

To
Selwyn District Council
PO Box 90
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For
Tim Harris/Cameron Wood

From
Cedric Carranceja

By
Email

Date
10 June 2011

Dear Tim and Cameron

Plan Change 7 issues re: Plan Change 1 to the Canterbury Regional Policy Statement

1. You have asked for our opinion regarding three issues that have been raised by the hearing commissioners for Plan Change 7 to the Selwyn District Plan ("PC7"). The three issues relate to the interpretation of, and the weighting that can be given to, the decisions version of Plan Change 1 to the Canterbury Regional Policy Statement as publicly notified on 19 December 2009 ("PC1"). The three issues are:

- (a) Whether the figures contained in Tables 1 and 2 in Policy 6 are maximums, minimums, or targets?
- (b) Whether the intensification of land within the urban limits constitutes a "bonus" over and above the Greenfields allocations in Tables 1 and 2 of Policy 6?
- (c) What weight should be given to PC1 when considering PC7?

2. By way of summary, it is our opinion that:

- (a) It is clear that the figures relating to Rural Residential Areas in Table 1 are maximums.
- (b) It is less clear whether the remaining figures in Table 1 represent maximums, minimums or targets. On balance, we consider that the figures in Table 1 (other than for Rural Residential Areas) are minimums.
- (c) The figures in Table 2, which relate to Greenfields Areas and existing zoned land, clearly represent anticipated targets to be achieved within a range of plus or minus 5%.
- (d) Reading Tables 1 and 2 together, the different types of residential development contemplated by PC1 are managed as follows:
 - (i) Rural Residential development is capped by the Table 1 figures;

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- (ii) Intensification (as that term is defined in PC1) is not capped by Table 1 or 2. However, Table 1 sets a minimum intensification target for Christchurch City;
 - (iii) Residential development of Greenfields Areas and existing zoned land is capped by the Table 2 figures (i.e. it cannot exceed 5% of the Table 2 figures), not by the Table 1 figures.
- (e) Intensification within the urban limits would constitute a "bonus" over and above the "Greenfield Areas" and "existing zoned land" allocations in Tables 1 and 2 provided that it is understood that "intensification" in PC1 (as defined in Clause 12A.7) refers only to intensification of developed urban areas, not "Greenfield Areas" or "existing zoned land". Any intensification occurring within "Greenfield Areas" or "existing zoned land" falls outside the meaning of "intensification" as contained in Clause 12A.7 of PC1, and would not constitute a bonus over and above the household figures for "Greenfield Areas" and "existing zoned land" in Tables 1 and 2. Any growth in household numbers within "Greenfield Areas" or "existing zoned land" would count towards those figures in Tables 1 and 2.
- (f) When considering PC7 the Council is required to "have regard to" PC1, which means that PC1 must be considered as part of a weighing-up process. The weight that can be given to any particular provision in PC1 will differ depending on whether and to what extent the provision has been challenged by appeal. Provisions that are unchallenged can be given more weight than those that have been appealed.

3. We set out the reasons for our opinion below.

Interpreting Tables 1 and 2 of Policy 6

4. The confusion arising with the interpretation of Tables 1 and 2 in the decisions version of PC1 can be illustrated by reference to two appeals that were filed with the Environment Court. These are:
- (a) Christchurch City Council and Waimakariri District Council filed a joint appeal which mentions that the decisions version of PC1 confused the relationship between Tables 1 and 2, and seeks changes to clarify their meanings. Amongst other things, the appeal seeks changes to clarify that:
 - (i) Table 1 prevails over Table 2¹; and
 - (ii) The total actual allocation of households for each Territorial Authority does not exceed Table 1 (i.e. that the numbers are maxima)².

¹ Notice of appeal, at paragraphs 8(d) and 9e).

² Ibid, at paragraph 8(g).

- (b) By contrast, Fulton Hogan Limited filed an appeal which seeks amendments to ensure that the household numbers specified in Table 1 are minima³.
5. It appears from these appeals that there is a lack of clarity as to whether the figures in Table 1 represent maxima, minima or something else (e.g. a target), and whether the figures in Table 1 prevail over Table 2 (or vice versa).
 6. In construing the meaning of Tables 1 and 2 in Policy 6, we have applied the following plan interpretation principles:
 - (a) The plain, ordinary meaning of the words must, where possible, be applied, together with a purposive interpretation, having regard to the total context of the words and the purpose of the plan. Where doubt arises, relevant parts of the plan, such as objectives and policies, should be referred to⁴.
 - (b) Conflicts should be resolved by reading the plan as a whole and making a balanced decision as between the objectives, policies, and rules⁵.
 - (c) It is desirable for an interpretation to:
 - (i) Avoid absurd or anomalous results;
 - (ii) Be consistent with the expectations of landowners; and
 - (iii) Promote administrative efficiency (rather than require lengthy historical research to assess lawfulness)⁶.
 - (d) It is also desirable that a policy be given an interpretation that implements the objectives of the Regional Policy Statement⁷.

Table 1 of Policy 6

7. Table 1 of Policy 6 is entitled "Projected Household Growth in Greater Christchurch 2007-2041", and we understand that the numbers in Table 1 have been determined using household growth projections. Our understanding is supported by Policy 16(d)(i) which contemplates that a review of the extent, location and timing of land for development would be initiated if "there is a difference of 10% or more between projected household growth in Table 1, Policy 6(a) and the estimated annual change in households by Statistics New Zealand over three consecutive years". Given that the Table 1 figures are based on household growth projections, we would not expect such figures to change unless there has been a change to the projections themselves.

³ Notice of appeal, at paragraph 5.1 (1st bullet point) and paragraph 6.1. We understand that this appeal has since been withdrawn. However, we consider that the fact that it was filed still illustrates that there was a lack of clarity regarding the meaning of Table 1.

⁴ *Re an application by Millbrook Country Club Ltd* (C45/97); *Queenstown Lakes District Council v McAulay* [1997] NZRMA 178 (HC).

⁵ *Hoyle v Auckland City Council* (W53/97).

⁶ *Nanden v Wellington City Council* [2000] NZRMA 562 (HC); *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700

⁷ Section 75(1)(b) of the RMA provides that policies are to implement the objectives of a Regional Policy Statement.

8. Table 1 contains projected household growth numbers for different categories of growth, including projected household growth in Rural Residential Areas (outside Urban Limits), projected growth via intensification, and projected growth in Greenfields Areas and existing zoned land. The issue we will consider in this case is whether the projected household growth figures for the different categories of growth in Table 1 represent maximums, minimums, or targets.
9. In our opinion, it is clear from the words of Policy 6(a) note 2 that the figures in Table 1 relating to Rural Residential Areas are maximums. Policy 6(a) note 2 states:

2. Rural Residential allocation provides for up to a maximum of the stated number.

10. Objective 1(f) provides contextual support for interpreting the figures in Table 1 for Rural Residential Areas as maximums. Objective 1(f) states:

Objective 1: Urban Consolidation

Urban development in Greater Christchurch shall be managed to achieve consolidation of existing urban areas, to avoid unsustainable expansion outside existing urban areas, and to bring about:

(f) Growth in rural residential development to equate to no more than 5% of the planned growth of households within urban areas.

[emphasis added]

11. The phrase "no more than" in Objective 1(f) suggests that there is a maximum amount of rural residential development. Thus, interpreting the Rural Residential figures in Policy 6(a) Table 1 as a maximum is consistent with implementing Objective 1(f)⁸. It would also be consistent with the 5th paragraph of the explanation following Objective 1(f) which states:

Provision has been made for rural residential development equivalent to no more than 5% of planned new urban households in Selwyn and Waimakariri Districts over the period 2007-2041.

[emphasis added]

12. Policy 14 also confirms that the Table 1 figures are maximums for Rural Residential Areas. Policy 14 states:

Rural Residential development further to areas already zoned in district plans as at 28 July 2007 may be provided for by territorial authorities, if it does not exceed the maximum quantities for the periods set out in Table 1, Policy 6, and if it accords with the methods under this policy.

[emphasis added]

13. However, unlike in the case of the Rural Residential figures in Table 1, ascertaining whether the remaining figures in Table 1 are maximums, minimums or targets is problematic because there is no clear wording to confirm what the figures represent. On balance, we consider that the remaining figures in Table 1 represent minimums for the following reasons:

- (a) The plain, ordinary meaning of the words of Policy 6(a) supports a conclusion that the remaining figures in Table 1 are minimums. Policy 6(a) requires

⁸ Ibid.

territorial authorities to provide for the strategic integration of infrastructure and development through releasing Greenfield areas and encouraging intensification. The policy then states that the release of Greenfield areas and the encouragement of intensification is intended:

"...to provide for increases over time in household numbers as set out in Table 1"

[emphasis added]

The plain ordinary meaning of the phrase "*to provide for*" is to support, or to make arrangements to supply. Thus, Policy 6(a) anticipates that territorial authorities would release sufficient Greenfield areas and encourage intensification in a manner sufficient to support (or make arrangements to supply for) the increases in household numbers set out in Table 1. A particular increase in household number in Table 1 would not be provided for if a territorial authority's actions result in supplying less than the stated number. By contrast, a given increase would be provided for if a territorial authority's actions result in supplying for that number, or more than that number (i.e. the number represents a minimum).

- (b) Policy 2(b) supports a conclusion that the intensification figures in Table 1 are minimums. Policy 2(b) states:

Intensification will take place primarily in areas to be identified through district plans to achieve the household numbers set out in Policy 6.

[emphasis added]

Policy 2(b) seeks "to achieve" the intensification figures in Policy 6. The plain ordinary meaning of "achieve" is to accomplish or attain. In our opinion, the intensification figures in Table 1 cannot be achieved, accomplished or attained unless that figure is met or exceeded (i.e. the intensification figures are minimums). Any lesser figure would not achieve, accomplish or attain the specified intensification figure.

- (c) Policy 6(b) note 4, which follows Table 2, supports a conclusion that the figures for Greenfield Areas in Table 1 are minimums. Policy 6(b) note 4 states:

Map 1 shows Greenfield Areas which provide a greater capacity than necessary to provide for the numbers of households in Table 1, to ensure the territorial authorities have some flexibility. Policy 6(b) Note 4 points out that there is more capacity in mapped Greenfield areas than necessary "to provide for" the numbers of households in Table 1. For the reasons given above, we consider that the phrase "to provide for" indicates that the Table 1 numbers are minimums. However, this should not be taken to mean that local authorities are able to provide as many households as they like so long as they are serviced. As will be discussed in paragraph 16 below, Table 2 imposes a maximum limit on the number of households that can be supplied in Greenfields Areas, being 5% above the stated figure for each area.

- (d) Adopting an interpretation that the figures in Table 1 (other than the Rural Residential figures) are minimums serves a purpose, which is to ensure territorial authorities have some flexibility (see Policy 6(b) Note 4). In our opinion, the flexibility provided by Table 1 is constrained by Table 2, which imposes a target number of households to be achieved, within a range of plus or minus 5% (see paragraph 16 below).
14. We acknowledge that alternative interpretations will be available for Table 1, primarily due to an absence of unambiguous wording regarding what the figures represent. We do not intend to set out all possible alternative interpretations that might be possible, but as an illustration, we note that some provisions of PC1 appear to suggest that Table 1 was not intended to state minimums, but instead set a household number target for Greenfields Areas. For example:
- (a) Method 6.2 appears to suggest that Policy 6(a) Table 1 was intended to set the *numerical* target for Greenfields areas households, while Policy 6(b) Table 2 is intended to set out the *locations* where the household numbers could go. In other words, Table 1 sets the overall numbers while Table 2 sets out the location options for the numbers to go. This would suggest that the flexibility anticipated in Policy 6(b) Note (4) (which is referred to in paragraph 13(d) above) relates to household locations only, not household numbers. Method 6.2 states:
- Territorial authorities in their district plans shall provide zoned and serviced land to enable Greenfields Areas households in Policy 6(a) in the areas set out in Policy 6(b), and may provide for rural residential land in accordance with table 1 in Policy 6(a) (Note: this is subject to review in 2010 – see Policy 14.2).**
- (b) If Table 2 sets a target for Greenfields Areas and existing zoned areas, then Table 1 would be rendered superfluous because Table 2 effectively specifies both minima and maxima. However, Table 1 would have a role to play if it was interpreted as a *numerical* target, with Table 2 setting out the *locations* where the Table 1 household numbers could go. The numbers in Table 2 would then simply set the household range for a given location option (if that location is to be developed), but it is Table 1 that dictates the overall household number available within each district.
15. As will be further discussed in paragraph 17 below, we consider that on balance interpreting the figures (other than the Rural Residential figures) in Table 1 as minimums better avoids conflicts with other parts of PC1 (including Table 2), and would better enable the provisions of the decisions version of PC1 to read together as a consistent and coherent whole.

Table 2 of Policy 6

16. In our opinion, all of the figures in Table 2 represent anticipated targets to be achieved within a range of plus or minus 5% (i.e. each figure has an upper limit or maximum of 5% above the stated figure, and a lower limit or minimum of 5% below

the stated figure). Thus, any household numbers falling outside the plus or minus 5% range would miss the target. The reasons in support of our view are as follows:

- (a) The plain, ordinary meaning of the words of Policy 6(b) note 1 supports a conclusion that all unbolded figures in Table 2 represent targets to be achieved within a range of plus or minus 5%. Policy 6(b) note 1 states:

Unbolded figures are anticipated targets to be achieved within plus or minus five percent and totals in bold represent overall totals resulting from managed development.

We note that if all unbolded figures represent targets with a range of plus or minus 5%, then each bolded figure (which represents a sum total of unbolded figures) will, as a mathematical outcome, also constitute a target with a range of plus or minus 5%. For example, if each unbolded figure was exceeded by 5%, then the bolded figure, being the sum of the unbolded figures, would similarly be exceeded by 5%.

- (b) The plain, ordinary meaning of the words in Policy 6(b) itself suggests that the figures in Table 2 are not fixed figures. Policy 6(b) states:

Within the Urban Limits identified on Map 1, residential development shall be provided for in general accord with the locations and numbers set out in Table 2.

[emphasis added]

The words "in general accord" anticipates that there would be some flexibility in the requirement to provide for residential development in respect of both the locations of households, and the numbers of households set out in Table 2.

- (c) It is relevant to consider the effect of Policy 11 when interpreting Policy 6(b) and Table 2. Policy 6(b) note 3 mentions that the allocation of numbers in Greenfields Areas is at the density set out in Policy 11. It is important to note that Policy 11 does not set out maximum densities. Instead, Policy 11 sets out "minimum net densities" that are to be "generally" achieved. Policy 11 states:

Residential subdivision and development shall generally achieve the following minimum net densities...

Paragraphs (a) to (d) specify the minimum net densities that are to apply. However, the word "generally" suggests that the specified minimum net densities will be minimums only in the generality of cases. There will be some cases where densities may be lower than the specified minimum. In fact, Policy 11 anticipates circumstances where lower densities than the specified minimum net densities may be considered appropriate. The relevant part of Policy 11 states:

Where these densities would have a significant adverse effect on Listed Heritage Buildings, Listed Heritage Areas or Tree Protection Orders, or significant open, landscape or coastal values, lower densities may be considered appropriate.

[emphasis added]

Thus, Policy 11 sets out minimum net densities that are to be met in the generality of cases, but lower densities may be appropriate in some cases.

Given that the allocation of household numbers in Greenfields areas is based on the densities set out in Policy 11, we can conclude the following:

- (i) As Policy 11 anticipates that net densities will be higher than the minimum net density in the generality of cases, the number of households in Greenfields areas can also be anticipated to be higher than the number specified in Table 2 in the generality of cases; and
- (ii) As Policy 11 anticipates that net densities will be lower than the minimum net density in some specified circumstances, the number of households in Greenfields areas can also be anticipated to be lower than the number specified in Table 2 under the same specified circumstances.

Thus, interpreting the Table 2 figures as setting a household allocation target with a range of plus or minus 5% is consistent with the plus and minus flexibility anticipated by the Policy 11 net densities.

Consistency with PC1 as a whole

17. On balance, we consider that our interpretation of Tables 1 and 2 avoids anomalous results, and enables the tables and other provisions of PC1 to work together as a consistent and coherent whole. This consistency and coherency can be observed when considering how PC1 manages the different types of urban growth as follows:
 - (a) Rural Residential Areas (outside Urban Limits): Interpreting Table 1 as specifying a maximum allocation for these areas gives effect to Objective 1(f) Policy 6(a) note 2, and Policy 14 (see paragraphs 7 to 11 above).
 - (b) Intensification: Interpreting Table 1 as setting out the minimum intensification numbers to be provided for by territorial authorities is consistent with giving effect to the following:
 - (i) Policy 2(a), which seeks to ensure that "an increasing proportion" of residential growth of Greater Christchurch takes place through intensification of existing urban areas;
 - (ii) Policy 2(b), for reasons given at paragraph 13(b) above;
 - (iii) Policy 11(c) and 11(d), which anticipates that intensification developments will generally achieve a "minimum" net density of 50 lots or household units per hectare within the City Centre, and 30 lots or household units per hectare elsewhere.
 - (iv) Anticipated Environmental Result 12A.6(i), which anticipates greater levels of intensification. Clause 12A.6(i) states:

A shift of emphasis from continued peripheral development to greater levels of intensification.

- (c) Greenfields Areas and existing zoned land: Interpreting Table 1 as setting a minimum to be met, with Table 2 setting a target (up to a maximum of plus 5%) is consistent with giving effect to the following:

- (i) Policy 6(a) note 3 which states:

The Greenfield Areas in Table 2 exceed the area needed to provide for the population numbers in Table 1. The availability for the Greenfields Areas is to be managed under Policy 6(b).

[emphasis added]

Policy 6(a) note 3 anticipates two things:

- (1) That the Table 2 figures for Greenfield Areas exceed the Table 1 figures; and
 - (2) That it is Policy 6(b) and Table 2 that manages the availability of Greenfields Areas. Availability is managed by the plus or minus 5% target for Table 2. By contrast, Policy 6(a) and Table 1 do not purport to manage the availability of Greenfields Areas.
- (ii) Policy 6(b) note 4. As with Policy 6(a) note 3, Policy 6(b) note 4 anticipates that the provision of Greenfields Areas in Map 1 (which are enumerated in Table 2) will be greater than the number of households in Table 1.
- (iii) The total household figures (2007-2041) in Tables 1 and 2 for Greenfield Areas and existing zoned land for Christchurch City, Selwyn District and Waimakariri District, which can be summarised as follows:

	Table 1	Table 2
Christchurch City	19680	22230
Selwyn District	11040	11140
Waimakariri District	7890	10890

The total household figures in Table 2 exceed those in Table 1 in every case. This is consistent with Table 1 setting minimum figures, with Table 2 setting a target with a range of plus or minus 5%. Interpreting Table 1 as setting a maximum would produce an anomalous result, because the figures in Table 2 cannot be met without being in breach of Table 1.

- (iv) Policy 6(b) for the reasons given at paragraphs 16(a) and 16(b) above. We also note that Policy 6(b) was changed in the decisions version of PC1 so that instead of requiring development to be provided for in accord with the "sequencing" in Table 2, it now requires residential development to be provided in general accord with both the "locations and numbers" set out in Table 2. The reference to "numbers" suggest it is Table 2 that sets the numerical target for households;
- (v) Policy 11 for the reasons given at paragraph 16(c) above.
- (vi) Method 15.2 which states:

Territorial authorities shall ensure that Outline Development Plans are prepared for each Greenfields Area for inclusion in district plans in accordance with the phasing in Policy 6 for Greenfields Areas – Residential, and in advance of establishment of business activities in Greenfields Areas – Business.

The method anticipates that Outline Development Plans ("ODP") must accord with the "phasing" in Policy 6. As the word "phasing" (which was inserted in the decisions version of PC1) is referred to in the title for Table 2 (not Table 1), Method 15.2 suggests that it is Table 2 that sets numerical targets to be met over time in Greenfields Areas.

Does intensification constitute a bonus?

18. You have asked us to advise whether the intensification of land within the urban limits effectively constitutes a "bonus" over and above the Greenfields allocations in Tables 1 and 2 of Policy 6. We understand that this issue has arisen as a consequence of the following comments made in paragraph 181 of Canterbury Regional Council's decision on PC1:

Method 2.1 seeks to provide for intensification to accommodate numbers of households in Table 1, Policy 6. When examined, this table is specific in terms of household numbers in intensification areas only for Christchurch City, so it must be assumed that a proportion of the allocation of households in the two districts will be accommodated via intensification, but that this will effectively be a "bonus" over and above the Greenfields allocation. We do not have a problem with this, and no submissions appear to raise this as an issue.

19. We have divided this issue into the following sub-issues:
- (a) What does intensification mean in Policy 6?
 - (b) Whether the intensification of land within the urban limits constitutes a "bonus" over and above the Greenfields allocations in Table 1?
 - (c) Whether the intensification of land within the urban limits constitutes a "bonus" over and above the Greenfields allocations in Table 2?

20. We consider each of the above sub-issues in turn.

What does intensification mean?

21. It is important to ascertain what the term "intensification" means in PC1 because it could otherwise cause confusion when interpreting the meaning of Tables 1 and 2.
22. In our opinion, the term "intensification" relates only to the intensification of areas within developed urban areas. Clause 12A.7 (Definitions) defines "intensification" as follows:

Intensification: means subdivision, use and or redevelopment of areas within developed urban areas.

[emphasis added]

23. The term "intensification" must also relate to the intensification of land that falls outside of "Greenfields Areas and existing zoned land" in Table 1 because Table 1 contains separate projected household growth figures for "intensification" and "Greenfields Areas and existing zoned land". Thus, the household figures in "Greenfields Areas and existing zoned land" are separate from, and additional to, the household figures stated for intensification within developed urban areas. To interpret "intensification" and "Greenfields Areas and existing zoned land" as the same (or otherwise having some overlap) would result in absurdity because the provision of households would be double-counted in Table 1 for Christchurch City (i.e. the provision of households would count toward meeting both the "intensification" figure and the "Greenfields Areas and existing zoned land" figure in Table 1).

Whether the intensification of land within the urban limits constitutes a "bonus" over and above the Greenfields allocations in Table 1?

24. As noted in paragraph 181 of Canterbury Regional Council's ("ECan") decision on submissions on PC1, Table 1 is specific in terms of household numbers in intensification areas only for Christchurch City. No intensification figures are specified for Selwyn or Waimakariri Districts. However, we consider that the absence of intensification figures for Selwyn and Waimakariri Districts does not mean that intensification in those districts would need to come off other household numbers specified in Table 1 for those districts. Rather, the absence of intensification figures for Selwyn and Waimakariri Districts simply means that neither council is required to achieve a specified minimum level of intensification. Their only obligation is to encourage intensification in accordance with Policy 2(c).
25. In our opinion, the point being made in paragraph 181 of ECan's decision is that any intensification that occurs in Christchurch City would count towards the intensification figures specified for Christchurch City in Table 1. Naturally, such intensification could not also count towards meeting the "Greenfields Areas and existing zoned land" figures in Table 1, as that would constitute double-counting (see paragraph 23 above). As Table 1 does not specify intensification figures for Selwyn and

Waimakariri Districts, there is no minimum intensification that those districts need to encourage pursuant to Policy 6(a).

26. For the reasons given in paragraph 22 to 23 above, any intensification that occurs within the developed urban areas of Selwyn and Waimakariri Districts would constitute a "bonus" in the sense that the resulting household numbers would not count towards meeting the "Greenfields Areas and existing zoned land" figures in Table 1.

Whether the intensification of land within the urban limits constitutes a "bonus" over and above the Greenfields allocations in Table 2?

27. It is important to note that the household allocation targets in Table 2 do not relate solely to Greenfield Areas. Table 2 also allocates households to "existing zoned land". Policy 6(b) note 2 states:

The allocations of households to existing zoned land in Table 2 assume development at densities in accordance with existing zoning provision that apply to those areas.

[emphasis added]

28. Thus, the relevant issue to consider is whether intensification of land within the urban limits would constitute a "bonus" over and above both the Greenfields Areas allocations and the "existing zoned land" allocations in Table 2. Before considering this issue, it is necessary to ascertain the difference in meaning between "intensification", "Greenfield Areas and "existing zoned land", as utilised in PC1.

29. For the reasons given at paragraphs 22 and 23 above:

- (a) The term "intensification" relates to intensification within developed urban areas;
- (b) The term "Greenfields Areas and existing zoned land" must refer to something other than developed urban areas.

30. The term "Greenfields Areas" is defined in Clause 12A.7 of PC1 as follows:

Greenfields Areas: means areas identified on Map 1 for greenfields development...

31. The term "existing zoned land" must mean something other than the term "Greenfields Areas" because the notes following Table 2 confirm that their household allocations have been based on completely separate things. In particular:

- (a) Note 2 mentions that the household allocations for "existing zoned land" are based on the existing zoning provisions that apply to those areas;
- (b) By contrast, note 3 provides that the household allocations for "Greenfields Areas" are based on the densities set out in Policy 11.

32. Although Clause 12A.7 does not provide a definition of "existing zoned land", we consider that the meaning of this term can be derived by adopting a meaning which avoids any overlap with the meaning of "Greenfields Areas" or the areas where

intensification can occur. In our view, "existing zoned land" means *undeveloped* land within *existing* urban zoned areas. Thus, "existing zoned land" would exclude *developed* urban areas (which are the subject of intensification) and *new* urban areas (which are Greenfields Areas). This interpretation of "existing zoned land" is consistent with the description of existing zoned land in the final row of the Table 2 figures for Christchurch, which states:

"Existing undeveloped Zoned Land including Masham, Aidanfield, Port Hills"

[emphasis added]

33. Consequently, we consider that intensification within developed urban areas would constitute a "bonus" over and above the "Greenfield Areas" and "existing zoned land" allocation in Table 2 because intensification as defined in PC1 occurs on land that is neither "Greenfield Areas" nor "existing zoned land". By contrast, any intensification occurring within the "Greenfields Areas" or "existing zoned land" areas identified by Table 2:
 - (a) Would fall outside the meaning of "intensification" as defined in PC1; and
 - (b) Would not constitute a "bonus" over and above the household figures for "Greenfield Areas" and "existing zoned land". Any addition of further households within "Greenfield Areas" and "existing zoned land" would count towards the figures contained in Table 2 for those areas.

What weight should be given to PC1 when considering PC7?

34. When preparing or changing a district plan, section 74(2)(a)(i) of the RMA requires a territorial authority to "have regard to" a proposed change to a regional policy statement such as PC1.
35. The phrase "have regard to" appears in several sections of the RMA, including section 104 which requires consent authorities to "have regard to" a list of matters when considering an application for resource consent. In the context of section 104, the Courts have interpreted the phrase "have regard to" as indicating matters that are required to be considered as part of a weighing-up process⁹. The phrase requires a decision maker to give genuine attention and thought to the matters listed, but such matters must not necessarily be accepted¹⁰. It should not be elevated to mean "give effect to"¹¹.
36. We see no reason why the Courts' interpretation of the directive "have regard to" in section 104 could not equally applicable to the same directive in section 74(2)(a)(i). Consequently, it is our view that PC1 should be considered as part of the weighing-up process for PC7.
37. Again in the context of assessing resource consent applications under section 104, the Courts have held that when having regard to a proposed planning document, the weight that can be given to its provisions will depend on what stage the relevant

⁹ *Donnithorne v Christchurch City Council* [1994] NZRMA 97 (PT).

¹⁰ *Foodstuffs (South Island) Ltd v Christchurch City Council* [1999] NZRMA 481 (HC).

¹¹ *Ibid.*

provision has reached. Generally, greater weight can be given to a provision as a proposed plan moves through the notification and hearing process¹². The Environment Court in *Sutherland v Queenstown Lakes District Council* (C20/05) made the following observation about the weight that can be attached to a district plan change:

The Council has recently announced decisions on Variation 18 to the partly operative District Plan. These decisions are still subject to appeal, so we cannot give them full weight, although we recognise that they represent the judgement of the consent authority after a process of public submission.

38. In this case, PC1 has already moved through the notification and council hearing process. As the provisions of PC1 have been the subject of a council decision following a process of public submission, we consider that at least some weight can be given to the provisions. However, the amount of weight that can be given to any particular provision of PC1 will depend on whether and to what extent the provision has been challenged by appeal. Provisions that have been challenged by unresolved Environment Court appeals should be accorded less weight than provisions that are not subject to any appeals.
39. We understand that recently, some appeals have been withdrawn in part, whilst the Court has received consent memoranda in respect of other appeals. Should these withdrawals and the subsequent release of consent orders by the Court result in removing challenges to some of the provisions of PC1, then greater weight can be attached to those provisions.
40. Please do not hesitate to call us if you have any further queries.

Yours sincerely



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**Please note our Christchurch office is currently operating at a temporary address:
Unit 3, 107 Wrights Road, Addington, Christchurch**

¹² *Hanton v Auckland City Council* [1994] NZRMA 289 (PT); *Lim v Hutt City Council* [1994] NZRMA 183 (PT).