

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
IN CHRISTCHURCH**

**TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

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**LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL ON  
PROPOSED PLAN CHANGE 14:**

**CENTRAL CITY AND COMMERCIAL ZONES**

Dated: 17 October 2023

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## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

#### Overview of legal submissions

1.1 These opening legal submissions on behalf of the Christchurch City Council (**Council**) provide a high-level overview of the Council's approach to the Central City and Commercial zones, as they relate to the following subtopics:

- (a) Centres approach;
- (b) Central City (including Victoria Street) specific building height limits;
- (c) Central City heritage matters – Arts Centre, New Regent Street, Cathedral Square precincts;
- (d) Radio communications pathways qualifying matter (**QM**).
- (e) Centres approach beyond the Central City; and
- (f) Rezoning of commercial zones.

1.2 These legal submissions adopt the following structure:

- (a) this **Part 1** contains an introduction and presents an overarching summary of the "**centres based**" approach to the Central City and Commercial Zones in PC14.
- (b) **Part 2** briefly comments on the applicable legal framework.
- (c) **Part 3** addresses key issues relating to the Central City, including building heights; heritage matters relating to the Arts Centre, New Regent Street and Cathedral Square precincts; and the radio communication pathways qualifying matter.
- (d) **Part 4** discusses key issues regarding the centres approach beyond the central city.
- (e) **Part 5** comments on central city and commercial rezonings.
- (f) **Part 6** introduces the 11 witnesses giving evidence for the Council at the Central City and Commercial zones hearing.

## The "centres-based" approach

1.3 Fundamental to understanding the issues at play in PC14 as it relates to the central city and the commercial centres of Ōtautahi Christchurch is the centres-based approach adopted by the District Plan, and what impact PC14 could have on that approach.

1.4 As the Environment Court said over 20 years ago, a centres-based approach recognises *"the value to the district's people and communities of the City's centres, and the 'enabling' benefits stemming from such centres now and for the future"*.<sup>1</sup>

1.5 The centres-based approach was introduced in Christchurch in 2004 by Variation 86 to the then proposed Christchurch City Plan<sup>2</sup> and has been a mainstay ever since. The Courts have supported the centres-based approach in Christchurch, recognising its benefits towards development. In *Sloan v Christchurch City Council*,<sup>3</sup> the Environment Court commented that there was:<sup>4</sup>

*"a strong argument for the development of town centres, namely a mix of commercial, residential and retail activity, in each of the district centres, and issues as to how this can be complementary to the central business district and be responsive to the needs of the local community must be addressed"*.

1.6 In both *Sloan* and *National Investment Trust v Christchurch City Council*,<sup>5</sup> the case for the development of strong town centres was supported.

1.7 The current District Plan's centres-based approach was adopted by the Independent Hearings Panel (**IHP**) following an extensive evaluation, accounting for the catastrophic effects of the Canterbury earthquakes on the city's commercial centres, including in particular the central city.<sup>6</sup> The IHP found that the Canterbury Regional Policy Statement (**CRPS**), to which the District Plan must give effect,<sup>7</sup> strongly directs that commercial activity is to be focused in a network of centres.<sup>8</sup> In addition, the IHP was *"overwhelmingly satisfied"* on the evidence that the centres based approach

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<sup>1</sup> *St Lukes Group v North Shore City Council* [2001] NZRMA 412 at [57].

<sup>2</sup> Variation 86 was publicly notified in August 2004 and became operative in November 2009.

<sup>3</sup> *Sloan v Christchurch City Council* EnvC Christchurch C3/2008, 21 January 2008.

<sup>4</sup> *Ibid* at [131].

<sup>5</sup> *National Investment Trust v Christchurch City Council* EnvC Christchurch C152/07, 26 November 2007 at [19].

<sup>6</sup> Independent Hearings Panel Decision 11 (Commercial (Part) and Industrial (Part) dated 18 December 2015.

This decision is available to download at <https://chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Commercial-Part-and-Industrial-Part-Stage-1.pdf>

<sup>7</sup> Section 75(3)(c) of the RMA.

<sup>8</sup> Independent Hearings Panel Decision 11 (Commercial (Part) and Industrial (Part) dated 18 December 2015, at paragraphs [26] to [37]. The CRPS provisions the IHP considered supported a centres-based approach include objectives 6.2.1(2), 6.2.2(3), 6.2.5 and 6.2.6(3), and policies 6.3.1(8) (previously 6.3.1(6)) and 6.3.6(3) and (4).

is the "most appropriate" under section 32.<sup>9</sup> The IHP states, at paragraph [101]:

*Ultimately, a centres based approach is important for assisting the revitalisation of communities, enabling their recovery and contributing to their long term strength.*

1.8 At paragraph [103], the IHP states:

*(...) we agree with Mr Heath that the centres approach concerns what is in the best interests of the community, particularly a recovering community.*

1.9 As noted by that IHP, the District Plan provides for a hierarchical centres approach for commercial activity and directs new commercial activity to those centres.<sup>10</sup> The hierarchy comprises the Central City, District Centres, Neighbourhood Centres, Local Centres and Large Format Centres.<sup>11</sup> The role of each of these centres is explicitly described in Chapter 15 Table 15.1 of the operative District Plan.

1.10 Primacy was specifically given to the Central City, followed by those District Centres and Neighbourhood Centres identified as Key Activity Centres.<sup>12</sup> The policy framework confirmed by the IHP was to:

- (a) Give *primacy* to, and support, the recovery of the Central City.
- (b) *Support* and *enhance* the role of District Centres.
- (c) *Maintain* the role of Neighbourhood Centres, Local Centres and Large Format Centres.<sup>13</sup>

1.11 The thrust of the District Plan's centre-based framework has been retained in PC14 as amended by s42A report authors (**Amended Provisions**), with the District Plan's centres zone descriptions updated to the "*nearest equivalent zone*" in the National Planning Standards. The updated policy framework has been adjusted to:

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<sup>9</sup> Ibid, at paragraphs [89] to [105].

<sup>10</sup> Ibid, at paragraph [89].

<sup>11</sup> Chapter 15 of the District Plan, at 15.1.d.

<sup>12</sup> District Plan Objective 15.2.2.a.iv.

<sup>13</sup> District Plan policy 15.2.2.1.

- (a) Give *primacy* to, and support, the recovery of the City Centre, followed by Key Activity Centres<sup>14</sup>, by managing the size of all centres and the *range* and *scale* of activities that locate within them.
  - (b) *Support* and *enhance* the role of Town Centres.
  - (c) *Maintain* the role of Local Centres, Neighbourhood Centres and Large Format Centres.<sup>15</sup>
- 1.12 This high-level framework for centres was considered by economic and market experts during expert conferencing, and it was agreed that PC14 should enable higher density/intensified development in areas that are economically efficient, layered through the centres hierarchy.<sup>16</sup>
- 1.13 The framework specifically includes a requirement to give *primacy*, and *support*, to the *recovery* of the City Centre, in recognition that unlike other Tier 1 cities, Ōtautahi Christchurch has a central city that is recovering from the devastating effect of the Canterbury earthquakes. Mr Hugh Nicholson observed during the strategic overview hearing that the central city continues to have derelict buildings, car parks and vacant sites, and that the rebuild is likely to continue for at least 10-20 years.<sup>17</sup> Based on an analysis of employment trends and metrics, Mr Heath considers the City Centre is still in recovery. He notes that recovery has been hampered by the COVID-19 pandemic and its enduring effects over the last 2 years, and will require a significant amount of resource and investment over a sustained period.<sup>18</sup> During questioning by the Panel, Mr Osborne succinctly described the distinction between Christchurch and other tier 1 cities when observing that Christchurch is a mature market but with an immature CBD.
- 1.14 The centres-based approach, and giving primacy and support to the recovery of the City Centre, thus remains "*important for assisting the revitalisation of communities, enabling their recovery and contributing to their long term strength*" and continues to be "*in the best interests of the community, particularly a recovering community*".<sup>19</sup>

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<sup>14</sup> Key Activity Centres is defined in chapter 2 of the Amended Provisions as the key existing and proposed commercial centres of Papanui/Northlands, Shirley/Palms, Linwood/Eastgate, New Brighton, Belfast/Northwood, Riccarton, North Halswell, Barrington and Hornby.

<sup>15</sup> PC14 (Amended Provisions version) of policy 15.2.2.1.

<sup>16</sup> Joint statement of economics, commercial feasibility, development viability, commercial demand, housing and development capacity and housing demand experts, in appendix 1, first row.

<sup>17</sup> Evidence-in-chief of Hugh Anthony Nicholson, at paragraphs 5.5 to 6.9 and 8.4.

<sup>18</sup> Evidence-in-chief of Timothy James Heath, at paragraphs 4 and 88 to 105.

<sup>19</sup> See paragraphs 1.8 and 1.9 above.

- 1.15 To this end, it is submitted that the centres-based approach is a factor that the Panel must consider as part of the "**density done well**" approach. It is essentially another "density done well" element to be considered when utilising the six discretionary levers identified in paragraph 3.23 of the Council's opening legal submissions for the strategic overview hearing (**Strategic Overview submissions**). Those levers include an ability to set density and height commensurate with categorisation of commercial centres.
- 1.16 Submitters have requested various changes to density, height and other provisions applicable to the Central City and commercial centres, and these can impact on the centres-based approach, and giving primacy and support to the recovery of the City Centre, for better or for worse.
- 1.17 PC14 as recommended by Council's experts represents a substantial increase to the development opportunity and capacity in the central city and in its commercial centres, relative to the status quo, as mandated by the Amendment Act and the NPS-UD. These increases would enable, and accommodate, a level of commercial growth that is more than the commercial demand requirement in Christchurch well beyond the 30-year timeframe.<sup>20</sup> However, in providing for such a substantial increase, Council's experts have been careful to do so in a way that continues to maintain the centres-based approach, giving primacy to the recovery of the Central City, as an element of "density done well".
- 1.18 Accordingly, the PC14 proposal is for the City Centre Zone to have the highest enabled height threshold, with a tapering down of heights outside the City Centre based on a centre's role and function in the market. Council's evidence will explain that these heights have been set to ensure relative competitiveness between centres so intensive development has a higher propensity to occur in the most economically efficient locations, and significant economic benefits to the community can be realised.<sup>21</sup>

## **2. LEGAL FRAMEWORK**

- 2.1 The legal framework outlined at part 2 of Council's opening legal submissions for the strategic overview hearing is also applicable to this hearing and is not repeated here. However, matters of scope will start

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<sup>20</sup> Evidence-in-chief of Timothy James Heath, at paragraphs 1, 17 and 45.

<sup>21</sup> See for example evidence-in-chief of Timothy James Heath, at paragraphs 176 to 185 and 198 to 208.

coming to the fore in this hearing. The Council's section 42A reports identify a range of scope matters for the Panel's consideration<sup>22</sup>, and we outline some further legal commentary in relation to rezonings at Part 5 below.

- 2.2 To assist the Panel, additional legal commentary is provided in relation to some key issues discussed in Parts 3 and 4 below.

### **3. KEY CENTRAL CITY ISSUES**

- 3.1 The section 42A reports of Mr Willis and Ms Gardiner collectively identify and respond to issues raised by submitters in relation to the central city. These legal submissions do not intend to duplicate their coverage of the issues raised and their responses. Instead, these legal submissions provide a broad overview and legal context for some of the key issues arising.
- 3.2 The starting point when considering heights for the Central City is the enabling nature of NPS-UD policy 3.

#### **What is "enabling"?**

- 3.3 NPS-UD policy 3 provides that for a Tier 1 local authority like the Council, the District Plan must "*enable*" particular heights and densities as set out in the subclauses of policy 3.
- 3.4 Understanding the NPS-UD direction to "*enable*" is of paramount importance when setting the PC14 framework. There are two main points to make here.
- 3.5 Firstly, the plain ordinary meaning of "*enable*" is to *make able, give the means*, to be or to do something.<sup>23</sup> The policy direction is only that a plan must "*enable*", i.e. give the means for, building heights/densities to be achieved. There is no NPS-UD direction for a plan to mandate, or force, or require that a particular building height/density actually be achieved, or NPS-UD direction that a plan must *prevent* or *restrict* the building of lower heights/densities if that is what the market wants, or if that is what is feasible in a given market. Indeed, NPS-UD objectives 1 and 3 are concerned about *enablement* of people and communities, while objective 2

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<sup>22</sup> See for example Section 42A Report of Kirk Joseph Lightbody, at paragraphs 7.2.1 to 7.2.4; Section 42A Report of Holly Elizabeth Gardiner, at paragraphs 7.2.1 to 7.2.11; Section 42A Report of Suzanne Amanda Richmond, at paragraphs 7.1.4 to 7.1.20.

<sup>23</sup> Shorter Oxford English Dictionary, Oxford University Press, 6<sup>th</sup> ed, 2007.

is concerned about *supporting* competitive land and development markets. There is no requirement or direction to force a minimum height or density, in a "do or do nothing" approach to development.

- 3.6 Requiring the actual achievement of a minimum height/density goes beyond what the NPS-UD itself requires or envisages. As the Ministry for the Environment guidance document succinctly puts it in relation to "enabling" 6 storey building heights in Metropolitan Centre Zones:

*"For the avoidance of doubt, the six-storey minimum is the minimum district plans must enable and not a minimum development rule. For example, local authorities are not required to set objectives, policies and rules to prevent the construction of buildings less than six storeys. While plans must enable six or more storeys, a developer or land owner can still choose to construct a four-storey building. Instead, district plans just need to be enabling, with the controls supporting the minimum height (six storeys or more) and as much yield of developable space across a site as appropriate, without compromising well-functioning urban environments."*

[Our emphasis added]

- 3.7 During the week 1 hearing, the Panel questioned the potential use of a policy and/or rule framework to require actual achievement of the higher heights and densities mentioned in policy 3, notwithstanding there is no NPS-UD requirement to do so. It is submitted that:
- (a) This is not required by the NPS-UD. Plans need only be enabling of the higher heights and densities. Putting it another way, plans need only provide the *opportunity* for the benefits of intensification to be realised by the market, whenever the market is ready, and whenever the opportunity to realise that intensification becomes feasible.
  - (b) Should mandating a minimum development framework be considered nonetheless (e.g. by imposing a minimum height/density rule), then care is required to ensure that any such rule does not compromise well-functioning urban environments (or any other "density done well" elements). Evidence presented during the week 1 hearing cautioned that the setting of minimum heights could sterilise sites (including empty sites and derelict buildings) from being developed at lesser heights or densities, hindering the recovery and achievement of a well-functioning urban environment in the Central City. The Council is not opposed to the use of



minimum limits as a method, provided they are set at an appropriate level that will best enable a well-functioning urban environment without sterilising sites from recovery. To that end, the Council has proposed a minimum level of development of 2 storeys as the appropriate level in the CCZ.<sup>24</sup>

- 3.8 Secondly, clause 3.4 of the NPS-UD provides practical guidance regarding the activity statuses a plan should utilise in order to be enabling of intensified development capacity: it is "*plan-enabled*" if it is a permitted, controlled or restricted discretionary activity.
- 3.9 The implication is that the NPS-UD does not requires higher heights and densities to be permitted activities. The NPS-UD anticipates that controlled and restricted-discretionary activity status could be assessed as providing the most appropriate way (in section 32 terms) to provide for higher heights and densities. This allows, for example, the urban design merit of tall buildings to be assessed in a consenting process. Other "density done well" elements will also be relevant to this consideration. The Council will be presenting evidence explaining that it is more appropriate to utilise a range of activity statuses, from permitted to restricted discretionary activity status, for higher heights and densities, than simply permitting all higher intensification, to promote sustainable management and give effect to higher order document, summarised as "density done well".

### **Central City Zone**

- 3.10 NPS-UD policy 3(a), which applies to the Central City Zone (**CCZ**), requires that PC14 enable "*building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification.*"
- 3.11 The requirement in policy 3(a) to "*realise as much development as possible*" is qualified by the purpose it serves, which is "*to maximise the benefits of intensification*". Inherent in policy 3(a) is the need to undertake an evaluative exercise to ascertain what is the highest amount of development that can be realised "*to maximise the benefits of intensification*". The question can be framed as follows: is there a point at

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<sup>24</sup> See Amended Provisions, CCZ zone rule 15.11.2.4, which retains the existing operative District Plan rule 15.10.2.4.

which realising development beyond a certain amount starts to cause disbenefits so that the benefits of intensification are no longer maximised?

- 3.12 Council's experts will explain that intensification has a range of both benefits and costs, and these need to be considered when evaluating if there is a height beyond which costs might outweigh benefits, and thus warrant further scrutiny beyond a permitted, controlled or restricted discretionary activity.
- 3.13 As Mr Willis will explain, the Council evaluated a range of height and density controls for the CCZ, including 28m, 32m, 50m, 90m and unlimited height. A 90m height limit was chosen after considering the costs and benefits of these options as described in the s32 report. Accounting for the urban design evidence of Mr Ray, the economic evidence of Mr Heath, and the feasibility evidence of Ms Allen, Mr Willis concludes that the heights proposed strike the correct balance between realising as much development capacity as possible, to maximise benefits of intensification, whilst still achieving a well-functioning environment.
- 3.14 To balance competing urban design and intensification demands and therefore accommodate taller structures while ensuring a well-functioning environment, PC14 proposes:
- (a) a controlled activity pathway for new buildings up to 28m with urban design certification;
  - (b) buildings between 28m and 90m are restricted discretionary activities with specific matters of discretion and built form standards applicable. This includes "tower provisions" to better control tall, large, block buildings that prevent sunlight and daylight access to the street below and internally to other buildings and ensure a well-functioning environment; and
  - (c) buildings above 90m are discretionary activities.

### **Central City Mixed Use Zone and Central City Mixed Use Zone (South Frame)**

- 3.15 The Central City Mixed Use Zone (**CCMUZ**) and Central City Mixed Use Zone (South Frame) (**CCMUZ(SF)**) are located within a walkable catchment of the CCZ. As such, NPS-UD policy 3(c) is relevant and requires that the District Plan "*enable (...) building heights of at least 6 storeys*" within these areas.

- 3.16 In response to the policy 3(c) national direction, following an evaluation of costs and benefits, the Council has proposed to provide more than the minimum building heights in areas where there is more demand and in areas where extra height can be more easily absorbed as follows:
- (a) CCMUZ: 32m; and
  - (b) CCMUZ(SF): 21m.
- 3.17 Evidence supporting these amendments will be presented at this hearing, and explain how they seek to *"enable (...) building heights of at least 6 storeys"* in a manner considered most appropriate for promoting sustainable management and giving effect to the higher order document elements summarised as "density done well".

### **Central City qualifying matters**

- 3.18 While it is accurate to describe NPS-UD policy 3 as providing a "starting position" for intensification, it would be erroneous to then assume that achieving policy 3, in and of itself, will also achieve a well-functioning urban environment that enables all people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, now and into the future (objective 1 NPD-UD).
- 3.19 It must be recognised that policy 3 does not stand alone as the method to implement the NPS-UD objectives. Rather, policy 3 must be considered alongside policy 4 which anticipates the utilisation of qualifying matters (**QMs**) as a tool to amend the policy 3 starting position to better achieve the NPS-UD objectives.
- 3.20 Section 80E(1)(a)(ii)(A) of the Amendment Act explicitly requires that an IPI *"must (...) give effect to (...) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD"*. It would be erroneous in law to give effect to policy 3, then turn a blind eye to policy 4. It is submitted that policy 4 exists because the drafters recognised that policy 3 will not on its own contribute to a well-functioning urban environment, but that there must be levers available to territorial authorities to better direct, limit, moderate and restrict policy 3 intensification to better promote the objectives of the NPS-UD.
- 3.21 To this end, the Council has evaluated the use of policy 4 QMs pursuant to the applicable statutory criteria in sections 77J to 77L and 77P to 77R, and

proposes the following central city QMs to modify the policy 3 starting point, but only to the extent necessary to accommodate the QMs:

- (a) Central City heritage QMs, to manage the most significant potential visual dominance and shading effects of increased heights in the CCZ on the Highly Significant central city heritage precincts of the Arts Centre, New Regent Street and Cathedral Square, as follows:
  - (i) Arts Centre – Retain 16m within the block<sup>25</sup>, and 28m for the sites with boundaries on the east side of Montreal Street (sites in the Worcester Boulevard/Hereford Street block only, which are located directly opposite the Arts Centre).
  - (ii) New Regent Street Interface – Retain 8m within the New Regent Street setting, and 28m for sites to the east, west, north and south of the street.
  - (iii) Cathedral Square – 45m.
- (b) Victoria Street building height – 45m in recognition of the specific identity of Victoria Street and as a response to the visual impact of any tower developments and their potential not to be absorbed into the CCZ cluster as well as the shading and visual impact of any towers in this location on the adjacent residential zones. It will also provide the rest of the CCZ with a relative advantage to direct efficient growth to those areas.
- (c) Radio Communication Pathways – 45 to 79m to avoid adverse impacts on radio communications between the Justice and Emergency Services Precinct and the Port Hills as part of ensuring the safe and efficient operation of nationally significant infrastructure. The Justice and Emergency Precinct forms a critical piece in the emergency response and justice infrastructure for the City and that radio communications are an essential part of the operations within the precinct.

3.22 The Council will present evidence in relation to the Central City zones and QMs, including in response to submitters seeking to increase or lower the heights proposed and other amendments requested.

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<sup>25</sup> The area bound by Montreal Street, Worcester Boulevard, Rolleston Avenue and Hereford Street.

## **Cathedrals in the Central City**

- 3.23 The Catholic Diocese of Christchurch seeks numerous changes across a wide range of District Plan provisions relating to the CCZ and CCMU, to expand the provisions that currently apply to 136 Barbadoes Street (the previous location of the Christchurch (Catholic) Cathedral), to provide for a replacement cathedral as a restricted discretionary activity anywhere in the central city.
- 3.24 It is submitted these changes are outside the scope of PC14 on the basis that:
- (a) As required by the NPS-UD, PC14 relates to the intensification of housing and commercial development across the city to increase development capacity, not activity or site-specific changes to the District Plan and not providing additional development opportunities for spiritual activities.
  - (b) No changes to these provisions are proposed in PC14.
  - (c) Members of the public who may be affected by this change would not have reasonably known that such a change could be considered by PC14.
  - (d) Some of the changes sought (amendments to policy, rules and matters of discretion) would impact on status quo operative District Plan development rights such that there is a potential *Waikanae* issue of scope.

## **4. KEY ISSUES REGARDING THE CENTRES APPROACH BEYOND THE CENTRAL CITY**

- 4.1 The section 42A report of Mr Lightbody identifies and respond to issues raised by submitters in relation to the commercial centres beyond the Central City. It is not intended to repeat that analysis in these legal submissions. Rather, these legal submissions provide a broad overview and legal context for some key issues arising.

### **Centres-based approach to commercial centres**

- 4.2 NPS-UD policy 3(d) requires plans to enable within TCZs, NCZs and LCZs building heights and densities of urban form "*commensurate with the level of commercial activity and community services*". PC14 gives effect to policy

3(d) by providing significant intensification opportunities in these centres. Mr Lightbody will explain how Council's approach has led to increased heights and densities for the different types of centres in Christchurch in a manner that is "*commensurate with the level of commercial activity and community services*".

- 4.3 The centres-based approach, discussed at paragraphs 1.3 to 1.18 above, was also fundamental to informing the approach taken in PC14 to the intensification of the commercial centres beyond the Central City.
- 4.4 Accordingly, significant intensification opportunities are provided to give effect to NPS-UD policy 3(d), but in a manner that Council's team of experts has carefully calibrated to maintain the centres based approach, which includes giving primacy, and support, to the recovery of the City Centre.
- 4.5 Having considered submissions seeking increased heights in different centres, the Council has proposed through the Amended Provisions the following calibrated height limits for commercial centres beyond the Central City<sup>26</sup>:
- (a) Town Centre Zones (**TCZ**):
    - (i) Hornby, Riccarton, Papanui – 32m (22m notified).
    - (ii) Shirley, Linwood, North Halswell, Belfast – 22m (20m notified).
  - (b) Local Centre Zones (**LCZ**):
    - (i) Church Corner, Merivale, Sydenham North, Ferrymead – 22m (20m notified).
    - (ii) All others<sup>27</sup>: 14m (12m notified).
  - (c) Neighbourhood Centre Zones (**NCZ**): 14m (12m notified).
- 4.6 The calibration aimed at maintaining the centres hierarchy and primacy of the central city has the potential to be unravelled by further changes to

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<sup>26</sup> Section 42A Report of Kirk Joseph Lightbody, at Table 10.

<sup>27</sup> Examples in the Amended Provisions include Addington, Avonhead, Sumner, Akaroa, Colombo/Beaumont (Colombo Street between Devon Street and Angus Street), Cranford, Edgware, Fendalton, Beckenham, Halswell, Lyttelton, Ilam/Clyde, Parklands, Redcliffs, Richmond, St Martins, Prestons, Barrington, New Brighton and Bishopdale.

centre classification, centre heights and office tenancy controls.  
Accordingly, caution is required before making any further adjustments.

### Centre classification

4.7 PC14 seeks to align the operative District Plan commercial zones with the "nearest equivalent zone" listed in the National Planning Standards. This approach is consistent with the following:

(a) Standard 8 clause 8(2) of the National Planning Standards provides:

*If an existing zone in a plan is consistent with the description of a zone in table 13, that existing zone must use that zone name in table 1.*

(b) Clause 1.4(4)(a) of the NPS-UD provides:

*A reference in this National Policy Statement to a zone is:*

(a) *reference to that zone as described in Standard 8 (Zone Framework Standard) of the National Planning Standard;*  
*or*

(b) *a reference to the nearest equivalent zone, in relation to local authorities that have not yet implemented the Zone Framework in the National Planning Standard.*

4.8 The exercise requires, as Mr Lightbody has done, a comparison between the operative District Plan description of the zones against the National Planning Standards descriptions of the zones.<sup>28</sup> This results in a conversion of operative zones into the National Planning Standard zones as follows:

Christchurch District Plan Commercial Zones	National Planning Standard Zones
Commercial Core Zone – District Centre	Town Centre Zone
Commercial Core Zone – Neighbourhood Centre	Local Centre Zone
Commercial Local Zone	Neighbourhood Centre Zone
Commercial Large Format Centre Zone	Large Format Retail Zone
Commercial Banks Peninsula Zone	Commercial Local Zone (Lyttelton)

<sup>28</sup> Section 42A Report of Kirk Joseph Lightbody, at paragraphs 6.2.2 to 6.2.8.

- 4.9 Some submitters have sought to change the "*nearest equivalent zone*" into a different zone (e.g. the TCZs in Hornby, Riccarton and Papanui to a Metropolitan Centre Zone (**MCZ**)<sup>29</sup>). These changes are effectively rezoning requests, with the potential to be out of scope under the *Clearwater* test. In terms of substance, the Council will be presenting evidence outlining concerns with these requests, including adverse impacts on the centres-based approach and urban design.

### **Heights and office tenancy sizes**

- 4.10 Interweaved with concerns arising with zoning changes are associated changes sought by submitters that would:
- (a) further increase height limits in various centres; and/or
  - (b) allow greater (or unlimited) office tenancy sizes.
- 4.11 Council's evidence will elaborate on the importance of both height and office tenancy size limits at maintaining the centres hierarchy, including giving primacy and support to the recovery of the City Centre. In essence, the concern is that upzoning, increasing height limits and/or enlarging/removing office tenancy limits in centres outside the Central City:
- (a) can undermine the realisation of intensification of the Central City;
  - (b) can be inconsistent with directions in the CRPS and existing District Plan to give primacy and support to the Central City; and
  - (c) may not be the most appropriate way to achieve other "density done well" elements.
- 4.12 For example, Mr Heath's evidence is that increasing commercial office tenancy limits (from 500sqm to 1,000sqm for Riccarton, Hornby and Papanui as sought by Kāinga Ora or that no limit be imposed as sought by Scentre), could result in business dislocation effects. Relying on this evidence, Mr Lightbody is of the view that the operative 500sqm provision is the most appropriate method to achieve the objectives of the District Plan, CRPS and NPS-UD.
- 4.13 It is submitted that the latter issue of enlarging/removing office tenancy limit is also an out-of-scope request, on the basis that PC14 is concerned about

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<sup>29</sup> For example, Kāinga Ora, Scentre (NZ) Limited and Lendlease New Zealand Limited.



increasing heights and densities of development pursuant to policy NPS-UD, rather than adjusting commercial office tenancy provisions aimed at controlling office activities consistent with the centres-based approach.

## 5. CENTRAL CITY AND COMMERCIAL REZONINGS

5.1 The following submitters are presenting evidence for this hearing in support of various change of use zonings as follows:

- (a) NHL Developments seeks that 132 to 136 Peterborough Street and 137 to 151 Kilmore Street is rezoned from HRZ to CCMU.
- (b) Christchurch Casino Limited seeks that 56 to 72 Salisbury Street and 373 Durham Street North be rezoned from HRZ to CCZ.
- (c) Wigram Lodge seek that the following sites be rezoned from HRZ to CCMU:
  - (i) 152 to 158 Peterborough Street and 327 to 333 Manchester Street.
  - (ii) 850 to 862 Colombo Street and 139 Salisbury Street.

5.2 Each of these proposed rezonings is out of scope. In each case, PC14 simply changes the operative Residential Central City zoning to a High Density Residential Zone. By seeking mixed use or commercial zoning, these submissions do not address the extent of any proposed alteration of the status quo, they are addressing something entirely different, and are not "on" the plan change. They fail at the first limb of the *Clearwater* test.

5.3 Even if the relief met the requirements of the first limb of *Clearwater*, the proposed rezonings would fail the second limb of the *Clearwater* test. The introduction of an entirely new zoning would be an appreciable change to the planning regime that could not reasonably have been foreseen by those potentially affected by the different zoning change sought. Those persons will have been effectively denied an opportunity to respond to the change through a submission.

5.4 As noted above, some submitters seek to rezone TCZs (being the nearest equivalent zone in the National Planning Standards for the operative District Plan zonings) to MCZs.<sup>30</sup> The Council did not, as part of PC14, introduce

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<sup>30</sup> For example, Kainga Ora, Scentre (NZ) Limited and Lendlease New Zealand Limited.

new MCZ zones, and thus there is no rule framework for such zones. The introduction of MCZs was not considered in the preparation of PC14, and there is an absence of any section 32 evaluation of the option of rezoning any land to MCZ within any area in Christchurch.

- 5.5 Even if the relief met the requirements of the first limb of *Clearwater*, the proposed MCZ rezonings could fail the second limb of the *Clearwater* test, particularly if a rezoning involved the introduction of new rules that differ from the existing rules for the district centres, other than those relating to height/density. This is particularly the case where the MCZ rules could enable new or different activity types (e.g. larger officer tenancies) not previously enabled, in circumstances where PC14 has not sought to change activity types, but only heights and densities.
- 5.6 Mr Lightbody's section 42A report, particularly at appendix 6, further discusses rezonings that are outside of scope, including those involving land that lie outside of walkable catchments, which is beyond the areas covered by NPS-UD policy 3.

## **6. WITNESSES FOR THE COUNCIL**

- 6.1 The Council is calling 11 witnesses for the Central City and Commercial zones hearing:
- (a) Mr Andrew Willis (s42A report addressing Central City density and height; Radio communication pathways QM);
  - (b) Ms Holly Gardiner (s42A report on the CCZ, CCMUZ and CCMUZ(SF));
  - (c) Mr Kirk Lightbody (s42A report on Commercial Zones beyond the Central City including rezoning of commercial zones);
  - (d) Ms Suzanne Richmond (s42A report on Central City heritage matters – Arts Centre, New Regent Street, Cathedral Square precincts);
  - (e) Ms Ruth Allen (commercial feasibility, development viability);
  - (f) Mr Mike Green (wind);
  - (g) Mr Tim Heath (economics);
  - (h) Mr Kirdan Lees (economic demand);

- (i) Ms Amanda Ohs (heritage);
- (j) Mr Alistair Ray (urban design for city centre); and
- (k) Ms Nicola Williams (urban design commercial and mixed-use zones).

**DATED** 17 October 2023

A handwritten signature in blue ink, appearing to be 'D G Randal / C O Carranceja', written in a cursive style.

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**D G Randal / C O Carranceja**  
**Counsel for the Christchurch City Council**