of our report for our findings on what the adjacent areas around the centre zones should be, we agree with the Council's structure of using a HRZ to manage that land. We are not persuaded to provide less enablement within those areas than the Council has proposed. Noting how substantial that enablement is and the degree of concern we heard from submitters opposed to even that, we found the evidence supporting even greater enablement of

development beyond that proposed to be insufficient, including in terms of s32AA RMA evaluations provided to us.

[67] Having established the above very high-level reasons for the degree of agreement we have reached with the Council's proposal, we now look specifically and separately at the MRZ and HRZ.in terms of both spatial extent and provisions.

Specific Findings on MRZ

Where should the MRZ apply?

[68] The Panel agree with the Council's proposal that the MDRS must apply to all relevant residential zoned land in the first instance. This does not include rural-zoned land or large-lot residential-zoned land. However, we find that the Council erred in identifying (parts of) the RHZ as a "relevant residential zone" that should be subject to the MRDS and (potentially) QMs. Specifically:

Part of RHZ is an LLRZ and not a relevant residential zone subject to the MDRS

(a) The Council itself found large parts of the zone were Large Lot Residential in nature, evidenced by its attempt through PC 14 to re-zone the land to that.

(b) These specific parts of the zone function as a coordinated and integrated whole that links areas of development (even at suburban densities) to larger undeveloped areas associated with those in practical landform and landscape terms. It is artificial to split these specific parts of the zone into separate component zones and we find that the promotion of sustainable management, as well as a well-functioning urban environment, would be best-served by managing the land in a coordinated and integrated manner by way of one overarching zone and outline development plan/overlay framework.

(c) In the same way that the RMA contemplates urban residential zones having many sub-categories (including precincts and overlays), we find no reason why the same cannot be so for specific parts of a Large Lot Residential Zone. We note that the ODP currently uses the title *Residential Large Lot Zone* and it applies to areas of the Port Hills for existing residential development that has a predominantly evenly disbursed low density or semi-rural character (rather than the "clustered" character within outline development plan and overlay areas). We have considered the overall form and function of the ODP RHZ and referred to the NPS. We find that

for specific parts, the existing situation best fits the definition and purpose of a Large Lot Residential Zone, even though based on local environmental constraints the RH zone adopts a localised house clustering approach and smaller individual section sizes than would ordinarily be imagined of an LLRZ. The point is that the larger undeveloped parts of the zone are just as much a part of the zone's overall outcomes as the developed parts (i.e. they both need to be looked at together).

(d) Taking a real-world view of the RH zones in their entirety including their Outline Development Plan and Overlay methods and substantial un-built areas, they do not fit the mould of an urban residential zone of the manner contemplated as having the MDRS subject to them. This follows through to the Council's convoluted process of proposing MHZ (in parts of the zone) but then looking to QMs to roll that back towards the status quo anyway based on the limited capability of the zone to generally accommodate MDRS-based development. This is fundamentally very indicative that the MDRS are not generally reconcilable with the characteristics of some parts of the RH zone.

(e) Section 77G of the Act requires that the MDRS apply to relevant residential zones and that this excludes Large Lot Residential zoned land. We find that this cannot only apply serendipitously to zones that prior to the Housing Supply Act's RMA amendments already happened to be named a "Large Lot Residential Zone". We find that we are entitled (and required) to consider the practical state of existing zones and whether they are relevant for the purpose of applying the MDRS. In the case of the RH zone, it is not.

(f) On this basis, specific parts of the RH zone, where an Outline Development Plan or overlay method is uses, does not need to be subject to the MDRS and based on the submissions and evidence we received, including from the Council, we are persuaded that it should not be subject to the MDRS even were we minded to exercise discretion in that regard. It follows that the parts of the RH zone as footnoted here[26] should be excluded from PC 14, and we recommend the operative zone provisions be retained. Amending the RH zone, even to re-label it as a form of Large Lot Residential Zone (such as a "Large Lot: Residential Hills zone"), falls

[26] Monks Spur/Mt Pleasant Density Overlay and Appendix 8.10.8 – Monks Spur,
Shalamar Drive Density Overlay,
Upper Kennedys Bush Density Overlay and Appendix 8.10.16 – Kennedys Bush / Cashmere Road 2008,
Residential Mixed Density Overlay -Redmund Spur,
Residential Mixed Density Overlay – 86 Bridle Path Road
Appendix 8.10.7 Cashmere and Worslesy Development Plan (for those parts showing RNZ)

beyond what we consider is directly consequential or related to the act of incorporating the MDRS or a NPS-UD Policy 3 response into the District Plan.

(g) It also follows that we do not agree with the Council's proposed re-zoning of parts of the RH zone to Large Lot Residential Zone. Having determined that specific parts of the operative zone should not be subject to PC 14, it follows that any re-zoning should be pursued only through the normal Schedule 1 RMA process for changing District Plans.

(h) Lastly, and for completeness, on the basis that the MDRS and NPS-UD Policy 3 should not apply to these parts of the RH zone, no Qualifying Matters can apply either.

(i) In relation to the submission from Red Spur Limited #881 #2068, we have applied our findings here to our consideration of the requested zone changes in Part 7 of the Report, where we recommend the submission be rejected, except to the extent that the LLRZ retains the status quo development rights for Redmund Spur (which was in fact what the submitter was seeking).

Part of RHZ is a relevant residential zone and is subject to the MDRS

(a) Where we agree that the RHZ has characteristics of a conventional residential zone and where the MDRS should apply (which is all parts of the RHZ that are not subject to an existing Outline Development Plan and overlay provisions), that land is a relevant residential zone and should be re-zoned MRZ, generally as proposed by the Council.

(b) With reference to this Part and Part 5 of our report, we have not accepted the proposed QMs that would have applied to parts of the existing RHZ. None of those were specific enough to the RHZ, or robustly set out and justified, to warrant reducing the extent to which the MDRS should apply on that land. However, based on the submissions received and our own site visits conducted as part of the PC 14 process, we acknowledge that there may well be a valid QM affecting parts of the RHZ that we find should be zoned MRZ, and which may justify limiting the extent to which the MDRS should apply. This would be based on the specific landform, landscape, infrastructure capability, and access and slope of that land. Although we are persuaded that there may *potentially* be a valid basis to qualify the MDRS on parts of the operative RHZ, the evidence available to us is insufficient to allow us to reach a reasonable conclusion on that matter either way. This lack

of evidence is primarily due to the Council's use of the LPT QM being the "proxy" method to roll back the MDRS enablement. For completeness we find that Council's Reply approach of applying the MRZ and either the "Suburban Hill Density Precinct" or the Residential Hills Precinct is effectively the LPT QM in another guise. In addition, we find that some of the provisions appear to be *ultra vires* in that activity status is determined by a third-party action (i.e., moveable location of bus stops) that sit outside the District Plan.

(c) We therefore recommend the Council undertake a specific analysis of the Operative RHZ land recommended to be classified MRZ, based on its own characteristics and capabilities, and if a valid QM based on that is identified, a Schedule 1 RMA process be initiated to introduce that qualification.

[69] Subject to the above, we agree with the Council's proposed (Reply) mapping except where we have amended the extent of HRZ to be less than the Council proposed adjacent to commercial centre zones. That land removed from the HRZ is recommended to become MRZ unless:

(a) it has a non-residential status-quo zone such as a business zone, in which case it is to retain that non-residential zoning; or

(b) It has an operative residential zone that is more enabling of height or density than the MRZ, in which case and due to our approach to the *Waikanae* issues, the operative zone(s) should be retained.

[70] We refer to our recommendations on QMs (largely in Part 5 but also later in this part and in Part 3), where we recommend qualifications to the MDRS that include setting the MRZ aside in favour of ODP zones in some instances. In all of those areas of Christchurch, the MRZ should not apply.

[71] Our following findings and evaluations with respect to MRZ and HRZ objectives, policies and standards are made in respect of those provisions that apply only to our Recommended Pathway B and C, to the extent the Reply or submissions apply to Pathway A enablements, we recommend that the changes are rejected, and the Council reverts to the relevant status quo objectives, policies and standards for the reasons set out above.

What should the MRZ policy framework be?

[72] Having reviewed each proposed objective and policy from the Council's Reply version, we agree that all are relevant. We have recommended minimal further changes to improve consistency, legibility, and certainty only.

[73] We do not find that any objective or policy over-extends what is appropriate or justifiable.

[74] We do not find that any additional objectives or policies are necessary.

What should the MRZ standards be?

[75] Having reviewed each proposed rule from the Council's Reply version, the Panel agree that all are relevant. We have recommended minimal further changes to improve consistency, legibility, and certainty only. We refer to the Sunlight Access QM (later in this Part), where we recommend deleting the Council's proposed height in relation to boundary recession plane (rule 14.5.2.6 and Appendix 14.16.2) and replacing it with the MDRS default of 4m vertical plus an incline of 60-degrees on all boundaries. We also refer to changes as a consequence of our findings on other QMs in Parts 3 and 5 of our Report.

[76] We do not find that any of the rules over-extend what is appropriate or justifiable.

[77] We do not find that any additional rules are necessary.

[78] We find that there is no need to further amend the Plan in terms of any specific activities or sub-categories of housing including custodial housing or retirement villages. The Plan will become more enabling than it currently is and we do not agree that either retirement villages or custodial housing (or any other type of residential activities) have been inadvertently or inappropriately "left behind". Specifically in the case of retirement villages, these are comprehensive facilities that will in almost all instances be in the 4-or-more unit category, and would in all likelihood be in the restricted discretionary activity consent space (aside from very minor additions and alterations to existing villages). Having considered the relevant rules and restrictions that could in all scenarios apply, we are comfortable that PC 14 is appropriately more enabling than the status quo on the basis of the position reached for retirement villages in the JWS.

What should the MRZ consent assessment framework be?

[79] We refer to our earlier "three pathways" framework. Putting aside Pathway A (existing enablements), we have considered the Council's proposal in the context of Pathways B (development compliant with the MRZ / HRZ standards) and C (development not compliant with the MRZ / HRZ standards).

[80] We agree with the Council's broad framework to the extent it applies to our recommended Pathway B and C where development enablements have been Having reviewed each discretion and matter and noting also the extent of refinement undertaken by the Council as a response to the submissions, evidence, and our questions of that, we are satisfied each has been appropriately justified.

[81] Although we did have sympathy for those submitters opposed to the amount of matters and overall extent of discretion the Council sought to retain for itself when we had in mind small-scale development of perhaps 4-8 dwellings, the fact is those matters would also be all that could be considered when proposals of perhaps 50 or 100 new dwellings were being proposed. Our site visits included several such large-scale developments of this scale and when we worked through the restrictions and assessment matters proposed we could see how each could be relevant. Following on from this, we did briefly consider whether the scale and intensity of a proposed development might justify a differentiated pathway (i.e. controlled activity) whereby fewer restrictions applied to smaller-scaled developments. We think that such an approach may have merit but based on the evidence we had available to us, we did not have sufficient means to identify what such a threshold (or thresholds) of scale might be, or what different matters should sit across those. On that basis we took the concept no further.

[82] Referring to our Low Public Transport Access Area QM (LPT) evaluation and recommendations (later in this Part), we identified that the potential for additional development over and above the MDRS might be warranted where passenger transport access was very good (i.e. the opposite approach of what the Council's QM was based on). To that end, we find that the most appropriate reflection of this opportunity would be within the Matters of Discretion where 4 or more dwellings are proposed and otherwise where standards are proposed to be infringed, to make it clear that one (but not a determining) factor relevant to such applications is whether the Site is within an 800m walkable distance of at least a high-frequency bus stop and if the proposal is maximising the efficient use of the Site to provide housing. Accordingly, we have slightly amended

the restrictions to accommodate this (the Council's reply version recognised building height infringements would be relevant but we find that building coverage also is).

[83] We are otherwise not persuaded that any additional or fewer matters of discretion are warranted.

Specific Findings on HRZ

Where should the HRZ apply?

[84] The Panel accept that the HRZ is the Council's NPS-UD Policy 3 response and that it should be used on land identified as being relevant to that. We are not persuaded to apply it to any other land.

[85] We refer to Part 3 of our report which addressed the question of adjacent land to commercial centre zones, and the walkable catchment of the CCZ.

[86] Submissions seeking the HRZ to apply to less land than we have identified as necessary to implement NPS-UD Policy 3 are recommended to be rejected. There is no further discretion available to grant relief to those submissions other than via a QM.

[87] Conversely, submissions seeking a greater extent of HRZ than we have identified are also recommended to be rejected. We have not been persuaded that such would be appropriate having regard to the NPS-UD as a whole as well as Policy 3, and there was inadequate s32AA evaluation to justify that. In reaching this recommendation, we refer to the decisions made by many local groups and individuals living in and around existing centres and their compelling descriptions of those centres and how and why people might walk to and from those. Although the NPS-UD Policy 3 test of "commensurate" is an imprecise one, we confirm that where we have not recommended HRZ to apply, but where residential-zoned land might still be considered adjacent to a commercial centre, that the MRZ reflects the extent of development enablement we find to be commensurate to the characteristics of those centres.

What should the HRZ policy framework be?

[88] Having reviewed each proposed objective and policy from the Council's Reply version, we agree that all are relevant. We have recommended minimal further changes to improve consistency, legibility, and certainty only.

[89] We do not find that that any objective or policy over-extends what is appropriate or justifiable.

[90] We do not find that any additional objectives or policies are necessary.

What should the HRZ standards be?

[91] Having reviewed each proposed rule from the Council's Reply version, we agree that all are relevant. We have recommended some minor further changes to improve consistency, legibility, and certainty only. We refer to the Sunlight Access QM (later in this Part), where we recommend modifying the standard below building height of 12m to match the MDRS, but retaining the notified standard for building height above 12m that, in conjunction with the other standards proposed, provides a greater enablement of development than the MDRS and which forms a coherent built form outcome for the land adjacent to commercial centres to be zoned HRZ.

[92] We have not been persuaded that a maximum building height of more than 14m (as notified) is necessary or appropriate in the first instance, with the exception of the Central City Residential Precinct. It is bordering on fanciful to imagine a permitted activity of up to 3 dwellings requiring more than a 14m-tall building and so in almost every imaginable scenario buildings taller than 14m would be in the 4 or more dwellings category, already needing a land use consent. In that context building height above 14m can already be suitably considered as part of the assessment framework provided for. In reaching this finding we also reviewed the Council's evidence on the makeup of existing residential zoned land as well as our own site visits conducted across the PC 14 process. On most sites, the height in relation to boundary standard and site widths would preclude height above 14m being achievable without infringing those either.

[93] We do not find that any of the rules over-extends what is appropriate or justifiable.

[94] We do not find that any additional rules are necessary.

[95] We refer to our MRZ findings above in terms of specific activities or sub-categories of housing including custodial housing or retirement villages, which apply also to the HRZ.

What should the HRZ consent assessment framework be?

[96] Referring again to our "three pathways" recommendation, and noting that separate provision for development in-line with existing enablements (Pathway A) be addressed

by the Council, we agree with the Council's broad framework as it would apply to Pathways B and C, and as noted previously we do not accept that adding additional matters of discretion or assessment matters that do not currently sit in the ODP would inherently be less-enabling of development than the status quo where development enablements have also been increased. Having reviewed each discretion and matter and noting also the extent of refinement undertaken by the Council as a response to the submissions, evidence, and our questions of that, we are satisfied each has been appropriately justified.

[97] Referring to our MRZ comments regarding the overall extent of discretion proposed to be retained by the Council, those apply also to the HRZ.

Other Matters

[98] We recommend that changes proposed in PC14 to vehicle crossing requirements in the District Plan Chapter 7 Transport be deleted. Having determined that existing enablements must be maintained, which include the existing operative vehicle crossing requirements, we considered introducing different requirements when a development tripped from Pathway A to Pathway B (as we have described the matter). We find it would be neither effective or efficient, and unnecessarily duplicative to do this. We also agree with submissions opposing the Council's proposal on the basis they lacked clear technical need or justification – in other words we disagree with the Council that there was a definitive problem in need of being addressed.

[99] There were three precincts proposed that impinge on the MRZ and HRZ and the Panel's findings are:

(a) The Local Centre Intensification Precinct (within the MRZ) is recommended to be deleted. We have rendered this obsolete in our NPS-UD policy 3(d) finding that Local Centres should have an area of land within 200m of the central point of the relevant centre zone re-zoned as HRZ, following the methodology we have set out in Part 3 of our Report. In this respect we have accepted the Precinct in part but prefer a simpler and more consistent Plan response via the HRZ.

(b) The Central City Residential Precinct is recommended to be retained to the extent that it falls within the area we have recommended for the CCZ's NPS-UD Policy 3(c) walkable catchment. The Council's evidence on the appropriateness of a 12-storey height limit based on economic viability concerns was persuasive and this

is also an appropriate complement to the NPS-UD policy 3(a) driver to concentrate activity within the CCZ.

(c) The Riccarton Residential Intensification Precinct is recommended to be deleted. There are several reasons for this:

(i) The Council did not provide a convincing nexus between the enablement of height and density proposed and the required analysis under NPS-UD Policy 3(d) that it be "commensurate" or otherwise appropriate for that centre in light of RMA s77H. The Council's justification for the precinct was to "make up" capacity lost elsewhere in the locality by the Airport Noise QM. That approach was also unconvincing on the basis that it contradicted the Council's otherwise firmly presented position that it had enabled significantly more dwelling capacity than was likely to be needed over even a very long period of 100-years or more and did not need to "do more".

(ii) The NPS-UD defines "planned" passenger transport infrastructure in terms of committed outcomes via Regional Land Transport documents. The potential future passenger transport facilities relied on by the Council to help justify this precinct and overall concentration of growth proposed around this centre did not meet this definition and we disregarded the concept as being overly speculative and uncertain. At such time as this potential project may come to meet the NPS-UD definition, the Council would be then able to advance a Plan Change on the basis that what we find to be "commensurate" here-and-now would have changed.

(iii) We are persuaded to agree with local submitters opposed to the precinct that it lacks a valid resource management basis in terms of the reasonableness of adverse effects being transferred into their neighbourhood because of a QM promoted by the Council elsewhere.

(iv) To the extent that our recommendations as to the appropriate NPS-UD Policy 3(d) extent of HRZ land adjacent to Riccarton is for a smaller area of land than has been proposed by the Council, and that following on from that some of the proposed Precinct would now sit on MRZ land rather than HRZ land, we confirm that our findings as to the inadequacies of the precinct in terms of NPS-UD Policy 3(d) apply to and are the same in terms of the test

within the MRZ for development more enabling than the MDRS under RMA s77H.

(v) For the avoidance of any doubt and noting that RMA s77H allows to enable more than what might be found as appropriate to implement the MDRS and/or NPS-UD Policy 3, we are not satisfied that it would be appropriate in the Precinct. For the foreseeable future, where there is demand for development of a scale greater than we recommend be enabled at and adjacent to Riccarton, the most appropriate and well-functioning urban environment contributing outcome would be for that to be accommodated within the Central City Residential Precinct, which we agree with and recommend in part for this specific purpose.

[100] For completeness we have considered all other submissions relating to the MRZ and HRZ, including land re-zoning requests (Part 7), but excluding matters relating to a QM (Parts 3 and 5). We are not persuaded, including in terms of the s32AA evaluations provided to us, to make any additional changes to the Council's Reply Plan provisions.

[101] We refer to our recommended provisions in Part 8, Appendix G. We confirm that where we have recommended changes it is to provide greater consistency, improve the language of the provisions or simplify them, or (based on the findings in other matters), provided for or removed QM-related provisions.

[102] Our recommendations are consistent with and implement the NPS-UD, particularly Policy 3. The MRZ and HRZ directly enable the housing outcomes set out as being included in the definition of a well-functioning urban environment. Although we did not find the Council's "density done well" positioning argument helpful or relevant, we do agree that the NPS-UD seeks more than just a mechanical maximisation of development capacity. There is a place for consideration of quality, built form character, and amenity values albeit in the context of higher-density urban amenity values. The PC 14 plan provisions as we have recommended them will appropriately reflect this.

Section 32AA Evaluation of Recommended Changes.

[103] Because our recommendations in relation to our identified Pathway B and C have fallen very close to the Council's (Reply) provisions, the Panel find that the Council's s32 and s32AA evaluations can be generally relied on and are sufficient insofar as it relates to development beyond the ODP enablements that could occur within the new MRZ and HRZ. The additional amendments we have recommended are minor and do not require

any additional evaluation beyond the reasons presented in this report. In terms of the vehicle crossing-specific provisions proposed as part of PC14 in the District Plan Chapter 7 Transport, we record that we do not accept the Council's s.32 analysis or conclusions, and recommend these be deleted for the reasons previously provided (and which include an RMA s32AA analysis as part of that).

[104] However, and as it relates to the existing ODP enablements and the likelihood that some persons may wish to only develop land within those, and not take advantage of the new MRZ or HRZ provisions, it is not appropriate for these to be diminished in the manner that the Council had proposed. These must be safeguarded, and we have recommended the Council re-work Chapter 14 of the District Plan to provide for that as part of what we have described as a "three pathways" approach. For completeness, this does not require additional s32 or s32AA justification as it amounts to the Council's own proposed approach modified to retain existing ODP provisions as is required by the RMA and affirmed recently by the High Court on review of the *Waikanae* case. Because our recommendation is for the Council to retain provisions that are already operative in the form of one development pathway that persons may take, without setting aside the new MRZ or HRZ provisions as the case may be, there is no need to consider what provisions might be more or less appropriate than the other; the RMA requires that both must be provided for and our recommend approach does this.

[105] In terms of the RHZ, those parts of the zone which have Outline Development Plan or overlay provisions are not relevant residential zones for the purposes of PC 14; no additional analysis is required under s.32 or s32AA of the RMA and that land should be simply excluded from PC 14 and kept in its current form. For the balance of the zone, which we find is a relevant residential zone, MRZ should apply for the reasons set out by the Council where it had also proposed to re-zone RHZ to MRZ. Although we have not been persuaded that any of the QMs put to us were valid, we have acknowledged that based on the submissions we heard, there may be a RHZ-specific QM based on the specific landform and characteristics of the zone and if this can be substantiated by the Council a Schedule 1 Plan Change process could be advanced. Again, this does not require any additional s32 / s32AA analysis as our recommendations are based on the requirements of the RMA, not a matter of preferred provisions out of a set of alternatives.

[106] For all of the above reasons, the Council's MRZ and HRZ should be retained as amended by our recommendations (or otherwise as a result of a QM and documented in Parts 3 and 5 of the Report and also in Section 4 of this part of the Report). The Council's approach is largely required by the RMA as mandatory. Although many

submissions opposed all or part of the Council's response, for the most part submissions in opposition must be rejected because there is simply no legal latitude to grant the relief requested.

[107] Where submissions sought more than the Council proposed, we have also largely rejected those including on the basis that beyond the statutory requirements for "up-zoning", questions relating to the long-term future of Christchurch City in an integrated resource management sense, including rural-to-urban re-zoning, are not relevant to the purpose of this ISPP and are just better-suited to the full RMA Schedule 1 plan-making process. Although we have not gone so far as to adopt a "do minimum" approach, we have been properly cautious about significant additional enablements beyond that point and the unintended consequences that might bring, where substantial and substantiating evidence (and s32AA evaluation) was not also provided accompanying those requests.

4. SUNLIGHT ACESS QUALIFYING MATTER

[108] This Section addresses the Council's proposed Sunlight Access QM. This qualifying matter attracted a significant amount of comment both in support and opposition.

Summary of Recommendations

[109] The Panel recommends that the Sunlight Access Qualifying Matter (Sunlight QM) for the MRZ be deleted, and that in its place the ODP height in relation to boundary plane be retained and apply to development in accordance with existing ODP enablements (what we have identified as Pathway A in our previous MRZ / HRZ recommendations). For development that would fall under our Pathways B and C, the MDRS height in relation to boundary plane set out in Schedule 3A of the RMA should apply.

[110] In terms of the HRZ the Panel recommends the ODP recession plane be retained as it applies to development under our Pathway A. For Pathways B and C, the height in relation to boundary standard should be based on the MDRS as set out in Schedule 3A of the RMA for building height below 12m; but having made that adjustment we recommend that the Council otherwise retain the PC 14 notified recession planes[27] for building heights above 12m in the HRZ as part of the "commensurate" enablement of

[27] We have used the term 'recession plane' to refer to the Schedule 3A MDRS Density Standard 12 'Height in relation to boundary'

building height and density required by NPS-UD Policy 3. No further justification of the recession plane is necessary.

[111] The Panel recommends that the submissions that supported the Sunlight QM, in either or both of the MRZ or HRZ, are rejected and that the submissions that opposed the QM (including those that sought modifications but that would have resulted in the standard still remaining less enabling than the MDRS equivalent) are accepted and those that opposed the Sunlight QM in the HRZ are accepted in part. Those submissions that supported the HRZ enablement of development greater than the MDRS (building height greater than 12m) as part of the NPS-UD Policy 3 response are also recommended to be accepted.

PC 14 as notified

[112] PC 14 was notified with a citywide Sunlight QM affecting all residential-zoned land. This was to replace the MDRS recession plane with a bespoke alternative. One other consequence of this was that the MDRS did not have legal effect when PC 14 was notified; in other words, no residential site has been able to utilise the MDRS permitted activity provisions when PC 14 was notified.[28]

[113] The Council's s32 evaluation provided a detailed explanation of the Sunlight QM and the reasons that the Council did not accept the MDRS recession plane was appropriate[29]. The s32 summarised the problem, as the Council saw it[30]:

> In conclusion, Council proposes to introduce Sunlight Access as a qualifying matter, thereby modifying density standards in a manner that best achieves an equitable outcome to sunlight access when compared to the vast majority of other Tier 1 Councils; with the Auckland context being representative of the MDRS baseline. Such an outcome also provides for other benefits; by reducing bulk and massing, the adverse heat island effects of density are reduced and greater opportunities for tree planting to counter heating effects during summer months are made possible.

[114] As part of investigating the issue, the s32 evaluation summarised the alternative ways to address the identified problem, including consideration of varying building height, and yard setbacks. It was concluded that revision of the ODP recession plane was the most targeted and appropriate MDRS provision to amend.

[28] In accordance with RMA, s86BA(1)(c)(ii).
[29] s32 Report, Part 2 (Part 3) at 6.30
[30] Ibid, at 6.30.6

[115] The alternatives evaluated in the s32 report were:

(a) Option 1 - reducing all metrics further than proposed in PC 14 (3m + 50-degrees on all boundaries)

(b) Option 2 - retaining the MDRS 4m vertical and then inclining at 50 degrees

(c) Option 3 - the PC 14 approach.

[116] The s32 evaluation did not include the MDRS as an alternative, having already determined that it was not acceptable.

[117] In the s32 report, Option 3 was determined to be the most appropriate on the basis that it would provide more development capacity than Option 1 and manage shadowing effects (sunlight access) better than Option 2.

Submissions and Section 42A Recommendations

[118] The Council s42A report[31] helpfully summarised submissions on the Sunlight QM them as follows (which we accept):

> 7.1.48 Submissions on the QM can be broadly summarised into three categories: some submitters seek to remove the Sunlight Access QM entirely; others seek to retain the QM as notified; and the third category of submitters seek to modify the QM further to be more restrictive of development, either retaining the operative approach or a more area-specific control for a particular suburb or environment (e.g. residential hills).
>
> 7.1.49 The majority of submitters favour removing the Sunlight Access QM. Those submitters consider that there is a lack of evidence supporting the QM, that it would unjustifiably protect the values of existing dwellings, and that it would result in a less efficient land use that would reduce housing affordability. Some submitters consider that the QM is not greatly different to recession planes applied currently under the operative Plan rules applying in medium- or high-density areas, so fails to respond appropriately to the intensification required under the new legislation. A large proportion of submitters (about 150) observed that the latitude of Christchurch is similar to some northern hemisphere cities in Europe and successfully achieved densities similar to, or greater than, MDRS.

[119] The Council grouped the submissions into the following categories, which we accept:

(a) MRZ (notified Rule 14.5.2.6):

(i) support the Council's approach (18 submission points identified)

[31] s42A Report of Ike Kleynbos, 11 August 2023 at 7.1.48 and 7.1.49

(ii) support the Council's approach but seek greater restrictions on development (58 submission points identified)

(iii) support the Council's approach but seek use of a different measurement / metric (four submission points)

(iv) apply the MDRS recession plane to narrow road boundaries (one submission point)

(v) seek an amended / alternative approach (six submission points)

(vi) submissions relating to the proposed exemptions from the Council's rule (both in support and opposition) (nine submission points)

(vii) oppose the QM (195 submission points)

(viii) general opposition to intensification (13 submission points).

(b) HRZ (notified Rule 14.6.2.2):

(i) support the Council's approach (14 submission points identified)

(ii) support the Council's approach but seek greater restrictions on development (40 submission points)

(iii) support the Council's approach but seek use of a different measurement / metric (three submission points)

(iv) submissions relating to the proposed exemptions from the Council's rule (both in support and opposition) (18 submission points)

(v) apply the MDRS recession differently (four submission points)

(vi) oppose the QM (148 submission points).

Submitter presentations and evidence

[120] The Panel received little expert evidence directly addressing the Sunlight QM. Kāinga Ora – Homes and Communities (Kāinga Ora) filed evidence from Mr. Liggett[32] (corporate); and Mr. Colegrave[33] (economics).

[32] Statement of Evidence of Brendon Liggett, 22 September 2023
[33] Statement of Evidence of Fraser Colegrave, 15 September 2023

[121] Consequently, there was no rebuttal evidence from either the Council or submitters on the Sunlight QM.

[122] At the hearing we discussed the Council's approach at length with its witnesses. In questions to Mr Kleynbos, he confirmed his view that the MDRS were based on Auckland's issues and environment, and that the Council's option was focused on the MRZ where the MDRS would apply, not where the NPS-UD Policy 3(d) would apply.

[123] Our questions to Mr Hattam also sought to understand the nature of the analysis that had been undertaken and the Council's concerns. Through this process we identified a desire for more precise testing of east and west (early morning and later afternoon) shadows. It struck us that at these times of the day the solar angle may be so low, and shadows so long, that the Council's proposed method may make negligible if any beneficial difference. This was relevant in terms of both direct solar access (i.e., where a property relied on early morning or late afternoon solar access for its principal means of sunlight), and total solar access (i.e., if calculated as total sunlight hours available across a day, we were interested in understanding how much of that was likely to be actually usable and enjoyable for people rather than being theoretical).

[124] This resulted in a specific request to the Council for additional information, which we addressed in more detail below.

[125] Turning to the submitters that presented, we heard supporting and opposing points of view.

[126] In terms of those opposed to the Sunlight QM, a representative statement came from David Townshend #599. He emphasised that people look for many things other than sunlight when purchasing a property including price and access. He explained to us his familiarity with many examples where dwellings had been turned away from the sun to maximise a view. In his view the Council had made several errors in its analysis, including:

(a) comparing Christchurch to Auckland, and not considering other locations that also have areas of higher density including Queenstown and Dunedin

(b) shading analysis that was overstated such as including tall-pitched roof forms when flat roofs are also possible, and making assumptions on building width and depth that also influence gaps and sunlight access around or between buildings

(c) shading analysis that was methodologically incorrect and unreliable

(d) unrealistic analysis of lost capacity noting that a loss of one dwelling on a site might make a whole project unviable.

[127] In terms of those supporting the Sunlight QM, a representative statement came from Robert Manthei #200. He presented a "whole-of-MDRS" response and recommended that in doing the absolute minimum required to satisfy the requirements of our process, adjusting the recession plane so that Christchurch residents received the same sunlight as Aucklanders was a fair and reasonable thing to do. The themes of fairness for Christchurch and the importance of sunlight for all dwellings (regardless of zone and including the HRZ) dominated the presentations of those supporting the Sunlight QM.

Section 42A Reporting

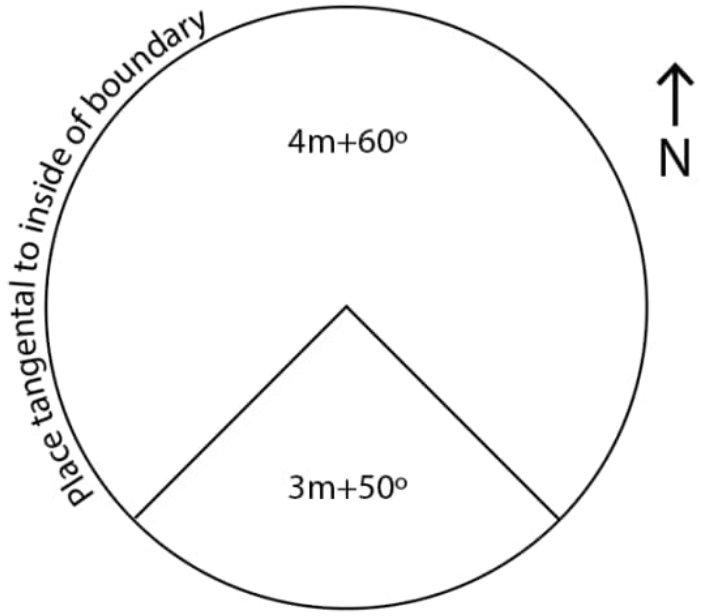
[128] The s42A report was authored by Mr. Kleynbos[34] (planner). He in turn relied on expert evidence prepared by Mr. Hattam[35] (urban design) and Mr. Liley[36] (atmospheric science).

[129] After completing his consideration of the submissions and with the evidence of Mr Hattam and Mr Liley, Mr Kleynbos reiterated his support for the PC 14 notified approach.

[130] After the Residential stream had been completed, we received a response from the Council to our query for more information on east /west shadowing effects. This was in the form of Appendix M[37] (prepared by Mr Hattam) to a Memorandum of Counsel from the Council dated 29 November 2023.

[131] The request, which Mr. Hattam recorded accurately in the statement, was (our emphasis added) "…to consider the impact of introducing MDRS for the **east and west recession plane** (a change to 4m + 60 degrees; instead of the notified 3m + 55 degrees)". Our request was to retain the 3m + 50-degrees (southern) and 3m + 60-degrees (northern) planes. However, what Mr. Hattam did was to also change the northern recession plane so that across all of the west, north, and east sides a 4m + 60-degree plane was used (not the 3m + 60-degree as requested). Plainly that would have the effect of showing additional shadows during the middle of the day, which the Panel had not asked to be further tested. This is demonstrated by the following diagram provided by Mr. Hattam to explain his further work:

[34] s42A Report of Ike Kleynbos, 11 August 2023
[35] Statement of Evidence, David Hattam, 11 August 2023
[36] Statement of Evidence of Ben Liley, 11 August 2023
[37] Memorandum of Counsel for Council, Appendix M, 29 November 2023



Revised Recession Plane Diagram for Testing

[132] Mr Hattam then proceeded to model total sunlight received across the day, on the basis that adjusting an east / west recession plane would also affect where a building could locate on a site, thus changing the point at which shadows from the north would affect neighbouring properties. The means of testing was to rotate site orientation relative to the sun, not to test the static site orientations based on the sun rotating around those sites across the day. This meant we were left with no additional information to understand what effect the east and west recession planes (as we had requested) had on the shadows when the sun was facing those directions (this is not the same as what orientation a site's boundaries had). However, and recognising the additional work Mr. Hattam undertook at our request, the additional testing (noting that it included a greater extent of shadowing from the sun's northern angle than had been requested and thus overstated the shading scenario that the Panel was investigating) identified a total of 15-minutes less sunlight in the middle of the day (12:40pm to 1:20pm vs 1.35pm) on the winter solstice; and 20 minutes less sunlight in the middle of the day (12.30pm to 2.15pm vs 2.35pm) on the two equinoxes.

[133] Mr Hattam's key conclusions were:

> …I consider that the notified recession planes would be a significant improvement on the MDRS recession planes (or using MDRS recession planes on east and west boundaries), with an increase of around 20% in sunlight access in the winter months and that they would make up the difference with the upper north island for most developments.

> As the aim of the qualifying matter was to give Christchurch housing similar solar access to where the majority of MDRS applies (i.e. the same or similar latitude as Auckland), it was (and still is) considered that the 3m+55 degree recession plane is the most appropriate.

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

Issues

[135] The Sunlight QM was a matter of particular interest to submitters, including because it applied to every residential site in Christchurch. We refer to the Council's legal submissions' summary of the QM and its importance[38] (footnote deleted):

> 4.4 Applying the 'off the shelf' MDRS recession planes in Christchurch would lead to around 6-8% more 'shading loss' than taking the same planning approach in Auckland. In the context of Christchurch's colder climate and greater reliance on direct sunlight for 'passive heating', this is a significant reduction.
>
> 4.5 The sunlight access QM is thus an important response to the specific latitudinal and climatic characteristics of Ōtautahi Christchurch.

[136] In essence, the Council proposed to substitute the recession plane set out in the MDRS with its own variants, one applying in the MRZ, and one applying in the HRZ. This attracted substantial submitter interest both in support and opposition, and in fairness acted as something of a lightning rod for commentary on the broader desirability of planning rules not specifically written for Christchurch being imposed on it.

[137] The key issue relating to the Sunlight QM was simply whether there was a justifiable basis to make the application of the MDRS recession plane less enabling in Christchurch. As will be seen from our later findings, this proved to be less of an issue in the case of the HRZ response.

[38] Legal submissions of Council - Residential-Zones, 26 October 2023 at 4.4 and 4.5

Findings and evaluations

[138] Having evaluated all of the submissions and evidence, and keeping in mind our MRZ / HRZ recommendations in relation to existing ODP enablements and what we have termed Pathway A, we find that the Council's proposed Sunlight QM for the MRZ is invalid. In the case of the Council's proposed Sunlight QM for the HRZ, we find that subject to adjustment accommodating the 4m + 60-degree basis set out in the MDRS (below 12m in building height), but otherwise retaining the Council's proposal for building height above 12m in height (see rule 14.6.2.2) this is the most appropriate solution and will be commensurate in a NPS-UD Policy 3(d) sense to the adjacent centre zones. Our reasons are set out below.

[139] We recognise that access to sunlight can provide important social and health benefits including in terms of warming air, evaporating moisture, and helping drive micro-climates within buildings that circulate air through and between spaces. We also recognise and accept the many submissions given to us in writing and in person, that collectively speak to the importance of sunlight to residential amenity values in Christchurch. We agree that healthy, sunny homes is an important outcome in Christchurch and to the extent that is possible within our statutory obligations, we agree that this outcome should be actively promoted.

[140] But it is also the case that the Housing Supply Amendment Act now directs additional housing choice and development freedoms to be provided to all residential zoned land where possible, and this will in most cases mean neighbours will become able to develop in ways that will block more sun, diminish more views, and create larger-scale buildings relative to each other than has previously been the case. This outcome is specifically identified in Objective 4 and Policy 6 of the NPS-UD.

[141] We disagree that there is a case to look for a "balance" between these two goalposts. The Act directs us to start by assuming incorporating of the MDRS across all relevant residentially zoned land, and then only working backwards from that to the extent that is necessary to accommodate a relevant QM. At one extreme end of that, holding the view that the status quo approach is just 'better' than the MDRS would not be a valid QM. That would amount to the MDRS becoming discretionary in their application.

[142] In this respect, we acknowledge the work the Council undertook. Having identified that it did not agree with the MDRS across its residential zoned land, we accept that it did in good faith look to find the least necessary restriction of the MDRS to accommodate what

it regarded as a minimum acceptable sunlight solution. The Council recession planes still accommodated the balance of other MDRS standards including up to three dwellings on a site. Fairly extensive calculations of lost development capacity were undertaken by the Council to test the severity of likely impacts (although we do not entirely accept the results of that work noting that many sites do not present optimal or unconstrained development opportunities and a minor change in development standards can make a big difference to what is achievable within the parameters of risk, funding, and other practical matters unrelated to built form envelopes).

[143] We confirm that we approached the Council's Sunlight QM with an entirely open mind and a willingness to accept that there may very well be a "more-appropriate--than-MDRS" solution for Christchurch.

[144] But fundamentally and noting that we are limited in our ability to manufacture options beyond the evidence available to us and what could be reasonably extrapolated from that, the evidence presented by the Council did not withstand RMA s32 scrutiny.

[145] In respect of the MRZ:

(a) The Council's argument was based in large part on the unique latitudinal context of Christchurch and that this formed a key justification to vary the MDRS on the basis that the MDRS did not even-handedly recognise Christchurch amongst other Tier 1 local authorities. We do not accept that argument. Specifically:

(i) Firstly, and in terms of the argument of what the MDRS did and did not take into account, we are aware that the Council and some submitters who appeared before us on PC 14 also submitted and were heard by a Select Committee considering the Housing Supply Amendment Act. Although the Council submission did not focus on the latitudinal differences aspect of the height to boundary ratio, other submitters from Christchurch did so.[39] In legal submissions from Kāinga Ora on the Sunlight QM, Mr B Matheson drew our attention to the changes that were made to the height to boundary density standards, as a result of hearing submissions through the Select Committee process, and in a Government Supplementary Order Paper. The original standard in the Bill when introduced was set at 6 metres plus 60 degrees. The Select Committee reduced that to 5m at side and rear boundaries plus 60 degrees and reduced again to 4m plus 60 degrees in the Government

[39] For example Christian Jordan #737#1068 #2093

Supplementary Order Paper. Parliament was well aware of the importance of sunlight as a principle of good design as was apparent during the third reading of the Bill.[40]

(ii) On this basis, we find that the MDRS and the process that led to the MDRS has demonstrated a recognition of the issues raised by the Council and have been reduced in scale from their original proposal in response. It was not correct of the Council or some submitters to conclude that the MDRS were Auckland-centric or otherwise had not been arrived at without proper consideration of Christchurch's context.

(iii) Second, in terms of real-world context, we find the Council's comparison with Auckland overly simplistic. We accept Auckland has a more northerly latitude than Christchurch, but it also receives substantially more wet-weather days on an annual basis than Christchurch (limited or no sun). In addition, in as much as Christchurch is quite famously flat in most of its urban area, Auckland is known as a hilly city with many south-facing sites on the south-side of hills, and despite the more favourable latitudinal setting, will receive in many cases less sunlight access than implied by the models relied on by the Council in support of its QM.

(b) We therefore cannot accept the Council's claim that the MDRS would not provide an acceptable level of sunlight access by comparing modelled simulations of Christchurch sites to Auckland sites.

(c) Following on from that, s77G of the RMA allows qualifying matters to reduce the enablement of the MDRS but only to the extent that is "necessary" (s77I). Having identified significant defect in the Council's position we attempted to investigate an alternative. This was based on:

(i) accepting the Council's position in respect of north and south boundaries (we identified that as north-west to north-east, and south-east to south-west), but

(ii) reverting to the MDRS recession plane for eastern and western boundaries (identified as north-east to south-east, and south-west to north-west).

[40] Legal Submissions of Kainga Ora, 22 November 2023 at 9.1-9.7

(d) This alternative would have been more enabling than the Council's position, be less enabling of the MDRS only to the extent absolutely necessary, but still recognise the latitudinal context of Christchurch as sought by the Council. Our rationale for this was that in the early morning and later afternoon periods the low solar angle often causes very long shadows to be cast across neighbouring sites anyway and that it was primarily the shadows in the middle period of the day that were of greatest potential nuisance between neighbours. This raised the question of whether amending the MDRS recession plane, if it could be justified at all, could be reduced to just the key part of the day where effects would be most pronounced. Regrettably the information we asked the Council for was not what was provided to us and despite this being communicated to the Council, no further corrections or updates were provided. This prevented us considering such an alternative any further and we discarded that potential option from our thinking.

(e) Being left with the MDRS or the Council's notified alternative, and on the basis that the evidence in support of the Council's alternative was flawed, we are left with only one functional option we can recommend – the MDRS.

(f) Because of the nature of our findings, we also observe that our recommendation is not that the MDRS is necessarily the best of all theoretically possible solutions for Christchurch. It is the most appropriate outcome for our process simply because it stands at the end of our evaluation as the only suitable option available to us. It may be that a future plan change based on more precise technical justification could allow greater nuance or location-specific variation of the recession plane to be successful. We confirm that we have no opinion on that.

(g) Having determined that the MDRS recession plane should apply, we then considered the submissions that sought exclusions, exemptions, or other changes to that. We find that the technical evidence available before us was not sufficient to justify any change to the recession plane or where or how it should be measured.

[146] However, in respect of the HRZ:

(a) As we have addressed in Part 3, and in Section 3 of this Part of the Report, where we address the required walkable and commensurate catchments around centres, the MDRS are required under s77G of the RMA to apply to all relevant residential zoned land and cannot be opted out of on any discretionary basis. NPS-UD Policy 3(d) then requires over and above that a consideration of a scale of enablement

"commensurate" to the adjacent centre in question. It is not a given that what might be "commensurate" will be necessarily greater or different than the MDRS, but s77G creates a "backstop" such that a "commensurate" outcome cannot be less than the MDRS.

(b) We are satisfied that the Council's proposed HRZ sunlight access recession planes are, once amended for building height below 12m in height to match the MDRS standard of 4m + 60-degrees, and in conjunction with the other permitted activity standards proposed, more enabling of building height and density than the MDRS and are appropriate.

(c) Having established that the HRZ approach above 12m in building height is not disqualified, the Housing Supply Amendment Act and NPS-UD Policy 3(d) give significant freedom as to what the standards should be, limited only by what is deemed "adjacent" and "commensurate". With reference to Section 3 of this Part of the Report where we address the MRZ and HRZ, we are satisfied that the Council's proposed package of standards including the recession plane at Rule 14.6.2.2 (as amended by our recommendations) are appropriate and are "commensurate" including by way of contributing to a transition between the scale and intensity of development enabled within the centre zones, and that enabled in the adjacent residential HRZ.

(d) Having determined that the MDRS recession plane should apply, we then considered the submissions that sought exclusions, exemptions, or other changes to that. As we found with the MRZ, we find that the evidence available before us was not sufficient to justify any change to the recession plane or where or how it should be measured. In the case of the HRZ, we find that the recession plane applicable above 12m in building height has been carefully coordinated with other built form standards and that making changes would only be possible if undertaken from the point of view of considering all controls as a package. We have insufficient evidence to enable us to pursue that.

[147] Following on from that, we considered whether the Council's proposed HRZ recession plane represents a reduction of what it would have likely been, had the Council never proposed a Sunlight Access QM. We find that it would not have. As was explained to us by Mr. Hattam at the hearing, the proposed HRZ recession plane in some instances (building height above 12m) provides for more development, and more shadowing of neighbouring land, than if the MDRS recession plane had been used and applied alone.

It follows that what has been arrived at is a specifically developed standard seeking to best-shape development on HRZ land, and not just result in "less" shadowing. Having then considered that recession plane in the context of the other standards proposed in the HRZ, we find that it sits comfortably and logically among them, and forms part of the commensurate response that the Council was obliged to develop in response to NPS-UD Policy 3(d). On this basis, no further evaluation or justification of the recession plane is required.

Overall Evaluation

[148] Taking our approach in Part 1 of the Report into account, we find that our recommendations are consistent with and give effect to the NPS-UD. Specifically, our agreement with the Council's approach to building height above 12m in the HRZ forms part of what we regard as a practical and commensurate response in terms of Policy 3(d).

[149] We recognise that the MDRS recession planes in the MRZ will on some sites and for some development configurations result in less sunlight being available for neighbours than the Council's proposal would have. But by the same token, the Council's proposal would have likely resulted in less sunlight being available for neighbours than the ODP status quo does. We disagree that a well-functioning urban environment as sought by the NPS-UD cannot be achieved by enabling the MDRS.

[150] We find that the Council erred in its s32 evaluation by not even including the MDRS as an alternative to be evaluated. This implies that the Council had predetermined to not accept it, and it compromised the Council's subsequent evidence in support of the Sunlight QM – namely that it had been shown to be more appropriate than the MDRS (when it had not). All the Council's s32 evaluation did do was establish, and we accept its findings, that of three alternatives that were each less-than-the-MDRS, the notified option was the more appropriate. Having said that, we do accept that in the evaluation there was a great deal of, what we have found to be inadequate, comparative analysis between Christchurch and Auckland, along with the clear association of the MDRS as an "Auckland solution".

[151] In the case of the MRZ, we find that we only have one workable and permissible option to consider, being the MDRS. We are not entitled to simply prefer the ODP recession planes, and we have found that the Council's proposed recession plane lacks a satisfactory evidential basis. The MDRS, pursuant to s77G RMA, must be incorporated

in every relevant residential zone and in the absence of a workable and justifiable Sunlight QM under s77I(j) to diminish it, the MDRS recession plane must be adopted.

[152] We generally accept the Council's s32 and s32AA analysis as they relate to the HRZ recession plane for building height above 12m. Although we have found that the HRZ recession plane for building height below 12m should be replaced with the MDRS standard (and our evaluation above for the MRZ applies to this), overall the two "limbs" of the rule as we recommend it will be the most appropriate response to NPS-UD Policy 3.

[153] In respect of the two conclusions above, we are satisfied that no additional reporting or evaluation is required.

5. LOW PASSENGER TRANSPORT ACCESSIBILITY AREA QUALIFYING MATTER

Summary of Recommendations

[154] The Panel recommend that the Low Passenger Transport Accessibility Area Qualifying Matter (LPT QM) be deleted and that the relevant residential-zoned urban land that was proposed to be subject to the LPT QM be re-zoned to MRZ except where that land qualifies for HRZ on the basis of NPS-UD Policy 3, or where the land is zoned Residential Hills where that land is also subject to an outline development plan overlay in the Operative District Plan (ODP). As discussed in Section 3 of this Part of the Report and in Part 7 of the Report, we find that is a form of Large Lot Residential Zone and is excluded from PC 14 in any event (as a non-relevant residential zone).

[155] In summary, those submissions that opposed the LPT QM are accepted, and those that supported it including of the submission from Canterbury Regional Council / Environment Canterbury #689 #2034 (Environment Canterbury) to also provide for storm water-related restrictions in the Port Hills area are rejected.

PC 14 as Notified

[156] As notified, the LPT QM covered a very extensive part of Christchurch's residential area (footnotes included)[41]:

[41] s32 Report, Part 2 (Part 3) at 6.32.6 and 6.32.7

> The areas proposed to be subject to this qualifying matter are extensive, covering approximately 12,096 hectares of land[42] around the periphery of Ōtautahi Christchurch. Within the Residential Suburban Zone, the proposed qualifying matter affects 1,7267 [sic] properties with potential to add capacity for development and captures approximately 29% of properties within the zone. Within the Residential Hills Zone the proposed QM proposed affects 5,315 sites where development is feasible and affects approximately 78% of properties within the zone. Within the Residential Banks Peninsular Zone in Lyttleton the QM affects XX [sic] development feasible sites and affects all the residential properties in Lyttleton within the zone.
>
> Starting in the north of the city, the qualifying matter is proposed to capture substantial areas around Casebrook, Styx, Northwood, Marshland, Parklands, Queenspark and Westhaven. Along the coast, the areas of Waimakariri Beach and North and South New Brighton are located in the proposed qualifying matter area. Moving around to the south and the Avon River, Avondale, Darlington, Avonside are substantially affected. To the south and west of the city, large patches of Westmoreland, Heon Hay, Sockburn, Riccarton Park are affected. Within the area of the hills to the south, the proposed qualifying matter affects Cashmere, Clifton Hill, Huntsbury, Mount Pleasant, Redcliffs, Sumner and Westmorland.

[157] As notified, PC 14 spatially identified the area that is wished to be subject to the LPT QM, and withheld any change of zones from that land. The Operative District Plan zones have been retained without change. To clarify, it was not the case that the LPT QM land had been specifically excluded from PC 14 in terms of any scope of the plan change; it was included in the exercise but on the basis of the Council's analysis under s77G and s77I (i.e. the presence of a qualifying matter) it was then excluded from having MDRS incorporated.

[158] The Council's s32 evaluation included a map identifying the areas that were subject to the notified LPT QM (reproduced as figure 1):

[42] This equates to 8.5% of the area of Christchurch

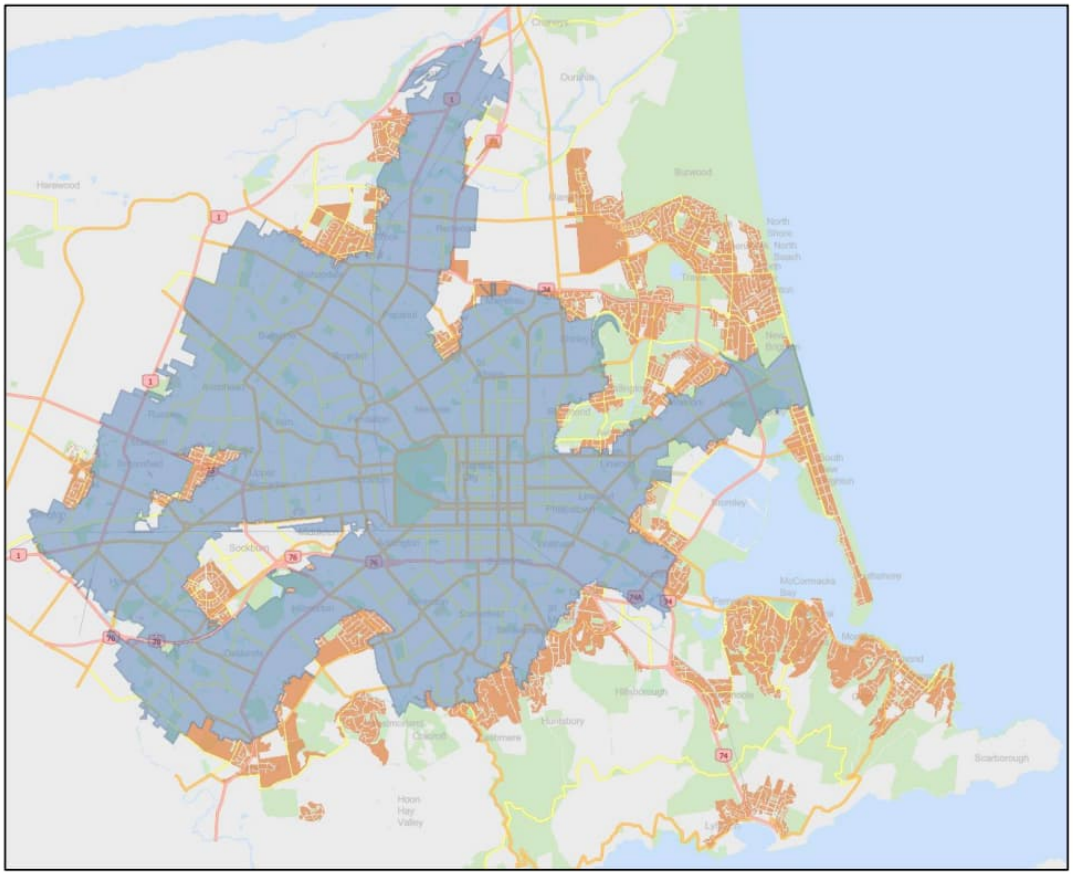


Figure 1 – Part 2, Council s32 evaluation map identifying QM area (brown) (no scale). This is Figure 6.32.1 in the s32 report.

[159] The s32 evaluation supporting the provisions identified two principal alternatives, being the LPT QM, or to apply the MDRS and NPS-UD policy 3 response without qualification. The s32 report did identify additional alternatives but these were not subjected to any comparative evaluation.[43]

- Varying specific development standards within the MDRS (height, density, site coverage and bulk and location rules) to allow slightly lower levels of intensification than the status quo within a qualifying matter overlay to somewhere in-between those in the MDRS and those of the Residential Hills, Residential Banks Peninsula and Residential Suburban Zones to allow more height and density while addressing some of the characteristics of the qualifying matter (Option 3).

- Expanding the distance where the qualifying matter is applied from a network of core and high frequency bus routes (800m) and High Density Residential Zoned areas (200m) to 1200 metres and 400 metres respectively to reduce the size of the qualifying matter (Option 4) and its effect on the MDRS.

- Limiting the qualifying matter to only apply to the large discrete contiguous residential areas affected by the QM farthest from and with the least accessibility

[43] s32 Report, Part 2 (Part 3) at 6.32.5.

to the City Centre in the Port Hills and Lyttleton through a variation of Option 4 (Option 5).

- Adding a further policy and new assessment matters for multi-unit developments exceeding permitted MDRS standards within a qualifying matter overlay which addresses the effects of increased levels of development in areas with poor accessibility to public transport and where development does not align with a strategy for integration of intensification with planned infrastructure upgrades (Option 6).

- Using a form of financial incentive to encourage medium density residential development in locations that support a compact urban form and align with planned public transport and network infrastructure. (Option 7).

[160] The key s32 conclusion was that the LPT QM was warranted on the basis that it would result in the greatest city-wide urban form benefits; provide a better relationship between enabled development and the Council's capital works programme; as well as limiting development within the LPT QM area to be "*consistent with the level of existing and likely future accessibility to employment, education and community services in these areas*".[44]

Submissions and Section 42A Report Recommendations

Submitter evidence and representations

[161] Pre-circulated expert evidence relating to the LPT QM was received from several parties. Some was in support of the LPT QM (subject to amendments), and some was opposed.

Port Hills and stormwater

[162] Environment Canterbury's evidence was in support of the LPT QM and it submitted to extend its function to include stormwater concerns in the Port Hills area (which was picked up on my Mr Kleynbos' s42A report via the Suburban Hill Density Precinct) Expert evidence addressing the QM was provided from Ms Buddle[45] (planning), and Ms Newlands[46] (storm water). Ms Buddle's evidence outlined concerns with the as-notified LPT QM, and indicated broad support with the s42A approach arrived at by Mr Kleynbos (the two precincts).

[163] A related re-zoning submission from Red Spur Limited #881 #2068 (operative RHZ) sought to maintain the existing enablements it currently enjoyed, or more. It sought that if the LPT QM was to apply, that it should not remove existing enablements (the Council's recommendation for that land is discussed in more detail in Part 7 of the Report.

[44] Ibid at 6.32.49.
[45] Statement of Evidence of Meg Buddle, 20 September 2023
[46] Statement of Evidence of Jessica Newlands, 20 September 2023

Low Passenger Transport Accessibility QM / Suburban Density Precinct and Suburban Hill Density Precinct

[164] Benjamin Love #799 is representative of the submissions in support of the LPT QM. His presentation did not specifically address the land within the LPT QM itself, but instead spoke to the importance of urban growth in Christchurch being focussed on passenger transport facilities and undertaken in a comprehensive manner, not via scattered site-by-site infill. Mr Love's strategic "best for city" view was a common theme we heard, and aligned with the Council's arguments - including how it had sought to justify the LPT QM.

[165] Kāinga Ora's evidence is representative of the submissions opposed to the LPT QM. Expert evidence addressing the LPT QM was provided from Mr Liggett[47] (corporate), Mr Colegrave[48] (economics), and Mr Joll[49] (planning). Mr Joll provided a detailed explanation of why in his view the proposed LPT QM is not valid. In essence, his opinion was that the overall framework created by the RMA and NPS-UD is that the MDRS was intended to be the base, and that the issues of concern to the Council and that led to the LPT QM being developed, instead of subtracting from the MDRS "base", could have instead led to a lifting of enablement beyond the MDRS where there is evidence of a superior service, infrastructure efficiencies, or other amenities.

[166] After considering the expert evidence of submitters, rebuttal evidence on behalf of the Council was filed by Ms McDonald[50] (responding to submitter Andrew McCarthy #681 #2081) and Mr Osborne[51]. A supplementary s42A report was filed by Mr Kleynbos[52], which responded to a number of re-notified submissions due to errors and in part to the Panel's Minute 5.[53] In summary Mr Kleynbos confirmed that his s42A recommendations remained unchanged.

[167] The Council's legal submissions introduced the QM and summarised the Council's position, and the expert witnesses were called to speak to their evidence. In summary none of the Council witnesses had changed their opinions except in relation to stormwater issues in the s42A proposed Suburban Hill Density Precinct, following expert conferencing between the Council and Environment Canterbury experts. The outcome of that is summarised in the next sub-section.

[47] Statement of Evidence (2) of Brendon Liggett, 22 September 2023
[48] Statement of Evidence of Fraser Colegrave, 15 September 2023
[49] Statement of Evidence of Tim Joll, 20 September 2023
[50] Rebuttal Evidence of Michele McDonald, 9 October 2023
[51] Rebuttal Evidence of Philip Osborne, 9 October 2023
[52] Supplementary Statement of Evidence / s42A Report of Ike Kleynbos, 15 September 2023
[53] IHP Minute 5, 23 August 2023

[168] Submitters that addressed us at the Hearing included Andrew McCarthy (Port Hills); Red Spur Limited (Residential Hills zone); and NTP Development Holdings Limited #280. We also heard from Kāinga Ora and Environment Canterbury. In summary, no material changes in opinion occurred, and by the end of the hearings, the key issues remained "live".

Council Section 42A Reporting

[169] Mr Kleynbos' s42A report acknowledged that the LPT QM was "divisive"[54] amongst submitters but after considering the issue raised in submissions, he concluded in support of the LPT QM's intent generally as notified but recommended changing how it was packaged within the Plan. In reaching his conclusions he relied on expert evidence from Mr Morahan[55] (transport), Ms McDonald[56] (wastewater and water), Mr Osborne[57] (economics), and Mr Norton[58] (stormwater). He also of note:

(a) emphasised the association made in the s32 evaluation report between proximity to high-frequency bus services and the likelihood of travelling by bus to work;[59]

(b) identified that limiting development in the LPT QM area might help concentrate intensification in what he regarded as superior locations;[60] and

(c) confirmed that any loss of development capacity resulting from the QM would not have any city-wide effect of any concern on development capacity.[61]

[170] In response to submissions concerned that the LPT QM area had not correctly accounted for several existing bus services, Mr Kleynbos recommended changes (reductions in the QM extent) to reflect The Orbiter; Blue Line # 1; Orange Line # 7; and Purple Line # 3.

[171] We refer to Mr Kleynbos' classification of the relevant submissions set out in Attachment A of the s42A report. He grouped the submissions as either:

(a) Supporting the notified approach (3 submission points);

[54] s42A Report of Ike Kleynbos, 11 August 2023 at 1.1.d.1
[55] Statement of Evidence of Chris Morahan, 11 August 2023
[56] Statement of Evidence of Michele McDonald, 11 August 2023
[57] Statement of Evidence of Phil Osborne, 11 August 2023
[58] Statement of Evidence of Brian Norton, 11 August 2023
[59] s42A Report of Ike Kleynbos, 11 August 2023 at 7.1.85
[60] Ibid, at 7.1.86
[61] Ibid, at 7.1.111

(b) Supporting the approach but seeking modifications to its extent based on additional existing bus routes (17 submission points);

(c) Supporting the approach but seeking modifications to its extent based on matters other than (b) (18 submission points);

(d) Opposing the LPT QM (202 submission points); and

(e) Opposing LPT QMs generally (1 submission point).

[172] We agree with and accept Mr Kleynbos' classifications.

[173] Mr Kleynbos' recommendations centred around his review of the MDRS standards. He concluded that several could apply within the LPT QM area, and following from that reached the view that the MRZ should apply to all of the LPT QM area but that those areas should instead be subject to two precincts that would provide for a more bespoke standards approach (i.e. one for the Residential Hills area named "Suburban Hill Density Precinct" and one for the remaining area named "Suburban Density Precinct").

[174] Mr Morahan's evidence explained how the City's passenger transport network functions, and what changes have been planned or are being planned for. He described that[62]:

> One feature of the planned future changes is to improve bus services on the routes which already have the greatest levels of service.

[175] Specifically in terms of the LPT QM, Mr Morahan explained what he saw as the negative outcomes likely for the city if the LPT QM was not included, and made reference to NPS-UD Objective 3(b) (we note that Mr Morahan quoted the 2020 version of the NPS-UD, not the current 2022 version).

[176] Ms McDonald's evidence explained the challenges facing the Council's wastewater and water networks and the benefits available from linking intensification opportunity to those locations best and most cost-effectively able to be serviced by the Council. She identified specific concerns with intensification occurring in peripheral parts of the City; greenfield areas developed in the past 10 years; and hill land subject to service constraints and complexity[63].

[177] Mr Norton's evidence explained the limitations of the existing stormwater network and the process through which connections to the Council's network are considered. He did

[62] Statement of Evidence of Chris Morahan, 11 August 2023 at 59
[63] Statement of Evidence of Michele McDonald, 11 August 2023 at 81

not support a stormwater-related QM in Christchurch, but was supportive of the LPT QM on the basis that[64]:

> …the permissive spatial extent the Medium Density Residential Standards (MDRS) development potential could lead to localised stormwater management/flooding issues. Any outcome which reduces the spatial extent of MDRS development provides the Council with greater certainty, allowing for a planned infrastructure response without oversizing infrastructure at unnecessary cost.

[178] And[65]:

> I consider the Qualifying Matter for LPTAA is appropriate, as it reduces the overall extent of MDRS zoning, particularly in some hill areas.

Joint Witness Statements

[179] A Joint Witness Statement on Transportation Effects was produced on 26 September 2023, which included the LPT QM.

[180] A Joint Witness Statement on Infrastructure was produced on 5 October 2023, which included the LPT QM and the issue of stormwater and the Port Hills area identified in Environment Canterbury's submission.

[181] A Joint Witness Statement of planning experts was produced on 11 December 2023, and a second was held on 24 April 2024. This developed the issues raised in the Environment Canterbury submission to a proposed Port Hills Stormwater Qualifying Matter separate to the LPT QM.

Issues

[182] In summary, the LPT QM sought to withhold the MDRS in its entirety from land within Christchurch that the Council considered, while being within an urban environment, is lacking satisfactory passenger transport access (or existing infrastructure capacity) to warrant the enablement of additional density beyond the level provided in the Operative District Plan (ODP). Mr Kleynbos described the intent of the LPT QM as[66]:

> …to restrict development in medium and high density areas to within those areas with the highest accessibility to core public transport corridors, or where public transport connects high employment centres together. It seeks to ensure that new development does not further promote the use of private vehicle transport and instead focuses intensification within areas where its benefits are best felt.

[183] The Council's s32 evaluation report was more to the point[67]:

[64] Statement of Evidence of Brian Norton, 11 August 2023 at 46
[65] Ibid, at 85
[66] s42A Report of Ike Kleynbos, 11 August 2023, at 7.1.78
[67] s32 Report, Part 2 (Part 3) at 6.32.5

> The Council has also reflected on relevant NPSUD objectives and policies and come to the view that medium density residential development should be concentrated in advantageous areas through applying the proposed qualifying matter.

[184] In effect, the LPT QM has the effect of applying a "global" qualifier to the application of the MDRS being to[68] (footnotes included):

> …limit the application of the Medium Density Residential Zone (and the MDRS standards) to residential areas with the following spatial characteristics:
>
> - Residential areas within 800m walk from five High Frequency (Core) Routes[69]
> - Residential areas within 800m walk from additional bus routes with significant potential to connect employment centres together[70]
> - Residential areas more than 200m from High Density Residential Zones and the application of Policy 3 in relation to centres, snapping to the nearest city block

[185] From the outset and as seen above quoted text it was not entirely clear whether the LPT QM was being justified on the basis that there is a minimum level of passenger transport service that is specifically lacking in the areas subject to the LPT QM, or simply that the Council determined to actively limit the MDRS to those parts of the City (outside of the LPT QM) that were just, in the Council's view, better suited for intensification than the land within the LPT QM area.

[186] The Council's position was not that passenger transport services sufficient to merit the MDRS being enabled would never occur in the LPT QM area (however that might be measured). The Council, in response to our questions assured us that creating the LPT QM would not of itself deter or stall future passenger transport service improvements.

[187] In summary key issues arising from this are:

(a) Whether there is a correct basis to withhold the MDRS from qualifying residential zoned land arising from a discretionary interpretation of the NPS-UD provisions, allowing the MDRS to be applied selectively.

(b) Whether the LPT QM has been otherwise properly justified.

(c) Whether on merit the LPT QM should be approved or declined.

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[68] Ibid, at 6.32.1
[69] Greater Christchurch Public Transport Combined Business Case 2020, The Blue Line, Orange Line, Orbiter, Purple Line and Yellow Line, Attachment II 34, Figure 57, page 43
[70] No. 17 route Merivale/Bryndwr; No. 29 route Fendalton to Airport; No. 44 route City to Shirley; No. 125 route Redwood to Halswell (connects Hornby, Airport, Papanui, and almost Belfast)

Findings and Evaluations

Port Hills Stormwater QM

[188] Over the course of the Hearings, the Environment Canterbury submission developed from an add-on to the notified LPT QM into its own potential QM. Although the evidence now sits somewhat inelegantly across this LPT QM and the proposed Port Hills Stormwater QM, we have determined that the latter should be addressed in this part of our Report.

[189] The Panel recommend rejection of the submission and the proposed QM. We find that it was not sufficiently articulated and evaluated as a part of the hearings process and through the submission and evidence of Environment Canterbury such that affected submitters could reasonably grapple with and understand it. That its final form did not arrive to us until a JWS dated 24 April 2024, near the very end of the hearings process, reinforced our concerns. We find that given the procedural constraints on the ISPP, Environment Canterbury needed to have properly framed up its proposed QM as part of its submission and in its expert evidence, including all of the required analysis of qualifying matters required of the RMA. We find the information we have received in its totality to be opaque and incomplete.

[190] The Panel prefer the position recorded in that JWS attributed to Tim Joll and Fiona Aston, who withdrew from the conference, that PC 17, which the Council has advised it is intending to complete and notify, would be a more appropriate vehicle to advance the issues of concern to Environment Canterbury.

[191] In addition, and referring to Section 3 of this Part of the Report we have found that the operative RHZ include areas that are in fact a form of Large Lot Residential Zone. On the basis there are parts of the RHZ we have found are not a not a relevant residential zone therefore there is no basis to apply the MRDS to that zone and we find that it falls outside of the scope of the Intensification Planning Instrument (IPI). It also follows that there is no ability to apply a QM to land that is not to be subject to the MDRS, in any event.

Low Passenger Transport Accessibility QM / Suburban Density Precinct and Suburban Hill Density Precinct

Whether there is a correct basis to withhold the MDRS from qualifying residential zoned land arising from an interpretation of the NPS-UD provisions, allowing the MDRS to be applied selectively.

[192] The Panel have significant concerns with the way that the Council went about this QM, and for the reasons outlined below we prefer the approach and evidence of Mr Joll on behalf of Kāinga Ora.

[193] We accept that across Christchurch the quality of passenger transport services varies. We also accept that in some parts of Christchurch, and for a variety of reasons, some areas have lower accessibility to passenger transport. We also generally accept the arguments advanced in the Council's s32 evaluation and the evidence of Mr Morahan (and Mr Kleynbos) that there are numerous efficiencies arising from matching housing density with locations that offer the greatest access to the various goods and services that people want.

[194] We are firmly of the view that these arguments, including NPS-UD Objective 3(b) from the 2020 version of the NPS-UD quoted by Mr Morahan in his evidence, do not reasonably or appropriately lead to withholding the MDRS (or NPS-UD Policy 3) from the notified QM area. Our reasons are:

(a) NPS-UD Objective 3, (as at 2022), states:

> Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:
>
> (a) the area is in or near a centre zone or other area with many employment opportunities
>
> (b) the area is well-serviced by existing or planned public transport
>
> (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.

(b) This differs slightly to the 2020 version relied on by Mr Morahan, but has the same practical effect in terms of our decision making. The key content in NPS-UD Objective 3 are the words "enable more people to live in". This lends support to the principle of maximising the enablement of capacity in those locations. It does not reasonably justify or lead to the withholding of opportunities for housing otherwise intended by the RMA outside of those locations (i.e. we would expect to

see the language of “limit”, “restrict”, or similar in the NPS-UD to support Mr Morahan’s approach). We find that it also does not lend support for the argument also raised by Mr Morahan to the effect that removing opportunities for intensification in the QM area might help achieve intensification in the Council’s preferred locations by limiting alternative locations away from the Council’s preferences.

(c) The Panel do not accept that using the NPS-UD objectives and policies to read-down the requirement of s77G(1) (that the MDRS must apply to all relevant residential zones) using the s77G(6) and s77I(j) and s77L pathway, by arguing that land has characteristics that make the MDRS level of intensification inappropriate, is valid. But in any event, that is not what the Council has actually done. The Council’s evidence supporting the QM falls short of demonstrating that the QM land is not appropriate for the MDRS. In this respect, we do not see an evidential basis for the LPT QM (or the two precincts developed through the s42A report) for the following reasons:

    (i) We were given no information on what actual level of passenger transport services is available (or planned) across the LPT QM area in absolute terms or what minimum level was in the Council’s opinion a de-facto pre-requisite for intensification being possible (or why).

    (ii) The evidence relied on was overwhelmingly focused on a journey to work, and although that is one valid trip purpose, we receive inadequate evidence demonstrating that within the LPT QM area there was such a deficiency of schools, community amenities, local / corner shops and local jobs, places of worship, open spaces, and the many non-work related things households rely on, that would render the MDRS still inappropriate even if we accepted the Council’s identified deficiency in terms of access to employment in a total or overall sense.

    (iii) The related evidence on infrastructure likewise fell short of demonstrating that technically feasible and realistic solutions were so unlikely to be available that the MDRS should be withheld from the land. The message we were consistent given was that the LPT QM land is more difficult and less beneficial, in the Council’s view, than other parts of Christchurch.

(iv) The Council's approach was ultimately not based on the LPT QM land possessing characteristics that rendered the MDRS inappropriate as required by s77I(j). Rather, it sought to demonstrate that land other than the LPT QM land was simply better suited to intensification than the LPT QM land (which for completeness we generally accept). That is not as we see it a correct use of the s77I(j) and s77L process, nor does it have the effect of establishing that the LPT QM land is not appropriate for the MDRS.

(v) We can find nothing in the RMA or NPS-UD that leads to a justifiable exclusion of the MDRS from a relevant residential zone simply because a Council considers another part of its district would be better suited for intensification, even taking into account the overall outcomes sought by the NPS-UD.

(vi) We find the Council's calculations that it has significant overall development capacity outside of the LPT QM area such that the removal of the LPT QM area from the MDRS enablement will not result in an adverse removal of intensification opportunity completely irrelevant. The RMA does not link roll-out of the MDRS to any benchmark of development capacity being met; these are related but independent considerations that the Act and the NPS-UD require councils to address. Removal of the MDRS from the LPT QM area can only be justified on the basis that the land can be demonstrated as being unsuitable for the MDRS, not because additional housing capacity is not needed in an overall sense.

[195] For the above reasons, we find that Mr Joll's evidence is based on the most reliable reading of the RMA and NPS-UD together, and we strongly prefer his conclusion in opposition to the LPT QM.

Whether the QM has been otherwise properly justified

[196] Putting aside the above, we have a number of other concerns with the proposed LPT QM:

(a) The enablement of the MDRS brings with it the opportunity to increase the number of people living in an area and this could directly help increase demand for local bus services that currently are not provided. Especially if those areas include neighbourhoods that are not as affluent as some others and in which the provision of passenger transport could make a tangible difference to people's lives. The

evidence provided in support of the LPT QM was overly limited in this respect. We find the argument that actively promoting growth in low passenger transport accessibility areas specifically to help set in place improved services has at least as much, if not more, opportunity to contribute to a well-functioning urban environment for those areas than the Council's approach. This was not an alternative considered by the Council in its s32 evaluation.

(b) As referred to in the earlier section, enabling the MDRS in an area could provide a range of benefits and disbenefits. Local benefits include improving the local economy, demand for jobs, school-rolls, and even allowing people an opportunity of improving their own wellbeing by acquiring and over time subdividing or developing property. Even if there was agreement that a lack of passenger transport access was likely to create some adverse effects, it is not a given that it outweighs all other social and economic benefits that enabling the MDRS might have provided. Noting that as set out in Mr Kleynbos' s42A report, the LPT QM affects a substantial part of Christchurch's urban population. The evidence in support of the LPT QM was particularly lacking on this matter, including consideration of whether, if the issue is access to employment, what actions might be taken to improve employment provision in the LPT QM area.

(c) Unlike most forms of physical infrastructure, the provision of (bus) passenger transport is highly flexible. It can vary by vehicle size and type, service frequency, and the destinations that one location can connect to. Routes can be expanded, changed and cancelled by way of local government decisions. Community decisions on what is or is not an acceptable level of funding or subsidy for services are also very changeable. In short, we are unconvinced that either a relative or absolute lack of passenger transport services today is a sufficient constraint to set aside the enablement of the MDRS in the LPT QM area. In fairness to the Council, many of the matters referred to in this paragraph lie with the regional council and can also be influenced by central government actions (such as fare subsidies provided during the COVID-19 pandemic recovery). The Council was limited in its ability to provide helpful evidence in this respect because it has limited decision making powers. For those reasons we do not accept that any relative lack of passenger transport services today is indicative the future state of the available services.

(d) We accept at face value the many assurances provided by the Council that putting the LPT QM in place would not unintentionally have the effect of reinforcing and legitimising an ongoing lack of passenger transport in those areas into the future. But those assurances are not binding and have no reflection in any resource management or other local government policy document. The Council also cannot control market-led responses to its policy signals. Simply put, we find that there is a real and potentially serious risk that withholding the MDRS from the proposed LPT QM area will create and in some ways inevitably reinforce a disadvantage, including property values relative to other areas that incorporate the MDRS, and creating an "expectation" that people living in the LPT QM area will not and should not expect enhanced passenger transport access. Without a firm commitment and timeline to improve existing passenger transport service levels in the LPT QM area, we see no way for our concerns in this regard to be addressed.

(e) Assuming for the time being that the principles of the LPT QM were accepted, we could not follow why other areas that currently have low, or no passenger transport services would not also be included in the LPT QM – specifically the operative RNN zone, or locations identified by Ms McDonald, including greenfield areas developed in the past 10 years where additional intensification may prove less-cost-efficient.

(f) Lastly, we are unaware of any Tier 1 local authority obliged to incorporate the MDRS into its District Plan that does not also grapple with issues of transport system management, and locally-differing degrees of passenger transport access. We struggle to imagine why Parliament would not have simply limited the MDRS to where a sufficient pre-existing (or formally proposed) passenger transport service was in place if this was seen as being determinative of the MDRS' suitability.

[197] In light of all the above and considering the significant scale and extent of the LPT QM, and the thousands of properties affected by it (albeit by the close of the Hearings couched as two precincts rather than one QM), we find the withholding of MDRS (or NPS-UD Policy 3) enablement proposed to be equally significant and unjustified. The correct RMA and NPS-UD recognition of the passenger transport system identified by the Council would be to maximise the provision of development enablement over and above the minimum MDRS requirement, and in that respect we refer to recommended restrictions of discretion 14.15.2(a)(vii) (proposals that infringe site density and site coverage standards), and 14.15.3(c)(i) (proposals that infringe the building height

standard). We agree that for each of these matters, proximity to passenger transport is a relevant matter that should inform decision making. We have addressed these and other recommendations made for the MRZ and HRZ above in Section 3.

Whether on merit the QM should be approved or declined.

[198] In light of these key concerns, and in consideration of all of the information before us, we are persuaded to agree with the submitters opposed to the LPT QM, with particular recognition to Mr Joll, whose evidence – specifically paragraphs 9.32 – 9.46 – were relevant and helpful to our decision-making exercise.

[199] We recognise that the ambit of s77I(j) RMA is very wide, and that it would be, at least in principle, possible to withhold the MDRS from land where infrastructure and passenger transport deficiencies could be shown to make the MDRS inappropriate on that land. The Council as we see it simply pursued an inappropriate argument - too much focused on an overall best-for-city concept, reliant too much on vague generalities and locations that might be "best" or "better than the LPT QM" for intensification. What was in this instance necessary was a much more detailed demonstration that the LPT QM land was itself inappropriate for the MDRS. There is ultimately a big difference between an outcome being inappropriate on land, and that outcome being more appropriate on a different area of land. The NPS-UD provisions do not have the effect of making those two considerations substitutable.

[200] In terms of s77L(c)(ii), we find that there was an inadequate evaluation of the characteristic of concern on the area to allow a proper and reasoned decision to be made on where it should apply. The LPT QM was identified not primarily by way of analysis within the area, but by a process of elimination looking primarily outside of what became the LPT QM area. Specifically what was, in our opinion, required might have been something similar to:

(a) Establishment with supporting evidence of exactly what minimum passenger transport services are required to make the MDRS appropriate.

(b) Analysis identifying those areas that lack reasonable access to those minimum services would seem logical (and we note that for some services we are familiar with park-and-ride facilities are a key component, hence even the starting-assumption that only being within a walking distance of a bus service was acceptable may have needed to be substantiated).

(c) Analysis providing a reasonable consideration of the potential or options to address those areas identified as lacking reasonable access to passenger transport services would then seem helpful (such as route changes, additional routes, different vehicle types, etc.) This would help to demonstrate whether the identified deficiency is likely to be permanent or not, and if not, what might be required to address that (contributing to the subsequent evaluation needed in s77L(iii)).

(d) Further analysis of those areas identified in might prove useful to identify what activities, services, amenities, or other destinations are locally available (or that could be, within reason), so that the severity of any loss of opportunity arising from a lack of passenger transport access could be objectively and fairly considered. It may be that a lack of passenger transport service severely limited households' ability to meet their daily needs, or it may be that it was in fact a relatively minor issue in the scheme of things.

(e) In light of the relationship between the number of users and bus services provided, it may additionally be helpful to examine whether an increase in density in each part of the total area, whether residential, non-residential, or both, could overcome the constraints that are currently limiting additional or superior service provision. This could lead the discussion back towards the MDRS being appropriate, or a density greater than the MDRS.

(f) Lastly, where non-passenger transport infrastructure is of concern to the Council, more specific identification of costs, barriers and issues within the area – and why it would not be reasonable or possible for those undertaking development to meet those costs whether by way of Development Contributions, targeted rates or other means, rather than general city-wide patterns, seems likely to be relevant.

[201] In terms of s77L(c)(iii), we agree with submissions and Mr Kleynbos' s42A view that the Council's s32 evaluation was deficient. We also acknowledge the work Mr Kleynbos undertook to fill that gap with his own additional (s32AA analysis). But we find that the evaluation of appropriate heights and densities was inherently undermined by the unchallenged assumption that the LPT QM area was just not suited to intensification in the same way that other parts of Christchurch were. The fact is that whether or not the LPT QM applies in the identified area, all of the qualities and merits of the land outside of that LPT QM area will remain unchanged. In this respect, we find the Council erred by considering and seeking to manage characteristics primarily outside of the LPT QM area

rather than within it. By way of example, one of Mr Morahan's overall conclusions in his evidence supporting the LPT QM was[71]:

> Achieving a higher proportion of the city's development along these corridors is expected to have positive impacts on the city's transport network, by locating growth in the areas with the greatest public and active travel accessibility.

[202] While we generally accept his statement, it is not related to the LPT QM area itself and why the MDRS would be inappropriate within that – ultimately PC 14 is primarily concerned with enabling opportunities for development, not directing growth into a preferred optimal solution from amongst those opportunities.

[203] In terms of a s32 and s32AA evaluation, it follows that we have not been convinced that the LPT QM has been correctly framed or presented. We find that the land within the LPT QM should be subject to the MRZ except where our separate findings on Policy 3 of the NPS-UD warrant a HRZ.

[204] But for completeness, the s32 evaluation insufficiently recognised or evaluated alternatives to address the root issue of whether what the Council regarded as insufficient access to passenger transport could be addressed including by way of changes in levels or types of service (recognising the wellbeing disadvantages that those members of the community experiencing poor services endure); or changes in land use opportunity at the local level (these examples are for explanatory context only).

[205] Complementing the above, noting that much of the Council's LPT QM argument was centred around land outside of the LPT QM area that it considered growth might be more desirable within, we also observe that the question of how the Council might incentivise development decisions in the locations it prefers remains a separate matter altogether unrelated to height and density enablement. This could include tools such as mandatory non-notification of proposals, relief from development contributions or other financial development costs based on the public benefits of development in certain locations, or outright development assistance such as acquiring land and assembling more readily developable land packages. There was no evidence before us that the Council considered any such methods when it was developing PC 14, and we can only observe that based on our agreement with much of the Council's evidence in support of its preferred growth pattern, this may be a worthwhile future planning exercise for it to undertake.

[71] Statement of Evidence of Chris Morahan, 11 August 2023, at 139

[206] Taking into account the approach in Part 1 of the Report we find that the LPT QM, either as notified or as substantially modified in Mr Kleynbos' s42A report, would not contribute to a well-functioning urban environment. The opportunities to provide more and cheaper housing at the heart of the MDRS would be denied, unreasonably, from those persons within the substantial LPT QM area and for very speculative, unproven reasons related to the Council's preferred urban growth outcome in centres and along passenger transport routes.

[207] Although we acknowledge that we found much of the evidence provided by the Council in support of its preferred urban form outcomes persuasive, we cannot agree that the NPS-UD can be used to allow discretion in what residential zones the MDRS apply to based on achieving a preferred urban form outcome. Although a "well-functioning urban environment" is a wide concept, we find it does not mean "ideal" or "optimum" settlement pattern.

[208] In terms of s32AA of the Act, we have rejected the Council's s32 evaluation and the additional evaluation undertaken by the Council's experts and in particular Mr Kleynbos to achieve a workable outcome for the proposed LPT QM (who we wish to stress impressed us with his efforts despite our ultimate disagreement with his recommendations).

[209] Because of how we have worked through the s77G – s77I – s77L procedure set out in the Act, the enablement of the MDRS across the LPT QM area is mandatory and does not require further justification or evaluation under s32AA (although we note for completeness that we have nevertheless worked through the section to confirm that there is nothing in our recommendations that might change). Having also considered the broader framework of policy 3(d) of the NPS-UD, we also find that there is nothing in the LPT QM area, where what we have determined would be a commensurate area around a centre zone, that would warrant or justify a departure from that, and for this reason we find that in those areas the HDZ should apply.

[210] In light of all of the above, and having considered the requirements of s32AA, we confirm that our recommendation will be the most appropriate package of resource management provisions for the land.

[211] For all of the above reasons, the Council's QM for Low Passenger Transport Accessibility, modified through the s42A process to a Suburban Density Precinct and a Suburban Hill Density Precinct, should be rejected along with all associated Plan provisions. Instead, the land should be zoned MDZ except for where a policy 3(d) NPS-UD circumstance arises, in which case the HRZ is recommended.

6. CHRISTCHURCH INTERNATIONAL AIRPORT NOISE INFLUENCE AREA QUALIFYING MATTER

[212] The notified proposal includes an Airport Noise Influence Area as a QM (Airport Noise QM). The spatial extent of the Airport Noise QM was based on a 2021 revised version of the Operative Contour, proposed by Christchurch International Airport Limited (CIAL).[72] There is no dispute that the Airport is nationally significant infrastructure, for the purposes of section 77I(e) and 77O(e).

[213] The Airport Noise QM addresses two types of effects:

(a) community health and amenity; and

(b) the risk of reverse sensitivity effects that lead to operational constraints on Christchurch Airport.

Summary of Recommendations

[214] The Panel recommends that:

(a) The Airport Noise QM as notified is rejected, but that an amended form of the QM be adopted.

(b) The MDRS is introduced to the operative Suburban Residential and Suburban Residential Transition Zones notwithstanding that they fall within Airport Noise Contours as shown on the operative Planning Maps, subject to the recommendations set out in (c), (d) and (e) below.

[72] The draft revised contour formed part of the Environment Canterbury Independent Expert Peer Review process, which at the time of notificaiton of PC 14 was not yet complete. The Contours were later updated and are referred to as the 'Remodelled Contour' later in this report.

(c) All of those areas described in (b) are rezoned to MRZ and HRZ in accordance with our findings above in Section 3 this part and in Part 3 of the Report regarding our recommended spatial application of the MRZ and HRZ near centres; and

(d) One to three new residential units per site are permitted activities in all MRZ and HRZ zones within the 50dB L_{dn} Contour as shown on the operative Planning Maps with the additional requirement to meet insulation and ventilation requirements for new residential units (along with meeting all other relevant standards).

(e) Four or more new residential units per site are restricted discretionary activities in all MRZ and HRZ zones within the 50dB L_{dn} Contour with discretion limited to managing adverse reverse sensitivity effects on the Christchurch International Airport and compliance with insulation and ventilation requirements. Subject also to meeting all other relevant standards.

(f) For those MRZ or HRZ zones that lie between the operative 50dBL_{dn} Noise Contour shown on the operative Planning Maps and the 2023 Remodelled 50dB L_{dn} Outer Envelope Contour[73], 4 or more residential units are restricted discretionary activities with discretion limited to managing adverse reverse sensitivity effects on the Christchurch International Airport and compliance with insulation and ventilation requirements. Subject also to meeting all other relevant standards.

(g) For the MRZ within the 55dB L_{dn} noise contour the ODP rules applying to residential units are retained.

(h) For the MRZ within the 65dB L_{dn} Noise Contour the ODP rules applying to residential units are retained.

(i) For those parts of commercial centres that fall within operative 50dB L_{dn} Noise Contour as shown on the operative Planning Maps, rules 15.4.1, 15.5.1 and 15.6.1.are retained as notified.

(j) Further drafting instructions are set out below at [116].

[215] On that basis the Panel recommends that:

[73] Christchurch Airport Remodelled Contour, Independent Expert Panel Report

(a) The submissions of Christchurch International Airport Limited #852 #2052 #2105 (CIAL) and those submissions and further submissions that supported the retention of the Airport Noise Qualifying Matter (QM) as notified are accepted in part.

(b) The submissions seeking alternative methods to qualify the proposed Airport Noise QM, by the requirement to provide insulation and or ventilation are accepted in part, to the extent those issues have been addressed by the Panel's recommended alternative.

(c) Those submissions seeking to amend the Outer Contour Boundary (OCB) to be 55dB L_{dn} be rejected.

PC 14 as Notified

[216] As notified the Airport Noise QM provides for the restriction of noise-sensitive activities within the 50dB L_{dn} Contour by retaining the ODP residential zones and density provisions or to put it another way by not applying the MDRS or Policy 3 enablements at all to the area within the 50dB L_{dn}, Contour (we discuss which contour below).

[217] The ODP planning maps identify airport noise contours for parts of the city exposed to, or potentially exposed to 50, 55 and 65dB L_{dn} levels aircraft noise, based on modelling undertaken in 2008. For the purposes of PC 14, the 50dB L_{dn}, 55dB L_{dn} and a smaller area within the 65dB L_{dn} contours lie across both relevant residential zones and urban non-residential zones.

[218] Within the 50dB L_{dn} contour, residential activities not meeting the permitted or controlled activity density standards require resource consent as a restricted discretionary activity in rules 14.4.1.3 RD 34 (residential suburban zone) and 14.12.12.RD 26 RD (residential new neighbourhood zone). Applications are required to be limited notified to CIAL.

[219] Within the 55dB L_{dn} Contour, density of residential units is restricted to 1 per 450m^2 within which acoustic insulation is required, and beyond that is a non-complying activity.

[220] Within the 65dB L_{dn} Contour, additional residential units are a prohibited activity.

[221] As notified the Council justified the Airport Noise QM in its Section 32 Report[74] as being necessary for the safe and efficient operation of nationally significant infrastructure. The

[74] Section 32 Report, Part 2, Appendicies 10-19

Council relied upon the technical reports and section 32 evaluation commissioned by CIAL, but the Council adopted them as its own section 32 assessment. The Council's further assessment only focused on the evaluation of the impact on development and feasible capacity and the different approaches to apply the proposed QM under the ODP.

[222] The Council considered two approaches, one was to rezone the impacted land Medium Density Residential Zone (MRZ) and include a QM with specific rules (or a precinct) to limit density and heights to levels currently enable under the Residential Suburban Zone, Residential Transition Zone and Residential New Neighbourhood Zone. The alternative approach is to retain the current zone equivalent for land impacted by the 50dB Noise Contour, being (in accordance with the National Planning Standards) a Low Residential Density Zone (LRZ), and Future Urban Zone (FUZ), or, where already developed for medium density a MRZ. The latter approach was preferred as it provides more certainty and clarity as to the level of enablement within the Airport Noise Influence Area in terms of expected densities and housing typologies. Notably those evaluations treated the Airport Noise QM as an existing QM, with evaluation undertaken only in accordance with s77K.[75]

[223] We also note that as notified PC 14 did not amend provisions in Chapter 15, including Policy 15.2.4.6 or rules 15.4.1, 15.5.1 or 15.6.1 which seek to avoid residential activities within TCZ, LCZ and NCZ within the $50dBL_{dn}$ Airport Noise Contour as shown on the ODP planning maps. CIAL made a submission requesting the rule be extended to apply to the remodelled noise contours (as they were at the time of their submission).

Council Section 42A Report Recommendations

[224] Following receipt of submissions from CIAL, the s42A Report author Ms Oliver recommended changes to the spatial extent of the Airport Noise QM based on the 2023 Remodelled OE Contour.[76]

[225] Ms Oliver's recommendation was that it was not appropriate to use the Operative Contour (or the 2021 revision). There are spatial differences between the Operative

[75] Section 32 Report Part 2, Appendicies 10 -19

[76] The noise modelling that supports the spatial extent of the 50dB Airp Noise Contour as shown on the ODP planning Maps have been revised following the work of the Christchurch Airport Remodelled Contour – Independent Expert Panel Report, Prepared for Canterbury Regional Council, June 202348 The process was initiated in accordance with monitoring requirements under CRPS Policy 6.3.11(3) s42A Report of Sarah Oliver, 10 October 2023 at 12.19 but is yet to have regulatory effect, and will be incorporated through the review of the CRPS to be notified later in 2024.

Contour, the Notified Contour and Remodelled AA and OE Contour between the 50dB, and 55dB L_{dn}.[77]

[226] Ms Oliver recommended that the Airport Noise QM be based on the Remodelled OE Contour but that:

(a) it only applies to relevant residential zones, commercial and mixed-use zones (noting this includes where these are underlying zones to Specific Purpose zones); and

(b) it excludes an area notified as HRZ located north of Riccarton Road within the area broadly between Ōtākaro Avon River, Deans Avenue Riccarton Road and Matai Street (Central Riccarton HRZ precinct). The Central Riccarton HRZ precinct was recommended to be included to 'compensate' new impacted areas between the Operative Contour and the 2023 Remodelled OE Contour. We discuss the Riccarton Precinct above at [99].

[227] In her rebuttal evidence Ms Oliver[78] changed her position again due to uncertainty in the expert evidence regarding the appropriate airport noise contour as a QM and she recommended the adoption of a 'Provisional Airport Noise QM' until the completion of the review of the CRPS. She said:

> 17. From my review of the above evidence, it is clear that there are substantive challenges to the application of the Updated 50dBA Contour as the basis for a QM. More specifically, evidence challenges whether the noise modelling assumptions (of CIAL) are appropriate and whether the Updated 50dB Contour is an appropriate noise control boundary.
>
> 18. I agree with Ms Bundle[sic] (planning expert for the Canterbury Regional Council) that the correct forum to decide the extent of an airport noise restriction on land use (broadly) is through the CRPS review (paragraph 40). The urban form for this part of the city is contingent on the CRPS airport noise policy review and PC14 is not the forum to evaluate the policy itself.
>
> 19. However, I disagree with Ms Bundle [sic] that the Airport Noise QM spatial extent should be based on the contour on Map A of the CRPS. The contour on Map A is also in question in the evidence. PC14 is not seeking to evaluate the CRPS airport noise contour policies or Map A (which identifies a contour). However, what PC14 is concerned about is where it is most appropriate to provide greater intensification, and it remains relevant to consider the most appropriate spatial extent for an airport noise QM in the circumstances.
>
> 20. Whilst the NPS-UD directs changes to the District Plan to give effect to Policy 3, there is no great urgency from a practical sense to provide for any greater enablement, particularly for higher density living, as the city does not have a housing capacity sufficiency issue. I understand that the change to the CRPS will be notified in December

[77] s42A Report of Sarah Oliver, 10 October 2023 at 12.35
[78] Rebuttal Evidence of Sarah Oliver, 9 October 2023 at 17-22

> 2024, with decisions possible by end of 2026. Once a decision on the policy and contour is reached, the District Plan can be changed accordingly (either retaining the status quo zoning in areas confirmed to fall within the contour or upzoning to medium or high density for areas confirmed to fall outside the contour) to align with this new direction.
>
> 21. Until a decision is reached, I recommend that the Updated 50dB Contour *is used as the basis for a "Provisional Airport Noise Qualifying Matter" noting that airport noise contours generally will be subject to the CRPS review process. Furthermore, I recommend that the area impacted by the Provisional Airport* Noise QM retains the Operative District Plan zoning. This can be revisited via a plan change after decisions on the CRPS confirm any changes to the airport noise policy, Map A and any related provisions.
>
> 22. Regarding the Riccarton area, I acknowledge the evidence of Mr Falconer and Ms Heppelthwaite, who reiterate the importance of achieving an enabling building envelope within walkable catchments of potential mass rapid transit stops. I do query whether the indicative locations for potential MRT stops could be revised to better align with less airport noise impacted areas. The benefit of a "Provisional Airport Noise Qualifying Matter" will also be to enable Waka Kotahi and the Council to explore in more detail alternative options, both in terms of optimisation of land-use development and transport improvement opportunities.

[228] The Panel records here that Ms Hepplethwaite and Mr Falconer provided evidence for Waka Kotahi, however that evidence was later withdrawn.[79]

[229] In her summary statement presented at the hearing Ms Oliver further clarified that due to the difference between the spatial extent of the 2023 Remodelled OE Contour and the Operative Contour that the area 'in between' should not be subject to the ODP RDA rules14.4.1.3 RD 34 and 14.12.12.RD 26 so as to avoid the *Waikanae* issue of impacting status quo development rights. During cross examination by Ms Appleyard, Ms Oliver agreed that, due to the density requirements for the operative zoning, any increase in density would require resource consent as a RDA, and the only difference to activity status would be the requirements which require notification to CIAL.

[230] Ms Oliver's summary statement also responded to the Panel request to advise whether in addition to the Central Riccarton HRZ, other locations may be suited to increased density, notwithstanding the Airport Noise QM. Ms Oliver said that locations such as around Avonhead Mall may qualify but that was dependent on whether greater precedence is given to housing enablement over protection of the airport's long-term operations.[80]

[79] Memorandum of Counsel for Waka Kotahi, 19 March 2024 and Memorandum of Counsel for Waka Kotahi, 24 April 2024
[80] Summary Statement of Sarah Oliver, 10 October 2023 in response to Panel request 57

[231] Ms Oliver reiterated that she had concluded as part of her strategic s42A Report at paragraph 12.109 and Part 2 of the s32 evaluation, section 6.31. overview, that:[81]

> what constitutes a well-functioning urban environment is not just housing supply. As important is the economic growth of the city and the airport, being a nationally significant asset, is a key contributor to the city's and region's economic future. It is my view that both the protection of the airport's long-term operations and maintaining a competitive housing market (with adequate housing choice) can be achieved without upzoning the entirety of the Outer Envelope QM impacted area. That there are many alternative locations outside of the QM impacted area which are well supported by infrastructure such to support higher density development.

[232] In relation to the submission from CIAL to apply the remodelled contours to the Chapter 15 rules, 15.4.1, 15.5.1 and 15.6.1, Ms Oliver recommended they be rejected for reasons of scope, as they affected status quo development rights, but otherwise accepted the change on the merits. We consider the issues at the end of our discussion on this QM.

Submissions and Submitter Representations

[233] CIAL,#852 requests that

> "…PC14 should define all areas potentially subject to levels of noise of 50dB L_{dn} or greater, based on the 2023 remodelled contours…There are two version[s] of the remodelled contours, one being the Annual Average methodology and the other using an Outer Envelope methodology. Both methods are technically valid and the preferred approach for Canterbury has not been confirmed. ..."

[234] During the hearing, the position of CIAL was that the Airport Noise QM should be updated in accordance with the most recent modelling results, the Remodelled OE Contour. This remodelled contour extends significantly beyond the spatial extent of the Notified Airport Noise QM. This presented a potential scope issue, however CIAL did not consider it to be an issue because they did not consider that the Airport Noise QM was tied to a line on a planning map. We address this interpretation below.

[235] There were submissions both in support and opposition to the proposed Airport Noise QM, and further submissions in opposition to the CIAL submission.[82]

[236] Submitters who supported the Airport Noise QM and the retention of ODP zoning, primarily wished to maintain amenity values of the area.[83] Submissions in opposition challenged the appropriateness of the method, whether the QM should be based on the 50 or 55dB L_{dn} contours or whether mitigation measures such as ventilation and air

[81] Summary Statement of Sarah Oliver, 10 October 2023 at 19
[82] Including late submissions from Waka Kotahi (later withdrawn on this issue) and from David Lawry #2112
[83] For example Waipuna Halswell - Hornby- Riccarton Community Board, #902 #1090 #2027, Robert Broughton #851, Riccarton Bush Kilmarnock Residents' Association #188

conditioning were a more appropriate response. The Panel discuss those submissions further below.

CIAL submission and evidence

[237] CIAL called the following witnesses in support of its submission on PC 14.

(a) Ms Felicity Hayman – in relation to Christchurch Airport operations and CIAL's approach to planning processes such as PC 14;

(b) Mr Sebastian Hawken –airport safeguarding;

(c) Mr Christopher Day –acoustics;

(d) Mr Gary Sellars –housing capacity; and

(e) Ms Natalie Hampson –economics.

[238] CIAL also filed evidence in chief and rebuttal evidence from Ms Smith (acoustics) and Mr Millar (planning) but due to the pause and disruption to the PC 14 hearing timetable both were unavailable to attend the hearing. The Panel accepted a substitution of witnesses with Mr Day appearing as CIAL's sole acoustics expert and adopting Ms Smith's evidence including her rebuttal. Mr Kyle appeared as CIAL's planning witness. Mr Kyle has prepared a statement recording his agreement with Mr Millar's planning evidence that maintaining "pre-PC 14" development potential within the Airport Noise QM area sought by CIAL in its submission is both appropriate and necessary.[84]

[239] The Panel note here that although the Council and CIAL cases were largely aligned on the justification for the Airport Noise QM, CIAL did not agree with Ms Oliver's recommendation of allowing intensification in Central Riccarton to enable the numbers of people in those areas to increase so as to justify a business case for a mass rapid transport (MRT) system. CIAL's legal counsel Ms Appleyard submitted that, because there are no firm plans for a MRT system and no analysis has been done on the trade-offs between the risks to Christchurch Airport and impact on people's health, wellbeing and amenity versus the benefits of a future MRT system.

[240] CIAL did not favour Ms Olivers revised recommendation to describe the Airport Noise QM as 'provisional', preferring that it applied but on the understanding its application

[84] Statement of Evidence of John Kyle, 8 April 2024

may well change as a consequence of the review of the CRPS, and if that was the case, CIAL would accept that outcome and 'fall into line' and would not rely on the outcome of PC 14, if the QM applied to the Remodelled Contours as trumping the CRPS, if it happened that the CRPS policy outcome differed.[85] She explained that we could call it an interim position, but in reality it is an interim position until the CRPS does something else. Her submission to us confirmed our view, that we had to make our decision on the legal position and evidence before us, and that the reality is there would need to be a later plan change to give effect to the CRPS when it was later reviewed.

[241] Ms Appleyard outlined the policy justification for the continued application of a 50dB L_{dn} noise contour as the Outer Control Boundary (OCB) for Canterbury as being necessary to give effect to the NPS-UD, CRPS, Chapter 6 and to the ODP. Ms Appleyard submitted that Christchurch Airport is recognised as infrastructure of local, regional and national importance in the NPS UD, the CRPS and in the Objectives and Policies chapter of District Plan. In particular she submitted that:

(a) the CRPS and District Plan recognise that residential activities in areas exposed to levels of 50dB L_{dn} have the potential to limit the efficient and effective provision, operation and maintenance or upgrade of Christchurch Airport and must be avoided.

(b) The CRPS and ODP also recognise that exposing residential activity to levels of 50Ldn has adverse effects on health, wellbeing and amenity.

(c) Controls on density in areas subject to 50dB L_{dn} Air Noise Contour or greater are the established mechanism to deliver the protection for Christchurch Airport that the CRPS directs and also to protect people from adverse effects on health, wellbeing and amenity.

(d) The CRPS and ODP direct that adverse effects, in the form of 'reverse sensitivity' effects on the airport are to be 'avoided'.

[242] Ms Appleyard reiterated that the Airport Noise QM was an existing QM within the meaning of s77I(e) and only needed to be assessed against the requirements of s77K.

[243] The background to the use of Airport Noise contours is explained in detail in the evidence of Ms Smith, for CIAL.[86] In effect NZS 6805:1992, Airport Land Use Management and

[85] Ms Appleyard in legal submissions to the IHP on 23 April 2024, Morning Session 2 at 51-54min
[86] Statement of Evidence of Laurel Smith, 20 September 2023 and Rebuttal Evidence of Laurel Smith, 14 November 2023

Land Use Planning (NZS 6805), is a mandatory New Zealand Standard as referenced in the NPS. It guides the noise contour modelling process and the associated land use planning and airport noise compliance rules. NZS 6805 is used to assess and rate aircraft noise in the vicinity of airports (including aerodromes/airfields).

[244] NZS 6805 allows the local authority to incorporate into its district plan aircraft noise contours based on the Annual Noise Boundary (ANB; based on the 65dB L_{dn} contour) or Outer Contour Boundary (OCB; based on the 55dB L_{dn} to less than 65dB L_{dn}), or in a position further away from or closer to the airport if a special circumstance warrants use of a different L_{dn}. CIAL considers that the 50dB L_{dn} is the appropriate OCB for Canterbury, and this is reflected in the CRPS and ODP. By adopting 50dB L_{dn} as the OCB, a larger buffer around the Airport exists than would have been allowed by the 55dB L_{dn} OCB of NZS 6805. As a result, in Canterbury the Councils and CIAL have effectively maintained a green-belt of low density or non-sensitive land use around Christchurch Airport.

[245] CIAL sought the adoption of the Remodelled OE Contour through its submission because at the time PC 14 was notified, only draft remodelled contours that were prepared by CIAL's expert team and submitted to Canterbury Regional Council/Environment Canterbury (Environment Canterbury) for peer review.

[246] Ms Appleyard filed further legal submissions in a memorandum on scope issues on 1 May 2024, in that memorandum she addressed the issue that the effect of applying Remodelled OE Contour would be that additional land would now be subject to the consenting regime for any new development, not just MDRS, by virtue of rules 14.4.1.3 RD 34 (residential suburban zone) and 14.12.12.RD 26 RD (residential new neighbourhood zone). Ms Appleyard's submission was that was not material as all those rules required was notification to the Airport, which did not constrain development rights.[87]

What effects does the Airport Noise QM seek to address?

[247] CIAL's case was based on there being two key types of airport-related effects that land use controls within the 50dB L_{dn} Noise Contour are designed to address which are related to each other:

[87] Memorandum of Counsel for Various Submitters, 1 May 2024 at 50.4

(a) Health, Wellbeing and Amenity – the effect of noise from aircraft operations on community health and amenity. Mr Day confirms that recent overseas studies have shown that, between 50dB and 55dB L_{dn}, 18% to 27% of people were found to be highly annoyed by aircraft noise.

(b) Reverse sensitivity – adverse effects on community health and amenity may lead to an increase in the incidence of complaints about noise and/or indirect pressure for CIAL to take steps to curb, curtail or amend its operations. CIAL considered this to be a very real concern which has and is being experienced at various airports internationally. In support of this concern, Ms Hayman CIAL operations manager explained the nature of complaints received in relation to airport noise and the modifications the airport had to accommodate in response.[88]

[248] In answer to questions from the Panel, Ms Appleyard explained that although health and safety of the community was a separate issue, it was integral to the issue of reverse sensitivity. She referred the Panel to the Environment Court decision of *Robinsons Bay Trust*[89] where the issue of whether the 50dB or 55dB noise contour should be the threshold for protecting amenity values. The Court said:

> [49] We accept the clear evidence given to us that noise can create impacts on amenity and some people will become highly annoyed. We also accept that there would be some benefit to the airport in future proofing its operation. That benefit is one that has local, regional and national significance.
>
> [58] … We do accept that there are likely to be a percentage of persons highly annoyed even below the 50dBA Ldn noise contour. Although that percentage is significantly less than at the 55dBA Ldn contour, we accept this may lead to an increased level of complaints.

[249] CIAL's position was that those findings are still applicable today and that the evidence presented at this hearing supports the conclusion that land subject to 50dB L_{dn} or greater aircraft noise is not a desirable noise environment in which to locate new residential development for reasons of reverse sensitivity and health and amenity. Ms Appleyard further submitted that "we are not at a stage where economics or housing capacity considerations require a compromise."[90]

[250] In support of that proposition, Ms Hayman, gave evidence about the nature of complaints received about airport operations, including the difficulties of causality, given the nature of some complainants.[91] She acknowledged that there may be other personal or

[88] Statement of Evidence of Felicity Hayman, 16 April 2024
[89] *Robinsons Bay Trust & Ors v Christchurch CC*, C 60/2004, 13 May 2004, Smith J (EnvC) (Interim decision).
[90] Legal Submissions of CIAL, 16 April 2024 at 68
[91] Statement of Evidence of Felicity Hayman, 16 April 2024 at 28.3

psychological sensitives or factors unrelated to aircraft movements that lead to complaints. Ms Hayman agreed that there was a research gap in terms of understanding the impact of aircraft noise on the enjoyment of outdoor spaces. Ms Hayman gave some examples of what matters she considered were 'reverse sensitivity' impacts, where complaints had led CIAL to modify their operations.

[251] Ms Hayman also explained the work her team undertakes alongside stakeholders, regulators and airport users to facilitate on and off airport resource management and environmental issues. For example, they liaise with Airways (New Zealand's air navigation service provider) and the aircraft maintenance sector to ensure Christchurch Airport's noise footprint in the Canterbury region is appropriately managed. They also work with applicants, district councils and acoustic experts to protect Christchurch Airport from reverse sensitivity effects and the establishment of incompatible activities. She also explained that CIAL also undertakes a significant amount of work in the noise management space to ensure they are doing as much as possible to reduce the effects that Christchurch Airport operations have on the community. There is a comprehensive noise management framework in the ODP, and this information is available on the CIAL website.[92] The ODP also provides for the establishment and operation of the Airport Noise Liaison Committee (ANLC). The ANLC includes community board members and, among other things, provides an avenue for community concerns about airport noise to be formally raised with CIAL.

Impact of QM on Housing Supply

[252] Mr Sellars, a valuation and housing capacity expert provided evidence on the city wide impact Remodelled Contour on Christchurch City, which he concluded is relatively minor when taking into account the location of the feasible capacity assessed by The Property Group (TPG).[93] The most impacted area is Central Riccarton where, but due to a number of factors, the impact is to some extent suppressed. Mr Sellars undertook a more detailed evaluation of the feasible capacity for Central Riccarton, and a comparison of development typology to illustrate that despite the Council's proposal to upzone areas, Central Riccarton was unlikely to deliver significant development capacity. Mr Sellars had not undertaken a detailed inquiry of all feasible capacity within the Operative Contour or Remodelled Contour, he relied on the TPG report which had excluded land within the noise boundaries and areas within flight path restrictions or within the utility

[92] Mitigating the Impact of Noise - Christchurch Airport
[93] TPG "New Medium Density Residential Standards (MDRS) Assessment of Housing Enabled" dated January 2022 at s32 Report, Part 2 Appendix 38 (Document 01) and s32 Report, Part 2 Appendix 39 (Document 02)

buffer requirements given in the ODP. Mr Sellars did, however, look more closely at the impact on the suburban areas of Russley and Avonhead, in his rebuttal evidence in response to Mr Blackburn's evidence for Miles Premises Limited #883 #2080 #2100 and Equus Trust #2102 #2107 that there were limited opportunities for new housing in those suburban areas due to the noise contours and more land should be released from the QM. Mr Sellars considered Mr Blackburn had underestimated existing feasible capacity in the ODP.

[253] Ms Hampson provided economic evidence which highlighted the economic significance of the airport to the national and regional economy. That is not disputed. Ms Hampson was concerned about the potential for even 'minor impacts on the efficient operation and investment certainty for CIAL could have significant economic consequences in the long term. Ms Hampson's evidence was premised on the assessment of the Airport Noise QM on the city-wide feasible capacity which concluded the Airport Noise QM did not come close to constraining. Ms Hampson was concerned about the lack of economic evaluation undertaken by the Council to justify the proposed HRZ in Central Riccarton.

[254] On an aggregate basis Ms Hampson considered the economic benefits to applying the Airport Noise QM that restricts further intensification outweighs the reduced development capacity in parts of the Christchurch Urban area.

[255] The Panel also record here that it received tabled planning evidence from Ms Hutchison on behalf of the University of Canterbury.[94] Her evidence illustrates one of the consequences of adopting the Remodelled OE Contour would be that some parts of the City (including parts of the University of Canterbury Campus) that are within the Operative Contour are no longer caught as a consequence of the changed spatial extent of the Remodelled OE Contour. The University of Canterbury accepted the need to restrict population density within the updated Air Noise Contours to protect the Airport and its operations, however, for those parts of the University campus that no longer fall within the spatial extent of the Updated Noise Contour, should retain the Alternative Zone, as notified in Appendix 13.7.6.1, MRZ, for the Special Purpose Tertiary Zone (SPTZ).

[256] Ms Appleyard indicated, that although she did not have instructions from CIAL she did not think that they could come along to a hearing and rely on the operative mapped contour or the CRPS Map A, in light of the technical information that was available to the airport on the basis that they were still shown as being within the Operative Contour, if

[94] Statement of Evidence of Caroline Hutchison, 20 September 2023

they were now outside of the Remodelled OE Contour and she had identified other areas that would similarly be released from the Airport Noise QM.[95]

Kāinga Ora submission and evidence

[257] Kāinga Ora opposed the use of the Airport Noise QM setting at 50dB L_{dn}, to impose restrictions and costs on urban development in existing residential areas. Kāinga Ora also opposed the application of the yet to be tested updated contours. It was the case for Kāinga Ora that the retention of the ODP zoning was an 'unnecessarily blunt tool' and that the evidence does not justify the restrictions. Kāinga Ora say that there is no evidence before the Panel that Christchurch residents are more highly annoyed by airport noise or otherwise affected to a greater degree than other New Zealanders, and that on the Council and CIAL's approach Christchurch will become a national, and international, outlier.[96]

[258] Kāinga Ora called the following witnesses:

(a) Mr Liggett (corporate)

(b) Mr Matthew Lindenberg (planning)

(c) Mr Jon Styles (Noise);

(d) Jonathan Selkirk (Ventilation)

[259] The Panel has discussed Mr Liggett's evidence in Part 1 of the Panel's report in relation to housing need. His evidence sets out the real-world impacts of the wide ranging Airport Noise QM on areas and locations within the City where there was a need for affordable housing choice exists and but for the Airport Noise QM the area is otherwise be well suited to residential intensification. He referred to areas in Riccarton as an example.

[260] Mr Lindenberg proposed an alternative planning approach which he said better balanced the various policy directions and considerations within CRPS and ODP with the intensification requirements of the NPS-UD, better aligned the Christchurch City Council approach with approaches in Auckland and Wellington.[97]

[95] Ms Appleyard in answer to questions from IHP 23 April 2024 morning session 2 at 57-59 min.
[96] Legal Submissions of Kainga Ora, 16 April 2024
[97] Mr Lidneberg also referred to an approach by Waimakariri District Council, but we have not considred this to be comparable as it was simply a recommendaiton in a s42A Report in the context of a plan review where the outcome has not yet been tested or subject of a decision of that Council.

(a) restricting development within the 65dB noise contour (as generally provided for through the operative District Plan framework)

(b) applying specific permitted standards to the development of noise sensitive activities within the 55dB noise contour relating to acoustic insulation (as per the general approach set out in the operative District Plan, through Standard 6.1.7.2.2 'Activities near Christchurch Airport'), plus the addition of ventilation requirements (as recommended through the evidence of Mr Selkirk on behalf of Kāinga Ora) within such a permitted standard. There would be no specific restrictions relating to residential density within the 55dB contour. Any non-compliance with the noted permitted standards would be assessed as a Restricted Discretionary Activity.

(c) no density restrictions / specific permitted standards applying to noise sensitive activities / residential units within existing residential zones located within the existing 50dB noise contour identified in 'Map A' as currently set out in the operative Canterbury Regional Policy Statement (CRPS)

[261] Mr Styles, an acoustics expert also supported an alternative approach, as being an appropriate response to aircraft noise which was consistent with other airports in NZ and the international research on annoyance levels.

[262] In support of Mr Lindenberg's alternative planning approach Mr Selkirk presented technical evidence on the efficacy of ventilation requirements for residential dwellings, he recommended changes to the ventilation requirements in rule 6.1.7.2.1(d), which is based solely on the New Zealand Building Code which does not address cooling or adequately address potential for overheating. He recommended that the minimum heating, cooling and ventilation requirements for noise affected habitable spaces.[98]

[263] Legal counsel for Kāinga Ora, Mr Whittington criticised the cases for CIAL and the Council on the basis that Mr Kyle, Mr Millar and Ms Oliver have concluded that there is such a level of incompatibility between the airport operations and the MDRS that they have improperly leapt to a conclusion that the existing planning framework is appropriate, without considering other means of modifying the planning framework that start from the MDRS. This is particularly clear in the acknowledgement by Mr Kyle that the purpose of CIAL's submission is to preserve the "pre-PC 14 state".[99] Mr Whittington submitted that qualifying matters are not intended to be used as a means to preserve

[98] Evidence of Jonathan Selkirk, 18 September 2023
[99] Statement of Evidence of John Kyle, 8 April 2024 at 7-8

the status quo but to moderate the default imposition of the MDRS or National Policy Statement on Urban Development 2020 (NPS-UD) Policy 3 enablement.

[264] Mr Whittington submitted that the CRPS does not seek to disenable new residential activity in existing residentially zoned urban areas. He said that policy 6.3.5(4) could not be clearer that its direction to only provide for new development that does not affect the efficient operation etc of the airport within the 50 dB contour does not apply to existing residentially zoned urban land.

Miles Premises and Equus

[265] Miles Premises Limited #883 #2050 #2100 and Equus Trust #2102 #2107, who are unrelated entities with land interests near to the airport,[100] presented jointly that the appropriate contour for management of intensification is the 2023 modelled 55dB L_{dn} Annual Average contour (55dB L_{dn} Contour). Within the 55dB L_{dn} Contour, they seek that residential development and intensification be enabled subject to a requirement for acoustic insulation. The Panel address the submission points made in respect of the evidential and policy considerations for the proposed QM here and address the associated request to rezone parts of the Miles Premises land in Part 7 of the report.

[266] Miles Premises and Equus, called the following witnesses:

(a) Professor John-Paul Clarke – Airport Noise (Miles and Equus)

(b) Fiona Aston – Planning (Miles and Equus)

(c) Jonathan Manns – Housing and industrial market analysis (Miles)

(d) Mike Blackburn – Residential construction analysis (Miles)

[267] Professor Clarke joined the hearing by video link from the USA. His evidence was that CIAL modelling takes an unreasonable worst-case assumption that will not eventuate in practice. In particular he referenced the lack of consideration for the likelihood that fleet upgrades and air traffic procedures would improve over a 60 year period and result in a 5dB quieter fleet. Professor Clarke also challenged the lack of evidence that the OE

[100] Miles owns land (the Miles Site) located between Memorial Avenue, Russley Road and Avonhead Road,1 which is currently zoned Industrial Park Zone (Memorial Avenue). The majority of the Miles Site is located between the operative 50 and 55 dB noise contours, with a smaller area (generally towards Avonhead Road) located within the Airport Noise 55 dB contour in the ODP. Equus owns 76 Hawthornden Road Christchurch (the Equus Site), which is currently zoned Rural Urban Fringe. The Equus Site is located within the Airport Noise 50 dB Ldn contour in the operative ODP.

Contour (worst 3 months) had any correlation with annoyance level (the correlation of annoyance levels was on the yearly average exposure, not worst 3 months). Dr Clarke was of the opinion that assumptions made by CIAL meant that the remodelled contours were significantly, larger than they should be.

[268] Dr Clarke's evidence was that most countries that have land use planning controls have limits corresponding to 55 dB L_{dn} or higher. This contour is considered the onset of adverse effects and special low-noise features may be recommended above that level (i.e. within the 55 dB contour). Development of noise sensitive buildings is typically discouraged or restricted at a level 10 dB above the "onset contour" (i.e. within the 65 dB contour). His opinion was that outside of the 55dB L_{dn} contour very few people will be affected, and only sporadic noise complaints will be registered. The number of complaints will remain relatively stable for exposure levels below this limit as there will always be a small percentage of complainers that will react negatively no matter how low the limit exposure level is defined.

[269] Ms Appleyard challenged Professor Clarke's evidence was co-authored with his colleague Truis Gjestland, who was not available for questioning. The Panel has considered the evidence in light of that limitation.

[270] Ms Eveleigh submitted that a change to 55dB L_{dn} Contour was also not inconsistent with CRPS Policy 6.3.5(4) which directs that new development of noise sensitive activities within the 50dB contour be avoided, except within existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A.

[271] Ms Eveleigh criticised the CIAL and the Council's interpretation of "existing residentially zoned" to mean consistent with the level of development enabled within the existing residential zones at the time the policy was introduced. She submitted this was contrary to the interpretation and findings of the Replacement Plan IHP[101] which recorded that there was no absolute bar on further development of noise sensitive activities within the 50dB contour, this was a matter to be assessed on its merits.

[272] Ms Eveleigh submitted that generally, adoption of an Airport Noise QM based on the 55dB Ldn contour creates no inconsistency with the CPRS or ODP policy and is appropriate having regard to the expert evidence of Professor Clarke. She noted that within existing residential zones, avoiding CIAL related reverse sensitivity effects is

[101] IHP Christchurch Replacement District Plan Decision 10, 10 December 2015 at [194]-[196]

currently achieved by way of rules which require new residential development to provide acoustic insulation where that development occurs within the 55 dB contour. There is no noise insulation requirement for construction of new residential dwellings within the 50dB L_{dn} contour.

[273] Ms Eveleigh also commented on Ms Oliver's 'provisional Airport Noise QM' alternative and submitted that if the Panel is not minded making a final determination on the appropriate spatial extent of the Airport Noise QM contour in advance of the CRPS review, the appropriate response is to apply the Operative Contour rather than the Remodelled OE Contour. That is because the evidence of Professor Clarke is that the Operative Contour is already very conservative, and no further expansion of this contour is necessary as a holding position. If the current Operative Contour is applied, the Submitters maintained their requested relief that residential development be enabled within the Airport Noise QM (up to the current ODP 65dB contour), subject to provision of acoustic insulation.

Environment Canterbury

[274] The Regional Council supported the application of an Airport Noise QM to the MDRS in PC 14 in accordance with section 77I(e) and 77(O)(e) as a matter required for the purpose of ensuring the safe or efficient operation of Christchurch Airport as nationally significant infrastructure. However, their position was that the 50dB contour as shown on Map A of the CRPS should define the spatial extent, pending the completion of the CRPS review process.

[275] The Regional Council position, supported by the planning evidence of Ms Buddle was that the remodelled contours, which represented the outcomes recommended by the Independent Expert Panel would be an input into the review of the CRPS but of themselves had no statutory weight. Ms Buddle accepted under cross examination from Ms Appleyard that they were relevant evidence to consider in evaluating PC 14.

[276] In support of retaining the Operative Map A contour over the remodelled contour Ms Mehlhopt for the Regional Council submitted that the airport noise contours are a cross-boundary issue for Christchurch, Waimakariri and Selwyn District councils and the extent to which PC 14 needs to be consistent with the plans or proposed plans of Waimakariri and Selwyn districts is a matter that this Panel must have regard to under section 74(2)(c) of the Resource Management Act 1991 (RMA). It is submitted that it would be inappropriate to apply the Remodelled Contour in Christchurch City through PC 14 in

circumstances when the CRPS Map A contour is applied in Waimakariri and Selwyn districts. She submitted that the review of the CRPS is the appropriate forum to make these determinations as it would enable Greater Christchurch residents the opportunity to effectively engage on the appropriate contour and its use in land use planning. This same opportunity has not been provided as part of PC 14.

[277] Counsel also drew the Panel's attention to the Greater Christchurch Spatial Plan (GCSP). In March 2024 the Greater Christchurch Partner Councils adopted the GCSP as their Future Development Strategy (FDS). Christchurch City Council must have regard to the FDS when changing the Christchurch District Plan through PC 14. The Council must also have regard to the GCSP as a strategy prepared under the Local Government Act 2002.

[278] On the issue of the interpretation of CRPS Policy 6.3.5 (4) counsel submitted the policy directs that noise sensitive activities within the 50dB L_{dn} airport noise contour for Christchurch International Airport are avoided, unless (relevantly for Christchurch City) the activity is within an existing residentially zoned urban area or residential greenfield priority area identified in Map A. The Regional Council position is that the reference to "existing" is the land that was residentially zoned as at 6 December 2013. However, the policy does not go so far as to freeze in time the intensification that was allowed in those zoned areas as at that date. If the land was residentially zoned as at 6 December 2013, then any new development is not subject to the avoidance direction in Policy 6.3.5(4). Instead, the effects of new development in these areas on the Christchurch International Airport must be "managed" in accordance with Policy 6.3.5(5).

Other submissions opposed to the Airport Noise QM

[279] There were a number of other submissions opposed the use of the 50dB Ldn Noise contour to define this qualifying matter, citing either the 55dB L_{dn} as being more appropriate or no QM at all.[102]

[280] The Panel also heard from Jeff Vesey #439, who expressed concerns about the impact of the Airport Noise QM, on the suburban area of Avonhead, particularly around Avonhead Mall, that was otherwise well served in terms of commercial services, schools and other services that made the suburb suitable for intensification. His evidence also

[102] For example David Lawry, #873 and #2112, and Brooke McKenzie #183

explained the ageing housing stock in Avonhead and Ilam. His written submission recorded that "

> Much of this area was built in the 1960's and 1970's. While mostly permanent material and some fine examples of architecture from that era those houses are now 40 to 60 years old, many in need of major renovation, cold with minimal insulation if any and single glazing. Upgrading and replacement housing is now due.
>
> There is a smattering of townhouse/units in this area (see attached "B" as a sample). Most of these units were built 40 to 50 years ago and on cross lease sites and as such need updating. Allowing more town houses to be built would improve the housing stock and allow more people to live in this highly valued area for its amenities.

[281] He concluded his submission by saying that "To suppress new housing in this area will continue the areas decline in warm modern housing for those wanting to live close to all the advantages of living in this area."

Joint Witness Statements

Acoustic Evidence

[282] The acoustic witnesses attended an expert witness conference[103] in relation to the Airport Noise QM, attendees were Mr Christopher Day for CIAL, Ms Laurel Smith for CIAL, Mr Jon Styles for Kāinga Ora, Professor John-Paul Clarke for Miles Premises Limited and Equus Trust and Dr Stephen Chiles[104] for Waka Kotahi.

[283] The matters of agreement amongst the acoustic experts were:

(a) land use planning is one of the tools that can be used to manage the effects of noise on people.

(b) other tools include:

(i) Source noise reduction.

(ii) Operational flight procedures and

(iii) Operational restrictions, e.g. curfews.

(c) NZS 6805 provides a general and flexible approach but that international research has advanced considerably since 1992.

[103] Joint Statement of Airport Noise Experts, 7 November 2023
[104] Waka Kotahi subsequently withdrew the evidence of Dr Chiles

(d) understanding is advancing on how noise affects health and there is limited NZ data on exposure response functions and the WHO guidelines are important information for the panel but should not be used in isolation to quantify effects.

(e) acoustic insulation could reduce the annoyance response however there is insufficient evidence to quantify the extent of efficacy.

(f) the noise band (50 to 55 dB L_{dn}) that ODP internal design criterion (40 dB Ldn) can be achieved by normal construction methods with open windows – therefore no mitigation is required.

(g) a disadvantage of insulation options is that windows must be kept shut.

[284] The points of difference included:

(a) the extent to which those tools in (a) and (b) above were effective,

(b) the methods to quantify noise effects and whether the threshold should be 10% highly annoyed (Mr Day) or between 10-25% (Mr Styles and Professor Clarke). Mr Styles also considered that there are a complex range of effects that need to be quantified including other noise sources and a broader judgement is required than reliance on a single metric such as a percentage of highly annoyed residents.

(c) different views on the application of overseas research with Mr Day supporting their validity whether or not there was insulation in place. Professor Clarke questioned the use of World Health Organization (WHO) guidelines because it sets a threshold based on health effects which is wider than annoyance. Mr Days view is annoyance is one aspect of health effects.

(d) Professor Clarke supported the use of the Gjestland 2020 curve[105] as a reasonable compromise, however Mr Day and Ms Smith prefer the 2018 WHO Curve. Mr Styles generally agreed with Mr Day and Ms Smith but considered that the 2018 WHO Curve was not readily transposable to Christchurch and the possible range of planned outcomes (including well insulated buildings).

(e) On the issue of Reverse Sensitivity effects on Airports the experts had different opinions:

[105] Truis Gjestland is a colleague of Professor Clarke, who co-authored aspects of Professor Clarke's Statement of Evidence, but did not appear before us.

(i) Mr Styles considers that the relationship between a true reverse sensitivity effect on the airport and the way that the population is exposed to noise is complex and involves more than just acoustical expertise. He considers that there are options beyond a simple limitation on density and that these should be considered.

(ii) Ms Smith considers there is evidence that reverse sensitivity can affect airports and result in operational restrictions. She considers reverse sensitivity effects on airports are generally triggered by aircraft noise and can also be influenced by non-acoustical factors.

(iii) Mr Day considers that noise initiated operational restrictions on numerous airports are proof that reverse sensitivity is a real issue, that can affect the efficient operation of nationally significant infrastructure.

(iv) Professor Clarke considers that the concept of "reverse sensitivity", being the impacts of newer uses on prior activities occurring in mixed-use areas, is not a universally accepted concept. Further, he considers that the premise that densification will result in a disproportionate increase in the percentage of people annoyed has not been proven. There are many competing factors that drive annoyance, and it is not clear that the relationship between densification and annoyance is both non-linear and increases monotonically.

(f) On the issue of efficacy of insulation requirements:

(i) Professor Clarke and Mr Styles considered that intensification generates the opportunity for a higher proportion of buildings to be acoustically treated, mitigating noise effects, but

(ii) Mr Day and Ms Smith considered this to be outweighed by the increase in population affected by noise resulting in higher annoyance levels.

(g) On the issue of alternatives:

(i) Mr Styles thought that different planning responses to ‘separation’ should be considered including managing building typologies, acoustic insulation and ventilation and cooling as an alternative to limiting intensification.

(ii) Mr Day disagrees with this statement. Ms Smith considered acoustic insulation and ventilation is a compromise rather than a solution. Mr Day and

Ms Smith consider that insulation and ventilation do not solve noise effects on outdoor living areas and noise effects via open windows.

(iii) Mr Styles considered that the need to keep windows shut is less of an issue in a denser urban context and it has the potential to considerably improve exposure to noise at night.

(h) Different opinions on the adequacy of the modelling undertaken as part of the Peer review, but on the issue of the Outer Envelope v Annual Average contour, Mr Day considers either approach is valid. Mr Styles agreed that the Annual Average approach does not adequately account for seasonal changes resulting in greater use of the cross runway. He considered that annual average should be used but with a factor included to address this issue but that such a factor should not extend to the outer envelope.

(i) Disagreement as to the existing adverse effects from noise with:

(i) Mr Styles considering that airport management policies and practices should have regard to existing effects on communities and how these can be mitigated to achieve a balanced outcome taking into account costs and benefits of alternative approaches which might result in reduced current and future exposure. His view was that this is relevant to the airports duty to avoid unreasonable noise (s16 RMA).

(ii) Mr Day and Ms Smith do not consider current noise levels are within the scope of PC 14 however if the panel determine that it is, then they will consider the matter further.

Economic Evidence

[285] As part of the economic expert witness conferencing undertaken in relation to feasibility and demand for housing, the witnesses discussed housing feasibility in Central Riccarton, and the impact of the Airport Noise Contour.[106]

[286] The participants agreed that in order to understand the impact of the Remodelled Contour qualifying matter on residential and business development capacity in Riccarton, including the need for HRZ to be retained within the Remodelled Contour, a more detailed assessment of capacity is required. This should include existing dwellings,

[106] Joint Witness Statement of Economics Experts, 21 and 22 September 2023

plan enabled and feasible capacity for net additional dwellings in the total Riccarton node, but disaggregated by area within the Remodelled OE Contour and outside the contour under the following zoning approach:

(a) Operative zoning (status quo)

(b) Notified zoning (this reflects the preferred nodal intensification, but took account of the notified Airport QM)

(c) Operative zoning within the Remodelled Contour and PC 14 Notified zoning outside the Remodelled Contour (this reflects the Remodelled Airport QM applied to full effect with no compensatory capacity)

(d) Recommended zoning (as informed by s42A reports), including retention of some HRZ and MRZ inside the Remodelled Contour and compensatory zoning/intensification outside the updated contour

(e) Modified Recommended zoning, but with HRZ in the Remodelled Contour instead zoned MRZ and compensatory zoning/intensification outside the updated Airport QM.

[287] The participants agreed that the modelling should include commercial zones and residential zones, whereby residential dwellings are defined as noise sensitive activities for the purpose of commercial zones. Other qualifying matters should be taken into account. The node/catchment of the centre for the analysis should be clearly stated/shown (for example, the walkable catchment however defined, or Riccarton Central as previously defined, or other).

[288] The Panel understood from cross examination by Ms Appleyard of Ms Oliver that the Council may have commenced that work, but that it was not available to us during the hearing.

Issues

[289] The issues arising in relation to the Airport Noise QM are as follows:

(a) What should the spatial extent of the proposed Airport Noise QM be,

(i) Operative 50dB L_{dn} Contour (Operative Contour);

(ii) PC 14 Notified Contour (based on draft remodelling)

(iii) 2023 Remodelled 50dB L_{dn} Contour - Annual Average (Remodelled AA Contour)[107] or

(iv) 2023 Remodelled 50dB L_{dn} Contour Outer Envelope (Remodelled OE Contour)[108]

(v) Operative 55dB L_{dn} Contour, or

(vi) 2023 Remodelled 55dB Contour

(b) What is the adverse effect that the Airport Noise QM seek to address:

(i) Protection of the operation of the airport from 'reverse sensitivity effects'

(ii) Protection of occupants of residential property or other sensitive land use activities from adverse health and safety effects.

(iii) A combination of (i) and (ii)

(c) Is the Airport Noise QM an existing, new, or other QM requiring evaluation in terms of s77I(e) under s77K or J, or is it a s77I(j), 'other matter' requiring an evaluation under section 77L?

(d) In the context of Canterbury Regional Policy Statement (CRPS), Chapter 6, Policy 6.3.5(4) and Operative District Plan (ODP) Objective 3.3.12 what does the exception to the 'avoid' policy for "existing residential zoned urban area" refer to and does it apply to increased density as directed by the NPS-UD, Policy 3 or MDRS?

(e) In the context of the required evaluation of the Airport Noise QM, is the implementation of the MDRS inconsistent with CRPS, Chapter 6, Policy 6.3.5 (4) and (5) and if so should it be set aside under s77G(8).

(f) What is the most appropriate method to address the proposed QM, only to the extent necessary to account for the QM?

(i) retaining the ODP residential zoning and density within the 50dB L_{dn} contour (whatever that it is determined to be under (a)(i)-(iii) above), or

[107] The 'Annual Average Aircraft Noise Contours (overall annual average runway usage))
[108] The 'Outer Envelope Aircraft Noise Contours (composite of four worst-case contours, with each representing the highest runway usage on each runway over a 3-month period)

(ii) apply the MDRS and Policy 3 enablement with mitigation measures such as a requirement or insulation and/ventilation/consent notices, or

(iii) apply the MDRS and Policy 3 enablement within the 50dB L_{dn} contour, with no QM, or

(iv) in relation to the (i)-(iii) apply a 'provisional' approach pending review of the CRPS.

(v) Adopt the 55dB L_{dn} Contour as the trigger for a QM

Findings Reached on Evidence on Each Issue:

[290] Overall, the Panel has found that there is insufficient justification in a s32 and s77K, J and L for the retention of the status quo zoning framework as the basis for the Airport Noise QM.

[291] The Panel's recommended approach is that the MDRS, be applied to all residentially zoned land within the ODP 50dB L_{dn} and 55dB L_{dn} contour shown on the ODP Planning Maps and the 2023 Remodelled OE Contours, and those areas should be changed to MRZ and HRZ, with rules to address the requirements for acoustics insulation and ventilation for one to three residential units per site, and restricted discretionary activity rules for four or more residential units per site (airport influence rules). There is an exception where the airport influence rules do not apply to areas that, by virtue of the 2023 Remodelled Contours would now not experience noises levels as predicted by the ODP mapped contour, i.e. would now be released from the airport noise restrictions.[109]

What is the spatial extent of the proposed Airport Noise QM?

[292] The Panel accepts that the remodelled contours as arrived at following the Canterbury Regional Council Independent Expert Panel[110] review represent the most up to date projected annual average and outer envelope contours, and that information is relevant for the Panel's consideration of PC 14. However, the Panel acknowledges that the outcome of the Independent Expert Panel review may change through the review of the CRPS and therefore we do not recommend that the contours as depicted on the ODP planning maps should be amended through PC 14. We prefer to consider an appropriate

[109] As explained by Ms Appleyard in her legal submisssions to the Panel on 23 April 2024, morning session 2, 24-26min.
[110] s42 Report of Sarah Oliver, 10 October 2023 at 12.19

planning framework that can apply to areas impacted by airport noise within the Operative Contour and the Remodelled OE Contour.

[293] The Panel considered the submissions and evidence outlined above, and agree with Ms Oliver and Ms Buddle's (for Environment Canterbury #689 #2034) appraisal that there is uncertainty regarding which of the remodelled contours is appropriate and that is best left to the review of the CRPS, as that is a matter which affects Selwyn and Waimakariri Districts also. It follows that second guessing that now would be overly speculative.

[294] We understood Ms Appleyard suggested that the status quo contour was not on table, given the outcome of the Independent Expert Panel findings, and none of the experts sought to return to the operative modelled contour in this process. The Panel disagree, at least Environment Canterbury sought the status quo as an interim position and there are submissions which seek the complete removal of the contour or reliance on the 55dB Ldn contour. The operative contours are still on the table, even if only on a potentially interim or provisional basis (noting that as yet the review of the CRPS has not been notified) to be revisited during a future plan change.

[295] The Panel found Mr Randal, Ms Oliver, Mr Millar's and Ms Appleyard's argument that the policy and regulatory response in the CRPS to be unrelated to the mapped spatial extent in Map A to lack credibility and it is also at odds with the depiction of the contours on the ODP planning maps. The representation on the planning maps forms the gateway to the required regulatory response as is abundantly clear from the wording of rules14.4.1.3 RD 34 and 14.12.12.RD 26 and as used in the provisions in ODP Chapter 6 related to airport noise that refer to the contours "as shown on the relevant Planning Maps."

[296] The Panel has undertaken its evaluation of the appropriateness of the Airport Noise QM in the following way:

(a) To the extent that there may be an adverse 'reverse sensitivity' effect from intensification within the Operative Contour on the 'safe and efficient' operation of the airport it is a s77I(e) and s77O(e) matter and may be evaluated in accordance with s77K for relevant residential zones on the basis that the operative planning framework provides for the operative residential density and an RDA activity status rules14.4.1.3 RD 34 and 14.12.12.RD 26 that allow for an assessment of the effects on operation, maintenance and upgrade of the airport, and appropriate indoor noise insulation. The Panel consider whether it is appropriate to roll these

over, on the same basis and whether that is 'only to the extent necessary to address the QM'.

(b) To the extent that CIAL and the Council seek to extend operative regulatory framework including RDA activity status rules 14.4.1.3 RD 34 and 14.12.12.RD 26 to the 2023 Remodelled OE Contour (as being a new spatial application of QM), and therefore to the extent that both remodelled contours differ spatially from the ODP, they must be subject to an evaluation pursuant to section 77J.

(c) To the extent that the QM relies on adverse effects on amenity, health and safety then the Panel has evaluated this as an 'other' matter pursuant to s77L

(d) To the extent that submitters seek to limit the Airport Noise QM to the 55dB L_{dn} Noise Contour (operative or remodelled) the Panel has assessed this in the same way for (b) and (c) only as it differs from the Operative regulatory framework and is not an existing QM.

[297] The Panel begin by considering whether there is an avoidance directive in the CRPS and ODP, for existing residentially zoned areas.

In the context of CRPS, Chapter 6, Policy 6.3.5(4) and ODP Objective 3.3.12 what does the exception to the 'avoid' policy for "existing residential zoned urban area' refer to and does it apply to increased density as directed by the NPS-UD, Policy 3 or MDRS?

[298] A significant part of the legal submissions for CIAL and the Council on the Airport Noise QM, was based on an interpretation of CRPS, Chapter 6, Policy 6.3.5(4) and ODP Objective 3.3.12, being an 'avoidance' policy which justified the Airport Noise QM method of avoiding all MDRS and Policy 3 enablement. The Panel deal with the CRPS policy and ODP strategic objective together here because the ODP adopts the same wording.

[299] CIAL and Council planning witnesses approached the interpretation of the exception to the CRPS, Chapter 6, Policy 6.3.5(4) and ODP Objective 3.3.12 that applied to 'existing residentially zoned urban area' was limited to the zone, including the density standards that applied at the time the CRPS and ODP became operative and that excluded increased intensification.

[300] That is contrary to the findings of Replacement Plan IHP who found at [195]-[196] that:

> [195] In essence, the position we reach is that:

> (a) There is no absolute direction to avoid any further noise sensitive activities in existing residentially zoned land within the 50 contour, but
>
> (b) There is a need to evaluate whether we should avoid or restrict such activities so as to give proper effect to Policy 6.3.5 and related CRPS objectives and policies.
>
> [196] The expert and other evidence is central to our evaluation of these matters. Ultimately, that is to inform our judgment on the most appropriate planning approach, under ss 32 and 32AA, so as to give proper effect to the CRPS and promote the sustainable management purpose of the RMA.

[301] There is nothing in the wording of the provisions that limit the application to the operative date or the density provided for at that time, it refers to 'existing residentially zoned urban areas'. The residential zones beneath the Operative and Remodelled Contours are residentially zoned urban areas.

[302] The Panel apply the same approach as the Replacement Plan IHP here. The Panel find that there is no overall avoidance policy for existing residentially zoned urban land, however, the Panel must undertake a fresh evaluation, on the evidence before us, in light of the policy framework that now applies, in particular the directives of the Housing Supply Amendment Act and Policy 3 and 4 of the NPS-UD.

In the context of the evaluation of the Airport Noise QM, is the implementation of the MDRS inconsistent with CRPS, Chapter 6, Policy 6.3.5(4) and if so should it be set aside under s77G(8).

[303] For the reasons stated above the Panel does not find that the incorporation of the MDRS to be inconsistent with the CRPS. CRPS, Policy 6.5.3(4) and (5) do not dictate that the Panel should avoid the MDRS or NPS Policy 3 enablement's, rather it aligns with an assessment of how that development may affect the operation of the airport. Which is precisely what the Panel is required to do when evaluating QMs in accordance with s77K, J and L. Had the Panel adopted the interpretation of CRPS, Policy 6.5.3(4) and (5) to require the avoidance of all additional residential intensification within existing residentially zoned urban areas after the operative date, that would plainly be inconsistent with the MDRS, and based on the Panel's interpretation of s77G(8) would mean the inconsistent policy should be set aside. The Panel did not follow Mr Randal's argument that somehow the Panel's evaluation could reintroduce the avoidance directive in its evaluation of the QM, that would undermine the clear policy directive of intensification.[111]

[111] Council Reply, 17 May 2024 13.45

[304] In any event the Panel has not found the CRPS Chapter 6 Objectives and Policies to be inconsistent with the evaluative exercise it is required to undertake under the Housing Supply Amendment Act.

What is the adverse effect that the Airport Noise QM seek to address?

Reverse Sensitivity

[305] The Council adopted the s32 Evaluation undertaken by CIAL as the basis for notifying the Airport Noise QM.[112] That report conflated (i) and (ii) as a reverse sensitivity issue.

[306] Mr Kyle's evidence was that 'reverse sensitivity' was a forward-looking concept and he cited experience he had with Wellington and Queenstown airport planning cases, where complaints had led to restrictions being imposed on those airports, as a curfew or an abandonment of a planned extension due to opposition. He considered that Christchurch Airport was in a unique position, and if faced with options to allow increased intensification in proximity to the airport, or to refuse it, he considered that 'avoidance' was the most appropriate outcome. Mr Millar (and Mr Kyle who adopted Mr Millar's evidence) referenced CRPS Policy 6.5.3(4) and (5), and Chapter 5 Objectives 5.2.1as supportive of that view.

[307] In evidence both Ms Hayman and Mr Day provided examples of where, Christchurch Airport had modified their operations, or had faced challenges from residents for extensions to airport operations via resource management processes, which they considered to be examples of 'reverse sensitivity' effects.

[308] The ODP definition of 'reverse sensitivity' is not proposed to be changed by PC 14, and there are no submissions seeking a change to it.

[309] Reverse sensitivity means[113]:

> means the effect on existing lawful activities from the introduction of new activities, or the intensification of existing activities in the same environment, that may lead to restrictions on existing lawful activities as a consequence of complaints.

[310] In the context of the potential increase of new residential activities within the 50dB Ldn noise contour, the Panel's interpretation of that definition is that there needs to be a

[112] s32 Report, Part 2, Appendix 10
[113] ODP Chapter 2. The definition was arrived at following the hearing of submissions and evidence by the IHP on the Replacement Christchurch District Plan process see Decsion 16 at page 29-31, including submissions from CIAL

causal nexus between complaints arising from new or intensified residential activities and the likelihood of restrictions being imposed on the airports existing lawful activities. The Panel find Mr Kyles view that the concept of reverse sensitivity being 'forward looking', does not extend to members of the community exercising their statutory right of objection to the expansion of activities that the airport may undertake in the future pursuant to the RMA, should planning approval be required, an issue both Ms Hayman and Mr Day were concerned with. Nor does it extend to the airport making an operational decision to alter its activities on a voluntary basis or in response to the duties imposed under RMA, s16, the Panel do not consider those to be 'restrictions' on existing lawful activities as a consequence of complaints. They are a mandatory duty of the RMA and are an inherent part of the lawful activities.

[311] Both Ms Eveleigh for Miles Premises and Equus and Ms Appleyard for the Airport encouraged the Panel to consider the case of *Robinson's Bay Trust*.[114] The Panel understood Ms Appleyard relies on the case as relevant historical context to the planning framework in Christchurch for managing airport noise and the choice to adopt the 50dB Ldn contour as the basis for regulatory intervention. She also relies on the fact of the Court's acceptance of airport noise, and sources of complaints as being a valid amenity and health effect that the Panel should consider in determining the appropriate planning response.[115] Ms Eveleigh referred specifically to the findings of the Court on reverse sensitivity and amenity and health effects, in the context of the Courts s32 evaluation of a new policy to be introduced to the 1995 Christchurch District Plan supporting rural subdivision in proximity to the airport:

> [58] By the same token, we are unable to conclude firmly from the evidence that we have heard that there is in fact any significant cost imposed upon the airport from the imposition of the 55 dBA Ldn as opposed to the 50 dBA Ldn contour. Many witnesses gave evidence based on an assumption that higher density would lead to curfews on the airport. The only distinction between 50-55 dBA Ldn noise contours was that a 55 dBA Ldn contour may introduce a higher concentration of noise sensitive activities to the land between 50 and 55 dBA Ldn. The proposition was that with a higher population in the low noise area there would be more agitation for a curfew. Having heard all the evidence, we have concluded that a curfew due only to the inclusion of buildings between the 50 and 55 dBA Ldn noise contour is unlikely. We do accept that there are likely to be a percentage of persons highly annoyed even below the 50 dBA Ldn noise contour. Although that percentage is significantly less than at the 55 dBA Ldn contour, we accept this may lead to an increased level of complaints. In our view such complaints are going to be inevitable in any event as the noise levels for airport activity within the existing urban area moves towards the 50 and 55 dBA Ldn contours in the next twenty to thirty years.
>
> [59] We have concluded as a fact that a greater number of dwellings between the 50 and 55 dBA Ldn contour will lead to an increased number of persons being highly

[114] *Robinsons Bay Trust & Ors v Christchurch CC*, C 60/2004, 13 May 2004, Smith J (EnvC) (Interim decision).
[115] Legal Submissions of CIAL, 16 April 2024 at [66] and [67]

annoyed by aircraft traffic. That effect is one on the amenity of the persons who may reside under the flight path and accordingly is an effect which we should properly take into account, particularly under section 5 of the Act. However, it is also an effect which has a cost (in the wider meaning of that term) in terms of its effect on the local amenity. It is an effect which is not internalised to the airport and its land and is therefore shifted to the owners of land under the flight path. Thus, although there is no prospect of curfew on the airport at this time, there is likely to be an adverse effect on amenity of persons living within the 50 dBA Ldn contour line and thus an environmental cost imposed.

Section 5

[60] The Act has a single over-arching purpose of sustainable management as that term is defined in section 5. The land in question between the 50 dBA Ldn and 55 dBA Ldn noise contours is land which has little, if any, current urban development. This land is able to be utilised now while not providing for the construction of significant physical resources on it. On the other hand, the physical resource of the airport itself has local, regional and national significance. The continued viability of the airport enables the wider community to provide for their social and economic wellbeing in particular.

[61] The health and safety of people in the community can also be provided for by providing some reasonable constraints over the development of and in proximity to the airport. In this particular case the effects of noise from over-flying aircraft cannot in this particular case be entirely avoided or remedied. The contours represent the maximum exposures taking into account the reasonable operation of the airport and appropriate noise reduction measures. Sustaining the airport as a physical resource to meet the reasonably foreseeable needs of future generations militates towards some flexibility in the operation of the airport. Having regard to the known effects of low Ldn noise levels and SEL events, a cautious approach should be adopted in fixing contours.

[62] We accept that this case is not comparable with either Wellington or Auckland Airports and that each airport must be considered on its own merits. In this case the natural and physical resources surrounding the airport between the 50 and 55 dBA Ldn contour are largely in a rural state. The Council has sought to reach a reasonable balance between permitting development in the area and safeguarding the airport as a physical resource. We are satisfied that they have also been minded to maintain the amenity of people who may reside in that area, within reasonable bounds.

….

[64] We must now conclude which noise contour would be better for inclusion in Policy 6.3.7. We have concluded that the 50 dBA Ldn line is better for the following reasons:

(1) the airport has significance in terms of the Proposed Plan, recognising its local, regional and national importance;

(2) high individual SEL levels can have more impact at lower Ldns (under 55 dBA), suggesting a conservative line to avoid amenity impacts;

(3) there is an amenity impact below 55 dBA Ldn and the Proposed Plan reflects a general expectation of lower Ldn levels in residential and rural areas;

(4) the 50 dBA' Ldn noise contour line better complements the existing Proposed Plan policies (discussed earlier);

(5) the 50 dBA Ldn line does not foreclose future options. It enables the parties in the sense of conserving options for the future (and future generations). These options apply to both the landowner and the airport. If the 50 dBA Ldn noise contour restrains the landowner at all it does so only in a temporary sense. The policy could be changed in the future to realise the potential for any appropriate development. We conclude that the 50 dBA Ldn line preserves the potential of land for future generations;

(6) in terms of the Noise Standard, the 50 dBA Ldn line would have some effect in setting an amenity standard for noise from the airport operation. As future noise approaches the contours, the expectation of people outside the 50 dBA Ldn line is that they will receive less than that level of noise. We conclude that the 50 dBA Ldn noise contour better reflects the purpose of the Act to achieve the sustainable management of these physical resources.

[underlining Panel emphasis]

[312] Although of a different time and a case related to subdivision of rural land, the findings of the Environment Court resonate with the evidence and choices the Panel now face. Mr Day was of the opinion that the evidence of the likelihood people would be highly annoyed by airport noise within he 50dB is stronger now than in the past, referring updated international survey data the 2018 WHO Report.[116] The Panel note, however, that the Marshall Day Report[117] concluded that a comparison in annoyance levels from surveys over the period 2001 Miedema et al[118] 2002 Taylor Bains[119], WHO 2018[120] and FAA 2021[121] shows there is an appreciable variation between the curves making it difficult to predict the actual annoyance outcome with certainty. The Panel note here that even if annoyance occurred in a 'worst case', that is not of itself a reverse sensitivity effect or even an inappropriate adverse effect; in terms of health effects, using surveys of annoyance as a proxy for actual adverse health effects on individuals is in the Panel's view less than entirely reliable. In terms of reverse sensitivity there is still a need for complaints to occur in such a frequency and manner that the operator of a lawfully established activity found itself unable to persevere with its activities, and scale those back.

[313] The general conclusion made by the Marshall Day Report was that community annoyance due to aircraft noise increases with noise level exposure (as expected), and overall has increased over time. In the Marshall Day Report the analysis demonstrated that the causes for complaints are varied and often unrelated to actual noise levels, and complaints are frequently agitated through media coverage or changes to airport planning, sometimes regardless of the scale or effect of that change. The Marshall Day report cites a paper by FICON in 1992 that commented that "*annoyance can exist without*

[116] s32 Report, Part 2, Appendix 15 Christchurch Airport Recontouring Assessment of Noise Effects: Annual Average Contour at page 8
[117] Ibid at 19
[118] Miedema, H, & Oudshoorn, C. (2001). Annoyance from transportation noise: relationships with exposure metrics DNL and DENL and their confidence intervals. Environmental Health Perspectives, 109(4)
[119] 2002 Taylor Baines and Associates and Marshall Day Acoustics as referred in s32 Part 2, Appendix 10 at 91 and 101c
[120] Guski, R., Schreckenberg, D., & Schuemer, R. (2017). WHO Environmental Noise Guidelines for the European Region: A Systematic Review on Environmental Noise and Annoyance. International Journal of Environmental Research and Public Health, 14(12), 1539
[121] U.S Department of Transportation (FAA). (2021). Analysis of the Neighbourhood Environmental Survey. National Technical Information Service

complaints, and conversely complaints may exist without annoyance" and it has long been thought that complaints data cannot be used to accurately predict annoyance levels. Marshall Day concluded that this continues to be the finding of the latest research in this area. However, recent studies have shown that analysis of complaints data can show other trends which may be helpful to understand.[122]

[314] In his primary evidence Mr Day said that the clear conclusion from comparison of the complaints data surveys outlined above at [313] is that community annoyance today is significantly higher than the results 20-40 years ago. Based on those results he concluded that:[123]

> …in my view it would not seem sensible to relax the planning controls to enable residential intensification in closer proximity to the Airport when the level of annoyance is trending the other way.

[315] In his primary evidence Mr Day identified real world examples of limits on airport activities.[124] Mr Day also referred to the Schiphol Airport in the Netherlands which is incurring significant costs and constraints on efficiency to reduce the number of people inside their noise contours by way of noise abatement measures.[125] In his rebuttal evidence Mr Day said that this real-world example begs the question why would you willingly allow a currently well protected airport to be compromised at this stage by intensification which would increase the number of people inside the noise contours.

[316] Mr Day concluded in his rebuttal evidence that:

> Not allowing intensification in the noise contours avoids those residents being exposed to aircraft noise and the potential reverse sensitivity effects for the airport. Partial mitigation (sound insulation and ventilation) does not solve all the issues. If there is land available elsewhere to meet the housing demands, I recommend maintaining the current planning regime to reduce/minimise the adverse effects of noise on people.

[317] Like the Environment Court in *Robinsons Bay Trust*, the Panel too are cautious when considering the experiences of other airports, with each needing to be considered on its merits.

[318] The Panel also note that these very same issues were considered in the context of the Replacement Plan IHP process. Much of the evidence of Mr Day referred to in the Replacement IHP decisions reflects that which was presented during to us[126], albeit the

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[122] s32 Part 2, Appendix 15 at 20
[123] Statement of Evidence of Christopher Day, 20 September 2023 at 52
[124] Statement of Evidence of Christopher Day, 20 September 2023; in relation to Auckland at 65, Wellington at 69, Queenstown at 75-77
[125] Ibid at 103
[126] Although it was Mr Boswell as the CIAL representative not Ms Hayman.

evidence of the acoustic experts in this hearing indicated that survey data indicated that between 10-27% people may be highly annoyed buy aircraft noise between 50 to 55 dBL_{dn}, and the previous IHP found on the evidence that:[127]

> [202] On the matter of community response to aircraft noise, Mr Day explained that Taylor Baines (2002) and associated work involving his firm showed that the proportion of "highly annoyed" people in the 50–55 dB Ldn area can be expected to be higher in Christchurch (10– 15 per cent) than a synthesis of the international studies shows as typical (3–12 per cent).
>
> [203] The underpinning basis for that opinion is relatively thin. However, it is the only expert evidence we received on this matter. Also, the choice of the 50 contour is already made by the CRPS. Given those matters, we accept Mr Day's evidence that the proportion of people likely to be highly annoyed by airport noise inside the 50 contour is in the order of 10–15 per cent, and that 12 per cent is a sensible basis for our evaluation.
>
> [204] Mr Day explained why he considers sound insulation, on its own, insufficient mitigation of the risk that sensitive activities posed for the Airport's operation and development. In essence, he explained that the mitigation measures themselves would be likely to be a source of complaint (as informed by studies and his experience in Auckland) and would not deal with the outdoor noise environment.
>
> [205] Subject to our following comments, we accept Mr Day's opinion on those matters.
>
> [206] Mr Day concluded that it is not sensible to locate new residential development (or intensification) within the 50 contour "if it can be easily avoided". He concluded that the "land use planning provisions in the [CRDP] should be maintained to ensure intensification inside the noise contours is not allowed to occur".
>
> [207] We do not consider we can rely on that ultimate conclusion, as it lacks a sufficiently reliable foundation and is, in any case, beyond the scope of Mr Day's true expertise.
>
> [208] As to foundation, it is important to bear in mind the policy and environmental purpose of any restriction to be imposed on intensification. Central to that is CRPS Policy 6.3.5. For our purposes, it is relevant to any noise sensitive intensification that would have the potential to limit the efficient and effective provision, operation, maintenance or upgrade of the Airport. Mr Day's evidence (and related studies) only assists on a limited aspect of that.
>
> [209] A higher relative proportion of people in the Christchurch community likely to be highly annoyed by airport noise is not itself conclusive as to the extent of any associated reverse sensitivity risk for the Airport. In a broad sense, we accept as logical that there will be correlation between the proportion in a community "highly annoyed" and the proportion who could take associated action, including opposing the Airport's further development. We also accept, in broad terms and subject to the limitations as to reliability of the evidence that we have noted, that larger scale developments could increase the proportion of highly annoyed people and, therefore the number who could become Airport opponents. However, that is a very limited basis for determining what, if any, related restrictions should be imposed on residential and non-residential activities in relevant zones.
>
> [210] Mr Day's evidence also leaves for assumption what, if any, material consequence a modestly higher proportion of active complainants (for instance, opponents of the Airport in future RMA or other processes) would have for the Airport's efficient and

[127] IHP Christchurch Replacement District Plan Decision 10, 10 December 2015 at [202]-[211]

> effective provision, operation, maintenance or upgrade. On this, the evidence of Mr Day (and the other evidence for the Airport) leaves us in the realm of speculation.
>
> [211] In any case, it is not a foundation that necessarily supports his ultimate conclusion as to what is "sensible". For us to determine the "sensible" planning outcome (as Mr Day termed it), we must test the benefits, costs and risks of the different options available to us, in order to determine what is the most appropriate approach to the management of noise sensitive activities. Ultimately, that involves some trade-offs on a range of matters beyond Mr Day's true expertise.

[319] The Panel find that remains the position before us today. The Panel find that the acoustic evidence from Mr Day and the operational evidence of Ms Hayman does not satisfy us that there is a sufficient nexus between the probability of 10-27% (regardless of whether the Panel accept the WHO or Professor Clarke's *Gjestland* curve of annoyance) of potential new residents as a consequence of implementing the MDRS or Policy 3 becoming highly annoyed necessarily leads to the conclusion that the airport will face restrictions on its existing lawful activities. It may be that the airport would face opposition from more residents than it would currently if it chooses to expand its operations beyond what lawfully exists, however that is not a reverse sensitivity effect as defined by the ODP.

[320] The Panel do not find the suggestion by Mr Day, that if given the choice it should adopt an avoidance approach, to be the correct approach. As we have set out in other parts of our decision, A QM should not be used to advance a general planning preference. The correct application of the RMA is to proceed on the basis that the MDRS (or NPS-UD Policy 3 response) must apply to all relevant zones and then, through the use of QM's, work back from that only to the extent demonstrated as necessary. Outright avoidance of the MDRS or NPS-UD Policy 3 response, as Mr. Day explained it to us, is not as we see it a valid option. The Panel need to test the appropriateness of the QM's method in the ordinary way, and consider the relative costs, benefits and risks for the Airport and other resource users, and the community as a whole[128] supplemented by the additional requirements of the Housing Supply Amendment Act.

Adverse Amenity, Health and Safety Effects

[321] Mr Day's evidence was that the noise levels experienced around Christchurch Airport are not sufficiently high to create physiological damage such as hearing loss but there are nevertheless adverse effects caused by noise. These adverse effects include annoyance, speech interference, sleep disturbance and potentially health effects associated with annoyance. Mr Day accepted that he was not an expert in health effects,

[128] IHP Christchurch Replacement District Plan Decision 10, 10 December 2015 at [214]

but he was adamant that while the adverse effects are less than, for example, they are at 65 dB L_{dn}, they are nevertheless real. His view is that if land is available elsewhere in the Christchurch region for new residential development (or intensification), he would not recommend from an acoustics perspective, to allow new noise sensitive activities inside the 50 L_{dn} Air Noise Contour if it can be avoided. He accepted noise effects are just one input to the decision-making process on land use restrictions. We find that Mr. Day's approach came close to simply identifying that land unaffected by the levels of noise that are likely within the 50dB L_{dn} contour would be 'better' for intensification, and on that basis should be preferred. Similar to our approach in addressing the Low Passenger Transport Accessibility QM, the only relevant means of evaluating a QM is to demonstrate that the land within the identified QM area cannot appropriately accommodate the MDRS without qualification. That there might be land outside of the QM area seen as 'better' for residential intensification is not only irrelevant but counter to the direction within the RMA that instead of using 'better' land as a means to reduce incorporation of the MDRS in 'worse' areas (in a subtractive sense); the appropriate response is to consider enabling more than the MDRS on that land seen as 'better' (in an additive sense).

[322] The Panel did not receive any expert evidence on actual health and amenity impacts associated with airport noise within the QM area. The evidence appeared to us to be being assumed, or based on personal experience of witnesses. A prediction of likely annoyance was being used as an equivalent proxy for stress, which was being relied on as an equivalent proxy for adverse health effects or a severity sufficient to qualify the MDRS. This is just too tenuous a link and as we asked at the hearings, if annoyance was a suitable way to determine unacceptable adverse effects, how might we approach the severe annoyance expressed to us by many submitters at the degree of intensification being otherwise proposed via PC14? The Panel does accept however that it is logical and reasonable to conclude that increased noise exposure could over time lead to adverse effects on people. This was accepted in general terms also in the *Robinson's Bay Trust* case.

[323] To the extent that existing and new residents are or would be exposed to an increase in aircraft noise, the Panel accept that it will be an impact on their amenity values, and that there is an increased likelihood that this may have health and wellbeing impacts that it should consider, as part of the Panel's evaluation and in giving effect to the NPS-UD and the Strategic Objectives of the ODP as amended by our recommendations in Part 2 of the Panel's report. As the Panel has found in Part 1 of the Report, we are not precluded

from considering amenity effects, as part of our evaluation of PC 14, but those effects are s77I(j) matters and require an evaluation under s77L..

[324] The Panel also note that ODP, has a strong policy framework to avoid significant adverse health, safety and amenity effects from incompatible activities, including from noise.

[325] Objective -3.3.14 Incompatible activities provides:

> a. The location of activities is controlled, primarily by zoning, to minimise conflicts between incompatible activities; and
>
> b. Conflicts between incompatible activities are avoided where there may be significant adverse effects on the health, safety and amenity of people and communities

[326] Objective 6.1.2.1 and Policy 6.1.2.1.1, 6.1.2.1. 2 and 6.1.2.1.5 address noise and amenity impacts.

> 6.1.2.1 Objective - Adverse noise effects
>
> a. Adverse noise effects on the amenity values and health of people and communities are managed to levels consistent with the anticipated outcomes for the receiving environment.
>
> Policy 6.1.2.1.1 - Managing noise effects
>
> a. Manage adverse noise effects by:
>
> i. limitations on the sound level, location and duration of noisy activities;
>
> ii. requiring sound insulation for sensitive activities or limiting their location relative to activities with elevated noise levels.
>
> Policy 6.1.2.1.2 - Noise during night hours
>
> a. Achieve lower noise levels during night hours to protect sleep, and the amenity values of residential and other sensitive environments, so far as is practicable.
>
> Policy 6.1.2.1.5 - Airport noise
>
> a. Require the management of aircraft operations and engine testing at Christchurch International Airport, so that:
>
> i. noise generated is limited to levels that minimise sleep disturbance and adverse effects on the amenity values of residential and other sensitive environments, so far as is practicable;
>
> ii. where practicable, adverse noise effects are reduced over time.
>
> b. Mitigate adverse noise effects from the operations of the Christchurch International Airport on sensitive activities, by:
>
> i. prohibiting new sensitive activities within the Air Noise Boundary and within the 65 dB Ldn engine testing contour; and

ii. requiring noise mitigation for new sensitive activities within the 55 dB Ldn air noise contour and within the 55 dB Ldn engine testing contour; and

iii. requiring Christchurch International Airport Limited (CIAL) to offer appropriate acoustic treatment in respect of residential units existing as at 6 March 2017 within the 65 dB Ldn Annual Airport Noise Contour, and within the 60 dB Ldn engine testing contour.

[327] Strategic Objective 3.3.12 together with the above Objective and Policies in the ODP Chapter 6 require us to consider the relationship between incompatible land uses and manage adverse noise effects, both at source and from the perspective of the receiving land use. The objective and policies in the ODP Chapter 6, support the conclusion that primarily there is an obligation on Christchurch Airport to manage its activities to the extent that it is practicable to minimise adverse effects on the amenity of residential areas so far as practical in tandem with methods such as insulation or land use planning to limit the location of noise sensitive activities.

[328] On the basis of submissions received on the Airport Noise QM, the options of insulation, ventilation and separation of incompatible land uses through zoning and density requirements are within the scope of the Panel's considerations. Although they may only partially mitigate adverse effects because they do not address the propensity for residents to open windows or enjoy the outdoors, irrespective of density.

[329] In the context of the ODP, the choice made by the Replacement Plan IHP in relation to the residentially zoned urban areas surrounding the airport was to require the following:

(a) Noise limitations on the noise generated from the airport on the ground (operations and engine testing).

(b) Use of noise contours to identify areas most exposed to noise, prohibiting new noise sensitive activities within the 65dB Ldn engine testing contour

(c) Requiring noise mitigation for new sensitive activities within the 55dB Ldn noise contour; and

(d) Using zoning, and density standards within the 50dB Ldn Noise contour, to limit the number of people exposed to airport noise.

[330] The ODP framework provides that in:

(a) areas that sit within the 50 dB Ldn air noise contour and which are subject to density controls comprise portions of the Residential Suburban (RS), Residential

Suburban Density Transition (RSDT) and Residential New Neighbourhood (RNN) Zones;

(b) within these areas, residential activities and other sensitive activities which do not meet the permitted or controlled activity density standards, trigger restricted discretionary activity rules requiring resource consent and enabling consideration of 'the extent to which effects, as a result of the sensitivity of activities to current and future noise generation from aircraft, are proposed to be managed, including avoidance of any effect that may limit the operation, maintenance or upgrade of … [the] Airport' [and] 'the extent to which appropriate indoor noise insulation is provided'; 14.4.1.3 RD34 and 14.12.1.3 RD26 and the relevant permitted and controlled activity standards `

(c) any applications triggering these rules are to be limited notified to CIAL (as a party identified as being adversely affected);

(d) within the above residential zones and under the, 50 dB Ldn air noise contour standards apply to subdivision as a controlled activity and impose direct controls on density, via minimum net site areas;

(e) sensitive activities (including residential activities) under the 50 dB Ldn air noise contour and also within the ODP zones: Commercial Mixed Use (CMU), Commercial Office (CO), Commercial Core (CC) and Commercial Local (CL) Zones are non-complying activities;

(f) any new sensitive activities located within the Air Noise Boundary (ANB) are prohibited.

[331] The Replacement Plan IHP arrived at this package of methods, under different statutory imperatives at the time, but concluded that:

> [234] In arriving at an appropriate outcome, we have recognised the strategic importance of the Airport. As we have noted, we find that protection of the Airport's operation and upgrade, including from reverse sensitivity risks, is of regional and even national significance, for the purposes of s 5. However, the evidence overwhelmingly satisfies us that this can be adequately assured by much less restrictive means than CIAL has pursued. We make that finding in light of both the importance of enablement of the various activities we have described, and in view of our findings as to the tenuous and weak nature of the evidence we have received as to CIAL's concerns about reverse sensitivity risk.
>
> [235] In light of our interpretation of relevant CRPS directions (and the related Strategic Directions objectives of the CRDP), we find that we should allow for an ongoing capacity to assess relevant reverse sensitivity and noise mitigation matters for residential

> intensification above a certain scale. This is not on the basis that the present evidence of risk justifies this. Rather, it is to allow for the possibility that new evidence and information concerning risk may come to light that is relevant, having regard to the CRPS policy directions.
>
> [236] In view of our evidential findings, we adjudge that, for residential activities, the cut-off trigger point for these additional restrictions should be at the restricted discretionary activity scale.

[332] What the Panel now need to consider for PC 14 is whether the intensification directives of the Housing Supply Amendment Act, and NPS-UD Policy 3, and in the context of the evidence regarding experiences from other airports (in NZ and internationally), and survey data of complaints requires a different choice to be made as to the most appropriate policy and regulatory framework.

[333] Section 77L requires that, to the extent that the Airport Noise QM addresses the potential adverse effects on amenity and health effects, that the s32 evaluation is required to also justify why the level of intensification provided for by the MDRS and NPS-UD Policy 3 are inappropriate in light of the national significance of urban development and the objectives of the NPS-UD. Assuming for the time being that this test is passed, the next is that any QM must only limit the MDRS to the extent necessary to accommodate that QM.

[334] Ms Appleyard submitted that reverse sensitivity and health and wellbeing effects are intrinsically linked, and that adverse effects on amenity and health and safety will lead to complaints that will inevitably curtail the activities of the airport. The Panel considered that but the evidence before us does not lead to a conclusion that inevitably leads to the likelihood of a 'reverse sensitivity' evidence effect, as defined in the ODP. The Panel consider the evidence is still relatively thin. The Panel has treated the matters separately for the purposes of its evaluation.

Is the Airport Noise QM an existing, new, or other QM requiring evaluation in terms of s77I(e) under s77K or J, or is it a s77I(j), 'other matter' requiring an evaluation under section 77L?

[335] The Panel find that it is only matters required for the purpose of ensuring the safe and efficient operation of nationally significant strategic infrastructure that qualify as an existing qualifying matter, that is able to be evaluated under s77K and J. Effects on amenity and health and safety are 'other matters' and require an additional level of analysis as required by s77L.

[336] To the extent that the Council and CIAL seek to apply the Remodelled OE Contour, and there are spatial differences between the Operative Contour on the relevant planning

maps and the Remodelled Contour the Panel find that these areas must be subject to s77J, in terms of the impact on strategic infrastructure under s77I(e). That requires an evaluation s77J(3) and (4). That test also applies to the alternative 55dB Ldn Contour.

[337] The Panel find that the primary s32 Evaluation undertaken by CIAL and adopted by the Council in support of the Airport Noise QM incorrectly conflated adverse effects on the amenity and wellbeing on residents with 'reverse sensitivity'. The s32 Evaluation and the evidence of Mr Millar and Mr Kyle, and Ms Oliver's s42A Recommendations leapt to the conclusion that increased density would equate to reverse sensitivity effects, and therefore the MDRS and Policy 3 response was appropriately qualified under s77K as an existing matter.[129]

[338] Notwithstanding that criticism, the s32 Report did consider the alternative of imposing the MDRS without the QM and did consider the issue of amenity and health and safety effects.[130] However the conclusions as to the most appropriate outcome focused on the workability of the provisions and least degree of change from the status quo rather than the requirements of s77J or L. With respect, the Panel find that the primary s32 evaluation asked and answered the wrong question, and this inherently also weakens the credibility of the notified PC 14 methods. The Housing Supply Amendment Act requires us to first apply the MDRS or NPS-UD Policy 3 enablement and then consider QMs and modify the mandatory enablement 'only to the extent necessary to accommodate the QM'.

[339] Although there was no specific evaluation undertaken under s77J and L at the time the QM was notified, Ms Appleyard and Mr Kyle were able to provide a summary which pulled together the elements from the initial s32 evaluation and the evidence provided during the hearing.[131] The Council also provided an evaluation in the Reply.[132] The Panel has also considered the case law referred to and past planning approaches.

[340] We are also assisted by the evidence of the Kāinga Ora, Environment Canterbury and Miles Premises and Equus, summarised above. The Panel discuss the alternative options for addressing the effects on the safe and efficient operation of the airport, and on the health, safety and amenity 'only to the extent necessary to accommodate the QM' below.

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[129] s32 Report, Part 2, Appendix 18 at section 3.3, page 15
[130] s32 Report, Part 2, Appendix 18 at pages 19-25
[131] Legal Submissions of CIAL, 16 April 2024, at Appendix A and Memorandum of Counsel for Various-Submitters, 1 May 2024
[132] Council Reply, 17 May 2024, Attachment 5 prepared by Mr Kyle

What is the most appropriate method to address the proposed QM, only to the extent necessary to account for the QM?

[341] The Panel has found, following its evaluation of the evidence, in the context of the evaluations required by s32AA, and s77I, J, K and-L in giving effect to the NPS-UD, CRPS and ODP that:

(a) retaining the status quo zoning and regulatory framework within the 50dB noise contour (regardless of its spatial extent), is not the most appropriate method to achieve the objective of PC 14. The Panel agree with Mr Lindenberg that it is a blunt tool and it fails the requirement that any QM only limit the MDRS or NPS-UD Policy 3 response to the extent that is necessary – it goes well beyond that based on evidence that is overly speculative (as it approaches the likelihood of reverse sensitivity effects occurring) and incorrect (as it approaches the definition and extent of what is reverse sensitivity).

(b) the evidence and s32 evaluation does not support an outcome that operates to prevent the mandatory introduction of the MDRS and Policy 3 intensification.

(c) the evidence does not support the conclusion that the status quo is required to make the MDRS and Policy 3 enablements less enabling only to the extent necessary to only accommodate the Airport Noise QM. Too much of the evidence in support of the QM is also confused with protecting whatever the future operational preferences of CIAL might be. As the Panel has established those that are not relevant and, in terms of the arguments put to us that it was appropriate to influence potential future plan-change processes by strategically limiting potential future submitters through restrictive zoning outcomes put in place today, are contrary to principles of sound resource management.

[342] The Council and CIAL cases are wrongly premised on an avoidance directive. The Panel find that that the CRPS and ODP create an exception for existing residentially zoned land, and that a more nuanced approach is justified to give effect to the NPS-UD and comply with the mandatory obligations in s80E, 77G and N and s77I and O.

[343] However, the evidence, and CRPS and ODP objective and policy framework does support the need to manage the potential for reverse sensitivity effects on the airport and potential adverse effects on people and communities from aircraft noise in areas subject to 50dB L_{dn} aircraft noise or more. The policy framework supports the continued safe and efficient operation of the airport as nationally significant infrastructure.

[344] The Panel has considered whether it should simply adopt the regulatory package suggested by Mr Lindenberg, for Kāinga Ora, or a requirement for insulation and ventilation for all residential development within the 50dB L_{dn} Contour but find that this will not of its own be sufficient to respond to the CRPS and ODP objectives and policies as they are currently drafted. On the issue of their ineffectiveness for outdoor environments, clearly insulation and ventilation is ineffective but the Panel also note the absence of evidence to support any conclusion that more residents enjoying outdoor living environments leads to complaints or reverse sensitivity effects. Residents within the noise contour enjoy a range of outdoor amenity or larger section sizes, and in the many parks and recreation spaces within that contour. Any suggestion that more people within the noise contours wishing to enjoy their outdoor living areas would be subject to either inappropriate health effects or give rise to CIAL reverse sensitivity effects is purely speculative.

[345] The Panel has considered the proposal to shift the QM trigger threshold to 55dB L_{dn}, but has rejected that on the basis that the 50dB L_{dn} contour is embedded in the policy framework of the CRPS, and as a higher order document, it is appropriate that this be reviewed separately in due course, and if necessary the District Plan will need to be reviewed to give effect to any revised operative CRPS.

[346] In the alternative the Panel has considered whether the mandatory requirements of the MDRS and NPS-UD Policy 3, should be applied, but qualified by the continued use of the restricted discretionary rule package (with some consequential changes) provides a more appropriate balance in light of the requirement in s77I to only limit the application of the MDRS and Policy 3, to the extent necessary to accommodate the qualifying matter.

Conclusion as to Approach to QM

[347] Our recommended approach to the QM is to within the 2023 Remodelled OE Contour[133]:

(a) Apply the MDRS and rezone all relevant residential zones within the 50, 55 and 65 dB L_{dn} Noise Contours MRZ and HRZ (in accordance with our findings above and in Part 3 of the Report), then

[133] Except that between the Operative 50dB Ldn Noise Contour and the 2023 Remodelled Contour the application of the rule must not remove pre existing development rights in accordance with our findings on *Waikanae.*

(b) Provide for one to three new residential units on a site within the 50dB L_{dn} Noise Contour as a permitted activity with a requirement that each residential unit be insulated and provided with ventilation.

(c) Provide for four or more new residential units on a site as a restricted discretionary activity to provide an opportunity for further scrutiny and assessment of reverse sensitivity effects on the operation of the airport and on the health and wellbeing of the community.

(d) The operative rule framework for residential activities within the 55dB L_{dn} and 65dB L_{dn} Contour be retained as the QM in respect of those locations, i.e. non complying and prohibited activities respectively.

[348] The Panel consider the recommended approach to be most appropriate in terms of s32AA on the basis that:

(a) It allows for the consideration of appropriate mitigation measures such as insulation and ventilation to address the health and safety of people and communities within the 50dBL_{dn} Contour, particularly in relation to sleep disturbance;

(b) It addresses the risk, which the Panel consider to be low on the evidence before us, that intensification will have direct effects on the safe and efficient operation of the airport within the 50dBL_{dn} Contour;

(c) It retains an existing and well understood method, without need to create new standards;

(d) It can be readily adapted to apply to the Remodelled Contours, and with a consequential change to the rules it can be crafted so as to only apply to MDRS or Policy 3 increased intensification, without affecting the status quo.

(e) We have considered the efficiency and effectiveness of our recommendations. Our proposed changes enable increased housing density in accordance with the mandatory MDRS, where it is appropriately treated for acoustic insulation and ventilation, but provides an additional level of discretion in relation to more intensification than the MDRS, to ensure that density can be managed so as not to cause reverse sensitivity effects on the operation of the airport.

(f) We have found that the notified QM is an inappropriate response to the mandatory requirements of the Housing Supply Amendment Act and NPS-UD Policy 3 and 4 and therefore ineffective in addressing those statutory requirements. Our recommended alternative is more targeted in its response to the MDRS and the potential effects on the Airport and on the community.

(g) In reaching our views on the efficiency and effectiveness of the provisions we have considered the economic evidence of CIAL and CCC note the limitations of the economic evaluation in terms of the localised impact on Riccarton (which became the focus of attention due to the Councils proposed 'compensatory' approach, but on other locations also, of the costs of withholding intensification and the additional costs of insulation and ventilation.[134] The economic cost to the airport from the risk of 'reverse sensitivity effects is speculative, as we have found the nexus between intensification, the prospects of complaints and the direct impacts on the operation of the airport is tenuous and therefore uncertain.

(h) The Panel has considered that the risk of incorporating the MDRS and Policy 3 intensification areas, on the operation of the airport to be low. The rules also provide the opportunity to ensure appropriate design and construction of dwellings to mitigate the effects of airport noise on the amenity and health of residential property occupants, particularly in relation to sleep disturbance;

(i) The risk of not enabling residential intensification as a consequence of the notified Airport QM is that areas where there is a need for increased housing choice and affordability (as distinct from the city-wide need, as discussed in Part 1 of the Report which are well served by community facilities, transportation and amenities are prevented from giving effect to the NPS-UD.

(j) We have provided for appropriate management of noise effects within the areas that fall between the operative 50dB L_{dn} Noise Contour and the 2023 Remodelled OE contour out of caution, and on the understanding that the Council will need to revisit the application of the rule framework following the review of the CRPS, except that those provisions need to be drafted so that they do not affect the status quo development rights on land outside the operative noise contour shown on the operative Planning Maps.

[134] Statement of Evidence of Philip Osborne, 11 August 2023, Statement of Evidence of Natalie Hampson for CIAL, 20 September 2023 and Joint Expert Witness Statement of Economics Experts, 21 and 22 September 2023 and s32A Part 2, Appendices 10 to 19

(k) Overall, we have found a more targeted QM, which enables intensification with appropriate insulation and ventilation requirements, and an opportunity to monitor and manage the effects on the safe and efficient operation of the airport, should they arise to be efficient, effect and therefore more appropriate than a blanket withholding of intensification within the 50dB Ldn Noise Contour.

Panel Recommended Version of Airport Noise QM and Instructions to Council

[349] As discussed more generally in Section 3 above, the drafting solution to achieve the Panel's recommended Airport Noise QM suffers a similar level of complexity due to the way in which Chapter 14 addresses Restricted Discretionary activities. This is illustrated by the amendments made by Ms Oliver to RD rules 14.4.1.3 RD 34 and 14.12.12.RD 26 in the Reply version. Those rules include linkages to a number of permitted and other standards to determine whether or not the rule applies, which are not user friendly. There is an added complexity because the standards that link the rule do not just apply to the MDRS standards.

[350] In order to incorporate our recommended QM there needs to be a new permitted activity for one to three units in both the MRZ and HRZ and then the splitting of a new RD rule (based on rules 14.4.1.3 RD 34 and 14.12.12.RD 26) to retain status quo development rights within those areas that fall between the ODP 50dB and the 2023 Remodelled Contour and a new RD rule for four or more residential units.

[351] The rules need be addressed in the three-pathway approach explained in Section 3 above, so as to ensure that the provisions do not offend the *Waikanae* issue more generally.

[352] In trying to find a drafting solution that supports our recommendations we found it difficult to understand why the airport noise RD rules in Chapter 14, are not simply included in Chapter 6.1 Noise as is the case for sensitive activities within the 55dB L_{dn} Contour. The provisions in Appendix 14.16.4 for residential units duplicate those in Chapter 6 rule 6.1.7.2.2. The RD rules in Chapter 14, even as redrafted by Ms Oliver in the Reply are complex. We have given careful thought to whether, at least in the case of residential units, or residential activities the simpler and clearer approach would be for those provisions from Chapter 14 relating to airport nose, to be removed from Chapter 14 and inserted into Chapter 6.1 along with the other noise and airport noise related rules, and then simply cross reference the rule in Chapter 14.5 and 14.6 permitted activity and restricted discretionary activity rules.

[353] That approach would allow the Panels recommended Airport Noise QM to be clearly articulated with consequential changes to:

(a) Policy 6.1.2.1.5 – Airport Noise to add new b (iii) – and re-order accordingly "requiring noise mitigation for new residential units constructed in accordance in the MRZ and HRZ within the 50dB L_{dn} air noise contour."

(b) Add a new permitted activity P4 "one to three new residential units in the MRZ and HRZ within the 50dB L_{dn} Noise Contour with the required activity specific standard referencing the requirements of rule 6.1.7.2.2 and to a new standard requiring ventilation in accordance with rule 6.1.7.2.1(d), but updated to include Mr Selkirks recommendations but only in so far as they apply to new residential units.[135]

(c) Add a new RD to refer to four or more new residential units in the MRZ and HRZ with matters of discretion limited to the same matters that apply to the ODP RD 14.4.1.3 RD 34 and 14.12.12.RD 26 within the 50dB L_{dn} Noise Contour. Then a new standard is to be included requiring ventilation in accordance with rule 6.1.7.2.1(d), but updated to include Mr Selkirks recommendations but only in so far as they apply to new residential units.[136]

[354] In fact, outside of the IPI process it would be far simpler and meet the requirements of Strategic Objective 3.3.2 if all sensitive activities that require management in response to airport noise should be located in Chapter 6, as is the case for the 55dB L_{dn} Noise Contour.

[355] We have stopped short at directing the Council to make this change to Chapter 6, because of the work that we have recommended the Council undertake to restructure Chapter 14, and it is outside the scope of an IPI to address all sensitive activities affected by the airport noise contours. But in so far as the changes set out at [353] can readily be adapted to the structure to Chapter 14 for the MRZ or HRZ, then the Council may prefer that as an alternative.

[356] We recommend the Council include the changes recommended in revised Chapter 14, either wholly within that Chapter or by amending Chapter 6.1 and providing a cross reference.

[135] Statement of Evidence of Jonathan Selkirk, 18 September 2023 at 1.6
[136] Statement of Evidence of Jonathan Selkirk, 18 September 2023 at 1.6

Findings on Application of Airport Noise QM to Commercial Centres

[357] For completeness we record that although the focus of the evidence and submissions on this QM have been on the impact of residential intensification within the relevant residential zones, as noted above CIAL, sought to extend the ODP framework that seeks to avoid residential activities within commercial zones, that are located within the 50dB L_{dn} Contour to also apply to the Remodelled Contour. ODP Policy 15.2.4.6, requires the avoidance of residential activities in those locations and rules 15.4.1, 15.5.1, and 15.6.1 provide for residential activities as non-complying activities within the 50dB L_{dn} noise contour shown on the ODP planning maps.

[358] Ms Oliver raised concerns about the impact on status quo development rights. We agree with her concerns, particularly on grounds of fairness in this instance and note that to the extent new commercial centres are caught by the Remodelled Contour residential activity would become non-complying under the rule framework. We received little evidence, and no s32, s77O, P, Q or R evaluation of the impact of the rule on its merits therefore we recommend that the ODP rule continue to apply only to the 50dB L_{dn} Noise Contour as shown on the Operative Planning Maps.

Conclusion

[359] Overall the Panel find that this outcome, gives effect to the requirements of the Housing Supply Amendment Act, the mandatory requirements of the NPS-UD, and the NPS-UD objectives as a whole and to Chapter 6 of the CRPS. Our recommendations are the most appropriate, having evaluated the issues, having particular regard to the Councils s32 Report, further s32AA evaluations provided by CIAL, the Council and our own evaluation of the evidence of Council and submitters and our further evaluation at [348] above.