

**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

**MEMORANDUM OF COUNSEL FOR CHRISTCHURCH CITY COUNCIL
REGARDING CITY CENTER ZONE CLARIFICATIONS RAISED BY
SUBMITTER**

3 September 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:

1. Christchurch City Council (**Council**) is grateful to the Panel for promptly clarifying its recommendations and mapping on Plan Change 14 (**PC14**) through its Minutes 50 to 53 (and associated materials).
2. The Council has been collating its remaining questions of clarification with the intention of filing these in one go, as requested by the Panel in paragraph 11 of its Minute 52.
3. However, on 30 August 2024 the Council received a letter from counsel for Carter Group Property Limited raising three issues with the Panel's recommendations in relation to the City Centre Zone (**CCZ**) that the Council was intending to make a decision to adopt / reject on 4 September 2024. A copy of that letter is **attached** to this memorandum.
4. Appendix 1 to that letter is a table setting out three issues in separate rows. Council officers have been considering the three issues and have identified additional issues with the CCZ provisions. The Council respectfully seeks clarification from the Panel on these issues as outlined from paragraph 7 below.
5. In the present circumstances, the Council is not in a position to make a decision to adopt / reject the Panel's recommendations on the CCZ on 4 September 2024 due to these clarifications needed from the Panel. However, the Council intends to reschedule decision-making to occur as soon as possible after the Panel clarifies the issues identified below in order to provide certainty regarding the CCZ. Decision-making has tentatively been rescheduled for 18 September 2024, but the Council intends to arrange a special meeting if it can implement the Panel's clarifications on the CCZ sooner. Accordingly, the Council would be grateful for the Panel's prompt clarification on the issues below.
6. The Council intends to consider and make decisions on other recommendations of the Panel on or before 4 December 2024.

Clarification sought

Rule 15.11.1.1 P13

7. In the first row of the table in Appendix 1 to the **attached** letter, the submitter seeks the deletion of Rule 15.11.1.1 P13 (e), (f), (h) and (i). The submitter's concern is that the Panel's recommended rule 15.11.1.1 P13 is contrary to the High Court's findings in *Waikanae* and the interpretation of *Waikanae* adopted and clarified on by the Panel in Minute 52.
8. Counsel for the submitter has since clarified that the intent of the request is to only reject tracked changes proposed in activity specific standards (e), (f), (h) and (i) of rule 15.11.1.1 P13 as recommended by the Panel, rather than deletion in their entirety.
9. The Council respectfully seeks clarification from the Panel whether rejecting the tracked changes proposed in activity specific standards (e), (f), (h) and (i) of rule 15.11.1.1 P13 correctly reflects the Panel's interpretation of *Waikanae* as applied to chapter 15 and the CCZ.

Rule 15.11.1.2 C1 and associated provisions

10. The Panel's recommended chapter 15 rule 15.11.1.2 C1 makes a controlled activity urban design certification approach available for buildings between 28m to 45m in height. The relevant part of the Panel's recommended rule states:

	Activity	The matters over which Council reserves its control:
C1	<p>a. Any new building, external alteration to any existing building, or the use of any part of a site not occupied by a building, for an activity listed in Rule 15.101.1.1 P1 to P17, which is:</p> <p>i. within the Central City Core area 28m to or less 45m in height; and</p>	<p>a. That the activity is undertaken in accordance with the urban design certification.</p>

11. In the second row of the table and on the last page of Appendix 1 to the **attached** letter, the submitter seeks an amendment to rule 15.11.1.2 C1 on the basis that the Panel appears to have inadvertently removed the ability for buildings less than 28m in height to be certified.

The submitter seeks this amendment on the basis that paragraph 176(c) of the Panel's Part 3 recommendations is that it is "*appropriate to increase the height at which Rule 15.11.1.2 C1 urban design certification pathway to include buildings up to 45m in height*" [our underlining for emphasis].

12. However, Council officers have noted the following from the Panel's Part 3 recommendations and recommended provisions which raises some additional matters for clarification:

(a) Paragraph 176(a) of the Panel's Part 3 recommendations mentions the Panel's favoured approach to building heights in the CCZ includes a permitted activity regime beneath 28m as follows:

"We favour a tiered approach which permits buildings up to 28m that meet all built form standards, provides for buildings not meeting built form standards or between the heights of 28 and 45m as controlled or restricted discretionary activities, subject to urban design controls and matters of discretion, and those buildings greater than 45m, should be restricted discretionary activities, subject to urban design matters of discretion."

[our underlining for emphasis]

(b) The Panel's recommended chapter 15 provisions include a permitted activity CCZ rule 15.11.1.1 P18 for "Small Buildings" which states:

P18	<u>Small buildings for an activity listed in Rule 15.11.1.1 P1 to P17</u>	<ul style="list-style-type: none"> <u>a. All small buildings shall be built up to the road boundary for the full width of the site;</u> <u>b. The maximum height shall be 21 metres, unless otherwise specified in Rule 15.11.2.1(a)(ii);</u> <u>c. There shall be no vehicle access to the site;</u> <u>d. There shall be no onsite vehicle parking;</u> <u>e. Where residential activities are included, a separate residential access to the building must be provided from the street or public laneway; and</u> <u>f. Glazing of the street fronting façade shall be as follows:</u> <ul style="list-style-type: none"> <u>i. ground floor between 0.5m and 3m in height – 75% minimum;</u> <u>ii. first floor level and above – 30% minimum per floor.</u>
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(c) The Panel's recommended provisions also include a new restricted discretionary activity rule 15.11.1.3 RD10 for activities listed in rule 15.11.1.1 P18 that do not meet one or more of the activity specific standards. The rule states:

	Activity	Council's discretion shall be limited to the following matters:
RD10	<p>a. <u>Any activity listed in Rule 15.11.1.1 P18 that does not meet one or more of the activity specific standards.</u></p> <p>b. <u>Any application arising from this rule shall not be limited or publicly notified.</u></p>	<p>a. <u>City Centre Zone urban design – Rule 15.14.2.6</u></p>

- (d) The Panel's recommended chapter 2 provisions include a definition for "Small building" as follows:

Small building

For the purposes of Chapter 15, means a building, structure or addition to a building, on sites with a street boundary of 21 metres or less in width and a pre-development legal boundary maximum internal width of 21 metres.

13. The Council respectfully asks the Panel to provide clarification of the Panel's intended outcome regarding rules 15.11.1.1 P18, 15.11.1.1 C1, the definition of "small buildings" and associated CCZ provisions as follows:

- (a) What is the intended activity status for a building **that is under 28m in height** in the CCZ (and thus below the height for buildings that would be captured by recommended rule 15.11.1.2 C1) in circumstances where:
- (i) The sub-28m building is not a "small building" as defined in the Panel's recommended chapter 2 provisions? Is such a building intended to be:
- (1) permitted if also in compliance with all built form standards (as mentioned in paragraph 176(a) of the Panel's Part 3 recommendations); or
 - (2) a controlled activity under rule 15.11.1.2 (as appears to be suggested by the submitter); or
 - (3) a restricted discretionary activity under rule 15.11.1.3 RD1; or
 - (4) otherwise have a different activity status?

- (ii) The sub-28m building is a "small building" as defined in the Panel's recommended chapter 2 provisions, but is not "*for an activity listed in Rule 15.11.1.1 P1 to P17*" as referred to in the left-hand column of recommended rule 15.11.1.1 P18? Is it intended to be a discretionary activity under rule 15.11.1.4 D2, or is the activity status taken from the applicable activity the building is intended to contain? The Panel's recommended rule 15.11.1.3 RD10 only applies to breaches of activity specific standards in the right-hand column of rule 15.11.1.1 P18.
- (b) Activity specific standard (b) in rule 15.11.1.1 P18 refers to a maximum height of 21 metres "*unless otherwise specified in Rule 15.11.2.1(a)(ii)*". However, recommended rule 15.11.2.1(a)(ii) does not specify alternative heights.
- (i) Is activity specific standard (b) in rule 15.11.1.1 P18 intended to cross-reference to rule 15.11.2.11(a)(ii) regarding an 8m building height for New Regent Street, so that "small buildings" of up to 21m are not permitted in New Regent Street? And if so, should rule 15.11.2.11.b be amended to avoid disapplying rule 15.11.2.11(a)(ii) to "small buildings" permitted by rule 15.11.1.1 P18 by stating the following?
- "With the exception of rule 15.11.2.11.a.ii, this rule does not apply to new buildings and alterations permitted by Rule 15.11.1.1 P18"*
- [suggested addition underlined]
- (ii) If not, what is the intended cross-reference and/or the alternative maximum height for a "small building" in activity specific standard (b) in rule 15.11.1.1 P18?
- (c) Recommended rule 15.11.1.3 RD1 applies to buildings for an activity listed in rule 15.11.1.1 P1 to P17 which is not a controlled activity under rule 15.11.1.2 C1. Is it also intended that rule 15.11.1.3 RD1 would not apply to:

- (i) "small buildings" permitted by rule 15.11.1.1 P18 (similar to rule 15.11.1.3 RD2); or
 - (ii) buildings up to 28m that meet all built form standards (as mentioned in paragraph 176(a) of the Panel's Part 3 recommendations)?
- (d) What changes are required to the CCZ recommended provisions in light of the above?
- (e) Whether any changes to the Panel's recommendations (such as those identified in paragraphs 11 and 12(a) above) are necessary?
14. The Council has asked the submitter to reflect on the amendment sought to rule 15.11.1.2 C1, having regard to permitted activity rule [15.11.1.1](#) P18 and paragraph 176(a) of the Panel's Part 3 recommendation (as set out in paragraphs 12(a) and 12(b) above). The Council has received confirmation from the submitter that the amendment to rule [15.11.1.2](#) C1 sought in the **attached** letter would no longer be required if the CCZ provisions are clarified so that buildings up to 28m in height are fully permitted where they meet built form standards.

Rule 15.14.3.1(b)

15. In the third row of the table in Appendix 1 to the **attached** letter, the submitter seeks the deletion of rule 15.14.3.1(b) from the Panel's recommended provisions on the basis they do not reflect paragraph 175(e) of the Panel's Part 3 recommendation which states:

The notified amendments to Rule 15.14.3.1b for Central City should be deleted as they are already addressed in Rule 15.14.2.6.

16. The Council respectfully seeks clarification from the Panel that deleting rule 15.14.3.1(b) from the recommended provisions is consistent with the Panel's intent in paragraph 175(e) of the Panel's Part 3 recommendation.

Relationship between certification path and wind matter of discretion

17. The Panel's recommended rule 15.11.1.2 C1 anticipates an urban design certification approach available for buildings between 28m to 45m in height against the urban design provisions / outcomes in rule 15.14.2.6.
18. Recommended rule 15.14.2.6.x applies to buildings over 28m in height, while subclause f of rule 15.14.2.6.x refers to the mitigation of adverse impacts of wind. However, an urban design certifier for controlled activity buildings between 28m and 45m would not be qualified to certify mitigation of wind impacts for such buildings.
19. The Council respectfully seeks clarification from the Panel as follows:
 - (a) Whether it is intended that the urban design certification under rule 15.11.1.2 C1 for buildings between 28m and 45m would exclude certification of mitigation of wind under rule 15.14.2.6.x?
 - (b) If not, what is the Panel's intended outcome?

Matter of discretion for maximising use of development capacity

20. Paragraph 175(c) of the Panel's Part 3 recommendations states:

The 90m maximum height threshold should be deleted and all buildings above 45m should be RDA subject to urban design matters of control and discretion in rule 15.14.2.6 (as amended by us) and the following additional restriction of discretion:

- a. maximising the use of development capacity on the site along the street frontages below 45m in height.

[our underlining for emphasis]

21. The Council respectfully seeks clarification from the Panel as follows:
 - (a) Whether the additional matter of discretion has already been incorporated into the Panel's recommended rule 15.14.2.6 (e.g. in subclause viii)?
 - (b) Alternatively, whether the Panel intends an additional matter of discretion would be inserted into rule 15.14.2.6, and if so, could it be worded as follows (or such other wording the Panel recommends)?

"for those parts of a building below 45m in height, maximises the development capacity on the site along the street frontages"

Heritage matter of discretion

22. Paragraph 175(d) of the Panel's Part 3 recommendations states:

"That the matters of control and discretion in Rule 15.14.2.6 and 14.3.1 should be amended to include an additional matter of assessment for the effects of buildings in excess of 28m on the heritage values of scheduled heritage items and settings, New Regent Street and the Christchurch Arts Centre. We have also recommended additional drafting changes for clarity and consistency."

[our underlining for emphasis]

23. The Panel's recommended rule 15.14.2.6.x.e is an additional matter of assessment for the effects of buildings in excess of 28m on the heritage values of New Regent Street and the Christchurch Arts Centre only, but it does not provide for such assessment for "*scheduled heritage items and settings*" generally as mentioned in paragraph 175(d) of the Panel's Part 3 recommendations. Recommended rule 15.14.2.6.x.e states:

e. For buildings located to the east of New Regent Street and to the east of the Arts Centre heritage items and settings in Appendix 9.3.7.2, how the building manages the individual or cumulative effects of shading and visual dominance on those heritage items and settings.

24. The Council respectfully seeks clarification from the Panel as to whether the Panel intends that recommended rule 15.14.2.6.x.e would include an assessment for the effects of buildings in excess of 28m on the heritage values of scheduled heritage items and settings (i.e. not just New Regent Street and the Christchurch Arts Centre).

Concluding request

25. If, in clarifying the above issues, the Panel considers the recommended chapter 15 provisions should be altered, then the Council would be grateful if the Panel could provide those alterations in an updated Microsoft Word version of the recommended chapter 15 provisions.

Dated: 3 September 2024

Two handwritten signatures in blue ink are positioned above a horizontal line. The signature on the left is more compact and stylized, while the one on the right is more elongated and fluid.

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

30 August 2024

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PLAN CHANGE 14 – ERRORS OR OVERSIGHTS IDENTIFIED WITH RESPECT TO THE PANEL’S RECOMMENDATIONS ON THE CITY CENTRE ZONE

- 1 We represent Carter Group Property Limited who were submitters on the Council’s proposed Housing and Business Choice Plan Change (*PC14*).
- 2 We understand that on 4 September 2024, the Christchurch City Council (*Council*) intends to make a decision to adopt / reject the Independent Hearing Panel’s (Panels) recommendations in relation to the City Centre Zone (*CCZ*) and a number of qualifying matters (*QMs*) as they relate to the *CCZ*.
- 3 The purpose of this letter is to indicate to the Council officers a number of issues identified in the Panel’s Recommendations on *PC14* related to the submitter’s relief that need to be addressed prior to any substantive decision by the Council on 4 September 2024 on the Recommendations. These are set out in **Appendix 1** to this letter.
- 4 We note that should these not be resolved prior to decisions being made by the Council on Recommendations, then we consider these would establish strong grounds for judicial review on the basis that the Council’s decision to adopt these Recommendations is challengeable as the Recommendations are:
 - 4.1 Internally inconsistent (in particular with regard to the application of the decision in *Waikanae*); and/or
 - 4.2 From the face of the Recommendations, relevant information has not been taken into account which leads to an error in decision-making.
- 5 Separately, there are also apparent disconnects between the Recommendations of the Panel and the drafting of the provisions to reflect those Recommendations can easily be reconciled and resolved.

6 We would be happy to discuss the contents of this letter further with you.

Yours sincerely



Jo Appleyard / Lucy Forrester
Partner / Senior Solicitor

ERRORS OR OVERSIGHTS OF THE PC14 RECOMMENDATIONS WITH RESPECT TO THE RELIEF SOUGHT BY CARTER GROUP LIMITED

Provision	Submitter evidence	Council’s position	Panel’s recommendation	The error / oversight and relief sought
City Centre Zone				
Rule 15.11.1.1 P13 (e) (f) (h) and (i) (Residential activity - activity specific standards) ¹	Per the evidence of Mr Phillips: Accounting for <i>Waikanae</i> , the rule is more prescriptive and less enabling than the mandatory MDRS and/or imposes an additional constraint relative to the status quo and conflict with objective 3.3.2. ²	The Council’s position was that the submission be rejected on the basis that <i>“In regards to the broader comments made by submitters, that these provisions are onerous and do not sufficiently implement the intensification sought by the NPS-UD, it has been widely discussed in Council’s section 42A reports and evidence that Christchurch has a housing surplus of plan-enabled, feasible development capacity, and this capacity will be further increased with the proposed changes in PC14.”</i> and that while the changes could impact on the status quo of current development rights, this is required to manage how intensive developments can be designed so as to provide high quality outcomes. ³	The Panel have accepted the provisions in the Council’s Reply but have not provided any substantive reasoning in Recommendation Part 3 and have failed to take into account relevant information being the submitter’s evidence or to consistently apply the decision in <i>Waikanae</i> . ⁴	Neither the Council nor the Panel addressed or have taken into account relevant information being the submitter’s evidence and relief. The Panel’s Recommendation incorrectly states that this built form standard will be more enabling than the status quo. The provision would be contrary to the High Court’s findings in <i>Waikanae</i> and the interpretation of <i>Waikanae</i> adopted and clarified on by the Panel. ⁵ The relief required is deletion of Rule 15.11.1.1 P13 (e) (f) (h) and (i).

¹ IHP Recommended PC 14 Provisions – Chapter 15: Commercial, Rule 15.11.1.1 P13.

² Statement of evidence of Jeremy Phillips (Planning) on behalf of Carter Group Limited, dated 20 September 2023 at [164].

³ Christchurch District Plan – Planning Officers report of Holly Elizabeth Gardiner Under Section 42A of the Resource Management Act 1991 (City Centre Zone; Central City Mixed Use Zone; Central City Mixed Use (South Frame) Zone), dated 11 August 2023 at [8.1.104]-[8.1.113].

⁴ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones, dated 29 July 2024.

⁵ Minute 52: Response to Third Council Request for Clarification dated 27 August 2024 at [8].

Provision	Submitter evidence	Council's position	Panel's recommendation	The error / oversight and relief sought
Rule 15.11.1.2 C1(iii) (Built form standards applying to controlled activity) ⁶	Per the evidence of Mr Phillips: Amendments to rule 15.11.1.2 C1(iii) are also disenabling relative to the status quo ^{7,8}	The Council's position was that the submission be rejected on the basis that " <i>the activity status provisions as proposed will remain enabling in the context of the NPS-UD with the matters of control and discretion focused on urban design considerations.</i> " ⁹ The section 42A report notes that the intention of the constraints are to achieve a well-functioning urban environment. ¹⁰	The Panel accepted the provisions in the Council's Reply on the basis that " <i>It is appropriate to increase the height at which Rule 15.11.1.2 C1 urban design certification pathway to include buildings up to 45m in height. This mid-tier building height, reflects existing taller built form within the city, and many taller buildings between 30 and 50m pre-earthquake on a range of sites. At 45m, there is acceptance by the planners and urban design experts who attended the conferencing that buildings can and are able to be designed to address urban design matters identified by Mr Ray. The only difference of opinion appeared to be the confidence in the certification process and the experience of Mr Willis that an RDA process resulting is</i>	Neither the Council nor the Panel addressed or have taken into account relevant information being the submitter's evidence and relief. Rule 15.10.1.2 C1 in the Operative District Plan (i.e. the status quo) provides a certification pathway (Controlled activity) for buildings up to 28m height. The Panel have changed the rule to allow for certification of buildings between 28m-45m (which the submitter supports), but in doing so have inadvertently removed the ability for buildings <28m to be certified. As rule 15.10.1.2 C1 no longer refers to buildings <28m in the recommended provisions, Rule 15.11.1.3 RD1 would apply and require buildings under 28m to obtain resource consent as a Restricted discretionary activity. This may be an unintended drafting error, given it would place more onerous consenting requirements on buildings <28m high relative to the status quo and

⁶ IHP Recommended PC 14 Provisions – Chapter 15: Commercial at [15.11.1.2] C1(iii).

⁷ Statement of evidence of Jeremy Phillips (Planning) on behalf of Carter Group Limited, dated 20 September 2023 at [164].

⁸ Statement of evidence of Jeremy Phillips (Planning) on behalf of Carter Group Limited, dated 20 September 2023 at [165].

⁹ Christchurch District Plan – Planning Officers report of Holly Elizabeth Gardiner Under Section 42A of the Resource Management Act 1991 (City Centre Zone; Central City Mixed Use Zone; Central City Mixed Use (South Frame) Zone), dated 11 August 2023 at [8.1.8]-[8.1.14]

¹⁰ Christchurch District Plan – Planning Officers report of Holly Elizabeth Gardiner Under Section 42A of the Resource Management Act 1991 (City Centre Zone; Central City Mixed Use Zone; Central City Mixed Use (South Frame) Zone), dated 11 August 2023 at [8.1.7].

Provision	Submitter evidence	Council's position	Panel's recommendation	The error / oversight and relief sought
			<i>superior design outcomes.</i> ¹¹ The Panel did not take into account the submitter's evidence.	in a manner that is contrary to the High Court's findings in <i>Waikanae</i> . The relief required is to retain the status quo for buildings under 28m under rule 15.10.1.2 C1, and insert the recommended provisions for buildings 28m-45m as a second part to the rule. Proposed amendments to the rule that would achieve this are attached at the end of this appendix.
Rule 15.14.3.1(b) (Maximum building height assessment matters)	Per the evidence of Mr Phillips: Rule 15.14.3.1 (b) matters are unnecessarily prescriptive; technical (e.g. requiring assessments of wind or reflected heat); and may be difficult to fully satisfy despite being a necessary consequence of enabling the greater height and density sought by NPS-UD Policy 3 and its effects as recognised by Policy 6. ¹²	The Council's position in the section 42A report was that the submission be rejected but no assessment of the submitter's relief or evidence was included. ¹³	The Panel appears to accept the submitter's evidence on this issue and finds " <i>The notified amendments to Rule 15.14.3.1b for Central City should be deleted as they are already addressed in Rule 15.14.2.6.</i> " ¹⁴	The recommended provisions do not reflect the Panel's Recommendation to delete these provisions in respect of the Central City Zone so the provisions are inconsistent with the recommendation. The relief required is deletion of Rule 15.14.3.1(b).

¹¹ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones, dated 29 July 2024 at [176(c)].

¹² Statement of evidence of Jeremy Phillips (Planning) on behalf of Carter Group Limited, dated 20 September 2023 at [179] – [180].

¹³ Christchurch District Plan – Planning Officers report of Holly Elizabeth Gardiner Under Section 42A of the Resource Management Act 1991 (City Centre Zone; Central City Mixed Use Zone; Central City Mixed Use (South Frame) Zone), dated 11 August 2023 at Appendix A – Table of submissions with recommendation City Centre and Mixed Use Zones.

¹⁴ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones, dated 29 July 2024 at [176(e)].

Relief required to Rule 15.11.1.2 C1:

<p>C1</p>	<p>a. Any new <u>building</u>, external alteration to any existing <u>building</u>, or the use of any part of a <u>site</u> not occupied by a <u>building</u>, for an activity listed in Rule <u>15.10.1.1</u> P1 to P17, which is:</p> <ul style="list-style-type: none">i. visible from a publicly owned and <u>accessible</u> space; andii. <u>is either:</u><ul style="list-style-type: none">A. <u>28m or less in height; or</u>B. <u>28m to 45m in height and meets the following built form standards:</u><ul style="list-style-type: none">1. <u>Rule 15.11.2.3 Sunlight and outlook for the street; and/or</u>2. <u>B. Rule 15.11.2.12 Maximum road wall height; and</u>iii. is certified by a qualified expert on a <u>Council</u> approved list as meeting each of the urban design provisions/ outcomes in Rule <u>15.14.2.6 City Centre Zone Urban Design</u>. <p>b. Certification shall include sufficient detail to demonstrate how the relevant urban design provisions/ outcomes in Rule <u>15.14.2.6</u> have been met.</p> <p>c. This rule does not apply to any activity requiring consent under C2 below.</p> <p>d. Any application arising from this rule shall not be publicly or limited notified.</p>	<p>1. That the activity is undertaken in accordance with the urban design certification.</p>
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