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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REPLY BY THE CHRISTCHURCH CITY COUNCIL TO MATTERS ARISING DURING THE HEARING OF SUBMISSIONS ON PROPOSED PLAN CHANGE 14

17 May 2024

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TABLE OF CONTENTS

MAY IT PLEASE THE PANEL:

1. INTRODUCTION AND STRUCTURE OF REPLY

1.1 This document sets out the reply on behalf of the Christchurch City Council (**Council**) to matters arising during the hearing of submissions on Proposed Plan Change 14 (**PC14**).

1.2 The Council is grateful to the Panel for the high-quality hearing it has conducted and acknowledges the hard work that has gone into evaluating the many submissions and voluminous evidence before it. The Council is likewise grateful to submitters for their extensive efforts and the information they have brought to bear on the process.

1.3 The collective investment of time and resources in PC14 reflects the vital importance to the Council and the people of Ōtautahi Christchurch that housing and business intensification is facilitated, encouraged, and managed in a way that enhances the liveability and vibrancy of the city and improves the lives of its inhabitants. This will be done by encouraging development where it most makes sense while retaining and enhancing the characteristics of the urban environment that make this city special.

1.4 The Council's reply addresses, in light of the representations and evidence heard by the Panel, the Council's position on:

(a) key overarching or generic issues relevant to the Panel's consideration of PC14, namely:

(i) the implications of the Council's **split decision-making** for PC14;

(ii) the **mandatory and discretionary matters for inclusion in PC14**, by reference to section 80E and the decision in *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga*[1] (***Waikanae***);

(iii) other issues of **scope**, including why the various relief sought by submitters is either within or outside scope of PC14;

(iv) in respect of qualifying matters (**QMs**):

(1) evaluation requirements for QMs, including by reference to the *"objectives"* of PC14, the other relevant District Plan

[1] [2023] NZEnvC 56.

(**Plan**) objectives, and higher-order planning instruments – including those that strongly direct the Council to achieve a well-functioning urban environment (**WFUE**), good environmental outcomes, and the efficient and effective use and development of infrastructure;

(2) the relevance of the significant current excess in development capacity in Christchurch, and other contextual matters; and

(3) the relevance of **amenity** for assessing QMs in PC14, in light of policy 6 of the National Policy Statement on Urban Development (**NPS-UD**);

(v) how PC14 promotes **equitable outcomes** for people living in Ōtautahi Christchurch, including disadvantaged communities;

(b) matters raised during the various hearing streams / topics, as follows:

(i) strategic overview / general submissions, including:

(1) overarching concerns raised by submitters; and

(2) the strategic directions objectives;

(ii) city-wide qualifying matters relating primarily to the natural environment, namely:

(1) outstanding natural landscapes and features (**ONL / ONF**), sites of ecological significance (**SES**), and sites of cultural significance (Wāhi Tapu / Wāhi Taonga, Ngā Tūranga Tupuna, Ngā Wai and Belfast Silent File) (**SCS**);

(2) water body setbacks;

(3) Open Space Zones;

(4) Specific Purpose (Ōtākaro Avon River Corridor) Zone, including Fitzgerald Avenue geotechnical constraint (**SPOARC**) and Specific Purpose (Cemetery) Zone;

(5) the Slope Instability QM; and

(6) high flood hazard areas;

(iii) central city and commercial zones, including:

(1) the centres-based approach;

(2) Central City;

(3) changes to the City Centre Zone;

(4) changes to Central City QMs;

(5) Central City Mixed Use Zone and Central City Mixed Use Zone (South Frame);

(6) minimum building heights to realise development capacity;

(7) wind effects and urban design;

(8) intensification of centres beyond the Central City;

(9) definitions of building base and building tower; and

(10) rezoning of commercial zones;

(iv) residential zones, including:

(1) the Medium Density Residential zone (**MRZ**) and the High Density Residential zone (**HRZ**);

(2) walkable and adjacent catchments for the purposes of NPS-UD policy 3;

(3) the Council's position in respect of retirement villages;

(4) commercial use on ground-floor of residential developments;

(5) the sunlight access QM;

(6) residential heritage areas QM (**RHAs**);

(7) residential character areas QM (**RCAs**);

(8) the Riccarton Bush interface QM;

(9) the low public transport accessibility area (**LPTAA**) QM;

(10) the Port Hills stormwater constraints QM (proposed by a submitter);

(11) the residential / industrial interface QM;

(12) the residential Future Urban Zone and outline development plans (**ODPs**);

(13) the Residential Visitor Accommodation zone and the Residential Large Lot zone;

(14) proposed rezoning of residential zones and other zones to residential (proposed by submitters); and

(15) the relief sought by the Department of Corrections;

(v) other zones, namely:

(1) the School, Tertiary, and Hospital Specific Purpose Zones (**SPZs**);

(2) Industrial General Zone (including Brownfield Overlay); and

(3) Mixed Use Zone (**MUZ**);

(vi) and subdivision, development and earthworks, and 'other matters' namely transport;

(vii) **heritage items** and associated provisions;

(viii) other city-wide QMs, namely:

(1) coastal hazards;

(2) trees;

(3) Christchurch International Airport Noise Influence Area QM (**Airport Noise QM**); and

(4) city spine transport corridor;

(5) wastewater constraint area;

(6) electricity transmission corridors and infrastructure;

(7) Lyttelton Port overlay; and

(8) NZ Rail network interface.

(ix) **financial contributions** relating to tree canopy cover.

1.5 The reply does not unnecessarily repeat the contents of the various sets of opening legal submissions filed on behalf of the Council[2] or introduce new evidence. Nor does the reply repeat information previously provided by the Council in response to the Panel's various requests made during the hearing; the full list of those requests and where the information provided can be reviewed is in **Attachment 1**.

1.6 Attachments 2 to 11 comprise the following (with a more detailed index contained in the **Appendix** at the end of this reply document):

(a) **Attachment 2**: the final set of PC14 provisions recommended by the Council planners (note that a set of provisions annotated in accordance with the Panel's direction in minute 36 is being filed separately, under cover of a memorandum of counsel dated 17 May 2024[3]);

(b) **Attachment 3**: accept / reject tables reflecting the Council planners' final recommendations;

(c) **Attachment 4**: tables setting out the Council's position on rezoning requests made by submitters;[4]

(d) **Attachment 5**: additional section 32AA and section 77J analysis, in respect of the financial contributions / tree canopy cover provisions, the Port Hills stormwater QM, and the Airport Noise QM respectively;

(e) **Attachment 6**: information regarding the mapping changes recommended by the Council planners comprising descriptive tables (in addition, all such mapping changes can be viewed at the following internet link, which is publicly accessible);

(f) **Attachment 7**: supporting coastal hazards mapping analysis;

(g) **Attachment 8**: the Council planning experts' response to the conferencing carried out by architect submitters;

(h) **Attachment 9**: a table of the medium density residential standards (**MDRS**) versus building capture;

[2] Those submissions were dated 3 October 2023 (strategic overview, here), 11 October 2023 (city-wide QMs relating to the natural environment, here), 17 October 2023 (central city and commercial zones, here), 26 October 2023 (residential zones, here), 16 November 2023 (other zones, subdivision, development, and earthworks, and other matters (transport), here), 16 November 2023 (historic heritage, here), and 8 April 2024 (other city-wide QMs and financial contributions, here).
[3] As explained in that memorandum, this approach was taken because, while every effort has been made to ensure the accuracy of the annotated provisions, the Council team has been focused on updating the provisions in **Attachment 2** to this reply to accord with the Panel's requests in its Minute 48 of 14 May 2024.
[4] As requested by the Panel, noted as information request #34.

(i) **Attachment 10**: an updated summary of RCAs and RHAs;

(j) **Attachment 11**: LPTAA QM changes; and

(k) **Attachment 12**: an updated RCA map relating to Cashmere View.

2. IMPLICATIONS OF THE COUNCIL'S SPLIT DECISION-MAKING ON PC14

2.1 Counsel's memorandum dated 19 April 2024 formally advised the Panel of the *Gazette* notice, containing the following direction:

> *(3) In accordance with section 80L of the Resource Management Act 1991 (RMA), the Minister Responsible for RMA Reform directs Christchurch City Council to notify decisions on the independent hearings panel's recommendations on parts of the plan subject to Policy 3 and Policy 4 of the National Policy Statement on Urban Development in accordance with clause 102 of Schedule 1 of the RMA by 12 September 2024, and notify decisions on the independent hearings panel's recommendations on parts not subject to Policy 3 and Policy 4 of the National Policy Statement on Urban Development by 12 September 2025.*[5]

2.2 On 1 May 2024, the Council resolved:

> *"(…) that its decision by 12 September 2024 on the IHP's recommendations on PC14 will be confined to (…):*
>
> *3.a Those parts of Plan Change 14 that implement policies 3 and 4 of the NPS-UD, including the rezoning of land in Sydenham to Mixed-use, and*
>
> *3.b Related provisions, including objectives, policies, rules, standards, and zones within policy 3 and 4 areas; and*
>
> *3.c Financial contributions for tree canopy cover across all relevant zones (including beyond NPS-UD areas)"*.

2.3 The Council understands from minute 36 that the Panel intends to issue a single recommendations report on all aspects of PC14, and acknowledges the Panel's concerns regarding 'unpicking' the evidence, submissions, and

[5] As an aside, the Ministry for the Environment has acknowledged that the latter date is an error; officials are working to have the date corrected, to refer to 12 December 2025 (which was the date specified in the earlier letter from Minister Bishop to the Mayor, reported to the Panel in counsel's memorandum of 27 March 2024 (here)).

provisions to determine which aspects do and do not relate solely to policies 3 and 4 of the NPS-UD.

2.4 Given the intended scope of the Council's initial decision in September 2024, however, it would greatly assist the Council if the Panel's recommendations expressly address the following matters, which go to the spatial extent of the 'sphere of influence' of NPS-UD policies 3 and 4:

(a) the classification of Christchurch's centres into the various types of centre zones described in policy 3, being City Centre Zones (**CCZ**), Metropolitan Centre Zones (**MCZ**) (if any), Neighbourhood Centre Zones (**NCZ**), Local Centre Zones (**LCZ**), and Town Centre Zones (**TCZ**);

(b) the areas constituting a *"walkable catchment"* around the CCZ and MCZs (if any) for NPS-UD policy 3(c) intensification; and

(c) the areas constituting what is *"adjacent"* around NCZs, LCZs, and TCZs for NPS-UD policy 3(d) intensification.

2.5 No doubt the Panel's recommendations would address those matters in any event, given that they are central to an IPI, policy 3 of the NPS-UD, and the submissions on PC14.

2.6 The Council's position on these matters is set out below in respect of the centres and residential topics.

2.7 The Panel will note that the PC14 provisions recommended by the Council in **Attachment 2** do **not** distinguish between provisions that solely relate to areas beyond the influence of NPS-UD policy 3, and otherwise (as had been previously signalled). Once the Panel has made its recommendations, officers will take the further steps necessary to brief the Council on its obligations for the September 2024 decision.

3. MANDATORY AND DISCRETIONARY MATTERS FOR INCLUSION IN PC14

Section 80E requirements

3.1 At a basic level, the mandatory and discretionary requirements of section 80E are straightforward. Through the PC14 hearing, however, the Panel's detailed questioning has highlighted a lack of clarity in the legislative drafting.

3.2 Relatively clear is the requirement for the Council, through PC14, to incorporate the MDRS and give effect to policies 3 and 4 of the NPS-UD (although the distinction between the two may sometimes be less obvious, given that the MDRS may form part of a NPS-UD policy 3 response).

3.3 The key issues arising during the hearing in relation to NPS-UD policy 3 relate to the classification of centres and the heights and densities to be enabled in each type of centre, addressed in the central city and commercial zones section below, and the extent of walkable catchments and 'adjacency', discussed below in the context of the centres and residential hearing topics.

3.4 It is the discretionary aspects of an intensification planning instrument (**IPI**) that are less clear. In respect of each category in section 80E:

(a) the Council has a broad power to include provisions relating to financial contributions, discussed further below in respect of the tree canopy cover;

(b) PC14 does not contain any additional papakāinga housing provisions beyond the Operative District Plan's Chapter 12 Papakāinga / Kāinga Nohoanga Zone (although there are separate commitments by the Council and mana whenua through the kāinga nohoanga initiative discussed in the Greater Christchurch Spatial Plan[6]); and

(c) the breadth of the words *"related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on [the MDRS or policies 3 and 4]"* is particularly open for debate.

3.5 On this latter point, the Council's position is that there is broad scope for an IPI to contain *"related provisions"*, as indicated by the words *"without limitation"* in section 80E(2).

3.6 Such provisions can ***"support"* intensification** via the MDRS or in response to NPS-UD policy 3. In the case of PC14, rezoning residential areas to Medium or High Density Residential Zone (**MRZ** or **HRZ**) might be considered a change that *"supports"* the MDRS – although nothing particularly turns on this distinction – because:

(a) the MDRS comprise *"the requirements, conditions, and permissions set out in Schedule 3A"*[7], which include objectives, policies, and rules

[6] See the 'key moves' on page 27 of: https://greaterchristchurch.org.nz/assets/Documents/greaterchristchurch-/Greater-Christchurch-Spatial-Plan-2024-Web.pdf
[7] Section 2, RMA.

relating to activity status, notification, subdivision requirements, and common walls, as well as density standards; and

(b) while the provisions making up the MDRS are incorporated through various changes throughout the residential chapter, a key mechanism the Council is using to incorporate the MDRS into *"every relevant residential zone"*, as required by section 77G(1), is rezoning to MRZ or HRZ.

3.7 However, an IPI can also clearly include *"related provisions"* that **restrict or otherwise control intensification**. As well as the direct reference to QMs in section 80E(2), this is clear from the 'flavour' of the other items in that provision: earthworks, fencing, infrastructure, stormwater management (including permeability and hydraulic neutrality), and subdivision are all matters that may reasonably be the subject of additional controls to manage the environmental effects that could otherwise arise from intensification.

3.8 As the Panel will appreciate, PC14 incorporates various measures within the scope of section 80E, including *"related provisions"*, aimed at promoting good resource management outcomes across a variety of topics, including (to name but a few):

(a) trees, through QMs to protect certain scheduled trees and other measures relating to tree canopy cover, to mitigate adverse effects of development on the environment, given the critical importance of trees to climate resilience, health, biodiversity, a well-functioning urban environment, and amenity values;

(b) the city's principal transport spine, because it is critically important to the Council that PC14 facilitates and does not compromise it as a city-shaping asset;

(c) recasting and refinement of residential design principles to improve clarity and their application within the residential rule framework;

(d) the residential / industrial interface QM, recognising that some controls are needed on intensified residential development so as not to exacerbate reverse sensitivity effects for existing industrial zones at their interfaces with residential zones; and

(e) natural hazards, to protect people and property by ensuring inappropriate development does not occur in these areas.

3.9 Commissioner Munro asked[8] where the line is to be drawn between *"related provisions"* that are provisions relating to a QM and otherwise. The catch-all description of QMs (such as in section 77I(j)) helps somewhat to answer this question; if a QM is a matter *"that makes higher density, as provided for by the MDRS or policy, inappropriate in an area (…)"*, then the provisions that limit higher density in an area are those *"related"* to a QM. As such, it is those aspects of the provisions that are subject to additional evaluation requirements (such as in sections 77J and 77L). Other *"related provisions"* – for example, changes to matters of control and discretion regarding residential fencing – are not QMs and are therefore not subject to the additional evaluative requirements.

3.10 Also relevant to Commissioner Munro's question was the Panel's request for further information #17 (in the Council's list). The Panel asked the Council to provide further information regarding: *"the provisions of the operative District Plan that could restrict residential development that would otherwise be enabled through PC14, and are intended to carry on post-PC14 coming into effect but which are not identified as QMs"*. The Council's response[9] explained that in most cases such provisions were not identified as QMs on the grounds that they do not affect building heights or density.

3.11 Section 80E must also be read in light of other relevant RMA provisions, including sections 77G(4), which enables the Council to create new and amend existing residential zones, and section 77N(3), which enables the Council to create new and amend existing urban non-residential zones. These provisions are discussed further below, in the section addressing scope issues.

Waikanae

3.12 A key issue arising during the PC14 hearing, as in other IPIs, is whether *"related provisions"* can go beyond limiting the intensification that would otherwise be newly enabled by the IPI and also constrain *status quo* development rights under the operative Plan.

3.13 Pending further clarification from the High Court (not yet issued), the Council's position on *Waikanae* remains as set out in counsel's opening legal submissions for the strategic directions hearing.[10] In short, the Environment

[8] At the hearing on 15 April 2024.
[9] Appendix C to the memorandum of counsel for the Council dated 29 November 2023, here.
[10] Paragraph 2.57 and following of the submissions, here.

Court in that case took an overly narrow reading of section 80E; the correct legal position is that:

(a) where a Council identifies a new constraint that founds a QM, consequential amendments can be made through an IPI that constrain *status quo* rights; and

(b) such provisions should be assessed on a case-by-case basis, with potential prejudice to interested persons obviously being an important consideration.

3.14 To hold otherwise would, as observed by the Panel considering Kāpiti Coast District Council's IPI:

(a) risk failing to achieve a safe and WFUE, in terms of objective 1 of the NPS-UD; and

(b) unduly restrict sensible planning necessary to achieve objective 1 and cut across the purpose and principles of the Resource Management Act 1991 (**RMA**) in Part 2.[11]

3.15 The Panel has heard from submitters who:

(a) broadly support the Council's position;[12]

(b) instead consider that *Waikanae* was correctly decided and should be strictly applied by the Panel;[13] and

(c) have *"some reservations"* about the Environment Court's reasoning in Waikanae, given that *"the decision contains some fairly blunt propositions that need to be carefully applied in any particular context"*, but consider that certain rules proposed through PC14 inappropriately limit *status quo* development rights.[14]

3.16 The submitters contending for a strict application of *Waikanae* have not squarely engaged with the logic underpinning the emerging body of opinion

[11] Paragraphs 195 and 196 of that Panel's recommendations report, here.
[12] This is understood to be the position expressed by counsel for Ravensdown, in the submissions for Riccarton Bush Trust (here), and in the submissions for Canterbury Regional Council (**ECan**, here). Counsel note the view expressed by counsel for ECan that *"provisions may only be included to constrain existing development rights (i.e. change the status quo) where those amendments are required as a result of the intensification being enabled. Amendments cannot be made to further restrict existing development rights where no intensification is being enabled"*. If counsel understand that submission correctly, it aligns with the Council's position that an identified QM, identified through an IPI to qualify intensified development rights, can appropriately found a restriction on *status quo* rights as well.
[13] See, for example, legal submissions on behalf of Kāinga Ora Homes and Communities (**Kāinga Ora**) (here), Red Spur Limited (here), and Kauri Lodge Rest Home 2008 Limited (here).
[14] Legal submissions for Carter Group Limited dated 24 October 2023, paragraphs 46 to 48, here.

that the case was wrongly decided. In particular, other Panels considering IPIs, a number of whom have observed that *"the Waikanae Land decision is not binding on us as a matter of law"*,[15] have expressed doubts that the case was correctly decided. See, for example, the recommendations of the Panels considering IPIs in Wellington,[16] Porirua,[17] and Kāpiti itself.

3.17 Having recorded the reasons expressed by the Environment Court, the Panel in Kāpiti set out a detailed critique of them, with which counsel respectfully agree. The key passage is reproduced in full, as follows:

> *[190] The Panel respectfully disagrees with the analysis by the Environment Court on the jurisdictional question. The Panel accepts the Court's observation that the inclusion of the Wāhanga Tahi in Schedule 9 affecting the Waikanae Land Company's land not only operates to qualify the operation of the building height and density requirements of the MDRS but also other existing land use controls in a more restrictive way. The central question is whether or not that is authorised by an IPI. We also accept the Court's proposition that the key provision to consider is RMA, s 80E.*
>
> *[191] The Panel disagrees with the analysis at [30] of the Environment Court decision because the Court appears to have assumed that the MDRS is simply the relevant building height and density requirements in Schedule 3A. That is not correct. The MDRS in Schedule 3A includes the objectives and policies in clause 6 already quoted in this decision. The core objective is Objective 1, which has the following goal: "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". A supporting policy is Policy 2, that states "apply the MDRS across all relevant residential zones in the District Plan except in circumstances where a qualifying matter is relevant (including matters of significant such as historic heritage and relationship of Māori and their culture and traditions and ancestral lands, water, sites, wāhi tapu and other taonga".*
>
> *[192] It is evident from the above and the text of RMA, s 77I that cultural heritage values of significance to Māori can qualify in whole or in part the density and building height standards that form part of the MDRS. The wording of Policy 2 does not suggest the values it addresses are not relevant to achieving a well-functioning urban environment more generally under Objective 1.*
>
> *[193] The key interpretation question then is whether or not an ISP can restrict existing development rights and still fall within the meaning of RMA, s 80E(b) as related provisions, including objectives, policies and rules, standards and zones that support or are consequential on the MDRS.*

[15] Paragraph 110 of the Panel's recommendations report 1A on Wellington City Council's IPI, here.
[16] Paragraphs 110 to 122, here.
[17] Paragraph 226-227 of the Porirua City Council recommendations report here.

[194] The Panel considers that if a local territory authority analysing the appropriate content of an IPI establishes that there are qualifying matters of such significance that:

> *(a) The MDRS should not apply; and*
>
> *(b) The tools available in the Plan that recognise those values and impose further restrictions on land use should be used and will also achieve Objective 1 MDRS together with the aim in (a);*

then the provisions fulfilling aim (b) above can be characterised as related provisions that support or are consequential on the MDRS.

[195] Applying the analysis to another context is helpful. Consider the situation where a territorial authority examines whether or not the MDRS should apply to land subject to flood hazards. It becomes apparent to the territorial authority when examining recent flood hazard information that certain land not previously identified as flood-prone is not only unsuitable for greater density and height but is also unsuitable for existing levels of development. As a consequence, the Council considers further restrictions on development should apply. Consequently, in its IPI, the Council extends the existing flood hazard mapping tool in its Plan to apply to land identified as flood-prone. On the Environment Court's analysis, that would not be a supporting or consequential provision of the MDRS because it has the added effect of introducing more restrictive land use controls rather than simply disqualifying the MDRS. Even though the measure is necessary to achieve a safe and well-functioning urban environment under Objective 1 of the MDRS.

[196] It is apparent from the example above that the conclusion of the Environment Court unduly restricts sensible planning necessary to achieve Objective 1, and the 'inherent' limitation found in s 80E runs across the purpose and principles of the RMA in Part 2.

[197] We accept the proposition that further restrictions beyond those necessary to qualify the density and height requirements would not be a usual outcome of an IPI where the focus is on more enablement of housing supply. It is not appropriate for a territorial authority to use the IPI to introduce entirely new measures to restrict urban development outside an IPI's true scope and legitimate qualifying matters under RMA, Subpart 6. However, incidental or consequential adjustments to the Plan provisions to support the overarching objectives and policies of the MDRS within a legitimate qualifying category are not in that class.

[198] The Panel does not take a hostile view about the scope of an IPI just because the usual procedures for appeal to the Environment Court do not apply. Increasingly, streamlined planning processes are becoming a feature of the RMA. There is no evidence that Parliament intended the interpretation of the legitimate scope of an IPI to be construed narrowly or introduce 'inherent' limitations manifestly against Part 2 and Objective 1. Indeed, the term "supporting or consequential on" is terminology that suggests an element of appropriate judgment. Hence the openness of the language in RMA, s 80E(1)(b) and (2).

[199] If the Environment Court decision is applied to its logical end, then the provisions authorised by RMA, s 80E(2) could not be more restrictive than existing provisions governing those matters in any way.

Respectfully, we cannot understand how a territorial authority could sensibly implement the MDRS except in a way that ensures other or further requirements than in the existing Plan for earthworks, fencing, infrastructure, and stormwater management would be applied in the face of the enabled intensification. These potential new restrictions will then operate on any development, even if individual development does not take full advantage of the MDRS. The management regime operates across a new urban landscape of greater development potential, not just the site under construction.

[200] Respectfully, the line the Court drew using the 'inherent' limitation is unworkable and insensitive to context and the statutory scheme.

3.18 In respect of PC14, the Council planners have clearly signalled *Waikanae*-related issues for the Panel to consider, including in Table G1.[18] Provisions having some effect on *status quo* development rights relate to the following QMs:

(a) **significant and heritage trees** (as well as 'other trees'), where the methodology to measure the protection zone around each tree will change in a way that potentially results in a larger areas of protection in many cases;

(b) the four new **RCAs** and additions to existing RCAs which are not currently in the operative Plan, along with changes to activity statuses and built form standards that are in some instances less enabling of development; and

(c) the **residential / industrial interface**, where buildings above 8m high will trigger restricted discretionary activity status where the new built form standard is not complied with, including in MRZ and HRZ where buildings up to 11m high are currently permitted.

3.19 Previously a *Waikanae*-related issue arose in respect of the **Riccarton Bush interface area**, in relation to a side-yard setback to protect views of the Bush down existing driveways. The Council now proposes to retain the *status quo* setback, because of issues raised at the hearing regarding the merits of a larger setback rather than because *Waikanae* would prohibit that outcome.

3.20 Also highlighted in Table G1 are the following QMs, where the potential additional constraints on development are more theoretical than real, given the other provisions in the Plan regulating the relevant activities:

[18] Table G1 begins at page 33 of the PDF here.

(a) **radio communications pathways**, only insofar as more restrictive activity statuses will apply for buildings encroaching within the pathways; and

(b) **Victoria Street and Cathedral Square building heights**, but only to add additional matters of discretion to assess buildings that do not comply with the height limit of 45m.

3.21 All of these QMs are discussed in specific terms in the relevant sections of the reply below. In general, the constraints on *status quo* development rights are modest and justifiable in light of the matters identified that are the basis of the relevant QMs. While the Council could advance a separate plan change using the standard Schedule 1 process, with full appeal rights, PC14 has clearly signalled the proposed constraints to potential submitters in this process, and it would be duplicative and wasteful of resources (both of the Council and submitters) to require that to occur.

3.22 Further, in the meantime it can be challenging to weave provisions into the operative Plan in a way that solely target the new intensification otherwise enabled by PC14, particularly given that the proposed response for each QM is bespoke, to integrate with the relevant District Plan provisions. As the Panel will recall, one mechanism has been proposed for coastal hazards (using a new definition of *"residential intensification"*) that may have more general application. The Council has not opted to rework each proposed QM to use that mechanism, partly due to time constraints but also because, as explained above, it does not accept that *Waikanae* was correctly decided.

3.23 In addition to the QMs listed above, PC14 contains some heritage-related provisions that would have constrained *status quo* rights, if Plan Change 13 (**PC13**) had not been notified at the same time. That is, as explained in counsel's memorandum of 17 April 2024:[19]

(a) section 86B(3) of the RMA provides that a rule in a proposed plan has immediate legal effect if the rule protects historic heritage;

(b) PC13 contains provisions duplicating the heritage-related provisions in PC14;

[19] From paragraph 14 of this document: https://chch2023.ihp.govt.nz/assets/Council-Memo/Correspondence/Memorandum-of-Counsel-for-Christchurch-City-Council-17-April-2024-Regarding-matters-arising-at-the-hearing-on-15-April-2024.pdf.

(c) when PC13 was notified, the proposed rules protecting historic heritage took immediate legal effect, thus altering the previous *status quo* development rights;

(d) the provisions in PC14 protecting historic heritage therefore do not give rise to any *Waikanae*-related issue in PC14, because the PC14 provisions do not impose any additional restrictions on *status quo* development rights (as those rights were altered on notification of PC13).

3.24 The relevant QMs are:

(a) **scheduled heritage items and settings**, where PC14 proposes to:

(i) add additional scheduled heritage items:

(ii) remove some activity standards for earthworks and signage, thus making the Plan more enabling for these activities but impose additional activity standards for repair, heritage investigative and temporary works, and service systems; and

(iii) make some activity statuses more restrictive;[20]

(b) **RHAs** and associated interface areas; and

(c) **heritage-related QMs in the central city**, relating to New Regent Street, the Arts Centre, and the Central City Heritage Interface.

3.25 Chapman Tripp filed memoranda regarding scope on behalf of a number of submitters,[21] asserting that these QMs are invalid to the extent that they affect *status quo* rights. Those memoranda do not address the implications of PC13 being notified concurrently with PC14, or of section 86B(3).

4. SCOPE

4.1 *"Scope"* is a term that has three different meanings in the context of a plan change that is an IPI:

(a) The ***mandatory* and *permissible* scope of an IPI**: as noted above, the combined effect of sections 80E and 80G is that an IPI:

[20] See more restrictive activities shown in red in Appendix 6 to the Summary Statement of Suzanne Richmond, 28 November 2023.
[21] Memorandum of counsel on behalf of LMM Investments 2012 Limited (and various other clients) regarding scope of Plan Change 14, dated 21 December 2023; and Memorandum of counsel on behalf of various submitters regarding scope and other matters, dated 1 May 2024.

(i) must incorporate the MDRS and give effect to policies 3 and 4 of the NPS-UD;[22]

(ii) may also amend or include the provisions described in section 80E(1)(b); and

(iii) must not be used for any other purpose.[23]

(b) The **scope of relief that submitters can lawfully seek** in respect of a plan change: as Kós J observed in *Motor Machinists*, *"By law, if a submission is not "on" the change, the council has no business considering it"*. Primarily this is for reasons of fairness and natural justice, stemming from the fact that persons directly affected by a plan change are specifically advised of the notification of the plan change by a council, but not of any submissions that seek relief that might directly affect them. As such, a submitter cannot seek relief that does not reasonably fall within the ambit of the plan change (i.e. that is 'out of left field'), because otherwise there is a real risk that persons potentially affected by changes sought in a submission have been denied an effective opportunity to participate in the decision-making process.[24]

(c) The **amendments to a notified plan change that can be recommended by the Panel**: normally, these must be 'within scope' in the sense of falling within the bounds of the provisions in the plan change as notified and the relief (lawfully) sought by submitters. In respect of an IPI, however, clause 99(2) of Schedule 1 of the RMA provides that *"(…) The recommendations made by the independent hearings panel (a) must be related to a matter identified by the panel or any other person during the hearing; but (b) are not limited to being within the scope of submissions made on the IPI."*[25]

4.2 The opening legal submissions for the Council in the strategic overview hearing summarised the legal principles relating to these points.[26]

[22] Section 80E(1)(a)(i) and 80E(1)(a)(ii)(A).
[23] Section 80G(1)(b).
[24] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [90]; *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.
[25] Further, clause 101(5) of Schedule 1 reads *"To avoid doubt, the specified territorial authority may accept recommendations of the independent hearings panel that are beyond the scope of the submissions made on the IPI."*
[26] Paragraphs 2.15 to 2.18, 2.33, 2.48 to 2.56 and 2.79 to 2.85 of the Opening legal submissions for Christchurch City Council (Strategic Overview hearing) dated 3 October 2023.

4.3 It is helpful to consider how these different scope considerations operate at the beginning, in the middle, and at the end of the IPI process. That is, the key scope questions for the Panel to consider are:

(a) What was the Council:

(i) **required** (mandatory); and

(ii) **entitled** (discretionary);

to include in the IPI when it was notified?

(b) After notification, what relief could submitters validly seek as being *"on"* the plan change, in the context of an IPI?

(c) What is the Panel able to recommend by way of changes to the IPI as notified?

Key question 1 – What was the Council required and entitled to include in the IPI as notified?

4.4 As noted above, through the IPI the Council:

(a) must incorporate the MDRS and give effect to policies 3 and 4 of the NPS-UD; and

(b) may also amend or include the provisions described in section 80E(1)(b).

4.5 As explained below, the Council's position is that the distinction between what the Council's IPI must and may do is an important factor that differentiates what the permissible scope of lodging submissions *"on"* an IPI is from the permissible scope of lodging submissions *"on"* an ordinary (non-IPI) plan change.

4.6 On their face, sections 80E and 80G provide the Council with a relatively broad scope to include non-mandatory changes through the IPI. As noted above, this broad scope is underscored by other provisions such as:

(a) section 77G(4), which enables the Council to create new and amend existing residential zones; and

(b) section 77N(3), which enables the Council to create new and amend existing urban non-residential zones.

4.7 However, sections 77G(4) and 77N(3) do not provide Council with unlimited ability to create new (or amend existing) urban zones (residential or non-residential) anywhere in the District, such as throughout rural Banks Peninsula and/or its small towns, as the opening statements of both sections 77G(4) and 77N(3) confirm that these powers are available to Council *"in carrying out its functions"* under the relevant section (i.e. 77G for the former, 77N(1) for the latter). Thus, new or amended zones are to occur while Council carries out its functions:

(a) under 77G, which is concerned about:

(i) incorporating MDRS in relevant residential zones; and

(ii) giving effect to NPS-UD policy 3 in every residential zone in an urban environment; and

(b) under s77N(1), which is concerned about giving effect to NPS-UD policy 3 in an urban environment.[27]

4.8 Accordingly, the creation of new or amended urban zones is anticipated by the RMA to occur within the confines of incorporating MDRS into relevant residential zones and giving effect to NPS-UD policy 3 in an *"urban environment"*. All new or amended zones proposed by Council occur within these statutory confines.

4.9 The Council has broad discretionary ability to choose to include in its IPI:

(a) Provisions relating to financial contributions "*if it considers it appropriate to do so*".[28] The Council has done this through the proposed tree-canopy cover financial contributions (discussed below).

(b) Related provisions that support or are consequential on the MDRS or policies 3 and 4 of the NPS-UD.[29] That includes a broad ability to identify qualifying matters – matters that make higher density, as provided for by the MDRS or NPS-UD policy 3, inappropriate in an area – for the reasons listed in the relevant sections or to accommodate *"any other matter"* that makes higher density development inappropriate (s77I(j) or s77O(j)). PC14 proposed various QMs, discussed below.

[27] Read together with s77N(2).
[28] Sections 77T and 80E(1)(b)(ii).
[29] Section 80E(1)(b)(iii).

(c) Provisions that are more lenient than the MDRS.[30]

Key question 2 – What relief could submitters validly seek?

Clearwater / Motor Machinists

4.10 A plan change is obviously distinct from a full plan review, as the former only seeks to change certain aspects of a plan. Case law has confirmed a council generally has no jurisdiction to consider a submission point if it falls outside the scope of the plan change due to it not being *"on"* the plan change.[31]

4.11 For a submission to be *"on"* a plan change, the Courts have required that it satisfies the following two limbs of what has been referred to as the *"Clearwater test"*:[32]

(a) First, the submission must reasonably fall within the ambit of the plan change by addressing the extent to which it changes the pre-existing *status quo*.[33]

(b) Second, the decision-maker should consider whether there is a real risk that persons potentially affected by changes sought in a submission have been denied an effective opportunity to participate in the decision-making process.[34] This second limb is directed to asking whether there is a real risk that persons directly affected by the additional change being proposed in a submission have been denied an appropriate response.[35]

4.12 Whether a submission is *"on"* a plan change is a question of fact and degree to be decided in each case in a robust and pragmatic way.[36]

4.13 In *Motor Machinists Limited v Palmerston North City Council*, the High Court provided the following useful observations to assist in identifying whether a submission is *"on"* a plan change, including in relation to submissions seeking zoning extensions:

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[30] Section 77H.
[31] *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234 at [66] to [68].
[32] The test was identified by the High Court in *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.
[33] Ibid at [69](a).
[34] *Albany North Landowners v Auckland Council* [2016] NZHC 138 at [119] to [128]; *Palmerston North Industrial and Residential Developments Limited v Palmerston North City Council* [2014] NZEnvC 17 at [34] to [36]; *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [90]; *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.
[35] *Albany North Landowners v Auckland Council* [2016] NZHC 138 at [127]; *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [82]
[36] *Sloan v Christchurch CC* [2008] NZRMA 556 (EnvC).

[80] For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in Clearwater *serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself 2 aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration.*

[81] In other words, the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change (...) Yet the Clearwater *approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no further s 32 analysis is required to inform affected persons of the comparative merits of that change.*

[82] But that is subject then to the second limb of the Clearwater *test: whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process. (…) To override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources.*

(our underlining for emphasis).

Clearwater / Motor Machinists in unique context of an IPI

4.14 However, the Council's position is that the usual *Clearwater / Motor Machinist* tests must be modified in the unique context of an IPI, for reasons given below.

4.15 As noted above, an IPI is distinguishable from an ordinary plan change because the former has both mandatory and discretionary elements, while the latter is entirely discretionary. In particular, with an ordinary plan change, a local authority has full discretion to define the scope of a plan change. A local authority could, for example, **choose** to notify a plan change seeking to rezone a single parcel of land, or change a setback rule for one particular type of zone – that choice defines the scope of a plan change. By contrast, an IPI compels the Council to notify a plan change the scope of which **must** address two mandatory elements, while affording Council an entitlement to choose to include other changes in an IPI (such as rezonings). For reasons

given below, it is submitted that *Clearwater / Motor Machinists* scope principles:

(a) do not restrict scope of submissions alleging Council has failed to implement the two mandatory elements of an IPI; but

(b) will otherwise apply to all other aspects of an IPI.

4.16 The first mandatory element of an IPI is to incorporate the MDRS into relevant residential zones (subject to any QMs).[37] Hypothetically, if the Council had elected, for example, to exclude all Residential Suburban zones in Christchurch City from PC14 so that MDRS would not apply within those zones, then it would have been permissible for submissions to request compliance with the RMA so that Residential Suburban zones were included in PC14, notwithstanding that such submissions would ordinarily fail the *Clearwater / Motor Machinists* tests (on the basis that PC14 had not sought to alter the *status quo* in the Residential Suburban zones).

4.17 A similar point can be made in relation to the second mandatory element of an IPI, which is to give effect to policy 3 of the NPS-UD in an urban environment. It is permissible for submissions to request compliance with policy 3, which is concerned to ensure that in and around specified centres, there is intensification in relation to:

(a) building heights; and

(b) density of urban form.

4.18 Therefore, in summary, in the present unique context of an IPI, the Council's position is that there is scope for submissions to include relief based on an assertion that the Council has not properly complied with the mandatory requirements of the RMA in terms of:

(a) incorporating the MDRS: a submitter can assert that Council has failed to incorporate all elements of the MDRS into all relevant residential zones, or that a QM should not be recognised in an area so that MDRS applies instead of the lower intensification proposed in the notified IPI;

(b) giving effect to NPS-UD policy 3, including to assert that:

(i) walkable and 'adjacent' catchments have been cast:

[37] Sections 77G(1), 77G(6) and 80E(1)(a)(i).

(1) too narrowly – thus effectively asking for greater intensification than in the IPI as notified; or

(2) too broadly (which would be permissible under *Clearwater / Motor Machinists* in any event); and

(ii) building heights and densities in centres, catchments, and residential zones are not set as they should be, for greater or smaller, particularly in terms of whether those heights/densities:

(1) realise as much development capacity as possible, to maximise benefits of intensification, in city centre zones (policy 3(a));

(2) are at least 6 storeys within walkable catchments of specified areas (policy 3(c)); or

(3) are commensurate with the level of commercial activity and community services within and adjacent to specified types of centre zones.

4.19 However, beyond those mandatory statutory matters compelling the scope of an IPI, the scope of relief that submitters can seek must be subject to *Clearwater / Motor Machinists* principles. That is because ordinary natural justice and fairness considerations continue to apply to the discretionary elements of PC14 in same way such considerations apply to an ordinary plan change.

4.20 To hold otherwise would be contrary to, and unravel, years of case law concerned about fairness and natural justice, not just for IPIs, but plan changes in general. This point is further discussed below in response to some memoranda filed by submitters.

Consequential and incidental rezoning extensions

4.21 The High Court in *Motor Machinists* confirmed that the *Clearwater* test for determining whether a submission is on a plan change does not prevent submissions from seeking zoning extensions altogether. However, a *"precautionary approach"* is required when determining that a submission proposing rezoning of land beyond the areas being rezoned by a notified variation is within scope as an incidental or consequential further change.[38]

[38] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [91](c).

Robust sustainable management of natural and physical resources requires notification of a section 32 analysis of the comparative merits of a proposed plan change to persons directly affected by the proposals.[39] Incidental or consequential extensions of zoning changes proposed in a submission are permissible given that no section 32 analysis is required to inform affected persons of the comparative merits of the change.[40]

4.22 The High Court's reference to an *"extension"* of a zoning change proposed in a variation implies that a proposed rezoning that is separated from, rather than adjacent to, land proposed to be rezoned in a variation, cannot be considered within scope as a consequential and incidental zoning extension. On the facts of *Motor Machinists*, the Court held that a submission seeking that the submitter's land be rezoned was outside the scope of a plan change that proposed to rezone a different area of land that was ten lots away from the submitter's land.

4.23 However, the fact that a submitter's proposed rezoning is adjacent to land proposed to be rezoned in a variation does not automatically mean that the submitter's request should be considered within the scope of the variation as an incidental or consequential rezoning extension.[41] Any proposed zoning extension must still meet the second limb of the *Clearwater* test and that necessitates a judgement call. It is a question of fact, scale and degree to be decided in each case in a robust and pragmatic way.

4.24 As an illustration of making a judgement call, in *Option 5 Inc v Marlborough District Council*[42] the appellant argued that once the Council notifies a variation to extend the area of a Central Business Zone (**CBZ**), any submission which seeks to add directly to that zone in immediately contiguous areas would also be *"on"* the variation. That argument was rejected by the High Court. Rather, the High Court considered that whether a rezoning submission is *"on"* a plan change or variation will involve a question of scale and degree, and when considering that question, it is relevant to take into account:

(a) the policy behind the variation;

(b) the purpose of the variation; and

[39] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [91](c).
[40] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [81].
[41] *Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC) at paragraph [41].
[42] *Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC).

(c) whether a finding that the submissions were on the variation would deprive interested parties of the opportunity for participation.[43]

4.25 The Court concluded it was relevant to consider the scale and degree of the difference between a variation and the submission's rezoning request. Scale and degree were also important when considering the extent to which affected property owners are shut out of the consultation process for the purpose of determining whether the submission on a variation.[44]

4.26 In the circumstances before it, the Court considered that:

(a) The policy and purpose of the variation was modest compared to the submission. The intention of the variation was simply to support the Blenheim central business district and to avoid commercial developments outside the CBZ. By contrast, the theme of the submission was to seek a long-term expansion of the CBZ, involving over 50 properties.

(b) The submission to extend the CBZ beyond the area covered by the notified variation would shut potentially affected property owners out of the consultation process. In particular, there was nothing to advise potentially affected property owners that the submission could affect property interests in another zone adjoining the area which was the subject of the variation.

4.27 The Court was satisfied, as a matter of scale and degree, that the submitter's proposed 50-property expansion of the CBZ was not within scope of the Council's more modest variation to extend the CBZ.

4.28 Accordingly, in summary, if a rezoning request relates to land that has not had its management regime (e.g. zoning) altered by PC14, then:

(a) If that land is not adjacent to land that has had its management regime (e.g. zoning) altered by PC14, it will fall outside the scope of PC14.

(b) If that land is adjacent to land that has had its management regime (e.g. zoning) altered by PC14, it can be considered as falling within the scope of PC14 **only if**, on a precautionary assessment of fact, circumstances, scale and degree, it can be considered as an *"incidental or consequential extension of zoning changes"* proposed by

[43] Ibid at [41].
[44] Ibid at [43].

PC14. Factors relevant to consider when making the precautionary assessment include:

(i) the policy behind a plan change;

(ii) the purpose of the plan change;

(iii) whether the request raises matters that should have been addressed in the s32 evaluation and report;

(iv) the scale and degree of difference between the submission request and the plan change; and

(v) whether the request gives rise to a real risk that persons potentially affected by changes sought have been denied an effective opportunity to participate in the decision-making process.

Key question 3 – What changes can the Panel recommend?

4.29 By virtue of clauses 99(2) and 101(5) of Schedule 1 to the RMA, the Panel can recommend any change that a submitter could have sought, even if no submitter actually sought that change.

4.30 However, the Panel cannot make recommendations broader in scope than that, because the same natural justice considerations would apply that would disqualify a submission as not being *"on"* a plan change.

Specific scope issues

4.31 Applying the above principles, the table below summarises relief sought by submitters that is within and outside scope.

Relief sought	**Within or outside scope?**	**Why?**
Higher or lower heights and densities in relevant residential zones and policy 3 centres and catchments	In	Lower heights / densities than proposed through PC14 as notified are in scope as they lead to relief between *status quo* and PC14 as notified. Higher heights/densities addressing a mandatory requirement (see paragraph 4.18 above) are reasonably within the ambit of an IPI. Note that submissions seeking lower heights / densities than in the operative

		Plan would raise a potential issue in terms of *Waikanae*, discussed above.
Larger or smaller walking / adjacent catchments	In	Smaller catchments are in scope as they lead to relief between *status quo* and change as notified. Larger catchments addressing a mandatory requirement (see paragraph 4.18 above) are reasonably within the ambit of an IPI (notwithstanding that larger catchments would lead to greater intensification than as notified).
Qualifying matters – too great / too small in coverage	In	Additional / expanded QM areas are in scope as they lead to relief between *status quo* and change as notified. To the extent that QMs proposed by submitters give rise to *Waikanae* issues, those aspects are out of scope (as not being 'on' the plan change, because that relief does not fall between the *status quo* and that notified). Removal of or reduced QM areas are reasonably within the ambit of an IPI as they effectively seek full implementation of a mandatory requirement (see paragraph 4.18 above) (notwithstanding that fewer / smaller QM areas would lead to greater intensification than as notified).
Additional controls on intensification (as consequential provisions)	In	Reasonably within the ambit of an IPI and aimed at newly enabled intensification, so the new management regime for the resource would likely fall somewhere between the *status quo* and that proposed through PC14 as notified.
Rezoning a site to include it within a centre zone that notified PC14 has renamed, but not substantively rezoned	Out	In this case, the Council has renamed rather than rezoned centres, so such a change is not an *"extension of a zoning change"* per *Motor Machinists.*
Rezoning a site to include it within an area that notified PC14 has proposed to substantively rezone – eg new MUZ, new HRZ, new MRZ	Out, unless an incidental extension of a zoning change and no prejudice	*Motor Machinists* principles – potential prejudice to neighbours of different zoning / activity mix. Incidental extensions unlikely to meet test for no prejudice, unless submitters have alerted neighbours to their submission and the neighbours have made a further submission.
Seeking enablement of specific activities in areas rezoned MRZ or HRZ	Out, unless addressing the extent to which the PC14 changes the	*Motor Machinists* principles – potential prejudice to neighbours of different activity mix, unlikely to have been addressed by direct engagement with potentially affected persons. Within

	status quo or incidental to the zoning change and no prejudice	scope to seek retention of controls per underlying operative zoning.
Seeking removal of heritage sites from the Plan schedule	In, as potential prejudice issues are addressed by the concurrent notification of PC13.	If it was PC14 alone, there would be potential prejudice to interested persons not anticipating removal of sites from the schedule the IPI. In this case, however, issues are addressed by the concurrent notification of PC13.[45]
Seeking amendment of operative overlay – eg change of waterbody path so overlay not required in an area	Out, unless incidental to changes made in the IPI and no prejudice. Ok to seek that the operative overlay is not a QM	Potential prejudice to interested persons not anticipating change to operative overlay through the IPI – but may be ok if no prejudice can be demonstrated.

4.32 Additional responses to submitter legal submissions on scope are outlined below.

Response to Chapman Tripp scope memoranda

4.33 Chapman Tripp filed memoranda on 21 December 2023[46] and 1 May 2024[47] taking a very wide view on scope which, it is submitted, cannot be correct at law and is clearly contrary to the principles of fairness and natural justice inherent articulated in *Clearwater*, *Motor Machinists* and other related resource management case law.

4.34 Central to the wider view on scope is the argument that it would be within scope for a submission to request any relief provided it meets the requirements of section 80E. In particular, it is asserted that if Council was "*legally entitled*" to include a matter in PC14 (such as a rezoning) but chose not to when it notified PC14, then a submitter can ask for that outcome.[48]

[45] Legal Submissions for Christchurch City Council, Week 7: Heritage Items Qualifying Matter, dated: 16 November 2023.
[46] Memorandum of counsel on behalf of LMM Investments 2012 Limited (and various other clients) regarding scope of Plan Change 14, dated 21 December 2023.
[47] Memorandum of counsel on behalf of various submitters regarding scope and other matters, dated 1 May 2024.
[48] See for example paragraph 57.4 of the 21 December 2023 memorandum, and paragraph 27.8 of the 1 May 2024 memorandum.

However, this assertion overlooks the fact that *Clearwater* and *Motor Machinists* also dealt with situations where planning authorities were also legally entitled to include any matter in a notified plan change, but had not included other such matters beyond what was notified.

4.35 The problem with the wide view of scope pursued by the Chapman Tripp memoranda is that it lays aside years of case law emphasising the importance of fairness and natural justice for ordinary plan changes where Council is similarly "*legally entitled*" to include a matter in a plan change. In the same way the RMA legally entitles the Council to define the scope of an ordinary plan change by giving Council discretion to decide what changes are proposed to the *status quo* (e.g. what land, if any, to rezone, or what rules, if any, are to be changed), for an IPI the RMA also legally entitles the Council to decide what, if any, land is to be rezoned, or what rules are to be changed), with the sole exception and difference being that the RMA mandates some changes that Council must include in an IPI.

4.36 For reasons given at paragraphs 4.14 to 4.19 above, *Clearwater* and *Motor Machinists* principles give way only to the extent that submitters can assert that the Council has not properly complied with the mandatory requirements for an IPI. This is appropriate because no prejudice, fairness or natural justice concerns arise where:

(a) any and all submitters are entitled to rely on the IPI-related provisions in the RMA, with the expectation that Council's IPI would comply with the mandatory matters that PC14 must include; and

(b) it is consistent with fairness and natural justice for submitters to lodge submissions requesting that PC14 includes what Council is compelled to include by statute.

4.37 However, in all instances where the RMA provides Council with a discretion (or legal entitlement) to include other matters in an IPI, *Clearwater* and *Motor Machinists* principles continue to apply.

4.38 Accordingly, it is submitted that relief sought by submitters represented in the Chapman Tripp filed memoranda that rely on the *"legally entitled"* argument for wider scope, are beyond the scope of PC14 and must be rejected. That includes:

(a) Rezonings sought by NHL Developments, Christchurch Casino Limited and Wigram Lodge Limited from residential to mixed use or

commercial, including for reasons set out in Council's legal submissions dated 17 October 2023.[49] As acknowledged by Ms Collie in cross-examination, members of the public, comparing the *status quo* to PC14, would note there are proposed changes to residential zone heights, but no changes to the activity mix which continues to be residential.[50]

(b) Rezoning of a Specific Purpose (Golf Resort) Zone to MRZ sought by LMM Investments, including for reasons set out in Council's legal submissions dated 16 November 2023 and from cross-examination of Mr Clease.[51]

(c) Changes sought by the Catholic Diocese of Christchurch 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, including for reasons set out in Council's legal submissions dated 17 October 2023 and from cross-examination of Mr Phillips.[52]

Response to legal submissions on scope for Foodstuffs

4.39 The legal submissions for Foodstuffs assert there is scope to rezone the following land on the basis that they are *"incidental or consequential extensions of zoning changes proposed in a plan change*":[53]

(a) At 171 Main North Road (Pak n' Save Papanui), land zoned Industrial General under both the Operative Plan and notified PC14 to Local Centre Zone is sought to be rezoned as LCZ, in circumstances where adjacent land zoned Commercial Core in the Operative Plan has been converted to the nearest equivalent National Planning Standard LCZ.

(b) Land zoned residential under both the Operative Plan and notified PC14 is sought to be rezoned as LCZ, in circumstances where adjacent land zoned Commercial Core in the Operative Plan has been

[49] Legal submissions for the Christchurch City Council (Central City and Commercial Zones dated 17 October 2023 at paragraphs 5.1 to 5.6.
[50] Cross-examination of Anita Collie on 31 October 2023.
[51] Legal submissions for the Christchurch City Council (Other Zones, Subdivision, Development and Earthworks, Other Matters (Transport) dated 16 November 2023 at paragraphs 5.2 to 5.4. Mr Clease was cross-examined on this topic on 16 November 2023.
[52] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 at paragraphs 3.23 to 3.24. Mr Phillips was cross-examined on this topic on 25 October 2023.
[53] Legal submissions for Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited dated 17 October 2023, at paragraphs 22 and 39.

converted to the nearest equivalent National Planning Standard LCZ, at the following locations:

(i) 304 Stanmore Road;

(ii) Breezes Road (Wainoni);

(iii) 92 Lincoln Road; and

(iv) 55 Peer Street (New World Ilam).

4.40 None of these cases involve the *"extension of a zoning change"*, however, because there is no actual substantive rezoning occurring, through PC14, to adjacent land zoned Commercial Core in the Operative Plan. In each case, the Commercial Core Zone has simply been renamed to match the National Planning Standards (to LCZ). In the circumstances, the substantive change from Industrial General or residential to LCZ can give rise to potential prejudice to neighbours due to enabling a different activity mix, which is unlikely to have been addressed by direct engagement with potentially affected persons.

4.41 However, to be clear:

(a) The Council is not opposed to rezoning of the above land on the merits, as confirmed by Mr Lightbody.[54]

(b) No scope issue arises for the land proposed to be rezoned at 159 Main North Road (i.e. the Head Office at Papanui). In that case, Foodstuffs is simply seeking to revert the PC14 notified High Density Residential zone back to the operative Industrial General Zone, being relief that clearly falls between the *status quo* and PC14.

Response to legal submissions on scope for Lendlease

4.42 The legal submissions for *Lendlease*[55] adopt a very wide view on scope similar to that proposed in the Chapman Tripp memoranda, essentially arguing that a substantive upzoning from TCZ to MCZ of Hornby Mall and / or the removal of the permitted activity 500m^2 office tenancy limit is within scope because the Council was entitled to make those changes (e.g. as a rezoning,

[54] Statement of Rebuttal Evidence of Kirk Joseph Lightbody in response to rezonings proposed by Foodstuffs dated 9 November 2023 (here). This was provided in response to Panel information request #33.
[55] Legal submissions on behalf of Lendlease New Zealand Limited dated 24 October 2023 (here).

or under section 80E as a related provision that supports or is consequential to increasing building heights).

4.43 However, neither the substantive rezoning of Hornby Mall, nor alteration of TCZ rules relevant to activity mix (e.g. changes to office tenancy limit) are mandatory requirements for the IPI, and the Council did not exercise any discretion to propose such changes in PC14 as notified. The rezoning is out-of-scope for the reasons given above. Changing office tenancy limits is also an out-of-scope request. PC14 is concerned about increasing heights and densities of development, not adjusting commercial office tenancy provisions aimed at controlling office activities consistent with the centres-based approach.

Response to legal submissions on scope for Miles Premises Limited and Cashmere Park Limited, Hartward Investment Trust and Robert Brown

4.44 Miles Premises Limited seeks that part of the site located between Memorial Avenue, Russley Road and Avonhead Road, which is currently zoned Industrial Park Zone, is re-zoned to MRZ. Cashmere Park Limited, Hartward Investment Trust and Robert Brown seek rezoning of land from Residential New Neighbourhood (**RNN**) and Rural Urban Fringe (**RUUF**), to MRZ.

4.45 The respective legal submissions for these submitters (which are identical on the matter of scope) adopt a very wide view on scope similar to other submitters addressed above, which is essentially that the rezoning should be considered as within scope because PC14 is *"broad and complex"* and includes rezoning of other land, and that they consider the rezoning sought is consistent with objectives that are added and amended through PC14.

4.46 For the same reasons as set out above, the Council disagrees that there is scope for the rezoning sought. There is no question of 'adjacency', and amendments to objectives do not provide scope for rezonings. In any event, as set out in the evidence of Mr Lightbody[56] and Mr Bayliss,[57] the Council does not support this rezoning on its merits.

Submitter requested rezonings

4.47 As requested by the Panel in information request #34, the Council has provided in **Attachment 4** to this reply tables setting out the Council's

[56] Section 42A report of Kirk Lightbody (here), 11 August 2023, at Appendix 1, section 3.
[57] Ian Bayliss Section 42A report, 11 August 2023, at paragraph 8.8.18.

position on rezoning requests made by submitters. These include a column setting out, in summary form, why Council considers various rezoning requests are out of scope of PC14, applying the principles outlined above. Some submitters have sought the re-zoning of land from RUUF and FUZ (ie undeveloped greenfield areas) to MRZ. Such requests are not *"on"* the plan change and not therefore within the scope of PC14. Those areas are not relevant residential zones, nor NPS-UD policy 3 areas, and the Council has not proposed any change (other than the naming of FUZ in those areas). People potentially affected by such upzoning may reasonably have assumed that rural areas would not be subject to change through PC14.

5. QUALIFYING MATTERS

Evaluation of QMs

5.1 The central legal issue explored at the hearing has been the correct approach to evaluating the QMs identified by the Council.

5.2 Counsel's opening legal submissions on the strategic overview hearing[58] explained that the Council, through PC14, was seeking to achieve 'density done well'. This concept sought to encapsulate, in one short phrase, the legal scheme relating to IPIs, whereby MDRS and NPS-UD policy 3 intensification is enabled subject to the reasonable imposition of various controls, including QMs, to ensure that PC14 does not compromise the environmental conditions, quality, and liveability of Ōtautahi Christchurch. Counsel explained that it is incumbent on the Council and the Panel to identify and apply QMs in order to:

(a) ensure a WFUE in accordance with objective 1 and policy 1 of the NPS-UD;

(b) give effect to other higher-order directives in the NPS-UD and the Canterbury Regional Policy Statement (**CRPS**);

(c) be consistent with the strategic directions objectives in chapter 3 of the District Plan – these are strong, direction-setting provisions that have been robustly tested and confirmed as giving effect to higher-order instruments, and must be brought to bear on PC14; and

(d) promote the sustainable management purpose of the RMA.

[58] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/00-Opening-Legal-Submissions-for-CCC.pdf

5.3 Counsel also explained that considering the merits of QMs (as to their appropriateness in achieving the objectives of PC14) necessarily entailed acknowledging the real-world context, including the fact that there is more than sufficient development capacity (including for housing) in Ōtautahi Christchurch.

5.4 There is nothing unorthodox or controversial about those legal propositions, which clearly stem from Part 2 of the RMA, the functions of territorial authorities under section 31, the evaluation requirements in section 32, the requirements for district plans in sections 72 to 77, and the IPI-related provisions of the RMA. The point is succinctly noted in the following question Commissioner Munro put to counsel: "*Aren't you just saying that 'density done well' is promoting sustainable management and doing what the law requires in a balanced way"?*[59] The succinct answer is: yes.

5.5 Examining the legal submissions filed on behalf of various submitters (including developers such as Kāinga Ora) reveals that there is no real dispute about a number of those fundamental legal propositions. In particular, there is clear acceptance that:

(a) MDRS and / or NPS-UD policy 3 intensification is the default position, unless a QM applies (or additional intensification is provided);

(b) a QM can be founded on any matter that makes intensification inappropriate in an area; and

(c) a broad range of factors must be weighed in evaluating the provisions of PC14, including QMs, under section 32 of the RMA; see, for example:

(i) paragraphs 3.3 to 3.5 of the submissions of counsel for Kāinga Ora on the strategic, city centre, and commercial provisions – which include an express acknowledgement of the relevance of the CRPS and New Zealand Coastal Policy Statement (**NZCPS**) to evaluating PC14 (specifically relevant to the Airport Noise QM and Coastal Hazard QMs, discussed below);[60] and

[59] Video transcript 10 October 2023 – morning session 2, at 56:18.
[60] https://chch2023.ihp.govt.nz/assets/Submitter-evidence/Kainga-Ora-Homes-and-Communities-834-Legal-submissions-6-October-2023.pdf.

(ii) paragraph 2.4 of the supplementary submissions of counsel for Kāinga Ora dated 11 October 2023:[61]

> "*Subject to the important caveat in para [3.1] below, this IPI is also a "plan change" in the normal RMA sense and must therefore give effect to a range of other instruments, including the full NPS-UD (eg, s 75(3)(a), RMA), and must be assessed against the orthodox tests in s 32, RMA. In other words, the provisions inserted by the Amendment Act are not a self-contained code.*"

5.6 Where the Council parts company with those submitters relates to the *"important caveat"* asserted by counsel for Kāinga Ora. This was expressed in the following way:

> "*While that broader assessment referred to in para [2.4] must be undertaken it is not permissible, in my submission, for that broader assessment to undermine or detract from the mandatory intensification objectives encapsulated by the MDRS provisions and by Policies 3 and 4 of the NPS-UD. In particular, it is not lawful for the Council to use these broader considerations to extend the ambit of countervailing factors beyond the very confined scope of s 80E, and the very restricted ability to constrain this additional development (ie through qualifying matters."*

5.7 Related submissions by various submitters' counsel have referred to a *"very clear statutory intent of the Amendment Act"*,[62] purportedly evidenced by Cabinet papers and other background documents, and to a risk that considering a broad range of factors in evaluating a QM would *"undermine a directive national policy statement"*[63] or *"distort the clear and direct meaning of the objectives and policies"*.[64] Those submitters have posited to the Panel that *"overarching legislative and policy purposes should resonate heavily in all of your considerations through the ISPP"*.[65]

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[61] https://chch2023.ihp.govt.nz/assets/Submitter-evidence/Kainga-Ora-845-Supplementary-Legal-Submissions-Tabled-Evidence-at-hearings-11-October-2023-v2.pdf.
[62] Paragraph 3.3 in these submissions for Kāinga Ora: https://chch2023.ihp.govt.nz/assets/Submitter-evidence/Kainga-Ora-845-Supplementary-Legal-Submissions-Tabled-Evidence-at-hearings-11-October-2023-v2.pdf.
[63] Ibid.
[64] Paragraph 17 in these submissions for Lendlease: https://chch2023.ihp.govt.nz/assets/Submitter-evidence/Lendlease-New-Zealand-Limited-855-Legal-Submission-Central-City-and-Commercial-Zones-24-October-2023-31-October-2023.pdf.
[65] Paragraph 19 of the submissions for Ryman: https://chch2023.ihp.govt.nz/assets/Submitter-evidence/RYMANH2.PDF.

5.8 Moreover, Chapman Tripp's memorandum on scope issues contained the following submission:[66]

> "*The enabling intent of the NPS-UD has been acknowledged in Middle Hill Ltd v Auckland Council, where the Environment Court stated (our emphasis added):*
>
> > *[33] … The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments. It also requires councils to remove overly restrictive rules that affect urban development outcomes in New Zealand cities…*"

5.9 With respect, the position taken by those submitters reflects their particular interest more than the provisions of the RMA or the NPS-UD, which take a considerably more balanced approach to the issues at hand. The assertions by submitters that the Council considers to be overstated can be addressed in turn, as set out below.

5.10 In terms of the Council's process of **identifying** QMs:

(a) **Section 80E does not have a *"very confined scope"***. That provision undeniably includes a general power to include in an IPI (or change through an IPI) related provisions that are consequential on the MDRS or NPS-UD policy 3, including provisions relating to QMs.[67]

(b) **The ability to *"constrain (…) additional development (…) through qualifying matters"* is not *"very restricted"***. Parliament has clearly and deliberately included in the RMA an ability for Councils to base a QM on *"any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area"*,[68] provided the evaluation requirements are met (discussed below).

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[66] Paragraph 20 of the following memorandum: Memorandum of counsel on behalf of LMM Investments 2012 Limited (and various other clients) regarding scope of Plan Change 14, dated 21 December 2023.
[67] Section 80E(1)(b)(iii) and (2)(e).
[68] Sections 77I(j) and 77O(j).

5.11 In terms of **evaluating** QMs, the following points are relevant.

5.12 First, while certain specific matters must be addressed in the section 32 evaluation report (which the RMA describes as *"additional"* to the requirements of section 32, but mostly would form part of a section 32 analysis in any event), **the additional evaluative requirements are not nearly as weighted in favour of intensification** as some submitters have asserted. That is:

(a) the need to demonstrate the existence of a QM, why it is incompatible with MDRS or NPS-UD policy 3 development, and why heights and densities are proposed to be limited only to the extent necessary to accommodate the QM, are obvious requirements to justify displacing the statutory presumption of intensification, and do not suggest that any particularly stringent standard must be met by a QM to do so;

(b) the need to assess the effect of the QM on the provision of development capacity and the costs and broader impacts of imposing those limits are again obvious considerations in a section 32 sense;

(c) the requirement for the evaluation to include a site-specific assessment for certain types of QMs supports the statutory scheme that QMs should not apply to more extensive an area than required in the circumstances, but again does not import a particular threshold 'test' to justify those QMs, on their merits; and

(d) the requirement in section 77L(b) to justify why the characteristic founding an *"other"* QM *"makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD"* also adds little to a standard section 32 evaluation. District Plans have to give effect to those higher-order directives in any event, and those directives are themselves balanced (as explained further below). We return to section 77L(b) in greater detail below.

5.13 **Otherwise, section 32 applies to IPI provisions as normal**. In this regard:

(a) **The IPI-related changes had no effect on the RMA's statutory purpose**, which remains the ultimate touchstone for the Panel (as for any other plan change). There is no separate 'purpose' of an 'Enabling Housing Act', as has been asserted to the Panel.

(b) Likewise, the **higher-order planning directives remain relevant** in evaluating QM-related provisions. This does not appear to be in dispute and it is important for the Panel to bear these in mind in evaluating QMs, including the Strategic Directions in Chapter 3 of the Plan.

(c) In particular, **the District Plan must still give effect to the CRPS**.[69] As noted above, the legal submissions for Kāinga Ora dated 6 October 2023 accepted that point, notwithstanding the later discussion about the CRPS in the context of the Airport Noise QM and section 77G(8) (*"the requirement in subsection (1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement."*)

(d) On a related note, **section 77G(8) applies only to the starting-point presumption of intensification**, because a Regional Policy Statement may contain details about where medium-density residential development should be located, for example, which must be disregarded in incorporating the MDRS into every relevant residential zone. Section 77G(8) cannot be read, however, as rendering the CRPS irrelevant in considering the merits of the PC14 provisions (such as provisions relating to a QM) as part of a section 32 evaluation. Nor can section 77G(8) be read as overriding the consideration, use and evaluation of QMs (anticipated by section 77G(6)). If this was Parliament's intent, it could have been reflected in sections 77J or 77L, for example, stating that the evaluation of QMs must ignore any inconsistent objective or policy in a regional policy statement, or in section 75 of the RMA. Absent such changes, the statutory requirement remains for the Plan to *"give effect"* to the CRPS under section 75(3)(c) of the RMA.

(e) **In the usual way, the effectiveness and efficiency of the proposed PC14 provisions must be evaluated** against the objectives of PC14, including in terms of their costs and benefits. This evaluation of costs and benefits must, in the usual way, be done on a real-world basis – i.e. the RMA does not require the Council or Panel to assume on a theoretical basis, when evaluating a QM, that certain benefits will accrue from intensification. We return to this point below, in respect of

[69] The Panel considering Selwyn District's IPI made findings to this effect; see paragraph 141: V1 IPI Hearing 01 - Residential.pdf (selwyn.govt.nz)

the relevance to PC14 of the lack of a significant housing issue in Ōtautahi Christchurch.

(f) **The objectives of the proposal against which the PC14 provisions fall to be assessed are the objectives in PC14 and other relevant objectives being retained in the operative District Plan**, in terms of section 32(3), and not any amorphous 'intensification objective'.

(g) **The objectives in PC14 include mandatory MDRS objective 1 (almost identical to objective 1 of the NPS-UD), which is considerably more balanced than suggested by some submitters**. While policy 1, which contributes to the implementation of objective 1, focuses on housing choice and related matters, objective 1 is considerably broader: *"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"*. Guidance material published by the Ministry for the Environment expressly acknowledges, in reference to NPS-UD policy 3(a), that *"development standards (…) may limit building and height and density, where there is evidence that doing so will contribute to a well-functioning urban environment and achieving the objectives of the NPS-UD as a whole."*[70]

5.14 To expand on this point, the wording in objective 1 is consistent with, and reinforces, the language used in the sustainable management purpose of the RMA. Objective 1 is concerned to ensure that WFUEs are those which (to paraphrase section 5) manage the use, development and protection of the urban environment in a way which enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety.

5.15 This is a clear counter to any *"intensification at all costs"* approach, and reflects that intensification under NPS-UD policy 3 and the MDRS is not compulsory, other than **as a starting-point** from which QMs and other controls can be used to better (or most appropriately) implement WFUEs that enable community wellbeing and health and safety.

5.16 The use of the phrase *"as a minimum"* in policy 1 of the NPS-UD confirms that the policy provides a non-exhaustive list of what contributes to a WFUE.

[70] Page 30 of https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-intensification-provisions-for-NPS-UD.pdf.

The door is open to the Panel to consider any other factors that contribute to a WFUE; any factor that better enables the wellbeing of people and communities and their health and safety is relevant for consideration. That can include considering amenity values, for reasons given below and as already managed under the Operative District Plan.[71] It can also include factors that different expert disciplines can identify and explain as contributing to a WFUE, including those identified by Mr Willis, Ms Gardiner, Mr Ray and Ms Williams in their supplementary statements of evidence provided in response to the Panel's information request #29.[72]

5.17 **More generally, the concept of balancing intensification and broader considerations of liveability permeates the NPS-UD and IPI-related RMA provisions.** Simply put, the scheme does not require or encourage intensification at all costs. QMs are deliberately and expressly provided for, for any reason that makes intensification inappropriate, as are related provisions (in terms of section 80E(1)(b)(iii)) to address the effects of intensification. The corollary to policy 3 is policy 4. So while Cabinet papers and other supporting material of course highlight intensification aims, the scheme provides balance to enable objective 1 to be achieved.

5.18 With respect, submitters seeking levels of intensification greater than the Council's notified proposal have singled out the aspects of the RMA and NPS-UD scheme that support their worldview or commercial imperatives, without giving fair credit to the counterpoint that is clearly inherent in that scheme. It is such cherry-picking that distorts the clear and direct meaning of the objectives and policies of the NPS-UD (rather than the Council's more balanced approach, as alleged by counsel for Lendlease).

5.19 This is typified by Chapman Tripp's submission on the extract from *Middle Hill* quoted above, in which counsel have emphasised aspects of the quote regarding increasing land supply and removing overly restrictive rules while skipping past the Environment Court's references to WFUEs, including the words *"while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments."*

[71] S42A Report of Sarah Oliver Appendix G – Existing Objectives and Policies Relating to amenity and the Quality of the Urban Environment
[72] Supplementary statements of evidence for Andrew Willis (here) at paragraphs 10 to 13, Holly Gardiner (here) at paragraphs 9 to 11, Alistair Ray (here) at paragraphs 31 to 35, and Nicola Williams (here) at paragraphs 10 to 13.

5.20 Another related point is that **QMs cannot fairly be described as *"[undermining] or [detracting] from the mandatory intensification objectives"***. The very nature of a QM is to limit intensification in an area for good (evaluated) reasons, which is why the so-called 'mandatory intensification objectives' do not require intensification at all costs, in all areas, even where matters exist that may make higher density inappropriate.

5.21 The lack of balance inherent in the position put forward by submitters seeking greater levels of intensification, has been observed by Panels considering other IPIs, such as in Wellington. The comments of that Panel are equally apposite in the context of PC14:[73]

> *45. Proceeding on that basis, we heard a number of legal submissions seeking to characterise the various tests contained within Section 77J and 77L. Counsel for Waka Kotahi, for instance characterised them as imposing 'onerous' requirements, setting a 'high bar' and requiring 'significant justification' for qualifying matters falling within Section 77I(j).*
>
> *46. Counsel for Kāinga Ora similarly suggested that such qualifying matters needed to be 'strictly assessed and quantified'. [Counsel] characterised Section 77L(b) as requiring that such qualifying matters be 'so significant' that they displace the MDRS and NPSUD Policy 3.*
>
> *47. We have to confess that we found the level of over-statement, if not hyperbole, somewhat surprising when coming from experienced counsel.*
>
> *48. Viewed objectively, Section 77L clearly requires a more granular analysis before one can reach the conclusion both that a qualifying matter is justified, and identify the level of restriction on the outcomes that the MDRS/Policy 3 would otherwise require. It also requires an assessment "in light of the national significance of urban development and the objectives of the NPS-UD" which Section 77J does not explicitly require. However, we would expect an evaluation under Section 77J to take these matters into account nonetheless since the issue either way is whether the qualification can be justified in light of the directions of the NPSUD.*
>
> *49. What Section 77L does not say is that a qualifying matter must be of national significance in order to prevail over those directions. The fact that Section 77I provides for potential qualifying matters other than those based on the matters of national importance identified in Section 6 suggests to us that that is quite deliberate.*

Section 77L(b)

5.22 As noted above, the evaluation of an *"other"* QM includes a requirement under section 77L(b) to justify *"why that characteristic makes [a policy 3 or*

[73] wellington-pdp-report-2b-final.pdf.

MDRS] level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD".[74]

5.23 The implied corollary is that an *"other"* QM needs to be assessed as enabling an alternative level of development that is *appropriate* in light of *"the national significance of urban development and the objectives of the NPS-UD"*.

5.24 It is important to note again that the *"national significance of urban development and the objectives of the NPS-UD"* do not mandate, nor even encourage, intensification at all costs. There is no presumption that an *"other"* QM immediately faces an uphill battle, or is on the back foot, if it is inconsistent with intensification at all costs. Rather than intensification at all costs, the *"the national significance of urban development and the objectives of the NPS-UD"* anticipates meeting the more balanced twin requirements of:

(a) having WFUEs that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety; and

(b) providing sufficient development capacity.

5.25 The *"national significance of urban development"* is not expressly stated in NPS-UD itself. However, the website of the Ministry for the Environment references the two bullet points of national significance as follows:[75]

"***What it does***

The NPS-UD 2020 recognises the national significance of:

- *having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future*
- *providing sufficient development capacity to meet the different needs of people and communities.*"

5.26 The above summary is consistent with a contextual and holistic consideration of the *"objectives of the NPS-UD"*, noting that section 77L(b) specifically references the objectives (plural) of the NPS-UD, not a singular objective or policy. Notably:

[74] Clause 3.33(3)(a) of the NPS-UD, and section 77L(b) and 77R(b) of the RMA.
[75] https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-urban-development/

(a) having WFUEs that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety is anticipated by NPS-UD objective 1, reinforced by policy 1 in particular; and

(b) providing sufficient development capacity is specifically anticipated by policy 2, which implements NPS-UD objective 2 which seeks to improve housing affordability by supporting competitive land and development markets through planning decisions.

5.27 On this latter point, no meaningful information has been put to the Panel to rebut the Council's explanations that PC14 provides sufficient development capacity, even considering all the QMs put forward by the Council – the relevance of which is discussed in more detail below. As such, the Panel and Council are able to assess on their merits the QMs and other provisions put forward to achieve 'density done well', such as promoting WFUEs, community wellbeing, health, and safety, and the directives of all other higher order planning instruments.

The relevance of excess development capacity (and other contextual factors)

General submission

5.28 The Council's position remains that there is sufficient development capacity already provided for through the operative District Plan, and that has been significantly augmented by PC14 as notified (and now recommended). At the beginning of the hearing the Panel queried the relevance of that excess capacity, in terms of its consideration of PC14.

5.29 As noted above, the Panel must evaluate the PC14 provisions on a real-world basis, including in terms of assessing (and quantifying, if practicable) the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions.

5.30 Where the Panel is evaluating provisions to apply a QM, therefore, it must consider the real-world benefits and costs of those provisions.

5.31 There is no legal basis for skewing this exercise in favour of intensification and not giving appropriate effect to a WFUE and the Plan's Strategic Directions objectives. While section 77L(b) highlights the national significance of urban development and the objectives of the NPS-UD

(discussed above), the RMA does not require the section 32 evaluation to assume that any particular benefits will come from implementing the MDRS on any particular site, for example, or that any particular costs will arise from not doing so.

5.32 Logically, the benefits of intensification must be greater where that will help address a significant societal problem, e.g. a housing shortage. In the case of PC14, the benefits of intensification would logically have carried stronger weight in evaluating the QMs in PC14 if housing supply were an issue in the city. Relatedly, the costs of a QM proposed to limit additional intensification in an area must be more modest than they would otherwise have been if there was a significant shortage of housing supply in Ōtautahi Christchurch.

5.33 Following this logic, the fact that there is significant surplus of housing and business capacity to meet demand over the NPS-UD long term timeframes, must weigh in favour of applying the QMs identified by the Council in PC14.

5.34 Other Panels considering IPIs have reached this same logical conclusion.

5.35 The Panel considering Porirua City Council's IPI correctly recorded its:

> "*appreciation that the manner in which these [RMA and NPS-UD] obligations 'land' in any particular district must reflect local circumstances and understanding over what can be characterised as 'well-functioning urban environments'.*"

5.36 The Panel noted that if the Government had not intended this outcome then it would have directly legislated specific and standardised provisions into district plans. In that Panel's assessment, the development of an understanding of the nature of housing demand and supply and development capacity is ingrained into the wording of the NPS-UD objectives and Policies 1(a)(i), 2, 6 and 8. The Panel noted:[76]

> "*It follows that we can safely proceed on the basis that Porirua City is not coming from a position of having to address a significant (or indeed any) shortfall in supply over demand (…) Practically it means that we can focus our attention on the merits of those requests in determining whether they are justified on their own terms. When we are considering requests to 'tamp down' development capacity or otherwise*

[76] Porirua City Council IHP recommendations 8A at paragraphs 371-391.

maintain status quo; we need to consider whether those requests would result in material impact on development capacity."

5.37 The same is true of the Panel considering Wellington City Council's IPI. Paragraph 91 of Report 2B of that Panel reads:

"*Counsel for MHUD submitted that it did not follow that an excess of PDP realisable capacity justifies Character Precincts. We consider that is correct, but only to a point. An excess of realisable capacity provided for in the PDP will not justify Character Precincts on its own. It is critical that the Council has evaluated where character values arise of importance. We are satisfied that Boffa Miskell's work provides a sound basis for that assessment.* ***Where the excess of capacity is relevant is on the specific point in issue: whether those character values make the level of development that would otherwise be prescribed by the NPSUD inappropriate, taking account of the national significance of urban development and the objectives of the NPSUD. It seems to us that an excess of capacity is highly relevant to that point. Put simply, the closer the PDP is to only just providing for projected demand, the greater the onus to establish that a qualifying matter (in this case Character Precincts) are justified, and vice versa.*** *Ms Woodbridge [the expert planner for a submitter, Kāinga Ora] accepted the proposition we put to her that the greater the margin of realisable capacity provided over predicted demand, the less significant is the need to provide yet further capacity in terms of the objectives of the NPSUD. To be fair to Ms Woodbridge, she qualified her acceptance by referring to the desirability of encouraging competition*" (our emphasis).

5.38 We respectfully agree with that Panel's logic. Again, to summarise, if restricting development to accommodate a certain qualifying matter would lead to the NPS-UD objectives **not** being met, section 77L(b) clearly requires that to be weighed against the justification provided for the qualifying matter. The inverse must logically also be true, so if an IPI provides significant housing choice and sufficient development capacity such that the objectives of the NPS-UD are met irrespective of the QM. Then section 77L(b) requires those factors to be weighed differently including by factoring in the local situation regarding development capacity.

This logic is supported by the NPS-UD

5.39 Objective 2 of the NPS-UD recognises that there is a limit to what planning decisions can do to improve housing affordability. Planning decisions cannot, for example, improve affordability by decreasing mortgage rates or increasing household incomes, or lowering costs of building materials. Rather, objective 2 anticipates that housing affordability could be improved by planning decisions that support competitive land and development markets. As markets are driven by supply and demand, with affordability improved when supply exceeds demand, the intent is that planning decisions support competitive land and development markets by providing development capacity in excess of demand.

5.40 The important implementing plank to this objective is policy 2, which requires Council at all times to provide:

> *"at least sufficient development capacity to meet expected demand to meet expected demand for housing and for business land over the short term, medium term, and long term".*

5.41 The requirement to provide sufficient development capacity is set out in sub-part 1 clauses 3.2 to 3.7 of the NPS-UD. Notably, plan-enabled development capacity need only be demonstrated as zoned in an operative and proposed district plan under clauses 3.4(1)(a) and 3.4(1)(b) up to the *"medium term"*, defined as between 3 and 10 years. Plan enabled capacity for the long term (defined as between 10 and 30 years) could be identified in a Future Development Strategy (**FDS**) or other relevant plan or strategy.

5.42 The NPS-UD also anticipates that:

(a) Sufficient housing capacity must also be infrastructure ready, feasible and reasonably expected to be realised, plus a 20% competitiveness margin.

(b) Sufficient business capacity must also be infrastructure ready and suitable, plus a 20% competitiveness margin.

5.43 As noted in the Council's opening legal submissions for the strategic directions hearing,[77] the current District Plan already provides at least sufficient development capacity to meet demand for housing and industrial

[77] Paragraph 2.57 and following of the submissions, here.

over the short- to long-term, and demand for commercial over the short- and medium-term.

5.44 PC14 significantly adds to that capacity, so that that there will well and truly more than sufficient development capacity, such that there would be 313 years of plan-enabled housing capacity, and over 100 years' of feasible housing capacity.

5.45 With regards to typologies, it is important to note that both the MRZ and the HRZ actually enable wide range of typologies. That is because the rules enabling the higher intensification typologies (such as apartment, multi-unit, and multi-story residential typologies) also enable the lower intensification typologies such as single storey dwellings on single sites, except in the case of HRZ which requires a two-storey minimum (but does not require a multi-storey apartment). In the MRZ, a four-bedroom house is enabled as is an MDRS development (subject to any applicable QMs). The important points are these:

(a) PC14 proposes residential zones that provide for a wide range and variety of homes, noting that there is strong demand for three+ bedroom homes and standalone homes across the city which must be met.[78]

(b) PC14 leaves the market free to operate so as to provide for whatever type, price, variety of home for different types of households, throughout the MRZ and HRZ zones, and within the lower density zones impacted by qualifying matters.

(c) PC14 therefore supports competitive and development markets (consistent with NPS-UD objective 2), contributes to home variety (consistent with policy 1(a)), and provides well and truly more than sufficient development capacity to meet expected demand (consistent with policy 2).

5.46 That PC14 greatly increases the already more than sufficient development capacity in Christchurch is relevant to the Panel in a number of respects as follows:

(a) Regardless of what decision the Panel makes on PC14, there will be at least sufficient development capacity. That is because there is already

[78] Section 42A report of Sarah Oliver (here), at paragraph 10.28.

more than sufficient development capacity under the status quo, with PC14 (with all proposed QMs) adding significantly more to that capacity.

(b) No QM being proposed in PC14 would cause a situation that would result in an insufficiency of development capacity in Christchurch that would be contrary to the sufficient capacity directives of the NPS-UD, or the national importance of providing for sufficient capacity. Therefore, there is no need to cull or reduce the impact of QMs for the purpose of rectifying any failure to provide at least sufficient development capacity.

(c) The national importance of providing sufficient development capacity is met in Christchurch.

(d) Thus, the evaluation of PC14 and its associated QMs under section 32 and the QM assessment sections 77J to 77I and 77P to 77R must account for the reality that no QM will cause a capacity insufficiency or shortfall that must be rectified. Putting it another way, the capacity cost of utilising QMs in Christchurch will not weigh as heavily as the capacity cost of utilising QMs in a district where there is a capacity shortage.

Commercial floorspace capacity

5.47 Mr Colegrave and Mr Clease have asserted throughout their evidence that a shortfall of commercial floorspace capacity exists. Mr Lightbody has explained that there is no shortfall in capacity, but rather a significant (1104ha) surplus provided through PC14, given the recommended building heights in centres (excluding the City Centre).[79] Mr Heath[80] supports Mr Lightbody's view that a significant surplus of commercial land is enabled by PC14 as recommended.[81]

The relevance of amenity effects

5.48 An issue discussed during the hearing is the relevance of amenity effects when considering proposed PC14 provisions, in particular those related to QMs.

5.49 Contrary to assertions by some submitters, and for reasons given in paragraphs 3.24 to 3.29 of the Council's opening legal submissions for the

[79] Rebuttal evidence of Mr Lightbody dated 9 October 2023 at [34] - [37].
[80] Evidence of Mr Heath dated 11 August 2023 at [195] - [197].
[81] Rebuttal evidence of Mr Lightbody dated 9 October 2023 at [37].

Strategic Overview hearing,[82] NPS-UD policy 6 does not prohibit a comparative consideration of adverse amenity effects arising from the various intensification options and alternatives being assessed in PC14. PC14 is a proposal to change the *"planned urban built form"* that is currently provided for in the Operative District Plan, and the Panel is entitled to consider amenity implications arising from the various options to create and set an entirely new *"planned urban built form"* under PC14.

5.50 That outcome is also reinforced by NPS-UD policy 6(a) refers to *"planned urban built form"* is that which has been anticipated *"by those RMA planning documents that have given effect to this National Policy Statement"*. A *"planned urban built form"* is one anticipated by RMA planning documents (defined to include a *"district plan"*, but not a proposed district plan)[83] that have (already) given effect to the NPS-UD. Thus, policy 6 is concerned about a *"planned urban built form"* anticipated in an operative district plan that gives effect to the NPS-UD. It is not concerned about a proposed urban built form that has yet to be tested through the planning process as giving effect to the NPS-UD.

5.51 Kāinga Ora has expressed disagreement with the above interpretation, arguing instead that policy 6 recognises that changes implemented through policy 3 of the NPS-UD will result in significant changes to an area, but those changes are not an adverse effect.[84] With respect, this submission is incorrect in two ways:

(a) Firstly, it does not account for the full context of policy 6, as outlined above.

(b) Secondly, it incorrectly assumes that policy 3, on its own, sets a new urban form resulting in significant changes to an area which cannot be considered as an adverse effect. This is contrary to policy 6(a) which anticipates a *"planned urban built form"* is one that gives effect to the NPS-UD as whole, not just to policy 3. The NPS-UD, together with the amended provisions of the RMA, anticipates there will be a new planned urban built form that is not one that simply, and blindly, gives effect to policy 3, but one that has been tested as giving effect to the whole NPS-UD including policy 4 (the 'yin' to the 'yang' of policy 3), and

[82] Opening legal submissions for Christchurch City Council (Strategic Overview hearing) dated 3 October 2023.
[83] See clause 1.4 Interpretation of the NPS-UD.
[84] Legal submissions on behalf of Kāinga Ora (Strategic, City Centre and Commercial Zone Provisions) dated 6 October 2023, at paragraphs 5.11 to 5.12.

objectives 1 and policy 1 which are concerned to ensure that the decisions on a new *"planned urban built form"* contribute to WFUEs that enable all people and communities to provide for their wellbeing, health and safety.

5.52 Kāinga Ora's submission effectively amounts to an amenity *fait accompli* – such that no person, whether Council or submitter, can raise amenity as an adverse effect if it departs from a policy 3 (and also presumably MDRS) built form, regardless of the fact that the whole IPI and Intensification Streamlined Planning Process scheme provides a public participatory process for setting a new planned urban built form, to be tested as to whether it gives effect to the totality of the NPS-UD including the countervailing factors that allow for appropriate departures from a plain policy 3 and MDRS response.

5.53 Further, it would be unlawful for a secondary legal instrument – the NPS-UD – to negate the general legal requirement in section 7(b) for persons exercising functions and powers under the RMA to have particular regard to the maintenance and enhancement of amenity values. As the Panel considering Wellington City Council's IPI observed, in response to a suggestion that sunlight could not be a matter giving rise to a QM:[85]

> *"[The planning witness] suggests that sunlight and privacy, for instance, cannot be a qualifying matter.* ***NPSUD Policy 6 says that changes in amenity are not automatically an adverse effect. It does not say they can never be an adverse effect, and we do not think a subsidiary instrument could have that effect even if it purported to do so (only Parliament can deem matters to be a fact that are not).*** *We consider such matters are issues of degree. At a certain point, loss of sunlight ceases to be an amenity issue (in the sense of being 'nice to have') and becomes an issue of health and wellbeing. It is then a question whether such effects can meet the evaluation requirements in Section 77J and 77L of the Act" (emphasis added).*

5.54 Commissioner Robinson queried whether policy 6 might be read as 'colouring' section 7(c), in a *King Salmon*-related sense. It is certainly the case that policy 6 must be read in a way that is consistent with the general obligation in section 7(c). The interpretation of policy 6 advanced by some submitters, to the effect that amenity effects are irrelevant in IPIs, would not achieve that consistency.

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[85] Paragraph 135 of this report: ihp-recommendation-report-1a.pdf (wellington.govt.nz)
Other Panels have similarly found policy 6 to be relevant to their considerations, including in Western Bay of Plenty where the Panel pointed to numerous indications in the relevant provisions of the RMA, NPS-UD, and MfE guidance confirming that amenity considerations remain relevant. See [3.235-3.240] of this report: PC92-IHP-Recommendation-Report.pdf (westernbay.govt.nz)

5.55 A consistent reading, in line with the Council's position above, is that policy 6:

(a) does not (and could not) create a bar to considering amenity effects in an IPI process;

(b) means that, both now and after the IPI is in effect (i.e. once the planned urban built form is in play), decision-makers should bear in mind that changes in amenity do not automatically amount to an adverse effect.

5.56 Lastly, if amenity values were not to be considered in the PC14 process, a practical problem would emerge: amenity considerations could not be put to one side in any meaningful way because practically all District Plan provisions have some amenity implications (including the MDRS standards relating to setbacks, site coverage, and so on). Some provisions in the operative Plan that manage amenity also manage the quality and functioning of the urban environment. As such, it is not feasible for the Panel or Council to categorise specific provisions as either relating to amenity, or not.

6. EQUITABLE OUTCOMES

6.1 Another issue explored during the hearing is whether PC14 results in equitable outcomes or perhaps equal opportunities for the inhabitants of Ōtautahi Christchurch. More specifically, the Panel queried people's ability to develop land or enjoy intensified living throughout the different parts of the city, including areas that are currently relatively disadvantaged in socio-economic terms.

6.2 The Panel's questions focused on certain large areas that feature QMs, such as because of the risks associated with coastal hazards or due to limited access to frequent public transport, which make intensification inappropriate in those areas. In respect of the latter QM, the Council has taken on board feedback about the need for the QM to be dynamic, in the sense of not 'locking in' a particular outcome in terms of public transport accessibility (discussed further below).

6.3 More generally, however, while those QM areas coincide with less affluent suburbs, they also coincide with affluent areas.

6.4 This demonstrates what the Council hopes is clear to the Panel and submitters: the Council has taken an even-handed, evidence-based approach to identifying QMs and including them in PC14. Where the Council has identified a matter that makes intensification inappropriate in an area, it

has applied a QM accordingly, in line with the requirements of the RMA. In some cases there are strong legal imperatives on the Council to do so, such as in respect of natural hazards.

6.5 Further, generally speaking the District Plan, augmented by PC14, is highly enabling of development. Enablement is still provided for in most parts of the city, including in the eastern suburbs, notwithstanding the existence of QMs there.

6.6 As well as there being significant development capacity and opportunity in the east outside the QM areas, opportunity even exists within the QM extents, as Ms Oliver noted in her summary relating to coastal hazards:[86]

> *"The RS, RSDT and RMD zone operative provisions will still provide for a limited level of intensification. Resource consents have been granted for multi-units within the CHMAs but subject to substantive conditions, including requirements to relocate when triggered by specified sea level rise (SLR) depths".*

7. STRATEGIC OVERVIEW / GENERAL – HEARING WEEK 1

Overarching concerns raised by submitters

7.1 The key whole-of-PC14 issues raised by submitters relate to the issues touched on above; a number of submitters seek a greater or lesser intensification response than provided through PC14 as notified, but the Council is comfortable with the approach it has taken to PC14. The provisions now proposed reflect a number of changes, but stemming from submissions on specific elements of PC14 (discussed below) rather than overarching concerns with the approach taken.

7.2 To the extent some submitters seek no MDRS or NPS-UD policy 3 intensification at all (for example, because there is already more than sufficient capacity), such an outcome is not available under the RMA or the NPS-UD. Even if there is more than sufficient capacity, the RMA and the NPS-UD require the Council to enable intensification (subject to moderation by the presence and evaluation of QMs).

[86] Paragraph 14: https://chch2023.ihp.govt.nz/assets/2024-Council-Hearing-Statements-Documents/16th-April/01-Sarah-Oliver-Summary-Statement-Coastal-and-City-Infrastructure-QMs-Hearing-16-April-2024.pdf

Strategic directions objectives

7.3 The proposed provisions in **Attachment 2** reflect the agreed outcome of expert planners' conferencing regarding the appropriate placement of the mandatory objectives and policies within the District Plan.[87]

7.4 The Panel asked whether there is any legal impediment to incorporating the mandatory objectives and policies in a way that 'meshes' the new provisions with existing provisions (which has largely been avoided through the agreed outcome of conferencing in any event).

7.5 In counsel's view, the answer is no. The obligation on the Council is to *"include"* the mandatory objectives and policies *"in [the] District Plan"*,[88] and in counsel's view:

(a) this must be done in a way that does not materially alter or detract from the meaning of those mandatory provisions; and

(b) a degree of duplication or overlap between the mandatory objectives and policies and existing provisions is inevitable, and therefore section 80E enables a IPI to provide for the new provisions to be incorporated in a way that 'fits' with the existing regime.

8. CITY-WIDE QMS – NATURAL ENVIRONMENT – HEARING WEEK 2

8.1 In this section we confirm the Council's position in respect of each of the QMs addressed in hearing week 2, updated as necessary following the hearing process.

8.2 During hearing week 2, the Panel asked the Council to advise on the approach to QMs proposed to be carried over from the operative District Plan via existing overlays, for 'otherwise enabled' sites that are largely or totally covered by QM overlays.[89] The Council's detailed response, including QM and site-specific analysis, is set out in Appendix A to the memorandum of counsel dated 11 April 2024.[90]

8.3 As set out in the response:

[87] https://chch2023.ihp.govt.nz/assets/Joint-Witness-Statements/Joint-Witness-Statement-Planning-Experts-IHP-Minute-20-Strategic-Directions-27-November-2023.pdf
[88] Clause 6 of Schedule 3A to the RMA.
[89] Panel request #16.
[90] Memorandum-of-Counsel-for-Christchurch-City-Council-11-April-2024-Information-requests.pdf (ihp.govt.nz); updating the initial response provided as Table G in Appendix 1 to memorandum of counsel dated 31 October 2023.

"(…) there are a number of instances in which it is now recommended that operative zoning is retained (...) The purpose of these changes is to remove any impression of 'upzoning' on sites on which development is unrealistic, given the qualifying matters present. (...) It is not considered this gives rise to any issues of natural justice, as reverting to operative zoning would not have any tangible effect on the development potential of a site, but rather serves to avoid any false impressions of 'upzoning'."

8.4 The updated mapping provided with this reply (refer **Attachment 6**) reflects these recommendations.

ONL/ONF, SES and SCS[91]

8.5 The Council's approach to these existing QMs, which address fundamental section 6 matters, is straightforward: all of the relevant sites listed / scheduled in the District Plan, and the existing District Plan provisions that apply to those sites, are proposed to be retained. Put simply, the Council proposes that the status quo apply in respect of these significant sites.

8.6 There was no serious challenge to that approach through the PC14 process,[92] and the Council's position remains that the Panel should recommend that these QMs be adopted as notified.

8.7 The Panel made two requests for further information specific to these QMs:

(a) Ms Hansbury explained the working of the SCS QM at the hearing on Wednesday 18 October 2023 (request #8); and

(b) Appendix B to the memorandum of counsel dated 29 November 2023 addressed the Panel's queries in respect of the SES QM (request #15).[93] In summary:

(i) the Council will give effect to the National Policy Statement for Indigenous Biodiversity (**NPS-IB**) in due course, but does not consider it practicable to do so through PC14;

(ii) the Council does not consider that additional SESs would reasonably have been anticipated to be added through

[91] Addressed in sections 5, 6 and 7 of the Council's opening legal submissions for the week 2 hearing: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/Christchurch-City-Council-Legal-submissions-Week-2-City-wide-qualifying-matters-11-October-2023-18-October-2023-v2.pdf

[92] Harvey Armstrong's submission seeking the removal of the ONL from 75 Alderson Avenue was addressed by Ms Hansbury, and Mr Armstrong did not attend the hearing. The CGL submission seeking the removal of the SCS overlay from either side of Beachville Road, Redcliffs was addressed by Ms Hansbury and was not pursued further by CGL.

[93] Memorandum-of-Counsel-for-Christchurch-City-Council-29-November-2023-with-updated-list-of-information-requests-and-providing-info.pdf (ihp.govt.nz)

submissions on PC14, and therefore considers that any such requests would be out-of-scope;[94] and

(iii) the Council considers that extending an existing SES, adding a new 'buffer' overlay around an existing SES, or adding an additional SES would all amount to proposing a 'new' QM. The Council is not proposing to take any of these steps through PC14.

8.8 Finally, in response to Panel request #16, the Council has identified that the zoning of two SES sites could be amended from residential to Open Space Coastal, to reflect their use as part of coastal reserves.[95]

Water body setbacks[96]

8.9 The water body setbacks QM is an existing QM that relates to a number of section 6 matters.[97] The Council continues to propose the existing provisions in the District Plan providing for the various forms of water body setbacks be retained.

8.10 The notified version of PC14 included a new water body setback overlay on the planning maps. As explained by Ms Hansbury[98] (in response to submissions) and in opening legal submissions, that planning map overlay is no longer proposed. That addresses a number of the submissions, including site-specific submissions, on the water body setbacks QM. Relying solely on the provisions means the setbacks can be applied to the 'on-the-ground' location of the banks of the water body, rather than by reference to a potentially inaccurate mapped overlay.

8.11 The Council does propose one relevant 'tidy-up' amendment, to remove the notation indicating a waterway at 147 Cavendish Road (the water body no longer exists, as per the Summerset Group Holdings submission).[99]

8.12 The Council did not understand any submitter to actively pursue any site-specific or general opposition to the Council's proposed version of the water body setbacks QM at the hearing.[100]

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[94] Only one submitter – Trudi Bishop (155.3) sought a new / expanded SES. That submission was addressed by Ms Hansbury, and Ms Bishop did not attend the hearing.
[95] Refer to the SES item in Table G.2, Appendix A to the 11 April 2024 memorandum of counsel: Memorandum-of-Counsel-for-Christchurch-City-Council-11-April-2024-Information-requests.pdf (ihp.govt.nz)
[96] Section 8 of the Council's opening legal submissions for the week 2 hearing.
[97] Council's opening legal submissions for the week 2 hearing at 8.3.
[98] s42A report of Anita Hansbury, paragraph 6.19.5: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/11-Anita-Hansbury-Section-42A-Report-FINAL.PDF
[99] 42A report of Anita Hansbury, paragraph 6.19.14 and page 88 of Appendix 3.
[100] Of note is Mr Tm Joll's confirmation at 1.2 of his evidence that Kainga Ora was not pursuing its submission on the QM: Kainga-Ora-Homes-and-Communities-834-2082-2099-Evidence-Tim-Joll-Planning.pdf (ihp.govt.nz)

Open Space Zones[101]

8.13 The Open Space Zones are not relevant residential zones. However, for the avoidance of doubt, the Council proposes to retain the operative provisions for those zones as an existing QM,[102] noting that section 77O(f) specifically addresses the protection of public open space areas.

8.14 There was no specific opposition to that approach expressed in evidence or by any submitter at the hearing.[103]

8.15 For completeness, we confirm that:

(a) The Council recommends a minor correction to the Open Space Water and Margins Zone in respect of 65 and 67 Richmond Avenue, in response to the submission of Greg Olive;[104] and

(b) The Council does not support an 'Interface Area QM' similar to that proposed for Riccarton Bush, to provide a buffer for the Open Space zoned Hagley Park, Cranmer Square and Latimer Square, as sought by Historic Places Canterbury.[105]

SPOARC and Specific Purpose (Cemetery) Zone[106]

8.16 The SPOARC Zone is largely public land along the Avon River. The Council proposes to retain the existing provisions over the public land within the SPOARC Zone,[107] as an existing QM and in respect of its open space values pursuant to section 77O(f).[108]

8.17 There are also private properties within the SPOARC Zone that continue to be used for other purposes. Those sites are subject to provisions of 'alternative zones' specified in Appendix 13.14.6.2.

8.18 There are three sites within a walkable catchment of the City Centre Zone, one of which (254 Fitzgerald Avenue/5 Harvey Terrace) does not currently have 'alternative zone' provisions. For these three sites, and relying on the

[101] Section 9 of the Council's opening legal submissions for the week 2 hearing.
[102] The Open Space Zones are listed in Policy 18.2.2.1 of the District Plan.
[103] Again, Mr Joll's evidence (at 1.2) confirmed that Kainga Ora is no longer pursuing the deletion of this QM: Kainga-Ora-Homes-and-Communities-834-2082-2099-Evidence-Tim-Joll-Planning.pdf (ihp.govt.nz)
[104] s42A report of Anita Hansbury, paragraph 6.19.11: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/11-Anita-Hansbury-Section-42A-Report-FINAL.PDF
[105] Historic Places Canterbury did not appear at the hearing.
[106] Sections 10 and 11 of the Council's opening legal submissions for the week 2 hearing.
[107] Chapter 13.14 of the District Plan.
[108] The SPOARC zone also has an important natural hazard mitigation function.

expert evidence of Mr Little[109] and Ms Hébert,[110] the Council continues to propose:

(a) QM status on an 'other matter' basis pursuant to section 77O(j) and following the section 77R analysis that was carried out; and

(b) operative 'alternative zoning' of RSDT for the two sites at 238 Fitzgerald Avenue and 57 River Road for reasons explained in Ms Hansbury's s42A report;[111] and

(c) 'alternative zoning' of MRZ for the site comprising 254-256 Fitzgerald Avenue and 5 Harvey Terrace (resulting in development rights more restricted than under HRZ that would apply to these properties because of their location within the walkable catchment of the Central City).

8.19 One of the three sites is 254-256 Fitzgerald Avenue and 5 Harvey Terrace, owned by, and subject to a submission by, Glenara Family Trust (**GFT**). In response to that submission, Ms Hansbury proposed additional rule changes in her s42A reporting in respect of that site.[112] Those changes were supported in the planning evidence of Mr Mountford for GFT.[113]

8.20 After GFT and Mr Mountford appeared at the hearing, and following a formal request from the Panel,[114] Mr Mountford and Ms Hansbury have discussed the SPOARC provisions. As a result of that discussion, Mr Mountford filed a memorandum dated 2 May 2024 setting out the further amendments to the provisions agreed between Mr Mountford and Ms Hansbury.[115] The further amendments include:

(a) matters of general clarification; and

(b) amendments specific to the GFT site, including:

(i) clarifying the matters of discretion applicable to the relevant RDA rules;[116]

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[109] 36-Dave-Little-Statement-of-Evidence-final.PDF (ihp.govt.nz)
[110] 28-Marie-Claude-Hebert-Statement-of-evidence-final.PDF (ihp.govt.nz)
[111] At 5.4.27 - 5.4.32.
[112] s42A report of Anita Hansbury, paragraphs 6.23.1 to 6.23.9.
[113] Microsoft Word - DLM evidence Final20 sept 2023.docx (ihp.govt.nz)
[114] Minute 29, Appendix A: https://chch2023.ihp.govt.nz/assets/IHP-Minutes-Directions-Docs/IHP-Minute-29-Hearings-Update-14-December-2023.pdf
[115] For the avoidance of doubt, counsel have confirmed that Ms Hansbury agrees with the amendments as set out in that memorandum. https://chch2023.ihp.govt.nz/assets/Submitter-Memos/Correspondence/Glenara-Family-Trust-91-2070-Memorandum-to-Hearings-Panel-David-Mountford-2-May-2024.pdf. The JWS on landscape architechture matters between Mr Little and Mr Compton-Moen is also relevant to this agreed position: Joint-Expert-Witness-Statement-of-Landscape-Architecture-Experts-256-Fitzgerald-Ave-SPOARC-10-October-2023.pdf (ihp.govt.nz)
[116] Rule 13.14.4.1.3 Restricted Discretionary activities, RD1, RD5 and RD8.

(ii) also providing specifically for consideration of positive effects for RDA applications;[117] and

(iii) increasing the SPOARC permitted activity height limit to 11 metres for the subject sites to align with the alternative MRZ zoning standard.[118]

8.21 The Council supports those agreed amendments, which are incorporated into the proposed provisions in **Attachment 2**. Counsel understands there to be no remaining specific opposition to the SPOARC QM and provisions as now proposed by the Council.[119]

8.22 For completeness, the Council continues to propose the retention of all the current provisions that apply to the Specific Purpose (Cemetery) Zone, again as an existing QM and in respect of its open space values pursuant to section 77O(f). The QM is proposed on an 'avoidance of doubt' basis, and no submissions specifically addressed the QM or the treatment of the Cemetery Zone.

8.23 Other Specific Purpose Zones are addressed later in these submissions.

Slope instability QM[120]

8.24 The slope instability QM (or collection of QMs) relates to the provisions in District Plan Chapter 5 (Natural Hazards) that apply to the various slope instability overlays.

8.25 While the section 32 report covered the slope instability overlays generally, Ms Ratka's section 42A reporting (and the opening legal submissions) specifically addressed only the Cliff Collapse Management Area 1, Cliff Collapse Management Area 2 and Rockfall Management Area 1. In response to the Panel's request #18, and generally to provide clarification as to the Council's intention, Ms Ratka prepared a supplementary statement of evidence and accompanying updated section 32 reporting.[121]

8.26 To confirm, Ms Ratka and the Council propose that:

[117] As above, RD5 and RD8.
[118] Rule 13.14.4.2.6(ii)(A).
[119] Mr Joll confirmed at 1.2 of his evidence that Kainga Ora no longer opposes the QM: Kainga-Ora-Homes-and-Communities-834-2082-2099-Evidence-Tim-Joll-Planning.pdf (ihp.govt.nz)
[120] Section 12 of the Council's opening legal submissions for the week 2 hearing.
[121] Appendix D to the Council's memorandum of 29 November 2023: APPEND1.PDF (ihp.govt.nz)

(a) all of the provisions relating to the slope instability overlays be 'carried over' as a QM; and

(b) the existing underlying District Plan zoning within a number of those overlays be retained, including for sites that have a 30% or greater overlap with those overlays.[122] This is because the provisions in these overlays would mean intensification under MDRS is challenging or unrealistic. As an update on this point, Ms Ratka now recommends that where the *status quo* zoning would be Residential Hills, the PC14 zoning of Residential Medium Density with Suburban Hill Density Precinct and Suburban Density Precinct be applied. This reflects that the precinct would result in the same outcome without the need to retain the *status quo* zoning.

8.27 The list of overlays is as follows, with those where the underlying zoning is also proposed to be carried over in italics:

(a) *Cliff Collapse Management Areas 1 and 2*;

(b) *Rockfall Management Area 1* and Area 2;

(c) *Mass Movement Management Area 1*, Area 2 and Area 3; and

(d) Remainder of Port Hills and Banks Peninsula Slope Instability Management Area.

8.28 The provisions applicable to these areas vary based on the nature and severity of the natural hazard risk.

8.29 The Council continues to propose the retention of the operative provisions, on an 'existing QM' basis, noting that the provisions directly address section 6(h) of the RMA (the management of significant risks from natural hazards).

8.30 As set out in opening legal submissions and in reliance on the expert evidence of Dr Dykstra[123] and Ms Ratka,[124] in response to submitters the Council:

(a) did not support new QMs to exclude *"severe"* erosion class land from further subdivision and development. However, as discussed later in

[122] See the Council's response to Panel request #16 – and in particular refer to page 5 of Table G.2 included with the 11 April 2024 memorandum of counsel: Memorandum-of-Counsel-for-Christchurch-City-Council-11-April-2024-Information-requests.pdf (ihp.govt.nz)
[123] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/19-Dr-Jesse-Dykstra-Statement-of-evidence-final.PDF
[124] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/09-Brittany-Ratka-Section-42A-report-final.PDF

these submissions, following further expert conferencing the Council now supports a new Port Hills stormwater constraints QM, which addresses erosion-prone land;

(b) does not support requests that the District Plan apply Building Code guidance for passive protection structures as an acceptable method of reducing rockfall hazard on a site-specific basis, or provide an additional overlay to indicate where specific dwellings have rockfall protection structures in place. The submitters who made these requests did not appear at the hearing.[125]

High flood hazard areas[126]

8.31 The Council continues to propose that the existing District Plan provisions[127] relating to High Flood Hazard Management Areas and Flood Ponding Management Area be retained. Again, this on an 'existing QM' basis, noting that the provisions directly address section 6(h) of the RMA.

8.32 The Council also recommends that the operative zoning be retained for sites that have a 70% or greater overlap with the HFHMA or FPMA.[128] As per the approach to the slope instability QMs, this is on the basis that the overlay provisions make MDRS development unrealistic. As an update on this point, Ms Ratka now recommends that where the *status quo* zoning would be Residential New Neighbourhood, the PC14 zoning of Future Urban Zone be applied. This reflects that the Future Urban Zone would result in the same outcome without the need to retain the *status quo* zoning.

8.33 No submitters specifically opposed these QMs, but some submitters sought additional controls and / or QMs in relation to stormwater or flooding effects. Relying on the expert evidence of Mr Norton[129] and Ms Ratka, the Council does not support those requests.

8.34 Of particular note is the ECan submission seeking that the upper Halswell River catchment areas be covered by a QM that prevents further intensification. Mr Norton and Ms Ratka do not consider that adding a QM through this process is necessary, including because there are other

[125] S231.1, Phil Elmey; and S240.1 Ruth Dyson / S368.1, Karen Theobald.
[126] Section 13 of the Council's opening legal submissions for the week 2 hearing.
[127] Primarily in Chapter 5.4.
[128] Set out in the Council's response to Panel request #16,a nd in particular refer to page 3 of Table G.2 included with include with the 11 April 2024 memorandum of counsel: Memorandum-of-Counsel-for-Christchurch-City-Council-11-April-2024-Information-requests.pdf (ihp.govt.nz).
[129] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/44-Brian-Norton-Statement-of-evidence-final.PDF

catchment areas with similar characteristics / issues where no QM is proposed. While ECan reiterated at the week 10 hearing (including in legal submissions)[130] that it continues to seek a QM, the Council's position remains that it is not necessary. The Panel will therefore need to determine that point.

8.35 Overall, the Council agrees with Mr Norton and Ms Ratka that the QMs it has proposed represent a pragmatic approach, with any additional controls to be a matter for a future plan change.

9. CENTRAL CITY AND COMMERCIAL ZONES – HEARING WEEKS 3 & 4

Centres-based approach

9.1 The *"centres-based"* approach of the District Plan is outlined in paragraphs 1.3 to 1.18 of the Council's legal submissions for the Central City and Commercial Zones hearing.[131] The thrust of the *"centres-based"* approach has been retained in PC14, so that the policy framework is to:

(a) Give *primacy* to, and support, the recovery of the City Centre, *followed by* Key Activity Centres,[132] 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.[133]

9.2 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.[134]

9.3 PC14 proposes a substantial increase to the development opportunity and capacity in the central city and in its commercial centres in a manner that ensures the centres-based approach is maintained, giving primacy to the recovery of the Central City. In particular, PC14 proposes a carefully

[130] https://chch2023.ihp.govt.nz/assets/Legal-submissions/Canterbury-Regional-Council-689-2034-Environment-Canterbury-Legal-submissions-17-April-2024.pdf
[131] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 (here).
[132] 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.
[133] PC14 (Amended Provisions version) of policy 15.2.2.1.
[134] Joint statement of economics, commercial feasibility, development viability, commercial demand, housing and development capacity and housing demand experts, in appendix 1, first row.

calibrated set of height limits in Christchurch, with the City Centre Zone having the highest enabled height (up to 90m – discussed further in the Central City section below) followed by descending heights for centres lower down the centres hierarchy.

Central City

9.4 Key central city issues are outlined in paragraphs 3.1 to 3.24 of Council's the Council's legal submissions for the Central City and Commercial Zones hearing.[135] They remain relevant and are not repeated here. Specific issues arising during the hearing are outlined below.

Changes to City Centre Zone

9.5 Policy 3(a) of the NPS-UD drives the approach to intensification in the City Centre Zone (**CCZ**).

9.6 The legal submissions for Kāinga Ora record Mr Clease's opinion that no building height limit would be the most effective means of maximising capacity within the CCZ.[136] However, maximising capacity at all costs is not the directive of policy 3(a) of the NPS-UD. Rather, the directive is couched in terms of enabling heights and densities in the City Centre Zone in order to:

> *"realise as much development capacity as possible, to maximise benefits of intensification"*
>
> (our underlining for emphasis).

9.7 Thus, policy 3(a) envisages an enabling planning regime that seeks to realise as much capacity as possible, but in a manner that would maximise the benefits of intensification. This is consistent with the intention signalled in the NPS-UD Guidance Documents issued by the Ministry for the Environment (**MfE**)[137] that the intensification requirements:

(a) are not intended to direct local authorities to have no controls;[138]

[135] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 (here).
[136] Paragraph 7.2 of Legal submissions for Kāinga Ora (Strategic, City Centre and Commercial Zone Provisions) dated 6 October 2023 (here).
[137] Recent case law has emphasised that MfE guidance does not have binding statutory effect and is simply 'guidance', and should be treated as such in this context (and elsewhere in the submissions where such guidance is referred to). See, for example, *Greater Wellington Regional Council v Adams* [2022] NZEnvC 25 at [136].
[138] Ministry for the Environment, 2020, *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*, Wellington: Ministry for the Environment, at page 28 within the blue box (here).

(b) are not intended to override or undermine good quality urban design or urban environments;[139]

(c) could mean no maximum heights, but there may be limits where doing so will contribute to a WFUE and achieving the objectives of the NPS-UD as a whole.[140]

9.8 In addition, policy 3(a) does not mandate the use of permitted activity status for plan enablement, including in terms of building height. Rather, clause 3.4 of the NPS-UD anticipates that plan enablement (including height) can be provided for by permitted, controlled or restricted discretionary activities. Further, discretionary activities are considered enabling in instances where policies are clear and there is a pathway if specified requirements are met[141].

9.9 Unlimited height options for the City Centre Zone were considered in the Council's section 32 report and its associated appendices.[142] However, these were discounted following a comparative analysis with an approach that still involves enabling a very significant amount of development capacity (with a maximum 90m height greater than any building ever built historically in Christchurch), but with a combination of controls that are still enabling (permitted, controlled, restricted discretionary) but aimed to maximise the benefits of intensification though encouraging the development of increased heights and density with quality urban design.

9.10 Although a planning regime that enables unlimited heights can have benefits, it can also have costs. These are summarised by Mr Heath.[143] Amongst other things, Mr Heath observes that the costs of increased heights / densification are all associated with public safety and amenity, and that these could be mitigated to some degree by urban design and good planning policy. On the other hand, poor quality policy and design can further exacerbate the costs associated with increased density enabled by greater building heights.

Outcomes from CCZ Expert Conferencing

[139] Ibid.
[140] Ibid at page 30.
[141] Primary Evidence of Andrew Peter Hewland Willis dated 11 August 2023 (here) at paragraph 33;
[142] See Options 3 and 4 on pages 59 to 63 of Council's section 32 report, Part 4 (Commercial) (here). Accompanying that report on Council's website for PC14 (here) are 11 appendices, including an economic cost/benefit analysis (here) and a technical report on urban design for commercial zones (here) that are relevant to the Central City.
[143] Paragraphs 153 to 155 of the Statement of Evidence of Timothy James Heath on behalf of Christchurch City Council (Property Economics) dated 11 August 2023 (here).

9.11 Following hearing weeks 3 and 4, the CCZ provisions were discussed at expert conferencing between planners for the Council, Kāinga Ora and the Carter Group, resulting in a joint witness statement (**JWS**).[144] The JWS records agreement that:

(a) buildings above 90m could be restricted discretionary activities if the matters of discretion are able to be accurately and comprehensively identified, but if they could not, then a fully discretionary status was warranted;[145]

(b) discretionary activity status above 90m:

(i) would not create any mischief as such buildings are unlikely; and

(ii) is a more pragmatic means of enabling assessment of particularly tall buildings than attempting to address all potential effects through assessment matters and restricted discretionary activity status;[146]

(c) plan provisions should enable the design of buildings to be managed so that good design outcomes are delivered;[147] and

(d) the adverse effects from poor design would likely be more significant on taller, bigger buildings.[148]

9.12 The planning experts also agreed on the following modified planning framework:

(a) there would be no change to the controlled activity pathway for new buildings up to 28m with urban design certification;

(b) a more enabling regime can be provided for buildings between 28m and 90m as follows:

(i) For buildings between 28m and 45m high, the built form standards for tower internal boundary setbacks, tower dimension, and tower separation can be replaced with a new maximum gross floor area rule. The remaining built form standards (maximum

[144] Joint witness conferencing statement of planners on City Centre Zone Heights & Densities dated 4 December 2023 (here).
[145] Ibid at Appendix A, page 3.
[146] Ibid at Appendix A, page 1.
[147] Ibid at Appendix A, page 4.
[148] Ibid.

road wall height and sunlight and outlook) can be retained with the urban design rules managing internal boundary issues.[149]

(ii) For buildings between 45m and 90m high, the built form standards regarding sunlight and outlook, maximum road wall height, building tower setbacks for internal boundaries and the maximum tower dimension can be retained, but rule 15.11.2.16 Minimum building tower separation (between towers) can be deleted. The new Rule 15.11.2.16 Gross Floor Area is recommended to be added and would apply to buildings above 45m.[150]

Regime now proposed by the Council for CCZ

9.13 The Council's proposed regime for the City Centre Zone in the reply provisions (**Attachment 2**) implements what has been agreed in the JWS, while electing to:

(a) retain discretionary activity status for buildings above 90 metres to enable particularly tall building, where appropriate, which contribute to the cityscape,[151] whilst enabling a close assessment of their impact on the wider urban form and consideration of unforeseen effects, including commercial distribution and cumulative effects, the scale and relevance of which may change over time and be difficult to encompass in matters of discretion;[152]

(b) retain the threshold for urban design certification with controlled activity status for buildings up to 28 metres, with a 28-metre threshold being appropriate because:

(i) it is based on existing form of the central city being a low- to mid-rise city and remains unchanged from the operative District Plan;

(ii) it provides an ability to decline applications for buildings over 28m if not appropriate, given that below 28m would be generally consistent with the existing urban form, and allows for a closer assessment of buildings that could affect the form of the CCZ and its skyline; and

[149] Ibid at Annexure A, page 2.
[150] Ibid.
[151] Primary Evidence of Holly Gardiner dated 11 August 2023 (here) at paragraphs 8.1.8 – 8.1.9
[152] Primary Evidence of Alistair Ray dated 11 August 2023 (here) at paragraph 90; Primary Evidence of Andrew Willis dated 11 August 2023 (here) at paragraphs 10, 75, 83, 85 – 90.

(iii) the framework remains enabling above 28m through the use of restricted discretionary activity status.

9.14 The proposed provisions for the CCZ in **Attachment 2** account for the urban design evidence of Mr Ray, the economic evidence of Mr Heath, and the feasibility evidence of Ms Allen by striking the correct balance between realising as much development capacity as possible, to maximise benefits of intensification, whilst achieving a WFUE that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety. The provisions provide an enabling intensification framework that encourages good quality urban design and environmental outcomes.

Changes to Central City QMs

9.15 The implications of the modified planning framework for the CCZ on the Central City QM areas were not discussed during conferencing. The Council has considered whether the modified planning framework for the CCZ (which alters the planning framework from that proposed in the section 42A provisions for buildings above 28 metres) would have unintended consequences for these QMs.

Victoria Street and Cathedral Square QMs

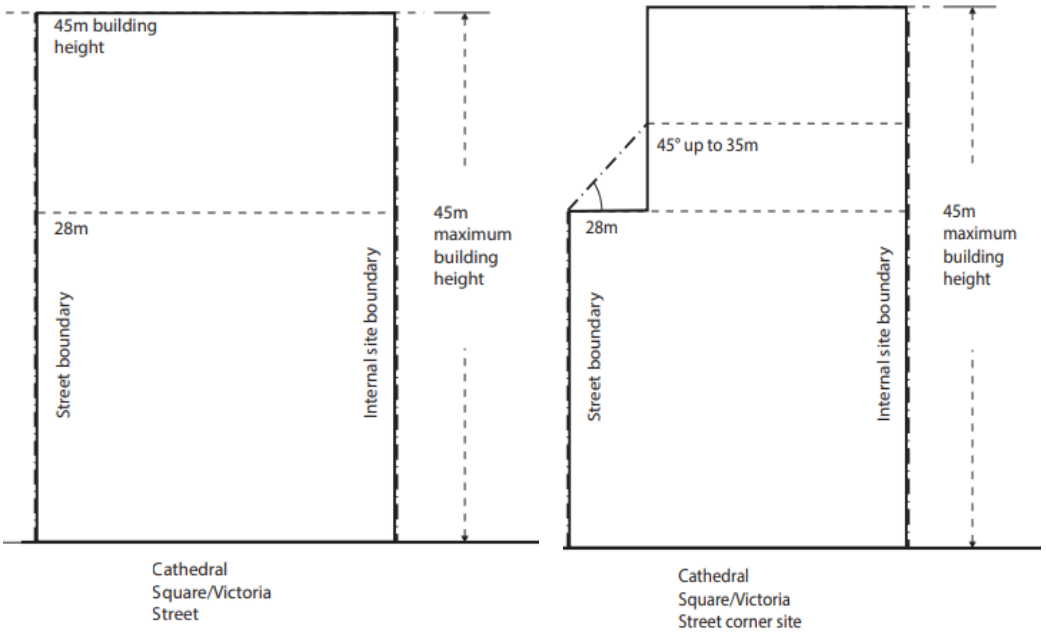
9.16 As outlined in the Council's section 32 report, sunlight, outlook and visual impact on the Victoria Street and Cathedral Square QM areas are particularly important.[153] Mr Willis, Mr Ray, Mrs Richmond and Ms Ohs explain that a building height of 45m rather than 90m is more appropriate for the Victoria Street and Cathedral Square QM areas, providing better outcomes in terms of visual impact, shading, and built form to protect the sensitive character of these important public open spaces.[154]

9.17 The modified planning framework for the CCZ (discussed at paragraph 9.12 above) would have unintended consequences for the Victoria Street and Cathedral Square QMs for buildings between 28 metres and the maximum building height of 45m provided for in these areas. On sites within 30m of street intersections, buildings would not have a maximum road wall height or

[153] See in particular Section 32 report, Part 2, Appendix 29 (Lower Height Limits – Victoria Street and Cathedral Square) (here), and Section 32 report, Part 2, section 6.14 (Cathedral Square Building Heights Section 32 evaluation) (here) and section 6.27 (Victoria Street Building Height Section 32 evaluation) (here).
[154] Statement of Primary Evidence of Andrew Willis dated 11 August 2023 (here) at paragraphs 113 to 128; Statement of Primary Evidence of Alistair Ray dated 11 August 2023 (here) at paragraphs 160 to 170; Section 42A report of Suzanne Richmond (here) at paragraphs 8.1.171 to 8.1.181; Statement of Primary Evidence of Amanda Ohs dated 11 August 2023 (here) at paragraphs 104 and 123 to 136.

upper floor setback and therefore could be constructed straight up to 45m. This would create an adverse impact on the QM areas, resulting in additional shading of Victoria Street and Cathedral Square.

9.18 The Council's proposed provisions (**Attachment 2**) seek to address this by amending rules 15.11.2.3 (Sunlight and outlook for the street) and 15.11.2.12 (Maximum road wall height) to replace the street corner exemptions with a higher road wall height and a 45° recession plane between 28m and 35m. The impact of this change is illustrated by the diagrams below, with the left diagram illustrating how the modified planning framework for the CCZ would apply to a building within the Cathedral Square / Victoria Street QM, and the right diagram showing how the provisions now proposed would impact on a corner site in Cathedral Square / Victoria Street.



9.19 The proposed amendments ensure that buildings at street corners will retain greater prominence and encourage the creation of landmark buildings, whilst ensuring that some sun and daylight is provided for the street. If a proposed building in the Victoria Street or Cathedral Square QM does not comply with the sunlight and outlook rule 15.11.2.3 the proposal becomes a restricted discretionary activity under rule 15.11.1.3 RD5. If a proposed building in the Victoria Street or Cathedral Square QM does not comply with the maximum road wall height rule 15.11.2.12 the proposal becomes a discretionary activity under rule 15.11.1.4 D1.

Arts Centre and New Regent Street QMs

9.20 The Council's proposed provisions (**Attachment 2**) continue to propose the following:

(a) Arts Centre and Interface – retain 16m within the block[155], 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).

(b) New Regent Street and Interface – retain 8m within the New Regent Street heritage setting, and 28m for sites to the east, west, north and south of the street.

9.21 Ms Ohs, Mrs Richmond and Mr Ray explain that the abovementioned building heights (rather than 90m) are necessary and more appropriate for the Arts Centre and New Regent Street QM areas, to protect the sensitivity of these highly significant heritage items and their associated settings and use, particularly from shading and visual dominance.[156] As mentioned by Mrs Richmond in her summary statement,[157] the height overlay and interface rules for the Arts Centre and New Regent Street support the implementation of the NPS-UD and the proposed Strategic Directions and CCZ policy framework of the District Plan by meeting the cultural wellbeing needs of a well-functioning urban environment,[158] responding to local character and context,[159] reinforcing the City's distinctive sense of place,[160] and recognising the importance of encouraging pedestrian activity and amenity of significant public open space by maintaining sunlight access and managing visual dominance effects on these spaces.[161] This is relevant for the New Regent Street outdoor dining area. There are specific policies for the Arts Centre and New Regent Street heritage items and settings in Policy 15.2.4.1 Scale and form of development.[162]

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[155] The area bound by Montreal Street, Worcester Boulevard, Rolleston Avenue and Hereford Street.
[156] Statement of Primary Evidence of Amanda Emma Ohs dated 11 August 2023 (here) at paragraphs 104 to 122; Section 42A report of Suzanne Amanda Richmond (here) at paragraphs 6.1.20 to 6.1.22, 8.1.141 to 8.1.170; Statement of Rebuttal Evidence of Suzanne Amanda Richmond (here) at paragraphs 61 to 73; Statement of Primary Evidence of Alistair Ray dated 11 August 2023 (here) at paragraphs 163 to 165.
[157] Summary statement of Suzanne Richmond for Central City (here) at paragraph 6.
[158] NPS-UD Objective 1 and Policy 1; Proposed Objective 3.3.1 Enabling recovery and facilitating the future enhancement of the district b. *"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 (…)"*.
[159] Proposed Objective 15.2.4 a.ii Urban form, scale and design outcomes; Proposed Policy 15.2.4.2 a.ii. Design of new development.
[160] Proposed Objective 3.3.7a.iii.D. Urban growth, form and design; Proposed Policy 15.2.4.1. a. Scale and form of development.
[161] Proposed Policy 15.2.4.2 a.i. and x.iii. Design of new development; Proposed Policy 15.2.6.3 a.ii. Amenity.
[162] Proposed Policy 15.2.4.1 a. iv. and v. Scale and form of development.

9.22 Unlike the Victoria Street and Cathedral Square QMs, the modified planning framework for the CCZ (discussed at paragraph 9.12 above) would have no unintended consequences for sunlight or outlook for the Arts Centre and New Regent Street QMs because the proposed height restrictions within these QMs do not extend above 28 metres.

Radio Communication Pathways QM

9.23 The Radio Communication Pathways QM is concerned about maximum building heights to avoid adverse impacts on radio communications between the Justice and Emergency Services Precinct and the Port Hills.

9.24 Amendments to the Radio Communication Pathway QM provisions have been agreed between the Council and the Ministry of Justice as set out in the JWS on Radio Communication Pathway Protection Corridors.[163] The agreed changes make the provisions clearer and require limited notification to the Ministry of Justice where a resource consent application is made that triggers non-complying activity Rule 6.12.4.1.5 NC1. These provisions are carried through into the proposed provisions in **Attachment 2**.

9.25 The agreed provisions are unaffected by the modified planning framework for the CCZ, as it does not extend the height limit for the limited part of the pathway overlapping the CCZ (over the Justice Precinct Building). The pathway largely overlaps other zones, being the Central City Mixed Use Zone (**CCMUZ**) the Central City Mixed Use (South Frame) Zone (**CCMUZ(SF)**) and Special Purpose Tertiary Zone as shown on the planning maps.

Central City Mixed Use Zone and Central City Mixed Use Zone (South Frame

9.26 Policy 3(c) of the NPS-UD drives the approach to intensification in the CCMUZ and the CCMUZ(SF) because they are within a walkable catchment of the CCZ. The minimum requirement is to enable building heights of at least 6 storeys.

9.27 The Council's approach in the proposed provisions (**Attachment 2**) is consistent with that mentioned in paragraphs 3.16 to 3.17 of the Council's legal submissions for the Central City and Commercial Zones hearing,[164] which is to provide more than the minimum building heights in areas where

[163] Joint witness conferencing statement of planners on Radiocommunication Pathway Protection Corridors dated 14 November 2023 (here), particularly in Annexure B.
[164] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 (here).

there is more demand and in areas where extra height can be more easily absorbed as follows:

(a) CCMUZ: 32m

(b) CCMUZ(SF): 21m

Central City minimum building heights to realise development capacity

9.28 The Panel has queried whether it is appropriate to impose a minimum building height standard in the Central City.

9.29 The NPS-UD seeks to *enable* higher building heights, rather than *mandating* achievement of higher building heights. As agreed by the planners in the JWS, policy 3(a) seeks to enable capacity and development, rather than requiring that intensification occurs.[165]

9.30 The NPS-UD is concerned about a competitive market that provides *opportunity* for higher building heights, but does not mandate, require or force that market to actually meet or achieve those higher building heights. Planning can provide for the opportunity, but it is the market that needs to generate the demand for a larger building to be built. As Mr Nicholson observed during questioning by Commissioner Munro:[166]

> *"Nicholson: I think it is the fundamental problem with planning really isn't it. We can zone for something but it is very hard to make people build what we zone (…)*
>
> *Commissioner Munro: Let's say for the sake of argument we accept the imposition of a minimum height is a justifiable and appropriate exercise of resource management authority. Why not 4 storeys or 5 storeys or something closer to the examples you said are really great cities?*
>
> *Nicholson: And I would just say that I think economically that is unrealistic.*
>
> *Commissioner Munro: How do we get to the outcomes you described, if you acknowledge it is not economically realistic?*
>
> *Nicholson: Well I think what we are seeing in Christchurch now is a reflection of the lack of demand. There simply isn't. If there was demand, people would build larger buildings.*
>
> *Commissioner Munro: So in summary, would you see it as superior in overall terms to see what demand does exist spread out across as many of those streets and vacant sites as possible?*

[165] Joint witness conferencing statement of planners on City Centre Zone Heights & Densities dated 4 December 2023, Appendix A page 1.
[166] IHP questioning on 12 October 2023, morning session 2, at 29:43 to 30:58 (here).

Nicholson: I would.

Commissioner Munro: Rather than going up in one.

Nicholson: Definitely, yes.

9.31 While the NPS-UD does not prohibit the use of rules requiring minimum building heights for a zone, such rules can backfire, causing sterilisation of sites, particularly where heights are set at a level that is uneconomic or inefficient to develop, relative to development opportunities that might be available elsewhere. In answer to the Panel's questioning about the potential use of minimum height rules, Mr Osborne noted that while minimum height rules could theoretically maximise intensification on a site, there is an opportunity cost of doing so, including the cost of no development occurring at all on a site as a consequence of the rule. Mr Osborne cautioned against their use due to the dampening of development opportunities in the Central City, and directing development to other centres. With a mature market in Christchurch and an immature CBD with a large number of vacant sites, he recommended erring on the side of trying to encourage development into the CBD.[167]

9.32 Mr Willis, in answering the Panel's questions, suggested a 2 or 3 storey minimum height rule might be appropriate whereas a 5 to 7 storey minimum is not.[168] Two to three storey heights are more consistent with urban development patterns over the last 5 to 10 years.

9.33 Should the Panel be minded to set minimum height rules, then it is submitted that caution must be exercised. Too high a minimum height can inadvertently sterilise development in Central City sites and direct developments to other centres instead, stifling Central City recovery and subverting the hierarchy of centres. The Council's proposal in the provisions in **Attachment 2** is that the most appropriate provisions are for two-storey minimum heights in the City Centre, Central City Mixed Use and Central City Mixed Use (South Frame) zones.[169]

Wind effects and urban design

9.34 The Council has responded to the Panel's information requests #27 and #28 relating the practical implications of the proposed PC14 provisions regarding wind assessments for tall buildings, and an explanation of the extent of

[167] Panel questioning on 11 October 2023, morning session 2 (here) particularly from 36:14 to 39:55.
[168] Panel questioning on 24 October 2023, morning session 2 (here) from 1:17:05 to 1:17:52.
[169] Right of Reply provisions, rules 15.11.2.4, 15.12.2.9 and 15.13.2.8.

proposed controls requiring wind effect assessments. These have informed the recommended changes in the proposed provisions in sub-chapter 6.13 – Wind:

(a) Enhancement of the proposed certification process with the introduction of a defined *"suitably qualified wind expert"* to improve application of the standard.

(b) Minor wording changes to improve application of the permitted standard in rule 6.13.4.1.1 P1.

9.35 The Council's position regarding the wind provisions in the City Centre Zone remains unchanged.[170] The design of a building and its resultant effects on wind patterns in the immediate environment are intrinsically linked, for example if a design is changed to respond to urban design considerations, then that change could affect wind patterns or *vice versa*. Therefore, having wind and urban design provisions together in the matters of discretion 15.14.2.6 is useful for Plan users, such that the key matters to consider are in one place. If the Panel is minded to retain the section 32 approach to have the wind requirements in rule 15.11.2.17, then the Council's position is that an advice note with a hyperlink to the rule be included in the matters of discretion 15.14.2.6 to ensure the links between these provisions remain clear.

Intensification of centres beyond the Central City

9.36 The Council's intensification response beyond the Central City is to increase heights and densities in the centres, not alter the centres hierarchy through substantive rezonings, nor substantive adjustments to the activity mixes that differentiate between the zones of that centres hierarchy.

9.37 As explained in paragraphs 4.7 to 4.8 of the Council's legal submissions for the Central City and Commercial Zones hearing (and further elaborated by Mr Lightbody), the exercise undertaken by the Council is simply to align the operative District Plan commercial zones with the *"nearest equivalent zone"* listed in the National Planning Standards, which is consistent with implementing clauses 1.4(4)(a) and 8(2) of the Standards.[171] Applying the *"nearest equivalent zone"* is consistent with the approach recently taken by

[170] Statement of Primary Evidence of Holly Gardiner dated 11 August 2023 (here) paragraphs 8.1.80 – 8.1.8.1.89
[171] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 (here).

the Environment Court.[172] Notably, PC14 does not propose any substantive upzoning, or downzoning, of existing centres, nor any substantive changes to provisions that are critical to differentiating between those centres, such as any adjustment to activity mixes (such as any increase or decrease to the office tenancy limits).

9.38 Several submitters seek what are effectively substantive rezonings, or adjustments to activity mixes, in the commercial zones. For example, Scentre and Lendlease New Zealand Limited seek to upzone the Riccarton and Hornby TCZs to new MCZs (discussed further below) and / or to change the activity mix applicable in Riccarton and Hornby so that office tenancies of any size would be permitted by removing the 500m^2 permitted activity limit (rule 15.4.1.1 P11). For reasons given above and in the Council's legal submissions for the Central City and Commercial Zones, requests for substantive rezonings of commercial centres and changes to office tenancy limits are out of scope.[173]

9.39 Furthermore, and in any case, substantive rezonings and/or adjustments to the activity mix differentiating centres in the hierarchy can put the centres-based approach at risk, contrary to the untouched objective and policy planning framework in the District Plan supporting that approach. There is no substantive city-wide retail distributional impact evidence to justify a departure from the centres-based approach. However, Mr Heath discusses the key role office tenancies greater than 500m^2 play in the recovery of the CCZ, and the potential business dislocation effects that could arise from removing the office tenancy size rule, with the likelihood of significant impacts on the competitive advantage afforded to the City Centre, leading to a decrease in effective density, a disaggregation of office activity leading to lower central city value, decreasing the potential for development and improved quality, and negative impacts on efficiency, agglomeration benefits and the viability of office development in the City Centre.[174]

Metropolitan Centre Zone (MCZ)

9.40 No operative commercial zone has been converted into a MCZ.

[172] *Wakatipu Equities Limited v Queenstown Lakes District Council* [2023] NZEnvC 188.
[173] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 (here), at paragraphs 4.9, 4.13 and 5.1 to 5.6.
[174] Statement of primary evidence of Timothy James Heath on behalf of Christchurch City Council, dated 11 August 2024 (here), at paragraphs 9 to 10, 117 to 137. See also Mr Heath's Key Speaking Points (Commercial Centre) as presented to the Panel on 25 October 2023 (here), at the bottom of the first page and the top of the following page.

9.41 The legal submissions for Kāinga Ora record Mr Clease's view that the centres hierarchy for Christchurch is *"missing"* a key level anticipated in the NPS-UD and the National Planning Standards, as PC14 does not include any MCZs.[175] However neither the NPS-UD nor the National Planning Standards compel any territorial authority, district plan, or plan change to include a MCZ in a district.

9.42 To the extent Kāinga Ora and other submitters[176] seek that Town Centre Zones (**TCZ**) be upgraded (or upzoned) to MCZ, it is submitted that such relief is unnecessary, inappropriate and out of scope for the following reasons:

(a) To the extent submitters seek MCZ to benefit from NPS-UD policy 3(b) intensification which provides for at least 6 storeys instead of policy 3(d) intensification, then such relief is effectively academic because the Council's intensification proposal for the TCZs already exceed 6 storeys in all cases, with 22m proposed for the TCZs at Shirley, Linwood, North Halswell, Belfast, and 32m proposed for the larger TCZs at Hornby, Riccarton and Papanui.

(b) The relief effectively requires drafting of an entirely new sub-chapter for a new type of centre (MCZ), potentially with different policies, rules that could provide different activity mixes from other centres in the centres hierarchy. No such sub-chapter has been notified by PC14. An entirely new sub-chapter for a new type of centre can have significant adverse impacts on, and implications for, the centres-based approach. There is no substantive evidence justifying a new sub-chapter for an entirely new commercial zone that could impact on the centres hierarchy including the Central City.

(c) The most appropriate zoning for Riccarton, Papanui and Hornby was evaluated in Mr Lightbody's s42A report.[177] He considers that a new MCZ for those centres would be inconsistent with the operative objectives and policies of the District Plan and CRPS that establish the centres hierarchy. Mr Lightbody also notes that a greater role and function for Riccarton, Papanui and Hornby in the hierarchy would give

[175] Paragraph 8.2 of Legal submissions for Kāinga Ora (Strategic, City Centre and Commercial Zone Provisions) dated 6 October 2023 (here).
[176] For example, Scentre seeks a MCZ for Riccarton while Lendlease New Zealand Limited seeks a MCZ for Hornby.
[177] Section 42A report of Kirk Joseph Lightbody dated 11 August 2023 (here).

rise to distributional cost effects on the City Centre Zone and ultimately undermine the City Centre's primacy.

(d) The relief is effectively a substantive rezoning request, in circumstances where PC14 simply seeks to convert (or rename) operative commercial zones to their nearest equivalent National Planning Standard zoning. For reasons given earlier in this reply, and in Council's legal submissions for the Central City and Commercial Zones hearing, this relief is out of scope.[178]

Town Centre Zone (TCZ) and Local Centre Zone (LCZ)

9.43 Policy 3(d) of the NPS-UD drives the approach to intensification in the TCZ and the LCZ, which is to enable building heights and densities of urban form *"commensurate with the level of commercial activity and community services"*.

9.44 The provisions in **Attachment 2** propose heights for the TCZ and LCZ which are higher than those initially notified as follows:

(a) Town Centre Zones (**TCZ**):

(i) Hornby, Riccarton, Papanui – 32m (from 22m as notified).

(ii) Shirley, Linwood, North Halswell, Belfast – 22m (from 20m as notified).

(b) Local Centre Zones (**LCZ**):

(i) Church Corner, Merivale, Sydenham North, Ferrymead – 22m (from 20m as notified).

(ii) All others:[179] 14m (from 12m as notified).

9.45 A number of submitters seek permitted heights greater than those proposed above.[180] Mr Heath points out that no economic rationale has been provided

[178] Legal submissions for the Christchurch City Council (Central City and Commercial Zones, dated 17 October 2023 (here) at paragraphs 4.7 to 4.9.
[179] Examples in the Amended Provisions include Addington, Avonhead, Sumner, Akaroa, Colombo/Beaumont (Colombo Street between Devon Street and Angus Street), Cranford, Edgeware, Fendalton, Beckenham, Halswell, Lyttelton, Ilam/Clyde, Parklands, Redcliffs, Richmond, St Martins, Prestons, Barrington, New Brighton and Bishopdale.
[180] For example, Scentre seeks 50m for Riccarton while Lendlease New Zealand Limited seeks 45m for Hornby.

to support those outcomes, nor any analysis of the economic costs and benefits associated with increasing the permitted heights.[181]

9.46 Care is required in setting the heights of the various commercial centres. The heights as recommended by Council are calibrated to ensure the relative competitiveness between zones and 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. As Mr Heath notes, the City Centre, being the foremost commercial hub of the city and most economically efficient location for built form density to occur, should have the highest enabled height threshold, followed by the surrounding city centre zones and walkable catchment, then the pre-eminent suburban centres and surrounds, followed by a tapering down in heights based on a centre's classification, role and function in the market.[182]

Neighbourhood Centre Zones (NCZ)

9.47 NCZs represent the smallest centres in the centres hierarchy, typically containing a small group of convenience shops (e.g. dairies). Consistent with Mr Heath's recommendations, the provisions in **Attachment 2** propose that the height for the NCZ be 14m, from 12m in PC14 as notified, and from 8m in the operative District Plan, as part of the height calibration ensuring the relative competitiveness between zones and centres.[183]

9.48 However, in contrast to the proposed heights for the TCZs and the LCZs (discussed above), the factor driving the increased height for the NCZs was not intensification pursuant to NPS-UD policy 3(d) *per se*, but rather it was driven by the MDRS shift in the height baseline in residential zones around the NCZ. As Mr Heath notes:[184]

> *"The MDRS has shifted the height baseline in which to consider relative competitiveness up to 12m. In effect 12m represents the new ground level when considering the relativity of heights between zones. This is important to setting a suite of heights that proactively guide the geospatial distribution of intensive development, and increasing the propensity for intensive development to occur, in the most efficient locations."*

[181] Statement of Rebuttal Evidence of Timothy James Heath on behalf of Christchurch City Council (Economics) dated 9 October 2023 (here) particularly at paragraphs 2, 26, 38 and 44. Also see Mr Heath's Key Speaking Points (Strategic Directions) as presented to the Panel on 11 October 2023 (here), last bullet point.
[182] Statement of Primary Evidence of Timothy James Heath on behalf of Christchurch City Council (Economics) dated 11 August 2023 (here) at paragraphs 18, 176 to 185 (including Table), and 198 to 208.
[183] Ibid. See in particular Table 3 beneath paragraph 179.
[184] Ibid, at paragraph 185.

9.49 Retention of the operative 8m heights in NCZs in circumstances where surrounding residential zones have MDRS heights of 11m (with an allowance of up to 1m for angled roofs) would result in a perverse 'doughnut'-shaped urban form with greater heights around a commercial centre. This is reflected in several places of the commercial section 32 report. At page 42, the report states:[185]

> *Increase permitted building height in Neighbourhood Centre Zones from 8m to 12 metres (outside the central city) reflecting the heights of buildings in surrounding medium density residential zones*
>
> (our underlining for emphasis).

9.50 It is also reflected on page 72 of the commercial section 32 report, where the option of retaining the operative 8m height for the NCZs was dismissed because it would result in an incoherent zoning pattern where centre heights would be lower than surrounding residential neighbourhoods. The same page mentions that some centre heights are no longer appropriate as a result of the greater enablement of heights in residential zones surrounding centres (MDRS provisions) having regard to objectives 3.3.7(b) and 15.2.4 and policy 15.2.4.1 which specifically refers to **achieving a legible urban form and the concept of a sensible zoning pattern**.[186] While achieving a *"sensible zoning pattern"* is not expressly mentioned in the NPS-UD, it is a factor that contributes to a WFUE (and thus NPS-UD objective 1 and policy 1) as acknowledged on page 34 of MfE's Guidance Document.[187]

9.51 Thus, the NCZ increase from operative 8m to notified PC14 12m was driven by promoting a WFUE (objective 1 and policy 1 of the NPS-UD) rather than policy 3(d) *per se*.

9.52 The further proposed height increase from 12m as notified to 14m for the NCZ is due to Mr Lightbody agreeing with a submission from Kāinga Ora to provide greater flexibility to develop more functional commercial ceiling heights, in reliance on the evidence of Ms Williams.[188]

9.53 The Council acknowledges that in some places the 8m height zones of Residential Suburban Zone and FUZ adjoin a 14m NCZ. While this is not ideal in urban form coherence terms, the NCZs are non-homogenous in

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[185] Section 32 Report Part 4 – Commercial (here).
[186] Ibid.
[187] Ministry for the Environment, 2020, *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*, Wellington: Ministry for the Environment, at page 34 (here).
[188] Section 42A report of Kirk Joseph Lightbody dated 11 August 2023 (here) at paragraph 8.3.6; Statement of Primary Evidence of Nicola Helen Williams on Urban Design (here) at paragraph 181.

nature and cover a wide variety of size, land use and urban contexts. Due to the non-homogenous pattern of NCZs, a consistent height across the zone is considered the most appropriate method in terms of effectiveness and efficiency, rather than differentiating heights for every NCZ across the City. The NCZ provisions also ensure that any adverse effects arising from development within NCZs on adjoining residential zones are avoided, mitigated, or managed.

Definitions of building base and building tower

9.54 The proposed provisions include amended definitions of *"building base"* and *"building tower"* to reflect the agreement reached by planners during conferencing.[189] These definitions are utilised in rules for the CCZ, CCMUZ and the CCMUZ(SF).

North Halswell town centre

9.55 Panel information request #75 asked the Council to confirm whether there are any permitted activities in the North Halswell town centre and, if so, whether this a point of difference with other town centres. In summary, the Council's response was:[190]

(a) there are no permitted activities in the North Halswell town centre;

(b) this is a point of difference with some town centres because the 'existing' centres proposed for rezoning to Town Centre (established centres) do not have area specific rules while two 'Greenfield' locations proposed as a Town Centre zone at North Halswell and Belfast/ Northwood do have area specific rules. North Halswell and Belfast/Northwood both have outline development plans, and any activity is a restricted discretionary activity in the first instance. The basis for this activity status is to ensure activities in these greenfield centres achieve Policy 15.2.2.2.

Rezoning of commercial zones

9.56 The Council's position on all rezoning requests made by submitters, including those seeking changes to or from a commercial zone, is set out in **Appendix 5**.

[189] Joint witness conferencing statement of planners on definitions of building base & building tower dated 1 December 2023 (here).
[190] Memorandum of counsel for Christchurch City Council regarding panel requests for further information dated 20 December 2023, Appendix K (here).

10. RESIDENTIAL ZONES – HEARING WEEKS 4, 5, AND 6

MRZ and HRZ

Additional enablement

10.1 The Panel will have understood that the widespread rezoning of land to MRZ and HRZ has been a key mechanism for PC14 to:

(a) incorporate the MDRS into all *"relevant residential zones"*; and

(b) intensify residential development in and around centres, to give effect to NPS-UD policy 3.

10.2 While much of the hearing has focused on the QMs proposed to limit intensification (to give effect to higher-order directives, including the strategic directions in Chapter 3 of the District Plan), it is worth noting that **the MRZ and HRZ provisions will establish a highly enabling framework**, augmenting what already is a generally development-friendly operative District Plan.

10.3 In many cases the mandatory MDRS provisions are proposed to be made more enabling, with appropriate controls, to incentivise both efficient land use and positive design outcomes. Examples include:

(a) the building height and height to boundary controls being more lenient, around all commercial centres where greater enablement is directed (either by application of HRZ or a Local Centre Intensification Precinct), to enable four- to six-storey perimeter block development;

(b) various exemptions to setbacks, including to allow for intrusions for greater eaves or porches into the front boundary;[191]

(c) reduced glazing requirements for street-facing facades where improved street integration is provided or where development relates to existing dwellings, and removal of gable ends to ease application of the relevant MDRS rule;[192]

(d) lesser outdoor living requirements for smaller units to better incentivise the development of single-bed units;[193]

[191] For example, Rule 14.6.2.3(b)(iii) as notified.
[192] For example, Rules 14.6.2.8 and 14.5.2.10 as notified.
[193] For example, Rule 14.6.2.10(c) as notified.

(e) increased site coverage in HRZ where a minimum site dimension is met (amongst other measures), to incentivise the amalgamation of sites and aid in the transition of established residential areas to high-density living;[194] and

(f) limiting notification of consent applications by extending the Schedule 3A direction to remove avenues for notification where MDRS built form standards are met, to situations where the Council has opted to make built form standards more enabling, such as building height.[195]

10.4 Moreover, other requirements have been introduced or carried over through PC14 to ensure that intensification remains an attractive prospect for people seeking to transition to a denser form of living, to support objective 1 and policy 1 of the NPS-UD (among others). Examples of such provisions include:

(a) retaining ground floor habitable space requirements, which encourage ground floor passive surveillance, provide for improved residential amenity at ground floor level, and improve connections with the street;

(b) storage space requirements, to ensure that residential spaces remain practical and functional to occupants and reduce the likelihood of conflict between occupants;

(c) outdoor mechanical ventilation screening, to ensure that ventilation units do not detract from their residential setting, with additional exemptions added for existing units and to accept other site screening as a means to screen units; and

(d) minimum unit sizes, to ensure that units constructed are functional and attractive to occupants.

Proposed changes to HRZ framework regarding height

10.5 As the Panel identified, the notified PC14 provisions contained some errors and unnecessary complexity regarding the treatment of building heights in HRZ. This was the subject of the Panel's information request #37, the response to which was provided by the Council on 29 November 2023.[196]

[194] For example, Rule 14.6.2.12 as notified.
[195] For example, Rule 14.5.1.3 RD14-RD17 as notified.
[196] https://chch2023.ihp.govt.nz/assets/29-Nov-Council-Memo-Appendices/Appendix-F-Response-to-Questions-37-to-40.pdf

10.6 The provisions in **Attachment 2** reflect a simpler framework to that notified in respect of building heights in HRZ.

10.7 The approach now proposed is simply to permit building heights to 22m (within HRZ generally) or 39m (within HRZ where the Central City Residential Precinct applies), conversely, 28m within HRZ where the Riccarton Residential Intensification Precinct applies (subject to the Airport Noise QM, discussed below). The permitted building height standard is split into two key parameters, namely:

(a) the permitted height (of 22m in-zone, or 39m or 28m in respective Precincts); and

(b) additional form controls that must be met, such as the 'tower and podium' approach and the communal outdoor living requirement at a specific building height.

10.8 In PC14 as notified, rule 16.6.1.3 RD7 was intended to apply to buildings between 14m and 20m in height, and RD8 to buildings greater than 20m in height. The two-step restricted discretionary process was intended to respond to the anticipated effects for each breach, with RD7 seen to be a permissible 'enabling' response and RD8 having more onerous requirements, in response to the anticipated effects of buildings above 20m. The two-step process proposed also, in part, reflected the requirement in the MDRS that the construction and use of residential units not complying with the building density standards must be restricted discretionary activities.[197]

10.9 The now-recommended approach essentially seeks to achieve the same outcome, but is more responsive to the scale of effects associated with breaches of each part of the building height rule.

10.10 Ms Dale, giving planning evidence for Winton Land Limited, commented on the HRZ framework for building height, as recommended at the time, in the context of retirement villages within HRZ. The rule framework in HRZ for retirement villages links to compliance with the building height standard as part of RD4 and RD5. However, the Council acknowledges that the entry point for such an activity is restricted discretionary in any event, and would be subject to the matter of discretion specific to retirement villages, which is mainly concerned with urban design matters and would capture building form outcomes. The relevant activity standards also require compliance with

[197] Clause 4 of Schedule 3A to the RMA and clause 3.4 of the NPS-UD.

several built form standards, including building height. As such, the rule is now proposed to be modified to exclude retirement villages from these building form sub-standards associated with HRZ building height.

Simplification of HRZ precincts

10.11 The Council planners now recommend further changes to the HRZ framework that seek to simplify the approach of applying precincts around commercial centres where HRZ is proposed.

10.12 The intended purpose of precincts, in PC14 as notified, was to denote the type of centre to which HRZ was responding; for example, Linwood's commercial centre was proposed to have a Town Centre Intensification Precinct apply (being a TCZ centre), while Merivale's commercial centre was proposed to have a Large Local Centre Intensification Precinct, representative of its commercial scale.

10.13 While these precincts were different in name, the associated controls were the same, enabling 20m-high buildings. This served a function both in terms of how the HRZ built form standards operated (only permitted to 14m) and to be clear to the Plan user as to the origin of further intensification.

10.14 Now, recommended changes to built form standards, simply to permit the intended maximum height (as discussed above), would make most HRZ precincts redundant. Only the precinct around CCZ is proposed to be retained, as it seeks to permit a building height of 39m, greater than the HRZ 22m baseline. This precinct is proposed to be renamed the Central City Residential Precinct.[198]

10.15 The only other intensification precinct that is proposed to remain is the Local Centre Intensification Precinct (**LCIP**), which is applied over MRZ around LCZ centres that are seen to meet the policy 3(d) criteria for intensification over and above MDRS building heights.

10.16 Identified in the mapping that accompanied the section 42A report recommendations was an *"Airport [Noise] Contour QM Compensatory High Density Precinct"*, to compensate for the additional building heights lost in response to the Airport Noise QM. That area has been re-named *"Riccarton Residential Intensification Precinct"*, and is included in the mapping on an assumption that the Panel will recommend that the Airport Noise QM be

[198] Chapter 15 – Commercial details the centre types, and development expectations (by category).

applied across its recommended extent. It reflects the Council's proposed compensatory approach to residential intensification around the Riccarton TCZ.

Architectural submitters' conferencing and planning response

10.17 A number of architect submitters attended informal conferencing with urban designers advising the Council regarding design-related provisions applying in residential areas.[199]

10.18 The Council planners have considered the outcomes of that conferencing and prepared a response, which is **Attachment 8** to this reply.

10.19 In summary, the Council considers that a number of proposed provisions can be improved, as set out below. Changes have been made in the proposed provisions in **Attachment 2** accordingly.

(a) the outdoor living space requirements for 1-bedroom units within the LCIP can be reduced, to the same level proposed in HRZ;

(b) tweaks are proposed to the exemptions to height to boundary control within the LCIP, in accordance with the proposed changes to the equivalent rule in HRZ;

(c) exemptions and alternatives to screening requirements of outdoor mechanical ventilation are now proposed; and

(d) the proposed HRZ exemptions to setbacks are now extended so they also apply in MRZ, introducing the ability to have porches protrude into the front yard setback.

Walkable and adjacent catchments for the purposes of NPS-UD policy 3

10.20 The exercise of identifying 'walkable' and 'adjacent' catchments for intensification around commercial centres arises because:

(a) NPS-UD policy 3(c) requires building heights of at least 6 storeys within "*at least a walkable catchment*" of existing and planned rapid transit stops, the edge of CCZs, and the edge of MCZs.

[199] https://chch2023.ihp.govt.nz/assets/Joint-Witness-Statements/Supplementary-Evidence-David-Hattam-JWS-Architects-and-Designers.PDF.

(b) NPS-UD policy 3(d) requires building heights and densities of urban form commensurate with the level of commercial activity and community services "*adjacent to*" TCZs, LCZs and NCZs.

10.21 The NPS-UD itself does not define the extent of an area around a centre that constitutes "*at least a walkable catchment*", nor the extent of an area "*adjacent to*" a centre. That is ultimately left to a local authority to exercise a judgement as to the extent of the relevant area.

10.22 However, some broad observations can be made, as follows:

(a) The catchments under policies 3(c) and 3(d) implement (in part) NPS-UD objective 3(a), by enabling more people to live in areas *"near"* a centre zone. While the word *"near"* does not provide any particular 'line in the sand', it does suggest that catchments are not to be unnecessarily extensive, as the aim is to encourage people to live near, or close to, centres.

(b) The plain, ordinary meaning of *"walkable"* is *"(of a distance) able to be walked"*.[200] While large distances are able to be walked by an able-bodied person given enough time, the context of policy 3(c) suggests that the phrase *"walkable catchment"* is intended to be moderated by a time / distance that people would generally be prepared to walk in order to get to the edge of a CCZ, MCZ or an existing or planned rapid transit stop. MfE Guidance documents suggest that:

(i) Not all places are equal and different locations with different characteristics may often have different sized walkable catchments. A centre's size can affect the size of the catchment, and thus a smaller centre will likely have a smaller walkable catchment than a larger one.[201]

(ii) Although it is ultimately up to each local authority to determine the size of walkable catchments appropriate to local circumstances:[202]

(1) 800m may be a good starting point.[203]

[200] *The New Shorter Oxford English Dictionary* (6th ed, Oxford University Press, 2007).
[201] Ministry for the Environment. 2020. *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*. Wellington: Ministry for the Environment (here) at page 24.
[202] Ibid.
[203] Ibid at page 23.

(2) While walkable catchments of 400m to 800m will be suitable for most tier 1 urban environments, it may be appropriate for larger tier 1 urban environments to consider greater distances in some situations, such as where rapid transit is of high frequency.[204]

(c) The phrase *"adjacent to"* in policy 3(d) must relate to a smaller spatial extent than what would constitute "*at least a walkable catchment*" in policy 3(c) because the overall context of policy 3 implies a descending hierarchy of intensification, commercial activity and community services (and thus descending catchment sizes) starting from CCZs to MCZs down to TCZs, LCZs and NCZs. As the Panel on the Wellington IPI observed for the TCZs, LCZs and NCZs, policy 3(d):[205]

> *"does not employ the mechanism of a 'walkable catchment', but rather directs building heights and densities of urban form in areas 'adjacent' to those zones that are commensurate with the level of commercial activity and community services they provide. We infer that the intention is that in the vicinity of such zones, the area identified is smaller than a walkable catchment because they provide fewer services and a generally lower level of commercial activity than do City Centres and Metropolitan Centres. We also infer that the wording of this policy indicates a recognition that smaller centres vary considerably in terms of the level of commercial and community services they provide, and thus the Plan-enabled intensification around these types of centres will depend on context and urban form."*

(d) The phrases *"at least a walkable catchment"* and *"adjacent to"* imply a need look beyond the edge of a given centre and assess whether an intensification response is warranted under policy 3. By way of example, there is a need to look at areas *"adjacent to"* TCZs, LCZs and NCZs to ascertain if building heights and densities in those areas need adjusting to be commensurate with the level of commercial activity and community services in the centre. There is potential for no intensification response to be warranted adjacent to a centre under policy 3 if those areas are already intensified (e.g. under MDRS / MRZ).

10.23 In the Christchurch context, there is a CCZ but no proposed MCZs (for reasons discussed at paragraphs 4.31 to 4.43 and 9.36 to 9.42 above) and no existing and planned rapid transit stop at this time.[206] The section 32 report considered a range of walkability catchments from the edge of the

[204] Ibid.
[205] Report and Recommendations of Independent Commissioners Hearing Stream 1 Report 1A for Wellington city Council (here) at paragraph 255.
[206] Section 42A report of Ike Kleynbos dated 11 August 2023 (here) at paragraph 6.1.5.

CCZ ranging from 800m to 1.8km, having regard to guidance material from the Ministry for the Environment,[207] Waka Kotahi,[208] and a walkability assessment by the University of Waikato,[209] ultimately recommending a 1.2km walkable catchment as providing for a level of development that responds to the significance of the CCZ at a scale that is supportive of the centre, and responds to current and future degrees of accessibility.[210]

10.24 The section 32 report also assessed a range of lesser *"adjacent"* catchments for the TCZs, LCZs and NCZs.[211] The most appropriate option selected as providing for a scaled response to each centre based on local context that would lead to an efficient and effective means to address policy 3(d) of the NPD-UD is as follows:

(a) Large TCZs: 600m catchment;

(b) TCZs: 400m catchment;

(c) Large LCZs: 400m catchment;

(d) Medium LCZs: 200m catchment; and

(e) Small LCZs and NCZs: no intensification proposed beyond MDRS (i.e. MRZ).

10.25 PC14 as notified used the above catchments and proposed the following height response to address the intensification directions of the NPS-UD, having regard to a range of factors including urban form, accessibility, demand while having regard to the centres-based hierarchy (including effects on the CCZ):[212]

[207] Ministry for the Environment. 2020. *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*. Wellington: Ministry for the Environment (here).
[208] Waka Kotahi, 2021. Aotearoa Urban Street Planning & Design Guide: He Whenua, He Tangata (here).
[209] A Summary of a National Survey on Living Locally in Aotearoa, New Zealand - White, I., Serrao-Neumann, S., Edwards, K., Mackness, K., Fu, X., & Reu Junqueira, J. (2022) (here).
[210] Section 32 Report, Part 3 – Residential (here) at pages 49 to 64.
[211] Ibid at pages 65 to 72.
[212] This table is from paragraph 6.1.12 of the section 42A report of Ike Kleynbos dated 11 August 2023 (here).

Centre Type	Location	Extent	Enabled Height
Neighbourhood Centre & 'Small' Local Centres	Addington; Fendalton; Edgeware; Parklands; Woolston; St Martins, *etc.*	Centre only	MDRS – 12m
'Medium' Local Centre	Bishopdale; Barrington; Prestons; Belfast*	200m	14m – four storeys
'Large' Local Centre	Merivale; Sydenham; Church Corner	400m	20m – six storeys
Town Centre	Linwood; North Halswell; Shirley	400m	20m – six storeys
'Large' Town Centre	Riccarton; Hornby; Papanui	600m	20m – six storeys & 22m in Commercial
City Centre	Currently CCBZ	1.2km+	32m in immediate surrounds (10-storeys), then 20m thereafter (six storeys)

10.26 The Council now recommends (in both the section 42A provisions and the provisions in **Attachment 2**) upward adjustments to some of the height responses and walkable/adjacent catchments. As Mr Kleynbos explains:

(a) HRZ has been applied across any part of the city where six storeys (now 22m or greater) are enabled as a residential activity, being nine commercial centres, providing over 1,000 ha of HRZ land. Lesser centres have an intensification response that applies a Precinct over MRZ (Local Centre Intensification Precinct), which enables four storey (14m) development and the same HRZ exemptions that permit perimeter block development also apply in this Precinct. A Precinct is also applied over HRZ around the CCZ, enabling 12-storey development (now 39m) as part of the NPS-UD policy 3(c) response (Central City Residential Precinct).[213]

(b) Some catchments have been updated to provide a catchment that is more responsive to commercial centres and the hierarchy of centres in the National Planning Standards. *"Adjacent"* catchments around

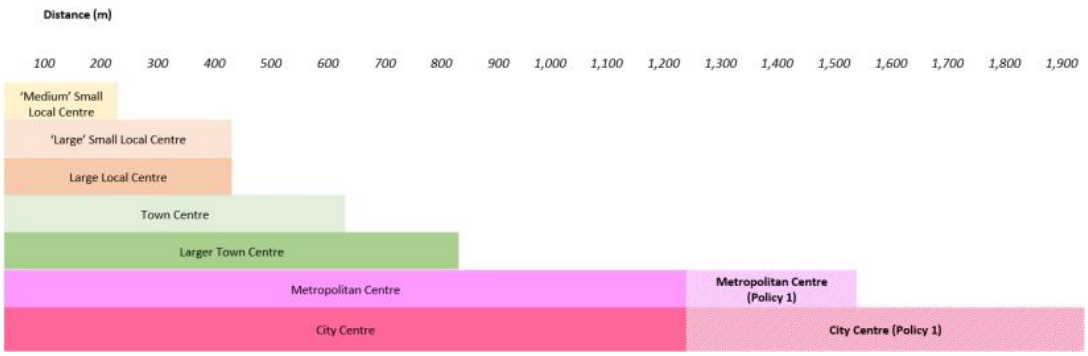
[213] Summary statement of Ike Kleynbos dated 1 November 2023 (here) at paragraph 16.

suburban commercial centres (i.e. outside of CCZ) now vary between 200m-800m (previously 200m to 600m), depending on their scale. The walking catchment of at least 1.2km from the edge of the CCZ has been extended outward based on the presence of local features, such as public and active transport corridors, commercial activity, open space, schools and the like.[214]

10.27 Only the North Halswell adjacent catchment is proposed to be reduced, from the 600m section 42A recommendation, back to 400m as notified (with some minor modification to HRZ extent). This is in response to the commercial limitation placed on the site highlighted through the presentation to the Panel on 22 November 2023 by Mr Brown, on behalf of Milns Park Limited and Danne Mora Limited. A reduced walking catchment better responds to the commensurate degree of commercial activity that the centre could otherwise provide.

10.28 Conversely, a minor change is now recommended to the intensification response around the Northwoods/Belfast TCZ commercial centre (see **Attachment 6** for a list of mapping changes).

10.29 A graphical overview of the updated catchments is provided in the section 42A report of Mr Kleynbos as follows:[215]



10.30 It remains the case that no policy 3(d) intensification response is considered necessary adjacent to NCZs. As noted at paragraph 9.48 above, the factor driving the increased height for the NCZs was not intensification pursuant to NPS-UD policy 3(d) per se, but rather it was driven by the MDRS shift in the height baseline in residential zones around the NCZ. With the MDRS shift, no intensification is required for policy 3(d) purposes adjacent to the NCZs.

[214] Ibid at paragraph 17.
[215] Section 42A report of Ike Kleynbos dated 11 August 2023 (here) on page 49.

10.31 As noted at paragraphs 4.18 and 4.31 above, it is within scope for submitters to seek adjustments to walkable or adjacent catchments, whether for smaller or larger catchments. Submitter responses included:

(a) Ms Marjorie Manthei expressed concern about the extension of the walkable catchment from the edge of the CCZ to at least 1.2km, which she considers would involve a 30-minute round trip. She seeks a reduction in the walkable catchment, noting (amongst other things) that the point it is being measured from is the edge of the CCZ but that is not where the services are.[216]

(b) Bruce and Diana Taylor expressed concerns about the arbitrariness of drawing lines identifying catchments. However, they acknowledge there is a legal requirement to identify catchments, and an evaluative exercise is required.[217]

(c) Mr Tony Simons submits that walkable catchments should be tested, accounting for where people actually want to go within a centre, and not be based on an average person's walk but what less able citizens can manage.[218]

(d) Mr Tim Preston suggests 5 minutes is a reasonable amount of time to count as a walking distance, and it should be to a place that matters rather than a line on a map.[219]

(e) Mr Robert Broughton suggests walkable catchments should be based on walking time which will depend on fitness levels.[220]

10.32 During the Panel's questioning, Ms Oliver advised that:[221]

(a) Catchment distances have been measured from the *"edge"* of a centre, noting that policy 3(c) of the NPS-UD specifically refers to a walkable catchment being measured from the *"edge"*.[222] A distance of say 800m

[216] Marjorie appeared in the afternoon session 2 of 14 October 2023 (the hearing recording is accessible from the Panel's website (here) particularly from 04:55 to 09:30).
[217] Bruce and Diana Taylor appeared on 8 November 2023 afternoon session 1 (the hearing recording is accessible from the Panel's website (here) particularly from 25:18 to 31:45).
[218] Tony Simons appeared for the Riccarton Bush Kilmarnoch Residents' Association on 8 November 2023 afternoon session 2 (the hearing recording is accessible from the Panel's website (here) particularly from 17:30 to 19:05).
[219] Tim Preston appeared in the afternoon session of 8 November 2023 (the hearing recording is accessible from the Panel's website (here) particularly from 31:45 to 32:30).
[220] Robert Broughton appeared in afternoon session 1 of 9 November 2023 (the hearing recording is accessible from the Panel's website (here) particularly from 49:10 to 50:30).
[221] Panel questioning on 10 October 2023, afternoon session 1 (the hearing recording is accessible from the Panel's website (here) particularly from 48:26 to 53:18).
[222] Mr Kleynbos highlighted at paragraph 18 of his evidence summary that policy 3(d) affords the Council more discretion in this regard.

from the edge of a centre will not reflect the actual distance a person might need to walk to get to where that person wants to get to within a centre itself.

(b) The overall aim in terms of urban form for Christchurch is to get the highest density development close to the centres, to concentrate the greatest population in the most accessible locations.

(c) The proposed catchments are very large and enabling catchments for high density.

10.33 While the Council's recommended catchment sizes are those identified in section 42A report of Mr Kleynbos, with the adjustments summarised above, it is acknowledged there is room for the Panel to evaluate and make adjustments to the catchments in light of all evidence provided to it.

Retirement villages

10.34 Several submitters seek a more enabling Plan framework for retirement villages than provided for in PC14 as notified.[223]

10.35 The Council's position presented during the hearing was that:

(a) Retirement villages as a complete development are not specifically further enabled through the MDRS. That was on the basis that there is a lack of clarity across the RMA and National Planning Standard definitions as to where retirement village falls and therefore its relationship to MDRS. While individual units in a retirement village complex may meet the definition of *"residential units"* in section 2 of the RMA, and could therefore avail themselves of the MDRS, villages as a whole are quite different in nature; they are commercial enterprises which typically have numerous employees, a large, centralised building, and various care facilities.

(b) The relief sought in respect of retirement villages is outside the scope of PC14, evidenced by the extensive changes proposed through the evidence of Mr Turner for the Retirement Villages Association and Ryman Healthcare Limited. A wide-ranging set of new provisions, from higher- to lower-order, for a category of activity already regulated

[223] Submitters include Summerset Group Holdings Limited, Retirement Villages Association of New Zealand Inc, Ryman Healthcare Limited, Kauri Lodge Limited and Winton Land Development.

deliberately by Plan provisions that are not amended by PC14, must logically be outside the scope of the plan change.

10.36 However, Council's position has evolved through consideration of an alternative framework, the genesis of which is outlined in the rebuttal evidence of Mr Kleynbos,[224] which was then discussed with planners for the retirement village submitters during expert conferencing, leading to a Joint Witness Statement (**JWS**).[225]

10.37 The alternative framework is built on the concept that enablement of retirement villages in the Operative District Plan is largely retained and that the built form controls of the MDRS can apply to retirement villages beyond this operative limit.

10.38 Following the JWS, the Council has given greater consideration of the MDRS and the split across standards/controls dealing with *"buildings"* and those which deal with *"residential units"*, and it is now considered there is a way to avoid conflict in how the MDRS density standards could apply to retirement villages. In particular:

(a) It can be observed that MDRS density standards dealing with a *"building"* only capture building height, height in relation to boundary, setbacks and building coverage, while the remaining density standards only apply to *"residential units"*.[226]

(b) Noting the distinct the split in the MDRS controls between *"building"* and *"residential units"*, these can be applied in the context of the operative District Plan definition of a *"retirement village"* without conflict. This is because:

(i) Clause (c) of the operative definition for *"retirement village"* requires that it must *"include not less than two residential units"*.[227]

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[224] Rebuttal Evidence of Ike Kleynbos dated 16 October 2023 (here).
[225] Joint Witness Statement of Planning Experts on Retirement Village controls dated 22 April 2024 (here).
[226] In particular, the density standards relating to outdoor living space (per unit), outlook space (per unit), windows to street and landscaped area.
[227] Chapter 2 of the District Plan defines **retirement village** as follows:
means any land, building or site that:
a. is used for accommodation predominantly for persons in their retirement, or persons in their retirement and their spouses or partners; and
b. satisfies either of the following:
i. it is registered as a retirement village under the Retirement Villages Act 2003 or will be so registered prior to it being occupied by any resident; or
ii. it is a rest home within the meaning of s58(4) of the Health and Disability Services (Safety) Act 2001; and

(ii) Therefore a *"retirement village"* must always contain at least two residential units, while acknowledging that the residential units are only part of what makes a retirement village complex.

(c) This means that the MDRS can apply to retirement villages in accordance with what each particular density standard applies to (i.e. a *"building"* or a *"residential unit"*), without directing any change to the activity status for the use of buildings for a retirement village (because the MDRS does not direct any changes to activity status for retirement villages).

(d) Accordingly, the built form standards for a zone, including those influenced by the MDRS, would apply to the construction of retirement villages in scenarios where the zone captures this as a permitted activity.

(e) It is now proposed that PC14 can alter the expected built form outcomes for retirement villages, without altering their activity status within the Plan or their notification exemptions.

10.39 A rule framework has been drafted and incorporated into the proposed provisions in **Attachment 2**. Recommended standards reflect the outcomes of the JWS, with some further nuance as to the consequential impact of the framework in some circumstances. As per the rebuttal evidence of Mr Kleynbos,[228] proposed locations of MRZ under PC14 are currently dominated by the operative RS / RSDT zones where retirement villages are a currently a permitted activity up to 8m in height, subject to a façade length control. The provisions now propose a continuation of this permitted activity status, with retirement villages beyond this considered as an RD activity in accordance with the operative rule escalation. This is to both ensure comparability with the operative framework and to ensure there is a continuation of a more enabling 'two-storey baseline' that is more enabling than MDRS would otherwise direct (because there is no unit scale control).

10.40 No activity status change is recommended for a retirement village in the HRZ. However, relevant built form standards are modified in accordance

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c. includes not less than two residential units; and
d. may include any or all of the following facilities or services for residents on the site:
   i. a care home within a retirement village;
   ii. a hospital within a retirement village;
   iii. nursing, medical care, welfare, accessory non-residential and/or recreation facilities and/or services.

[our underlining for emphasis]

[228] Rebuttal Evidence of Ike Kleynbos dated 16 October 2023 (here) at paragraph 112.

with the conclusions for the MRZ (and the JWS, where applicable) to ensure alignment. This has encompassed changes sought by Ms Dale[229] through removing the building form requirements relative to retirement villages as the HRZ rule framework would make construction a restricted discretionary activity, with matters of discretion focused on urban design matters. This would address building form outcomes. This exemption also addresses the matter raised by Mr Turner[230] in relation to the Ryman Healthcare site and the specific exemption captured under operative rule 14.6.2.[231] The concluding framework would be more enabling than what the operative exemption permits.

10.41 A further change has been proposed to HRZ rule RD5 to reflect the fact the operative rules are currently exclusively focused on the Central City, but PC14 proposes to greatly expand the spatial extent of the HRZ to other areas. The significant expansion of the HRZ means that alternative matters of discretion must be referenced to align with standards more generally. Leaving this as is would mean retirement villages outside the central city would, in practice, not be subject to any applicable matters of discretion for breach of standards. The concluding framework seeks to align the matters of discretion for built form standard breaches, as per the HRZ zone framework, rather than bespoke central city matters of discretion. RD5 has now sought to segment out developments that are within or outside of the central city.

Commercial use on ground floor residential developments

10.42 Mr Clease supports the submission by Kāinga Ora seeking to increase the amount of ground floor retail from 40m^2 to 200m^2 across all of the HRZs. However, this relief is inconsistent with the centres-based approach. As Mr Heath observes in rebuttal, "*providing for retail to establish ad hoc across such an extensive zoned area has the potential to dilute centre agglomeration benefits and reduce efficiency of urban form*".[232]

10.43 In any case, it is submitted the request is out-of-scope. PC14 does not change the 40m^2 limitation on non-residential activities in the operative RS, RSDT, RMD, RCCZ and HRZ zones, generally making them non-complying.[233] A member of the public, comparing the status quo to PC14,

[229] For Winton Land Limited (#556).
[230] For Retirement Villages Association of New Zealand Inc (#811) and Ryman Healthcare Limited (#749).
[231] Rebuttal Evidence of Ike Kleynbos dated 16 October 2023 (here) at paragraphs 138 and 139)
[232] Statement of rebuttal evidence of Timothy James heath dated 9 October 2023 (here), at paragraph 25.
[233] See RS/RSDT rules 14.4.1.1 P13 and 14.4.1.5 NC1; RMD rules 14.4.1.1 P13, 14.5.1.3 RD5, 14.5.1.4 D1; RCCZ rule 14.6.1.5 NC1; HRZ rule 14.6.1.5 NC1.

would note proposed changes in height for residential zones, but the activity mix is still residential, with the 40m^2 non-residential activity restrictions remaining in place.

Sunlight access QM

10.44 Of the nine density standards constituting the MDRS, which all tier 1 territorial authorities are required to incorporate into every relevant residential zone,[234] it is the height in relation to boundary standard whose adverse impacts within the jurisdiction of a tier 1 territorial authority is uniquely linked to latitude. While height in relation to boundary rules are intended to provide access to sunlight and daylight for properties, how much sunlight and daylight access is actually provided for by a particular rule is necessarily influenced by the latitude of the site where the rule is applied.

10.45 The Council witnesses who provided evidence on the sunlight access QM are Mr Kleynbos (planning), Mr Hattam (urban design), and Mr Liley (atmospheric science).

10.46 There is no dispute between Council and submitters that property access to sunlight and daylight can provide benefits in terms of people and community wellbeing, and health benefits. A number of submissions provide strong community support for the sunlight access QM and its benefits.[235]

10.47 Wellbeing and health benefits are relevant to consider under objective 1 of the NPS-UD. Furthermore, access to sunlight and daylight provide amenity benefits which, for reasons given at paragraphs 5.48 to 5.55 above, are able to, and should be, considered when setting a new planned urban built form in an IPI.

10.48 Despite the wellbeing, health and amenity benefits of a height in relation to boundary standard being influenced by latitude, the MDRS in Schedule 3A to the RMA set a uniform height in relation to boundary rule for all tier 1 territorial authorities spanning very different latitudes. However, it is submitted that the wellbeing, health and amenity benefits of sunlight and daylight access are just as important to the residents of Christchurch as they are to residents of other tier 1 territorial authorities such as Auckland.

[234] At least as a starting point pursuant to section 77G(1).
[235] For example, the Waimaero Fendalton-Waimairi-Harewood Community Board, the Waipuna Halswell-Hornby-Riccarton Community Board, the Riccarton Bush Kilmarnoch Residents' Association.

10.49 The purpose of the notified sunlight access QM is to provide for an equitable sunlight environment relevant to other tier 1 local authorities where the MDRS applies, better responding to the climatic and latitudinal characteristics of Christchurch.[236] It recognises that the wellbeing, health and amenity benefits of sunlight and daylight access are just as important to Cantabrians as they are to Aucklanders, and seeks to avoid discriminating Cantabrians from the very same sunlight and daylight access benefits that the northernmost tier 1 territorial authority residents can enjoy under the MDRS height in relation to boundary standard.

10.50 The sunlight access QM does not seek to retain *status quo* sunlight access in residential zones. When compared to the operative District Plan, the recession planes proposed for the sunlight access QM are nearest to those currently provided for within the Residential Central City zone, being the most enabling operative residential zone. Exceptions are also proposed for the PC14 recession planes for the HRZs in light of the direction to further intensify within Policy 3 areas, so that it is more enabling than MDRS height to boundary controls as explained by Mr Kleynbos on 1 November 2023 and the tabled *"Sunlight access recession plane diagrams"*.[237] This shows the pragmatic and balanced approach that Council has applied for the proposed sunlight access QM, as considerable additional capacity is still enabled with the QM, having regard to the overarching NPS-UD direction including the provision of at least sufficient capacity under policy 2.

10.51 In response to the Panel's information request #49, Mr Hattam provided a supplementary statement of evidence modelling the impact of a modified height in relation to boundary rule which replaces the east and west quadrants of the notified recession planes with the MDRS recession planes (called the 'Modified HIRB').[238] The modelling shows that the notified PC14 height in relation to boundary rule provides a 14-22% increase in direct sunlight hours compared to the Modified HIRB. The notified approach provides the most comparable sunlight and daylight access to the MDRS approach in the northernmost tier 1 territorial authority, and is therefore proposed to be retained.

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[236] Section 32 Report (here) at paragraphs 6.30.1 to 6.30.33 and associated tables; and in Appendix 35 of that section 32 report, entitled "Technical Report - Residential Recession Planes in Christchurch" (here).
[237] Summary statement of Ike Kleynbos dated 1 November 2023 (here).
[238] Supplementary statement of evidence of David Anthony Hattam dated 25 March 2024, being Appendix E to the Memorandum of counsel for Christchurch City Council regarding panel requests for further information dated 11 April 2024 (here) at pages 82 to 103 of the pdf.

10.52 To delete or reduce the impact of the notified sunlight QM would be to signal to the residents of Christchurch that they should not have the same wellbeing, health and amenity benefits of sunlight and daylight access that the MDRS height in relation to boundary standard affords to residents of the northernmost tier 1 territorial authority.

10.53 If not 'daylight robbery', as described by one submitter, at the very least the outcome would be the MDRS having uneven effects throughout the country, to the significant detriment of the people of Ōtautahi Christchurch.

RHAs

10.54 RHAs are a new concept in the District Plan and relate to the protection of areas within residential environments that have collective heritage values identified as significant and distinctive. RHAs were identified following a rigorous identification process which considered over 90 candidate areas, distilling these down to 11 proposed areas.[239] It is only the 'best' potential RHAs that have been put forward.

10.55 The proposed RHAs are already *"fragile"* in that the average degree of intactness is only about 65% therefore it is imperative that they be kept as intact as possible notwithstanding the pressures of intensification.[240]

10.56 The RHA provisions proposed in PC14:

(a) appropriately support the protection of historic heritage from inappropriate use, subdivision and development as a matter of national importance under section 6(f) of the RMA;

(b) support the relevant CRPS and District Plan objectives and policies[241];

(c) limit intensification only to the extent necessary to accommodate the RHA qualifying matter and represent an element of 'density done well'; and

(d) affect a relatively small proportion of the relevant residential zones and will have a minimal effect on housing capacity given the lack of any particular development capacity issue in Ōtautahi Christchurch, as explained above.

[239] Glenda Dixon, Section 42A report, 11 August 2023 at 6.1.7
[240] Glenda Dixon summary statement,1 November 2023, at paragraph 19.
[241] CRPS: in particular Objectives 6.2.3, 13.2.1, 13.2.3; and Policies 13.3.1 and 13.3.4. District Plan: in particular, Objectives 3.3.9 and 9.3.2.1.1 and policy 9.3.2.2.2.

10.57 Various details about the proposed RHAs, including the relationship between RHAs and RCAs, were provided in response to request #42 from the Panel.[242] Ms Dixon also submitted two supplementary evidence briefs to the Panel, in response to Panel requests, which respectively explain how the RHA rules work[243] and the consultation process undertaken in respect of landowners whose properties are within the proposed RHAs and RCAs.[244]

Relevance of certificates of compliance

10.58 The relevance of certificates of compliance to demolish certain buildings within proposed RHAs (and RCAs) was a matter addressed in evidence and discussed at the hearings.

10.59 In legal submissions, Counsel for Kāinga Ora cites *Queenstown Lakes District Council v Hawthorn Estate Ltd*[245] (***Hawthorn***) as support for the proposition that the 'environment' encapsulates how a site might develop in the future pursuant to permitted activities or unimplemented resource consents.[246] However, *Hawthorn* was decided in the context of resource consents, and the High Court in *Shotover Park Ltd v Queenstown Lakes DC* found that *Hawthorn* can be distinguished in a plan change context.[247]

10.60 The Council's position remains that such certificates should have no bearing on the identification of an RHA (or RCA), because they do not alter the heritage values of the RHAs (or character values of the RCAs) at the current point in time, and there is no certainty that demolition will occur.

Demolition controls

10.61 The inclusion of demolition controls in PC14 makes the provisions more restrictive than those in the operative District Plan, as it was prior to notification of PC14. These controls are needed, however, because if the Plan does not discourage demolition, the RHAs and RCAs would lose their effectiveness. Any RHA or RCA in a favourable location in respect of proximity to centres, and public transport routes would be at significant risk of its values being compromised. If it was too easy to demolish buildings, especially defining or primary buildings, there would be a considerable

[242] The most up-to-date version of this response is attached as **Attachment 10** to this reply.
[243] Supplementary Statement of Evidence of Glenda Dixon on behalf of Christchurch City Council, dated 29 November 2023.
[244] Supplementary Statement of Evidence of Glenda Dixon on behalf of Christchurch City Council, dated 14 December 2023.
[245] [2006] NZRMA 424 (CA).
[246] Legal submissions for Kāinga Ora – Residential provisions and related qualifying matters, 22 November 2023 at 5.5.
[247] [2013] NZHC 1712, at [115].

decrease in the overall quality of these areas over time. As Ms Dixon explained in her summary statement, a revised policy is now proposed for demolition in RHAs, which now differs from that for scheduled heritage items.[248]

10.62 The Panel asked the Council to address the lawfulness of proposed rules controlling demolition of buildings in RHAs and RCAs, particularly in the context of the decision in *Waikanae*. As explained in the memorandum of counsel for the Council of 17 April 2024:

(a) *Waikanae* was wrongly decided (the reasons why this is the case are reiterated above);

(b) In respect of RHAs, section 86B(3) of the RMA provides that a rule in a proposed plan has immediate legal effect if the rule protects historic heritage. PC13 contains provisions duplicating the heritage-related provisions in PC14, including the proposed rules controlling demolition. PC13 was notified at the same time as PC14. At that time, the proposed rules controlling demolition took immediate legal effect, thus altering the previous *status quo* development rights insofar as they related to demolishing buildings in RHAs. Section 80E of the RMA allows a council to amend or include *"related provisions that support or are consequential on"* the MDRS or NPS-UD policy 3. *"Related provisions"* may relate, without limitation, to qualifying matters or various other listed matters. Demolition controls are central to maintaining the integrity of RHAs and RCAs and can validly be related provisions.

RHA interface QM

10.63 The Council also proposes an RHA interface QM. This would require consent as a restricted discretionary activity for any new building over 5m on a site zoned HRZ or Residential Visitor Accommodation Zone which shares a boundary with an RHA.

10.64 Kāinga Ora and Carter Group have argued that RHA interface areas and the associated rule are not justified to mitigate the adverse effects of new buildings on the heritage values of sites within the adjoining RHAs. However, as Ms Dixon explained to the Panel, the existing urban design assessment matters will not adequately consider the heritage context of RHA sites. The

[248] Glenda Dixon summary statement, 1 November 2023, at paragraph 17.

proposed rule is not overly onerous, with proposed matters of discretion being limited to the impact on heritage values and visual domination or effects on views of the sites in the heritage area.

RCAs

10.65 RCAs are neighbourhoods that are distinctive from their wider surroundings, and which are considered to have a special character in the context of Ōtautahi Christchurch that, on the whole, is worthy of retention.

10.66 As part of the development of PC14, a comprehensive review was undertaken to consider carefully if the RCAs contained in the Operative District Plan continued to have a level of integrity and character worthy of retaining.[249] Additional areas put forward in public feedback were also investigated. As a result, in summary the Council proposed to remove two of the 15 existing RCAs (Esplanade and Clifton) and reduce the extent of eight others (Cashmere, Beckenham, Piko, Heaton, Malvern, Francis, Dudley, Englefield).

10.67 Three new areas (Bewdley, Roker, and Ryan) are also proposed through PC14, as are expansions to two existing RCAs (Beckenham and Lyttelton).[250]

10.68 In response to submissions received, a further RCA – Cashmere View – was recommended in the section 42A report to be included.[251] Based on the updated evidence presented by Ms Nikolau (submitter 1054) and a reassessment of the relevant area by Ms Rennie, the Council now supports an alteration to the boundary of the Cashmere View RCA to also include Fairview Street.

10.69 Conversely, Ms White has recommended the removal of two RCAs (Beverley and Ranfurly), as on balance, she considers the objectives of the NPS-UD and CRPS are better met because of the benefits of increased density in these locations.[252]

10.70 Amendments to certain RCA provisions are proposed through PC14. As Ms White explained to the Panel, the retention of the current controlled activity status for most building works will not be sufficient to maintain the character

[249] Section 32 Report, Part 2 – Qualifying Matters (District Plan Chapters 6, 8, 9, 13, 14, 18): Appendix 21, Investigation of Qualifying Matters –Ōtautahi Christchurch Suburban Character Areas, Boffa Miskell Ltd, 1 June 2022; Appendix 22, Investigation of Qualifying Matters – Ōtautahi Christchurch Suburban Character Areas – Stage 2A Addendum Report, Boffa Miskell Ltd, 22 July 2022; Appendix 23, Investigation of Qualifying Matters - Lyttelton Character Area, Boffa Miskell Ltd, 22 July 2022.
[250] Liz White Section 42A report, 11 August 2023 at 6.1.4.
[251] Liz White Section 42A report, 11 August 2023 at 8.3.7.
[252] Liz White Section 42A report, 11 August 2023 at 8.2.25.

values of these areas and would likely lead to a loss in the integrity and cohesiveness of the RCAs.[253] A change from controlled to restricted discretionary activity status for most building works, along with the inclusion of RCA specific built form standards would be more effective in achieving the relevant objectives of the Plan in relation to RCAs.[254]

10.71 In summary, the RCA provisions proposed in PC14:

(a) appropriately support the distinctive and special character values of these areas;

(b) promote the maintenance and enhancement of amenity values relating to those character values (i.e. which is relevant as a section 7(c) RMA matter to which particular regard must be had) – as explained above, the Panel is entitled to consider amenity implications through an IPI;

(c) support the relevant CRPS and District Plan objectives and policies;[255] and

(d) limit intensification only to the extent necessary to accommodate the RCA qualifying matter and affect a relatively small proportion of the relevant residential zones and will have a minimal effect on housing capacity given the lack of any particular development capacity issue in Ōtautahi Christchurch, as explained above.

10.72 Some of the issues relating to RCAs discussed through the hearings are the same as for RHAs (namely, in terms of certificates of compliance, consultation, and demolition controls). These matters are addressed in the RHA section above.

10.73 The Panel also had a number of questions regarding the overlap between RCAs and RHAs which, in addition to oral answers, were responded to in the Council's further information responses.[256]

10.74 In summary, while there is some geographic overlap between RHAs and RCAs in some locations, they have been identified on different criteria and serve a different purpose. Given this, the Council does not consider it is appropriate to combine these two types of areas. However, density and built

[253] Liz White Section 42A report, 11 August 2023 at 8.4.19.
[254] Liz White Section 42A report, 11 August 2023 at 8.4.27.
[255] In particular, Objectives 6.2.2 and 6.2.3 of the CRPS, and Objectives 3.37 (re-numbered 3.3.8 through PC14), 14.2.3 and 14.2.5 of the District Plan.
[256] Supplementary Statement of Evidence of Glenda Dixon on behalf of Christchurch City Council, dated 14 December 2023.

form rules have been aligned between the two types of areas, to jointly support the retention of existing built form and open space values.

Riccarton Bush interface QM

10.75 From the hearing the Panel will have gained a clear appreciation of the special nature and status of Pūtarikamotu / Riccarton Bush. It clearly merits protection from numerous standpoints relevant to section 6 of the RMA, notwithstanding its proximity to the Riccarton centre.

10.76 The Panel has heard from local residents, and from submitters from further afield, regarding this QM. Inevitably, a variety of views have been expressed; notably, most of the submitters (five out of seven) who live within the proposed interface area itself support the QM (or want the protections to be strengthened further).[257]

10.77 The proposed controls have been refined through the process, including through expert conferencing on landscape matters between Dr Hoddinott for the Council and Ms Strachan for Kāinga Ora,[258] to the extent that there is a high degree of consensus between the experts regarding the merits and details of the QM. Dr Hoddinott's rebuttal evidence addressed almost all concerns raised by Ms Strachan,[259] including that 50% building site coverage should be allowed on sites zoned Residential Medium Density along Riccarton Road.

10.78 The key residual issue explored at the hearing related to viewshafts to the Bush. While the landscape experts agreed on the need for viewshafts to be protected, the workability of rules requiring at least 3m or 1m setbacks on either side of buildings came into question.

10.79 On reflection, the Council is now comfortable to retain the 1m operative side yard setbacks for the relevant properties. That is because the previously proposed rules would have been unlikely to lead to a uniform response, given that driveway locations along affected sites are inconsistent, with some are already fragmented by other accessory buildings or rear site development.

[257] The relevant table of submitters requested by the Panel (request #41) is here: https://chch2023.ihp.govt.nz/assets/29-Nov-Council-Memo-Appendices/APPEND2.PDF.
[258] https://chch2023.ihp.govt.nz/assets/Joint-Witness-Statements/Joint-Expert-Witness-Statement-of-Landscape-Experts-Putarikamotu-Riccarton-Bush-Interface-Area-27-September-2023.pdf.
[259] https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/30.-Rebuttal-Evidence-Wendy-Hoddinott.pdf.

10.80 The other issue arising in respect of Pūtarikamotu / Riccarton Bush, relating to a setback from the predator-proof fence, is addressed in the city-wide QMs section of this reply, below.

LPTAA

10.81 The Council remains of the strong view that MDRS intensification should not be enabled in areas that are not within a walkable distance of a frequent public transport service. The Council's evidence emphasises:

(a) the numerous benefits of the QM and, conversely, the downsides if it were not provided for;

(b) in particular, that MDRS development far from reliable public transport would likely lead to:[260]

(i) a lower overall share of trips being by public transport; and

(ii) a corresponding increase in private vehicle use, and associated increases in greenhouse gas emissions, air and water pollution, impacts on amenity and noise, public space required for cars, and associated costs to residents, as well as reduced public health;

(c) the economic efficiencies inherent in focusing development in the right areas;[261] and

(d) the increased positive social impacts of intensification from concentrating development in that way; as Ms Foy stated:[262]

> "*A more dispersed urban form also provides housing choice and affordability but is likely to lead to greater reliance on private motor vehicles to access employment, education, goods and services and social infrastructure. There are financial costs of providing infrastructure, such as roads and three waters to larger areas, which will be incurred by ratepayers and households.*"

10.82 The key technical issue raised with the QM is its responsiveness to a changing public transport network, which has been addressed (as explained below).

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[260] Evidence of Mr Morahan from page 27: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/42-Chris-Morahan-Statement-of-evidence-final.PDF.
[261] Evidence of Mr Osborne from paragraph 173: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/46-Phil-Osborne-Statement-of-evidence-final.PDF.
[262] Paragraph 104: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/21-Rebecca-Foy-Statement-of-evidence-final.PDF.

10.83 More generally, at the hearing the Panel expressed some scepticism about the legitimacy of this QM. With respect, that scepticism was misplaced, for the reasons summarised below:

(a) **The LPTAA is a valid QM**: being so far from the main public transport network that increased private vehicle use (etc) is inevitable does indeed make intensification in that area inappropriate, in terms of section 77I(j), as explained by the Council's witnesses.

(b) **The Council met the additional evaluation requirements** for an 'other matter' QM: in particular, in terms of the required site-specific analysis, it did not seem to be disputed that a geographic characteristic applying to numerous sites (i.e. distance from a service) is logically a permissible factor founding such a QM.

(c) **It is therefore necessary to engage with the evidence regarding the merits of this QM, in terms of section 32 of the RMA**. In this regard, the following factors strongly support the QM:

(i) Central to the NPS-UD (and modern-day planning practice more generally) are the concepts of focusing intensification in and around centres and avoiding a more dispersed urban form.

(ii) Section 77L(b) requires a justification of why a QM makes medium-density development inappropriate in light of the national importance of urban development and the objectives of the NPS-UD. In this regard, no fewer than half of the eight objectives of the NPS-UD itself directly support this QM, namely:

(1) objective 1, promoting WFUE;

(2) objective 3, particularly objective 3(b);

(3) objective 6, regarding the need for urban development to be integrated with infrastructure investment; and

(4) objective 8, requiring New Zealand's urban environments to support reductions in greenhouse gas emissions.

(iii) Unsurprisingly, these imperatives are also central to the CRPS and strategic directions in the operative District Plan.[263]

(iv) In terms of objective 3(b), disapplying the QM would clearly entail reading down that objective. If the QM did not exist, the District Plan would *"enable more people to live in (…) areas of an urban environment"* in which **none** of the listed matters apply, least of all the requirement that such areas be *"well-serviced by existing or planned public transport"*. As discussed earlier in this reply, there is no legal basis for doing so. Submitters arguing against the QM have not clearly explained why it is necessary for PC14 to cut across that objective, or why the Panel should feel free to do so.

(v) The QM has numerous benefits, noted above, which gain considerable weight from those higher-order directives.

(vi) Those benefits of the QM weigh favourably, in the section 32 balance, against its relatively low costs. In this regard:

(1) while it applies to a large number of sites in absolute terms, the QM applies to a relatively small area of the city, mainly on its fringes, as illustrated by figure 3 in Mr Osborne's evidence,[264] some parts of which are covered by other QMs; and

(2) the significant excess in feasible development capacity in Ōtautahi Christchurch is highly relevant for evaluating this QM, for the reasons discussed above. In real terms, what this means is that the cost of the LPTAA QM on a landowner of a site within the QM area, wishing to develop medium-density housing, is relatively low because there are ample opportunities to purchase land for that purpose elsewhere in the city.

10.84 In terms of the technical criticisms of the QM, Mr Kleynbos prepared a response to the Panel's information request #55.[265] In it he described a

[263] CRPS objectives 6.2.1(9), 6.2.1(11), 6.2.4, 6.3.4, 6.3.7(2); operative District Plan objectives 3.3.8.a.iv, viii, ix and x (previously 3.3.7.a.iv, viii, ix and x).
[264] Evidence of Mr Osborne: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/46-Phil-Osborne-Statement-of-evidence-final.PDF.
[265] Appendix F to this memorandum: https://chch2023.ihp.govt.nz/assets/Council-Memo/Correspondence/Memorandum-of-Counsel-for-Christchurch-City-Council-11-April-2024-Information-requests.pdf

proposed exemption, reflected in the provisions in **Attachment 2**, to the effect that a site would be exempted in future from the QM if a new bus service is established, with a stop within 800m of the site and with a frequency of at least four buses per hour over peak travel periods, namely between 7am and 9am and 3pm and 6pm on weekdays. This exemption complements that provided under MRZ area-specific controls (14.5.3.1.3 RD19), which enable three units per site where located within a walkable catchment to any bus service.

10.85 The Council also proposes to update the extent of the QM in light of the recent disestablishment of the number 17 bus, and to add the number 8 bus route (apart from in Lyttelton).

10.86 The net result of the most recent changes proposed by the Council is to remove the proposed QM over an area of approximately 100ha, leaving the zoning as MRZ and allowing full MDRS development. **Attachment 11** includes mapping illustrating this change.

10.87 Mr Kleynbos' response to the Panel's request #55 also discussed options for converting this QM into a regime permitting MDRS development but providing for a matter of discretion, where consent is needed for development involving four or more residential units, regarding accessibility to public transport. He identified two workable options, while not considering them preferable to the 'QM proper' approach that is reflected in the provisions in **Attachment 2**.

Port Hills stormwater constraints QM

10.88 The Council now supports this QM, which was proposed by a submitter, ECan, to limit the sedimentation effects of new development in the Port Hills.

10.89 It has been the subject of several rounds of expert conferencing. Following the infrastructure experts agreeing that the loess soils on the Port Hills are highly erodible and pose a significant development constraint,[266] the planners advising the Councils and submitters alike (including Mr Joll for Kāinga Ora and Ms Aston for Red Spur) expressed the shared view that a QM response could be appropriate (and most agreed that the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) was relevant to consider).[267]

[266] Joint-Expert-Witness-Statement-of-Infrastructure-Experts-Infrastructure-5-October-2023.pdf (ihp.govt.nz)
[267] Joint-Witness-Statement-Planning-Experts-Port-Hills-Stormwater-Qualifying-Matter-11-December-2023.pdf

10.90 The latest conferencing took place at the very end of the hearing (albeit with Mr Joll and Ms Aston instructed not to take part), with the planners broadly agreeing that the QM should comprise two measures:

(a) a certified permitted pathway, applying where loess soils are located (identified by a Loess Soil Management Area), requiring the creation of an erosion and sediment control plan to be prepared and approved prior to works beginning for residential development that is at a density greater than operative zones permit (i.e. 650m^2 or 400m^2, respectively); and

(b) an impervious surface control aligning with the MDRS density standard for building coverage (i.e. 50%).[268]

10.91 On reflection, the Council proposes that the maximum building coverage be 45%, in line with the level of imperviousness assumed in the modelling associated with the stormwater network management within the areas zoned Residential Hills in the operative Plan. Provisions for impervious surface controls are spatially tied to where MRZ is proposed to replace the operative Residential Hills Zoning, and provide an avenue where controls do not apply if suitable stormwater discharge facilities are available. This approach specifically addresses concerns raised by Cashmere Land Developments Limited and Red Spur Limited, as these sites benefit from newly constructed stormwater facilities, while the latter is wholly unaffected by provisions as MRZ is not proposed over Redmund Spur.

10.92 As such, the QM will manage both water quality and quantity effects of intensified development in residential areas of the Port Hills. It responds to clause 3.5(4) of the NPS-FM, which requires territorial authorities (among other things) to include objectives, policies, and methods in their district plans to avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and wellbeing of water bodies, freshwater ecosystems, and receiving environments.

10.93 A section 32AA evaluation and further commentary is in **Attachment 5.2**.

Residential / industrial interface QM

10.94 A relatively modest 40m buffer is proposed in MRZ and HRZ areas adjoining industrial zones, within which measures are proposed to address the risk of

[268] Joint-Witness-Statement-Planning-Experts-Port-Hills-Stormwater-Qualifying-Matter-Second-session-24-April-2024-v2.pdf

increased noise and reverse sensitivity effects if a third storey is provided for in those areas, which may negatively impact industrial operators who contribute significantly to the city's economy.

10.95 Originally the QM was based on qualifying building height by applying a limit of 7m (now 8m)[269] instead of 12m or 14m, with exceedances triggering a need for resource consent. As such, where the MRZ areas are currently zoned for medium-density residential development under the operative Plan, the QM would have slightly reduced the *status quo* building height limit.

10.96 More generally, Mr Joll for Kāinga Ora raised a number of concerns regarding this QM, which were comprehensively responded to by Ms Ratka in her rebuttal evidence.

10.97 The main developments during the hearing process arose from the presentation by submitters near the Ravensdown site (including Ms Goulter), that of Ravensdown itself, and subsequent expert conferencing directed by the Panel. While the QM was primarily driven by noise considerations, which were the subject of questions from the Panel, Ravensdown's case focused on its air discharges and effects associated with sulphur dioxide and fluoride, and ECan (via a memo attached to the Joint Witness Statement of Ms Ratka and Ms Whyte) subsequently provided information regarding odour complaints, all of which have led to the following updated recommendations by the Council:

(a) For the QM generally:

(i) Within 40m of industrial zones, a new built form standard is proposed to be included for properties zoned MRZ and HRZ. Instead of the proposed lower building height limit, the standard now requires mechanical ventilation and air conditioning units to be installed where buildings are above 8m and there is line of sight to industrial zones. The standard also requires that balconies be oriented away from these zones.

(ii) Where this standard is not met, resource consent would be required for a restricted discretionary activity with assessment matters considering noise mitigation and reverse sensitivity.

[269] This was subsequently recommended to be changed to 8m, by Ms Ratka in her section 42A report.

(iii) The Council now proposes to increase the residential noise limits by 10dB, at new compliance locations within the QM overlay above 8m, given the noise mitigation measures now required.

(iv) While a dedicated new Objective 14.2.12 was previously proposed, the QM can instead be supported in reliance on Strategic Objective 3.3.14 - Incompatible activities.

(v) The wording of the new Policy 14.2.12.1 has been updated to reflect the potential for noise mitigation.

(b) In respect of the Ravensdown site at 312 Main South Road, the Council's position is that the residential properties within 240m of the site should retain their operative zoning of Residential Suburban.

10.98 The detailed justification for that position and related section 32AA material is contained in the appendices to the joint witness statement of Ms Ratka and Ms Whyte.[270]

Residential Future Urban Zone and ODPs

10.99 Counsel's opening legal submissions for the residential topic explained the Council's approach to the Residential New Neighbourhood zone, being to rename it Future Urban Zone or, where development was complete or underway, rezone land as MRZ. The Council's response to the Panel's information request #44 provided a breakdown of the relevant areas.

10.100 Relief sought raised by submitters in relation to this topic primarily comes down to questions of scope, addressed elsewhere in this reply and in **Appendix 5**. Undeveloped areas of Residential New Neighbourhood are not being rezoned through PC14, but are renamed in line with the National Planning Standards. Importantly, the associated outline development plans are retained to ensure an integrated and sustainable approach to the land's development is continued.

[270] https://chch2023.ihp.govt.nz/assets/Joint-Witness-Statements/Joint-Witness-Statement-Planners-Ravensdown-Industrial-Interface-with-Appendices-1-to-9-18-April-2024.pdf

Residential Visitor Accommodation zone and Residential Large Lot zone

10.101 For completeness, areas zoned Residential Visitor Accommodation that fall within the influence of NPS-UD policy 3 also benefit from intensification proposed in adjacent residential zones.

10.102 In respect of the Residential Large Lot zone, the section 32 analysis and Mr Kleynbos' section 42A report explained that a small number of sites with current residential zoning are proposed not to be zoned MRZ through PC14, because density overlays apply to those sites in the operative Plan that given them a different zoning character and are at odds with medium-density development. The sites are:

(a) Rural Hamlet (zoned Residential Suburban in the operative Plan);

(b) 86 Bridle Path Road (zoned Residential Hills in the operative Plan); and

(c) Redmund Spur (also currently zoned Residential Hills).

10.103 Through PC14 the zoning of those sites is proposed to be **renamed** Residential Large Lot zone, which is the nearest equivalent zone to 'Large Lot Residential Zone' in National Planning Standards found in the National Planning Standards (in terms of how the operative plan captures this), once the effect of the current density overlays is taken into account. A Residential Large Lot zone is expressly excluded from the *"relevant residential zones"* to which the MDRS must be introduced.

10.104 It must be open to the Council to undertake this kind of real-world analysis, and in legal terms the relevant RMA provisions must be interpreted in a way that takes into account their purpose; in this case, Parliament did not intend for Councils to be required to introduce the MDRS into areas which, in terms of the density of development allowed in them, are effectively subject to Residential Large Lot zoning.

10.105 The Panel has heard from Ms Aston and counsel for Red Spur Limited, seeking that MRZ be applied over Redmund Spur, or the operative Residential Hills zoning be retained if the LPTAA QM applies. Mr Kleynbos' rebuttal evidence explains that the submitter's concerns are unfounded because PC14 does not effect any 'down-zoning' of the land in reality, despite the change of zone name. However, Mr Kleynbos also noted that the application of the Port Hills Stormwater QM, sought by ECan, means that the

status quo zoning of Residential Hills was an appropriate outcome in any event.

10.106 Now the Council is content with its original proposal to apply Residential Large Lot zoning in the three areas, subject to the applicable QMs and associated area-specific precincts.

Proposed rezoning of residential zones and other zones to residential (proposed by submitters)

10.107 The Council's position on all rezoning requests made by submitters, including those seeking changes to or from a residential zone, are set out in **Appendix 5**.

Relief sought by the Department of Corrections

10.108 Ara Poutama Aotearoa / the Department of Corrections seeks to amend the existing Plan definition of *"residential activity"* to remove the exclusion currently provided for *"the use of land and/or buildings for custodial and/or supervised living accommodation where residents are detained on the site"*. As explained on the Council's behalf during the residential hearing, such changes to the District Plan are not mandated by section 80E of the RMA, which instead requires incorporation of the MDRS (to apply to residential units and buildings) and enabling greater building heights and densities in giving effect to policy 3.

10.109 The District Plan deliberately distinguishes residential activity, on the one hand, from custodial and supervised living accommodation (where residents are detained on the site), on the other. Section 80E does not direct the enablement of the latter.

11. OTHER ZONES, SUBDIVISION, DEVELOPMENT AND EARTHWORKS, AND OTHER MATTERS (TRANSPORT) – HEARING WEEK 7

11.1 The week 7 hearing focused on the following topics:

(a) 'other zones', namely the School, Tertiary, and Hospital Specific Purpose Zones (SPZs); Industrial General Zone (including Brownfield Overlay); and Mixed Use Zone (MUZ);

(b) 'other matters', namely Transport (not including transport-related matters that have been or will be addressed in other hearings); and

(c) Subdivision, Development and Earthworks.

11.2 The Council's updated position on these topics is set out below, including in respect of the various scope matters raised by the Council, and by the Panel at the hearing.

Specific Purpose Zones: School, Tertiary and Hospital

11.3 Chapter 13 of the Plan sets out SPZ provisions, which apply in so far as the relevant sites are used for the relevant specific purpose. Otherwise, the alternative (or 'underlying') zones listed in the relevant SPZ appendices apply.

11.4 PC14 proposes changes to the SPZ provisions that are primarily focused on ensuring a commensurate planning response to the SPZ sites, consistent with the overall proposed strategic form for the city, in particular in terms of providing for greater development around centres, and otherwise consistent with the surrounding residential zones. These are therefore considered to be consequential changes in section 80E terms.

11.5 The only submission on the Tertiary SPZ was in support of the notified provisions. The other relevant submissions addressed the School SPZ and Hospital SPZ. Those two SPZs are addressed in turn below.

School SPZ

11.6 The Council's position remains that the submissions that sought to enable greater development on specific School SPZ sites through rezoning of the 'alternate zone':

(a) are out of scope, because they go beyond the amendments proposed in the notified version of PC14;[271] and

(b) relying on Ms Piper's evidence, would not be appropriate in merits terms due to, for example, inconsistent application of development enablement with the surrounding residential zone.

11.7 The submissions that seek to extend the School SPZ to specific residentially zoned sites to enable greater development to occur[272] are also considered by

[271] Legal submissions for the Christchurch City Council on other zones, subdivision, development and earthworks and other matters (transport) dated 16 November 2023 section 5.
[272] Christs College and the Catholic Diocese of Christchurch seek to rezone specific sites to School SPZ

the Council to be out of scope.[273] However, if the Panel considers there is scope for those submissions, Ms Piper would support the re-zonings sought.

11.8 In terms of scope, rezoning 21 Gloucester Street to School SPZ would substantively alter the education activity authorised on the site compared to the operative Residential Central City Zone[274] and the notified PC14 MRZ zoning[275] of the site, by removing the gross floor area and operating hours limitations, so that education activity is no longer subject to limits on floor area and hours of operation. The relief sought does not address the proposed change to the status quo, and a member of the public comparing that to PC14 could not have reasonably foreseen such significant changes.

11.9 As per the memorandum of counsel dated 20 December 2023, the Council accepts that scope is not an issue for the Christ's College submission seeking the alternate zoning of its existing school site be amended from MRZ to HRZ. However, Ms Piper and the Council do not support this proposal in merits terms: the MRZ alternate zoning should remain as it is commensurate with the surrounding residential zone.

11.10 The Council continues to propose more restrictive activity status and built form standards in response to the permitted height for School SPZs within HRZ increasing from 16m to 22m, notwithstanding submissions that seek to retain the existing more enabling activity status and built form standards. Ms Piper's evidence is that:

(a) lowering the activity status for exceedances of the height standards would remove the ability to decline consent for such breaches and would not appropriately manage the effects of increased heights in the School SPZ.

[273] Legal submissions for the Christchurch City Council on other zones, subdivision, development and earthworks and other matters (transport) dated 16 November 2023 at Section 5.
[274] Operative District Plan rule 14.6.6.1 P9.
[275] PC14 rule 14.5.1.1 P5.

(b) relaxing the boundary/recession planes, building setbacks, maximum continuous building length,[276] heritage[277] and landscaping standards would not appropriately mitigate the effects of increased heights.

11.11 After her appearance at the hearing, Ms Piper acknowledged in her hearing response document[278] the unintended consequences of the proposal (as notified) to remove the terms ‘amenity’ and 'amenity value' from a number of the School SPZ provisions, and recommended those words be reinserted.

11.12 Ms Piper's position, updated through her hearing response document, is reflected in the School SPZ provisions as now proposed by the Council.

Hospital SPZ: - Former Christchurch Women's Hospital site (FCWH)

11.13 Submissions on the Hospital SPZ concerned Princess Margaret Hospital, St. George's Hospital and other sites but there was a particular focus on the Former Christchurch Women's Hospital site (**FCWH**).[279] Submitters wish to ensure the site is retained for future hospital use, and on that basis oppose the more enabling provisions (retaining the Hospital SPZ zoning with an alternative HRZ zoning) proposed by the Council.[280]

11.14 Having considered the submissions, and listened to Mr Banks at the week 7 hearing, Ms Piper supported some changes to the proposed provisions, but not a less enabling activity status nor built form standards for development.

11.15 In particular, in response to questions from the Panel at the hearing, Ms Piper explained the proposed 60% site coverage rule for the FCWH in her hearing response document[281] and information response provided after her appearance at the hearing.[282] There Ms Piper confirmed her view that this

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[276] The rationale for the maximum building length rule was explained by Ms Piper in her response to the Panel provided after her appearance at the Week 7 hearing: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/Christchurch-City-Council-Clare-Piper-Response-SP-Zones-Hearings-22-November-2023.pdf. That followed on from the updated wording to provide clarity as to the interpretation and application of Rule 13.6.2.4 proposed by Ms Piper in her rebuttal evidence in response to submissions by CGL and the Catholic Diocese and also her in summary statement provided at the hearing at paragraph 2.2 https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/10-Clare-Piper-Summary-Statement-specific-purpose-zones-Hearings-21-November-2023.pdf.

[277] In her rebuttal evidence and at the hearing, in response to Council, CGL and Catholic Archdiocese submissions, Ms Piper explained her view that Rule 13.6.4.2.a should include assessment matters relating to heritage items and settings such that additional built form standards are not required. This position was reiterated in her summary statement https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/10-Clare-Piper-Summary-Statement-specific-purpose-zones-Hearings-21-November-2023.pdf and evidence given at the hearing.

[278] Christchurch-City-Council-Clare-Piper-Response-SP-Zones-Hearings-22-November-2023.pdf (ihp.govt.nz) at paragraphs 2.1-2.5.

[279] It is noted that legal submissions for the week 7 hearing focused exclusively on the FCWH site because submissions relating to other hospital sites were either in support of the provisions as proposed by the Council or were accepted or accepted in part by Ms Piper (section 42A report author).

[280] Submitters include Mr Geoff Banks and Victoria Neighbourhood Association.

[281] Christchurch-City-Council-Clare-Piper-Response-SP-Zones-Hearings-22-November-2023.pdf (ihp.govt.nz) at paragraphs 6.1-6.4.

[282] Memorandum on behalf of the Council dated 20 December 2023 Response to question 66.

new rule is an appropriate planning response in light of the increase in permitted height, adjacent to the residential zone. A site coverage requirement for this specific site is considered appropriate to assist in managing effects of built form on the surrounding community, which could be considered as ensuring a 'contextual fit' with the surrounding environment.[283]

11.16 The Council supports that approach; the site coverage provision is appropriate in support of / consequential on the increase in enabling heights up to 22m in accordance with section 80E.

11.17 For completeness, the Council does not support the removal of the alternative proposed HRZ zoning as sought by some submitters. Given the significant land area and its proximity to the Central City, retaining the ability for future development opportunities of this site through an alternative HRZ zoning is considered most appropriate.

Industrial and Mixed Use Zones and Brownfield overlays

11.18 The Council continues to propose:

(a) the rezoning of existing Industrial General Zone areas within a walkable distance of the City Centre Zone to MUZ.[284,285] The relevant areas are at Sydenham, Addington, Phillipstown and around Lancaster Park; a Comprehensive Housing Precinct (**CHP**) and associated provisions are proposed to guide the establishment of comprehensively designed high-density housing and manage new non-residential activities. The key driver for that proposal is policy 3 of the NPS-UD, supported by various other provisions supporting more people living close to centres, including objective 1, objective 3, and policy 1;[286] and

(b) Brownfield Overlays for residential or non-industrial uses within a walkable catchment of larger suburban centres, to allow for a transition into high density residential neighbourhoods.

11.19 In response to submissions, in his section 42A report Mr Lightbody recommended changes to the Industrial General Zone and MUZ objectives, policies and rules to improve clarity or consistency. Mr Lightbody, and the Council, do not support other changes proposed to those provisions, for

[283] Memorandum on behalf of the Council dated 20 December 2023 Response to question 66.
[284] The Industrial Zone and Brownfield Overlay provisions are located in Chapter 16 of the District Plan.
[285] The MUZ provisions are in Chapter 15 (Commercial) of the District Plan. The Central City Mixed Use Zone and Central City Mixed Use South Frame Zone were addressed in the Central Centre and Commercial Zones hearing and are covered above.
[286] Memorandum on behalf of the Council dated 20 December 2023 Response to question 61.

example removing references to supporting reductions in greenhouse gas emissions in the Objective and Policy (as sought by Kāinga Ora) because these amendments either:

(a) are not as aligned with the NPS-UD direction to contribute to well-functioning urban environments compared with the notified provisions; or

(b) may hinder the readability of the provisions and/or result in a convoluted and unclear District Plan framework.

11.20 In particular, the Council does not support changes to the MUZ provisions proposed by Kāinga Ora that would encourage additional office and retail in the MUZ, as that would be contrary to the centres hierarchy. Mr Lightbody and Ms Radburnd (for Christchurch NZ) are in agreement on that point, as per the Planning – Mixed Use Zones JWS. More broadly, that JWS confirms there is no substantial remaining disagreement between Mr Lightbody and Ms Radburnd in respect of the MUZ provisions. The updated provisions now proposed reflect that agreement.

11.21 The Panel asked the Council to confirm whether any further changes proposed to the Industrial Zone provisions by submitters are 'related provisions' in s80E terms, being consequential on intensification in adjoining zones. The Council's position is that: [287]

(a) no changes to the Industrial Provisions were proposed in the notified version of PC14, meaning submissions seeking greater restrictions in the provisions are out of scope in the *Clearwater* and *Motor Machinists* sense;

(b) relying on the 'merits' assessment by Mr Lightbody, the changes that have been sought by submitters are not necessary or appropriate (which in turn supports the Council's position that the relief does not support nor is consequential to provide for the MDRS in s80E terms). Put simply, Mr Lightbody and the Council consider the existing provisions adequately manage effects.

11.22 A number of requests have been made by submitters to rezone land to or from Industrial Zone, or to apply a Brownfield Overlay to an existing Industrial Zone site. The Council's updated position on all those requests is set out in

[287] Memorandum on behalf of the Council dated 20 December 2023 Response to question 63 (Appendix J to the memorandum).

full in the rezoning request table, attached to this reply in response to Panel request #34. In most cases, the Council does not support those requests, both because:

(a) the requests are not 'on' the plan change and therefore are out of scope in Clearwater and *Motor Machinists* terms, and are not within a Policy 3 NPS-UD walking catchment; and

(b) the 'merits' assessment by Mr Lightbody is that the proposed rezonings are not appropriate. Where a change to Industrial Zone is sought, Mr Lightbody has emphasised that there is no shortfall of industrial land across the city.[288]

11.23 The exceptions are that:

(a) The Catholic Diocese request to have a Brownfield Overlay applied at 2 Lydia Street, Papanui is considered to be out of scope on in *Clearwater* and *Motor Machinists* terms, and the site is not within a Policy 3 NPS-UD walking catchment. That said, Mr Lightbody would support the request in 'merits' terms;

(b) As above, the Council's position is that no scope issue arises for the land Foodstuffs proposes to be rezoned at 159 Main North Road (i.e. the Head Office at Papanui) because Foodstuffs is simply seeking to revert the PC14 notified High Density Residential zone back to the operative Industrial General Zone.

Sydenham Comprehensive Housing Precinct (CHP)

11.24 There was a particular focus on the Sydenham CHP in submissions. The Council's position on the issues understood to remain in contention between the planning expert witnesses is as follows:

(a) Retail, Office and Community Activities within the CHP. Having considered the evidence of submitters, including that of Mr Clease on behalf of Kāinga Ora, in his summary statement Mr Lightbody confirmed his position that the changes sought would have distributional effects that would be contrary to the primacy of the centres hierarchy in the CRPS.[289]

[288] 04-Kirk-Lightbody-Section-42A-Final.PDF (ihp.govt.nz) Appendix 1.
[289] 04-Kirk-Lightbody-Summary-Statementindustrial-mixed-use-zones-brownfield-overlays-Hearings-21-November-2023.pdf (ihp.govt.nz)

(b) Extent of CHP: Kāinga Ora and other submitters sought to reduce the spatial extent of the CHP. The area proposed by the Council is the extent recommended by Mr Lightbody in his s42A report, which includes Phillipstown. This spatial extent differs from the outcomes of the Urban Design and Architecture JWS between Ms Williams and Mr Clease (for Kāinga Ora), but is consistent with Mr Lightbody's position as set out in the Planning – Mixed Use Zones JWS. That position being that the entirety of Operative Industrial General Zone within the City Centre Zone walking catchment should have the same intensification provisions for efficiency and effectiveness reasons.[290]

11.25 There was also discussion at the hearing about High Trip Generator Activities within the CHP. Submitters including Christchurch NZ (supported by their witnesses Ms Radburnd, Mr Hardcastle and Mr Johnson) sought a number of changes to the minimum standards for comprehensive residential development relating to the CHP over the MUZ. Again, those matters are now substantially agreed between the Council and Christchurch NZ, as per the Planning – Mixed Use Zones JWS[291] and confirmed in Mr Lightbody's summary statement.[292]

11.26 Finally, in response to questions from the Panel, the Council confirmed that it did consider the appropriateness, effectiveness, and efficiency of rezoning Sydenham as a residential zone as opposed to MUZ with the CHP to achieve the overall long-term outcome now rather than providing for a gradual transition overtime. Doing so would create a potential conflict between existing industrial activities and new adjacent residential development, without appropriate measures to mitigate potentially significant adverse reverse sensitivity effects. The Council therefore maintains its position that the CHP is the most appropriate method to give effect to NPS-UD Policy 3(c) and Policy 3(d).[293]

[290] Noting that this was a change from Mr Lightbody's rebuttal evidence. It is noted that the Planning – Mixed Use Zones JWS was updated following further expert conferencing on 18 December 2023. The planners agreed a set of provisions that the Panel could impose but only if it was minded to rezone part of the existing Industrial General Zone within the walkable catchment of the City Centre zone to MUZ (CHP). The Council does not however, support that approach.
[291] Joint-Witness-Statement-Planners-Mixed-Use-Zones-6-and-13-November-and-18-December-2023-UPDATED-20-December-2023.pdf (ihp.govt.nz)
[292] 04-Kirk-Lightbody-Summary-Statementindustrial-mixed-use-zones-brownfield-overlays-Hearings-21-November-2023.pdf (ihp.govt.nz)
[293] Memorandum on behalf of the Council dated 20 December 2023 Response to question 68.

Transport

11.27 PC14 updates the Transport provisions in Chapter 7 to give effect to the MDRS and Policy 3. The changes are 'related provisions' in s80E, required for practicality reasons, and address access and cycle parking in particular.[294]

11.28 Some submitters sought additional amendments, while others opposed or sought changes to the notified amendments. The Council's position on key matters raised in submissions and during the hearing is summarised below.[295]

11.29 In terms of car-parking, including accessible parking, and loading spaces:

(a) the NPS-UD[296] prevents the Council from imposing minimum car parking requirements, including for EVs;[297]

(b) Ms Piper and the Council propose:[298]

(i) a requirement for loading spaces to be provided for developments of 20 or more residential units, to facilitate deliveries; and

(ii) mobility parking requirements for MRZ developments.

11.30 The proposed provisions addressing cycle parking (including associated e-bike charging facilities) have been updated following submissions, and in particular discussions with Christchurch NZ. The provisions take a measured approach, seeking to encourage good facilities without being overly prescriptive. Of note:

(a) advice notes are proposed to encourage one electrical power point per cycle parking space, and Sheffield cycle stands with recommended dimensions to accommodate a wide range of cycle types and micromobility devices;[299] and

(b) whether cycle parking facilities are integrated within the building is proposed to be a decision left to the developer.

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[294] Memorandum on behalf of the Council dated 20 December 2023 Response to question 64.
[295] Ms Piper addressed the relevant submissions in her section 42A report (Report 10A)
[296] NPS-UD Policy 11 and Clause 3.38.
[297] Noting ChristchurchNZ's concern about the lack of EV charging requirements.
[298] These positions were informed by the evidence of Mr Rossiter for the Council, and reached after considering submissions and evidence including from Mr Phillips and Ms Williams on behalf of CGL.
[299] 10-Clare-Piper-Summary-Statement-transport-Hearings-22-November-2023.pdf (ihp.govt.nz)

11.31 In response to a request from the Panel, data on e-micromobility ownership from the (now completed) Life in Christchurch Transport Survey has been provided by Ms Heins.[300] Having considered this data Ms Heins' position is that the cycle parking requirements for residential developments proposed by the Council are not overly generous when compared to the current need and anticipated future growth in micromobility ownership. The provisions as now proposed therefore reflect the Council submission on that point.

11.32 Mr Field, Mr Rossiter and Ms Piper considered the submissions and evidence on pedestrian access requirements and vehicle crossings.[301] The Council proposes:

(a) A minimum 3m width pedestrian access, but with flexibility for smaller developments to provide a 1.5m width.[302] These requirements are important, in s80E terms, in order to achieve good CPTED, privacy, universal access, landscaping, cycle and servicing access, and to provide for welcoming and pleasant residential environments in residential developments; and

(b) A minimum 8.1m separation distance for vehicle crossings, to provide for both safety and on-street design considerations. In response to the Panel's question #64, the Council confirmed this is a consequential amendment in s80E terms.[303]

11.33 The accessibility of emergency vehicles was a specific concern raised by Fire and Emergency New Zealand (#842) in relation to greater intensification across the city, particularly for development in the Port Hills. Pre-notification engagement was undertaken with the submitter on this matter, resulting in the notification of a required 7m accessway width for Residential Hill-zoned areas. The current proposal has been refined to require a 4m-wide accessway, with specific provision for access fire hydrants (see Appendix 7.5.7). Provisions have also been updated to tie to applicable hill-related precincts, rather than Residential Hills zone, as this is proposed to be removed.

[300] Memorandum of counsel dated 11 April 2024 in Appendix I.
[301] Including Mr Phillips and Ms Williams on behalf of CGL and Mr Turner on behalf of the Retirement Villages Association and Ryman Healthcare.
[302] 10-Clare-Piper-Summary-Statement-transport-Hearings-22-November-2023.pdf (ihp.govt.nz);
[303] Memorandum on behalf of the Council dated 20 December 2023 Response to question #64.

Subdivision, Development and Earthworks

11.34 PC14 also updates Chapter 8: Subdivision, Development and Earthworks. The updates addressed in the week 7 hearing give effect to the MDRS and Policy 3. As Mr Bayliss explained, the proposed subdivision rules are "*significantly more permissive*" than the operative District Plan rules, and "*seek to ensure levels of development otherwise permitted be MDRS are not thwarted by subdivision provisions that constrain the ability to build*".[304] The key changes include:[305]

(a) modifying the subdivision rules and activity status of subdivision activities for sites subject to the MDRS so that subdivision rules do not constrain the ability to build according to the MDRS;

(b) removing limitations on the size, shape or other site-related requirements for subdivision, as per Clause 8, Schedule 3A of the RMA; and

(c) changes to align with National Planning Standards zoning references.

11.35 The Council proposes minimum allotment size and shape requirements for subdivision that enable development as per the MDRS. This is a 'tried and true' approach, and Mr Bayliss does not support the new 'shape factor' approach sought by Kāinga Ora.[306]

11.36 PC14 as notified proposed no substantive changes to the earthworks rules; submissions seeking those changes raise *Motor Machinists* scope issues. Mr Bayliss considered the submissions on their merits in any event, and concluded that they are not appropriate.

11.37 The changes Kāinga Ora seeks in respect of minimum allotment size for vacant lots and maximum earthworks volumes would result in substantive changes by comparison to PC14 as notified:

(a) the minimum dimension for vacant lots sought by Kāinga Ora would amount to an effective minimum allotment size of 120m^2, compared to 400m^2 / 300m^2 as notified for MRZ and HRZ, respectively. It would be

[304] 12-Ian-Bayliss-Summary-Statementsubdivisionearthworks-development-Hearings-21-November-2023.pdf (ihp.govt.nz)
[305] In addition, in his summary statement Mr Bayliss proposed an 'avoidance of doubt' update to Rule 8.6.2 and Table 6. That update has been carried though to the provisions now proposed by the Council.
[306] Bayliss summary statement; evidence of Mr Clease for KO.

difficult to achieve three residential units per site (as enabled under MDRS) on a 120m^2 site; and

(b) the proposed changes proposed by Kāinga Ora would enable larger volumes of earthworks as a permitted activity, noting again that the council does not proposed any changes to the earthworks rules.

11.38 In response to the Panel's queries about the prospect of relaxed notification requirements and / or activity status for earthworks:[307]

(a) The Council provided a detailed explanation of the operative notification regime for earthworks. Public notification is precluded, and limited notification generally occurs only in limited and specific situations. The Council remains of the view that the current regime, as developed through the Replacement District Plan process, is appropriate.

(b) Earthworks activities that exceed the permitted standards have the potential to create serious nuisance, and it would be difficult to a controlled activity status with even limited notification precluded.

12. HERITAGE – HEARING WEEKS 7 AND 8

12.1 The Council has proposed a Heritage Items QM. This is an existing QM because heritage items relate to a section 6 matter and relevant provisions were operative in the District Plan when the IPI was notified.

12.2 In addition to the current provisions in the District Plan, the Council proposes certain amendments to:

(a) Appendix 9.3.7.2 Schedule of Significant Historic Heritage (**Heritage Schedule**). There are 17 new items proposed, along with 25 additional interiors within the spatial extent of PC14. In each case, the owners support having the item protected.[308] Various corrections to entries in the Heritage Schedule are proposed where circumstances have changed, such as the deletion of items that have been demolished, and amendments to the extents of settings;[309] and

(b) various provisions relating to heritage items.

[307] Memorandum on behalf of the Council dated 11 April 2024 response to questions 71 and 72 (Appendices G and H to the memorandum).
[308] Section 42A report of Suzanne Richmond dated 11 August 2023 at [6.1.3].
[309] Section 42A report of Suzanne Richmond dated 11 August 2023 at [6.1.5] to [6.1.6].

12.3 Matters relating to the Heritage Items QM going to scope are addressed above.

PC13

12.4 The Council has also notified Proposed Heritage Plan Change 13 (**PC13**). As explained in the memorandum of counsel for the Council dated 28 July 2023, and in the Week 7 Legal Submissions for the Council, the heritage provisions of PC13 are largely duplicated in PC14 (aside from those relating to heritage items outside the allowable spatial extent of an IPI[310]).

12.5 If the Panel considers that any heritage provisions in PC14 are outside the scope of an IPI, then the Council intends that those heritage provisions would be considered later as part of PC13.

12.6 As explained by counsel at the hearing, the Council is not able to definitely advise as to the future of PC13. However, the following points are worth noting:

(a) The Council is comfortable that submitters seeking 'de-listings' (as discussed below) are entitled to have those submissions considered, and recommendations made by the Panel, through PC14; and

(b) If the Panel agrees with the Council that the changes proposed to the heritage provisions are in scope, and recommends that those changes are made, it is unlikely those provisions will be reconsidered through PC13.This would likely be achieved by the Council notifying a variation to, or withdrawing parts of, PC13.

Heritage items QM

12.7 A significant proportion of the submissions, evidence, and hearing time relating to the Heritage Items topic was dedicated to requests for removals of heritage items from Appendix 9.3.7.2 Schedule of Significant Historic Heritage (**Heritage Schedule**).

12.8 In respect of the seven requests to remove heritage items from the Heritage Schedule, the Council maintains its overall positions as presented to the Panel in Hearing Week 7. Namely that, while it does not oppose the removal of certain heritage items[311] it does oppose the removal of 32 Armagh Street

[310] That is, those that are outside a relevant residential zone or urban non-residential area.
[311] 137 Cambridge Terrace (Harley Chambers), 471 Ferry Road, and 40 Norwich Quay, Lyttelton (Mitre Hotel, which has been demolished). The Council supports a reduction in the extent of the Former Holy Name Seminary (commonly known as Antonio Hall), 265 Riccarton Road, but opposes deletion from the Heritage Schedule.

(**Blue Cottage**), 9 Daresbury Lane (**Daresbury**), and St James's Church at 65 Riccarton Road.

12.9 The District Plan, in accordance with Section 6(f) RMA, directs a clear starting point that significant historic heritage should be protected and conserved.[312] There was no expert heritage evidence before the Panel disputing that the above 3 items have the requisite heritage values to be considered (at least) 'significant'.

12.10 Relevant to the case put forward by submitters seeking removals, Policy 9.3.2.2.1 (the **Scheduling Policy**) in the District Plan provides that there may be "*financial factors related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item*".[313] The 'reasonableness' and 'appropriateness' considerations in this policy must be read in light of the strong imperative to protect and conserve historic heritage. That is, the heritage values of the heritage item must be relevant to this consideration. As Mrs Richmond explains, this consideration should also take into account public good-related economic values of retaining a repaired heritage item on its site.[314]

12.11 In light of this policy framework, and having carefully evaluated each of these requests, the Council is opposed to the above three requests on the basis that a sufficient case has not been made out to support removals from the Heritage Schedule. Further specific points in reply in respect of these heritage items are set out below.

Blue Cottage

12.12 In respect of the Blue Cottage:

(a) CGL did not bring any expert evidence on the assessment of heritage values (either in respect of current values, or expected post-repair values), despite having two expert witnesses who professed to have such expertise.[315] As explained above, the consideration of heritage values is relevant throughout an assessment against the Scheduling Policy.

[312] 9.3.2.1.1 Objective - Historic heritage.
[313] 9.3.2.2.1 c iv. Policy - Identification and assessment of historic heritage for scheduling in the District Plan.
[314] Section 42A report of Suzanne Richmond, dated 11 August 2023, at paragraph 8.1.154; Joint Statement of Planning Experts in relation to 32 Armagh Street (also known as 325 Montreal Street), dated 2 May 2024, at paragraph 22.
[315] Mr Hill and Mr Fulton. See hearing recording, 16 April – Afternoon Session 1, at around 42:00 and 1:14:40, respectively.

(b) Mr Phillips even stated (without relying on any expert evidence) that it was unclear whether the item met the significance threshold for scheduling in the first place.[316] This was a position he modified under cross-examination, having earlier been conclusive (rather than 'unclear') in his written evidence that the site did not meet the threshold for scheduling.[317] His position was contradicted by the evidence of Mr Fulton for CGL.[318] While Mr Phillips said that he did not rely on his conclusion in respect of heritage values when undertaking the rest of his assessment,[319] it is difficult to see how this could not have some influence on the balance of his assessment, given the relevance of heritage values throughout.

(c) The CGL witnesses did not take a heritage conservation approach when recommending repair actions,[320] which meant that the repair estimates (and scope of works on which it relied) were flawed. The witnesses for the Council did integrate a heritage conservation approach, which is more appropriate for a scheduled heritage item.

(d) The evidence of Mr Hill for CGL that "*the building is in such a deteriorated state it will have to be rebuilt*" was not explained in any detail in his evidence,[321] and was contradicted by the evidence of Mr Fulton (also for CGL) who agreed that the building is capable of repair.[322]

(e) The Council witnesses were unable to undertake a site visit to view the interior of the building until 8 April 2024. The scope of works that informed Mr Stanley's estimate as recorded in the Joint Witness Statement dated 29 April 2024[323] was updated to reflect the site visit and his subsequent discussions with Mr Tim Holmes (Conservation Architect, who gave evidence on the Blue Cottage for the Council). His updated estimate, applying a conservation approach seeking to replace only the minimum heritage fabric needed in order to bring the building

[316] See hearing recording, 16 April – Afternoon Session 1, at around 1:48:35.
[317] Evidence of Jeremy Phillips on behalf of CGL, 20 September 2023, at paragraph 109.1.
[318] See hearing recording, 16 April – Afternoon Session 1, at around 1:14:35.
[319] See hearing recording, 16 April – Afternoon Session 1, at around 1:49:35.
[320] See hearing recording, 16 April – Afternoon Session 1, at around 36:20
[321] Evidence of David Hill on behalf of CGL, dated 20 September 2023, at paragraphs 12-13.
[322] Evidence of William Fulton on behalf of CGL, dated 20 September 2023, at paragraph 26.
[323] Joint Witness Conferencing Statement of Quantity Surveyors Blue Cottage (325 Montreal Street), 29 April 2024.

up to a habitable standard under the Building Act (including meeting the Healthy Homes Standard), is for a repair of $585,429 excluding GST.[324]

(f) The characterisations by Counsel for CGL in 'supplementary legal submissions' that the Council repair scope of works would result in a *"(…) heritage curiosity but not open to members of the public (...)" "(…) with no prospect of leasing or sale for residential or educational purposes (…)"* that would *"(…) generate an empty shell building that has heritage value but cannot be occupied (…)"* are spurious and without basis.[325] This has never been the outcome described or contemplated by Council experts, and the position is directly contradicted by the recognition earlier in those same legal submissions that it was agreed that the revised scopes considered in expert conferencing (including Mr Stanley's, as referred to above) were based on an end-use for education or residential purposes.[326] Mr Stanley's revised scope clearly contemplates a scenario where the building is used for a residential purpose.[327]

(g) The Council strongly rejects the assertion from counsel for CGL that the Council's position is somehow based on the site being owned by a *"well-resourced owner."*[328] As Mrs Richmond explained, the subjective circumstances of an owner might be relevant to the overall picture, but are not determinative, particularly where there is a prospect of sale of a property.[329]

(h) Matters relevant to the consideration of financial factors that go to the reasonableness of the continued listing of the Blue Cottage include the following:

(i) The site was purchased in 2021, presumably with full knowledge of the heritage status and the condition of the building. Evidence from Mr Shalders[330] in respect of Daresbury indicates that a

[324] Paragraph 17 of Joint Witness Conferencing Statement of Quantity Surveyors Blue Cottage (325 Montreal Street), 29 April 2024.
[325] Supplementary Legal Submissions on behalf of Carter Group Limited – Blue Cottage heritage item, 8 May 2024, at paragraphs 13-15.
[326] Ibid at 10.1.
[327] Joint Witness Conferencing Statement of Quantity Surveyors Blue Cottage (325 Montreal Street), 29 April 2024 at paragraph 10.
[328] See hearing recording, 16 April – Afternoon Session 1, at around 11 minutes.
[329] See hearing recording, 28 November - Morning Session 1, at around 52:00.
[330] Mr Shalders appeared as an expert witness in respect of Daresbury. He was the author of a report appended to Mr Carter's evidence for CGL, but did not appear as a expert witness in respect of that report.

heritage listing depresses sales value,[331] so one can assume that the listing and condition were reflected in the purchase price.

(ii) As Mr Carter explains, the site is "*one of the few remaining large sites in the Central City with a great location and lookout onto public spaces*".[332] The Blue Cottage takes up only one corner of a site which Mr Carter described as having "*an excellent opportunity and potential for a large comprehensive and coordinated master planned development*."[333] While Mr Carter says the suggestion by Mrs Richmond that CGL could recoup the costs of the repair through the development of the broader site "*is not how development works*"[334], the Council considers that is a reasonable and appropriate lens to assess the context of a site containing a scheduled heritage item.

(iii) The valuation report appended to Mr Carter's evidence is not expert evidence[335] and was only submitted to the Panel at the time of Mr Carter's appearance. Nevertheless, even if the findings in that report are accepted (and, for the avoidance of doubt, the Council does not accept that this should be the case), the table prepared by Mr Phillips adapting the findings of that report demonstrates that there is not a significant difference in the likely value of a subdivided and repaired Blue Cottage in accordance with Mr Stanley's revised scope and the cost of that repair plus land value.[336]

(iv) As Mrs Richmond explains, there are also public good-related economic values that would be associated with the landmark significance of a repaired building that go to the consideration of reasonableness.[337]

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[331] Summary Statement of Mark Shalders for Daresbury Limited (Valuation), dated 17 April 2024 at paragraph 6.
[332] Evidence of Philip Carter for CGL, 16 April 2024, at paragraph 10.
[333] Evidence of Philip Carter for CGL, 16 April 2024, at paragraph 10.
[334] Evidence of Philip Carter for CGL, 16 April 2024, at paragraph 19.
[335] The author, Mr Shalders, did not appear as an expert witness in respect of the report (despite appearing in respect of a similar valuation report for Daresbury).
[336] Appendix A to the Joint Statement of Planning Experts in relation to 32 Armagh Street (also known as 325 Montreal Street), dated 2 May 2024. The table shows a repair cost plus land value as $1,423,243.35, and a market value of less than $1,350,000. As Mr Phillips notes in that table, the valuation report does not directly assess the market value of this scenario, which is likely to be lower than if repaired according to Mr Chatterton's scope.
[337] Joint Statement of Planning Experts in relation to 32 Armagh Street (also known as 325 Montreal Street), dated 2 May 2024, at paragraph 22.

(i) For the above reasons, the evidence of the Council should be preferred in respect of this heritage item and the item should be retained on the Heritage Schedule.

Daresbury

12.13 In respect of Daresbury:

(a) There are relatively minor differences in the evidence between the Council and the submitter in relation to the scope and cost of repair works.

(b) When considering the Scheduling Policy, the Council does not consider it is unreasonable to compare the value of an equivalent high-specification new build to the cost of repair.[338] As Mrs Richmond explains, this provides a useful comparison taking into account the scale of the building,[339] which has been assessed by Council as nationally significant.[340] While it was put to the Panel by counsel for Daresbury that no-one wants to buy such sized houses,[341] this was directly contradicted by the evidence of Mr Milne for Daresbury that he had in mind to purchase Daresbury to live in.[342]

(c) In response to a question from the Chair, Mr Milne expressed a willingness to apply for a demolition consent, which he considered would be successful.[343] This remains an option for Mr Milne if Daresbury is retained on the Heritage Schedule.

St James's Church

12.14 In respect of St James's Church:

(a) The expert evidence brought by the submitter, Church Property Trustees (**CPT**) in respect of this heritage item was very limited. CPT did not bring any expert evidence relating to the consideration of heritage values. The evidence on behalf of CPT relating to building condition and options for repair was given by a witness, Mr Carney, who had not visited the site (either at the time he filed his evidence or

[338] As Mrs Richmond did in her Section 42A report, 11 August 2023, at 8.1.46 and rebuttal evidence, dated 9 October 2023 at paragraph 24.
[339] 28 November 2024 – morning session 1, at around 57:25
[340] Suzanne Richmond Section 42A report, 11 August 2023, at 8.1.44.
[341] 17 April 2024 - afternoon session 2 (unfortunately this was omitted from the hearing recording, which appears to have started part way through the presentation of Daresbury's case).
[342] Statement of evidence of James Milne for Daresbury Limited, 17 April 2024, at paragraph 8.
[343] 17 April 2024 - afternoon session 2 (as above, unfortunately this was omitted from the hearing recording, which appears to have started part way through the presentation of Daresbury's case).

when he appeared at the hearing).[344] Mr Carney's evidence was based on what he referred to as a 'high-level review'[345] of a 2011 report with which he did not entirely agree.[346] This is an insufficient amount of information to assess the appropriateness of the scheduling of what is currently a 'highly significant' heritage item.

(b) Mr Clease's statement in his planning evidence for CPT that the costs of repair would exceed the end value of the building once repaired by a "*significant margin*" was not supported by any expert evidence going to the value of the repaired building.[347]

(c) The evidence of Mr Holley for CPT (provided when he appeared before the Panel) was that the site was subject to offers when put on the market.[348] While the owner did not find these agreeable at the time, it is an indication that there may be others that are willing to buy the site with the heritage protection in place. The reasonableness of any potential sale value must also be considered in the context of Mr Holley's evidence that the insurance pay-out received for earthquake damage to the heritage item of $1.3m in December 2019 was spent on other sites.[349]

(d) The Council's position remains that the building is repairable and alternative uses can be explored.[350]

Overall

12.15 The retention of the above items on the Heritage Schedule would not leave owners in a position (as asserted by Counsel for the submitters) where their only option is to leave the buildings to degrade. Even if the owners do not wish to repair the buildings, they have the option to sell the relevant sites to someone who might. The evidence for the Council is that there are potential options for repair and/or adaptive reuse of these heritage items that might be

[344] Statement of evidence of Peter Carney on behalf of Church Property Trustees (Structural Engineering), dated 20 September 2023, at paragraph 8; and Summary statement of Peter Carney (Structural Engineering) on behalf of Church Property Trustees Dated, 17 April 2024, at paragraph 11.
[345] Statement of evidence of Peter Carney on behalf of Church Property Trustees (Structural Engineering), dated 20 September 2023, at paragraph 8.
[346] Statement of evidence of Peter Carney on behalf of Church Property Trustees (Structural Engineering), dated 20 September 2023, at paragraph 9.
[347] Statement of evidence of Jonathan Clease (planning) on behalf of Daresbury Limited and Church Property Trustees, 20 September 2023, at paragraph 40.4.
[348] Statement of evidence of Gavin Holley on behalf of Church Property Trustees (Company), 17 April 2024, at paragraph 12.
[349] Statement of evidence of Gavin Holley on behalf of Church Property Trustees (Company), 17 April 2024, at paragraph 17.
[350] Evidence in chief of Chessa Stevens, 11 August 2023 at paragraphs 87 to 109; Evidence in chief of Clara Caponi, 11 August 2023 at paragraph 67.

attractive to different owners. Otherwise, if the owners wish to retain the sites without repairing the buildings, they can apply for resource consent for demolition of the heritage items.

Heritage provisions

12.16 The Council also proposes to make certain amendments to the existing heritage provisions in order to simplify and clarify the provisions and improve workability, both for applicants and for Council. There is also some minor strengthening of rules proposed, such as changing the activity status of some activities (namely, heritage building code works, reconstruction, restoration) from controlled to restricted discretionary where the activity standard for a permitted activity is not met.[351]

12.17 Only a small amount of hearing time concerned the proposed changes, and the Council's position remains as set out in the evidence of Ms Ohs and Mrs Richmond. The only changes of substance to the heritage items provisions in sub-chapter 9.3 as notified now proposed by the Council are a minor change to the wording in the proposed definition of 'Heritage Setting', which Mrs Richmond agreed to having considered the evidence of Mr Clease for Daresbury, and recommended changes to the Demolition Policy.[352]

12.18 During the hearing, the Panel queried whether the amendments to heritage provisions mean that the Heritage Items QM is no longer an 'existing QM' in terms of s77K(3) and s77Q(3). The amended heritage provisions are 'related provisions' in terms of s80E(1)(b)(iii) and do not go to height and density. As such, they are not part of the QM itself, and therefore do not affect whether the Heritage Items QM is 'existing' or not.

13. OTHER CITY-WIDE QUALIFYING MATTERS – HEARING WEEKS 9 AND 10

Coastal hazards

13.1 Paragraphs 4.1 to 4.10 of the Council's legal submissions, which is not repeated here, provides an overview of the coastal hazard QMs (Coastal Hazard High Risk Management Areas and Coastal Hazard Medium Risk Management Area (together, the **CHMA**) and the Tsunami Risk Management Area (**TRMA**). [353]

[351] Section 42A report of Suzanne Richmond dated 11 August 2023 at [6.1.7] to [6.1.19].
[352] Rebuttal evidence of Suzanne Richmond, dated 9 October 2023, at paragraph 40.
[353] Legal submissions for the Christchurch City Council dated 8 April 2024 (here).

13.2 The Council provided section 32 analyses (incorporating additional evaluative requirements under sections 77I to 77R) with associated evaluative and technical appendices for the CHMA and TRMA.[354]

13.3 The Council provided technical evidence on the CHMA, which relate to risks from coastal inundation and erosion, through Mr Todd and Mr Debski.[355] Dr Lane provides technical evidence on the TRMA.[356] Social and economic impacts on the coastal hazard QMs are provided by Ms Foy and Mr Osborne respectively.[357]

13.4 The Council's proposed provisions in **Attachment 2** incorporate changes Ms Oliver has proposed to the notified version of PC14 in light of submissions, so that:

(a) the spatial extents of the CHMAs and TRMA apply only to relevant residential zones and business zones;

(b) amendments so that the scope of the rules only manage development that results in a density greater than that provided for under the Operative District Plan;[358]

(c) in RS/RSDT zones within the coastal hazard areas, the intent is to continue enabling permitted and controlled *"residential activity"* as per the Operative Plan *status quo*, but to change the activity status to a non-complying activity for residential intensification beyond that provided for as a permitted or controlled activity. This change includes the proposed introduction of a new definition for *"residential intensification"* and policies that define the risk profiles for each management area and limit the MDRS and NPS-UD Policy 3 enablement (refer to **Attachment 2**).

(d) Within the RMD/MRZ and commercial zones within the coastal hazard areas, the provisions remain as per the Operative Plan *status quo*.

[354] Section 32 report, Part 2 (Part 2) (here) in sections 6.15 and 6.16; Section 32 report, Part 2, Appendix 6 Coastal Hazard Assessment by Tonkin + Taylor, parts 1 to 4 (here, here, here and here); Section 32 report, Part 2, Appendix 7 Risk Based Coastal Hazard Analysis for Land-use Planning by Jacobs (here); Section 32 report, Part 2, Appendix 8 Addendum Report to Risk Based Coastal Hazard Analysis for Land-use Planning Report (here).
[355] Statement of primary evidence of Derek John Todd, dated 11 August 2023 (here); Statement of primary evidence of Damian Debski, dated 11 August 2023 (here).
[356] Statement of primary evidence of Dr Emily Margaret Lane, dated 11 August 2023 (here).
[357] Statement of primary evidence of Rebecca Anne Foy, dated 11 August 2023 (here); Statement of primary evidence of Philip Mark Osborne, dated 11 August 2023 (here).
[358] Section 42A report of Sarah Oliver (here), 4th and 5th rows of table on page 39, paragraphs 13.11, 13.12, 13.26 (from pages 125 to 128), 13.35 to 13.38, and 13.44.

Appropriate tsunami return event

13.5 The key issue in dispute is the appropriate tsunami return event to be used as the basis for the TRMA's spatial extent.

13.6 Mr Joll mentions that Kāinga Ora is concerned that the spatial extent of the TRMA, which is based on a 1:500 year event, is excessive, and not appropriately commensurate with risk.[359] However, this position is inconsistent with, and fails to give effect to, the NZCPS and the CRPS.

13.7 Mr Joll's position is based on an incorrect understanding of NZCPS policy 25, the chapeau of which begins with:

> *"In areas potentially affected by coastal hazards over at least the next 100 years: (…)"*

13.8 Mr Joll conflates the management of 1:100 year events with the policy concern about areas *"potentially affected"* over *"at least"* next 100 years. Policy is not about limiting avoidance or management of risks of coastal hazards to 1:100 year events, but is concerned about considering the probability of any coastal hazard event (irrespective of return period) that could occur over at least the next 100 years.

13.9 In essence, NZCPS policy 25 requires a consideration of the probability of an area being affected by coastal hazard over the next 100 years, whether that be by a 1:100 year event, a 1:500 year or even a 1:1000 year event.

13.10 Kāinga Ora provides no technical evidence refuting Dr Lane's assessment that the probability of a 1:500 tsunami event being reached or exceeded between now and 2130 (approximately 100 years) is 19.3%.[360] The likelihood of a 1:100 year tsunami event being reached and exceeded between now and 2130 grows to 65.9% chance of occurring.[361] While Kāinga Ora is critical of the section 32 evaluation not considering other tsunami event probabilities, it provides no alternative section 32 evaluation of such other events to justify a departure from utilising a 1:500 tsunami event.

13.11 In essence, Kāinga Ora's effective position is that an almost 20% probability of a 1:500 tsunami event being reached or exceeded over the next approximately 100 years is too high a likelihood to warrant a planning response, notwithstanding the impacts such events could have on affected

[359] Statement of evidence of Tim Joll on behalf of Kāinga Ora, dated 20 September 2023 (here) at paragraph 6.31.
[360] Statement of primary evidence of Dr Emily Margaret Lane, dated 11 August 2023 (here), at paragraphs 10, 32 and 68.
[361] Ibid.

communities. While not clear, presumably Kāinga Ora seeks that the probability of a tsunami hazard event affecting communities over the next 100 years must be as high as 65.9% to warrant a planning response, but provides no section 32 evaluation to explain why that is most appropriate.

13.12 In any case, a planning response based on a 1:100 year tsunami event area with a 65.9% probability of occurring over the next 100 years would fail to give effect to the CRPS.

13.13 CRPS policy 11.3.5, which sets out a general risk management approach for natural hazards like tsunami hazards which are not covered by CRPS policies 11.3.1, 11.3.2 or 11.3.3, states:[362]

> *For natural hazards and/or areas not addressed by policies 11.3.1, 11.3.2, and 11.3.3, subdivision, use or development of land shall be avoided if the risk from natural hazards is unacceptable. When determining whether risk is unacceptable, the following matters will be considered:*
>
> *1. the likelihood of the natural hazard event; and*
>
> *2. the potential consequence of the natural hazard event for: people and communities, property and infrastructure and the environment, and the emergency response organisations.*
>
> *Where there is uncertainty in the likelihood or consequences of a natural hazard event, the local authority shall adopt a precautionary approach*
>
> (our underlining for emphasis).

13.14 In short, CRPS policy 11.3.5 requires the avoidance of subdivision, use or development of land where natural hazards risks are assessed as unacceptable, having regard to the likelihood and consequence of a natural hazard event, while adopting a precautionary approach.

13.15 The explanation and reasons accompanying CRPS policy 11.3.5 recognise that the assessment of unacceptable risk for a hazard requires a case-by-case risk assessment, recognising that not all hazards are equal. A risk assessment for what is unacceptable risk for a general flooding hazard is not the same as that for a tsunami hazard.

[362] Canterbury Regional Policy Statement (here).

13.16 Mr Joll relies on the following part of the explanation and reasons referencing general flooding hazard, to argue that reliance on a 1:500 year tsunami event area is inconsistent with policy 11.3.5:[363]

> *Risks to a development can be assessed qualitatively using risk analysis matrices, as given in the Risk Management – Principles and Guidelines (AS/NZS ISO 31000:2009). Alternatively, risk can be assessed quantitatively using the Structural Design Action Standard (AS/NZS 1170.0:2002), such that normal buildings or developments should be safe in a 0.2% AEP flood event, but that larger structures such as schools or rest homes should be safe in a 0.1% AEP flood event, and emergency facilities should be safe in a 0.04% AEP flood event*
>
> (our underlining for emphasis).

13.17 It appears Mr Joll's position is that because a 0.2% AEP flood event means there is a 1:500 chance of a flood of this size happening and that normal buildings or developments should be safe in such an event, reliance on a 1:500-year tsunami event area is excessive as normal buildings or developments should be safe in such an event.

13.18 However, Mr Joll does not refer to the very next part of the explanation and reasons of CRPS policy 11.3.5 which specifically references tsunamis as follows:

> *For example, an area of coast may be exposed to large but infrequent tsunamis. The likelihood of a tsunami may be around 0.1% AEP, low enough that residential development in the area is acceptable, but high enough that the risk created by placing a school or rest home in the area is unacceptable and should be avoided*
>
> (our underlining for emphasis).

13.19 Thus, the CRPS anticipates that a 0.1% AEP tsunami event, effectively a 1:1000 year tsunami event, is the risk threshold where residential development is acceptable but schools and rest homes are not. This implies that there will be an area of coast covered by a tsunami event more frequent than 1:1000 where residential development is no longer acceptable.

13.20 The Council's TRMA proposal for PC14 is not based on the CRPS 1:1000 tsunami event, but rather an area covered by the lesser 1:500 tsunami event with approximately 20% probability occurring in next 100 years. Furthermore, within this lesser area, it is important to note that it is proposed that residential development is still being enabled, rather than being avoided

[363] Statement of evidence of Tim Joll on behalf of Kāinga Ora, dated 20 September 2023 (here) at paragraphs 6.45 to 6.47.

altogether. The rules for the RS and RSDT zones continue to permit residential development pursuant to the Operative District Plan status quo, including:

(a) residential units (rule 14.4.1.1 P1);

(b) minor residential units (rule 14.4.1.1 P2);

(c) student hostels containing up to 6 bedrooms (rule 14.4.1.1.P3);

(d) multi-unit residential developments of up to and including four residential units (rule 14.4.1.1 P4);

(e) social housing complexes up to and including four units (rule 14.4.1.1 P5);

(f) older persons housing unit (rule 14.4.1.1.P6);

(g) retirement villages (rule 14.4.1.1 P7);

(h) replacement of a residential unit with two residential units (rule 14.4.1.1.P11); and

(i) construction of two residential units on a site vacant prior to the Canterbury earthquakes but outside of the tsunami inundation area as set out in the Environment Canterbury report number R12/38 (rule 14.4.1.1.P12) and any Flood Management Area.

13.21 It is therefore submitted the 1:500 tsunami event is the most appropriate profile to use to define the TMA QM, which is proposed to be used to continue enabling residential development permitted under the status quo, not avoid it altogether.

13.22 During the hearing (18 April 2024), Mr Joll referred to natural hazard maps 7 and 8 of the recently adopted Greater Christchurch Spatial Plan (Spatial Plan).[364] However those maps:

(a) are only indicative of areas of vulnerability to a range of coastal hazards, rather than pre-determining the setting of risk thresholds through the review of the CRPS and district plans;

(b) are not binding on an IPI. The Spatial Plan, which is also a Future Development Strategy, is something the Panel must have regard to

[364] Greater Christchurch Spatial Plan 2024 (here).

when considering PC14, not give effect to.[365] The legal status of the Spatial Plan is further discussed in the memorandum of counsel filed on 15 April 2024.[366]

Non-complying activity status for residential intensification in coastal hazard areas

13.23 Consistent with the avoidance directives of the NZCPS and the CRPS, the Council's proposed planning response is to make residential intensification beyond the status quo permitted and controlled activities a non-complying activity. Together with the proposed coastal hazard policies in Chapter 5, the coastal hazard rules are related provisions under section 80E, moderating the application of MDRS intensification provisions, including MDRS objective 2 and policy 5 when assessing resource consent applications for residential intensification beyond the Operative District Plan status quo. The provisions, while not impacting status quo permitted activity development rights, are related provisions under section 80E to protect people and property, by:

(a) avoiding increasing risks associated with natural hazards and the influence of climate change on those natural hazards;[367] and

(b) ensuring inappropriate intensification development does not occur in the coastal hazard areas, and thus promoting good resource management outcomes through a WFUE that provides for community wellbeing, and their health and safety.

13.24 If coastal hazard QMs not applied, then:

(a) more households (and therefore more people) are enabled to occupy land that is subject to hazard risk, increasing the number of people subjected to the risks and increases the likelihood that those occupants will then suffer adverse effects and loss; and

(b) it will create landowner expectations of intensification proposals (whether as a permitted activity or via a consenting approach).

13.25 Viewed as a proportion of the whole area of residentially zoned land in Christchurch City, the area covered by the hazard areas is comparatively small. The coastal hazard QMs, even if added to all QMs, will still result in

[365] Clause 3.17(1)(a) of the NPS-UD.
[366] Memorandum of counsel for Christchurch City Council in response to Minute 39 – Update on the status of the Greater Christchurch Spatial Plan, dated 15 April 2024 (here).
[367] CRPS objectives 6.2.1.8, 11.2.1, 11.2.3, policies 11.3.1 to 11.3.3, 11.3.8; District Plan objective 3.3.6.

the Christchurch urban environment having more than sufficient capacity for the purposes of policy 2 of the NPS-UD. Furthermore, significant housing opportunities will continue to be provided for within eastern Christchurch, with the greatest densities enabled in areas outside of those with an elevated life-safety risk and potential for material property damage from coastal hazards.

13.26 While the Council considers *Waikanae* to be incorrectly decided, as explained above, for the purpose of managing residential intensification within the coastal hazard management areas, the Council's approach is aligned with the Environment Court's decision in *Waikanae*. This is a pragmatic approach given that the Council has already initiated a plan change to manage coastal hazards across the district (Plan Change 12), as discussed by Ms Oliver in paragraphs 13.7 and 13.8 of her section 42A report. It is through PC12 that the matter of changes to pre-existing development rights will be evaluated.

Underlying zoning of sites impacted 30% or less by the CHMA and TRMA and drafting of provisions.

13.27 During the hearing Commissioner Matheson requested Ms Oliver to draft recommended changes to the policies and rules, to give effect to her recommendation to retain the spatial extent of the TRMA but for properties that are no more than 30% impacted by the TRMA, to provide for medium density development outside of the impacted area.[368] Ms Oliver has recommended changes (refer to **Attachment 2**) to policy 5.2.2.5.2.b and rule 5.4A.5 to implement this approach.

13.28 During the hearing, Ms Oliver mentioned that a detailed site-specific assessment would be needed to consider the underlying zoning of those properties 30% or less impacted by the TRMA. That assessment has been unable to be completed. The zoning of properties partly impacted by the TRMA continues to be somewhat sporadic, creating pockets of zoning which in some locations zones only one or two properties different to their surrounds (refer to **Attachment 7**). This matter was noted by Commissioner Matheson in his questioning of Ms Oliver.

13.29 There will be solutions to resolving the rezoning issue, but directions from the Panel as to the criteria for the detailed rezoning changes, and time, is

[368] Panel questioning on 16 April 2024, morning session 1, at 27:40 to 28:53 (here).

required to make the rezoning changes. To assist the Panel, possible criteria have been drafted within **Attachment 7**.

13.30 There are three main options available to the Panel to resolve this rezoning issue:

(a) Option 1 – Retain the sporadic zoning approach for the TRMA impacted properties as illustrated within the online mapping provided with the Council's reply. This option is not supported as it may provide development rights for some properties that are not achievable through the application of proposed policies and rules within Chapter 5, and conversely fail to provide development rights where they may be appropriate.

(b) Option 2 – A conservative approach to retaining the operative Residential Suburban and Residential Suburban Density Transition Zone applying to the greater extent of the full Tsunami Management Area overlay as notified and rezoning to the closest outer road or block boundary. This approach would allow for a future plan change to provide for more expansive MRZ, or potentially further rezonings to MRZ as part of the second phase of PC14 should the Council only decide on NPS-UD policy 3 and 4 components in September 2024. This option is supported by Council as it provides the greatest time to undertake the detailed site-specific evaluation, including developing its own zoning criteria. This option could also involve further consultation with the community and landowners.

(c) Option 3 – The Panel provides zoning criteria as part of its recommendations, with a direction for Council to apply these criteria and propose a zoning solution by the end of August 2024. The Panel would then have a maximum of two weeks to provide a recommendation to Council on the underlying zoning, which could then be included within the September 2024 Council decision. The Council consider this timeframe to be challenging but achievable should it be the preferred option by the Panel. The main benefit would be a complete recommendation to give effect to the proposed coastal hazard policy direction.

Tree QMs

13.31 The Schedule of Significant Trees in Appendix 9.4.7.1 (**Tree Schedule**) sets out those trees that are protected in accordance with the provisions of chapter 9.4 of the District Plan. Through the proposed QM, there are no recommended additions to or removals from the Tree Schedule, but certain trees are categorised as non-QM trees where they are either outside of relevant MDRS and NPS-UD Policy 3 zones, were unable to be re-assessed by Council arborists, or did not pass the Christchurch Tree Evaluation Method assessment criteria.

13.32 The Council continues to support an amendment to the operative rules proposed through PC14 to replace the phrase 'dripline' with 'tree protection zone radius'. This is considered necessary as the current 'dripline' method often fails to capture a sufficient extent of a tree's root system to provide it with the necessary protection during construction, and so is not fit-for-purpose.

13.33 As she explained to the Panel, Ms Ratka also now recommends a new permitted activity status (Rule 9.4.4.1.1 P13) where scheduled trees are not identified as QM trees. It consolidates exemptions from the notified version. It permits pruning, felling, gardening and work within the tree protection zone radius of non-QM trees in the Tree Schedule where associated with residential development within the Medium Density Residential and High Density Residential zones that complies with built form standards and subdivision controls, and commercial development that complies with building height in various relevant zones.[369] Ms Ratka's summary statement includes a s32AA analysis for both of these changes.[370]

13.34 At the Week 7 hearing (other zones and other matters) the Riccarton Bush Trust submitted that its issues concerning the setback had been resolved. In Ms Ratka's section 42A report, she recommended retaining the existing 10m setback from predator proof fence for Riccarton Bush (Rule 9.4.4.1.3 RD6) rather than applying the new Tree Protection Zone Radius (as notified) in accordance with the Trust's submission. In her rebuttal evidence Ms Ratka recommended that if the Panel is minded to allow for greater intensification adjoining Riccarton Bush then in accordance with the evidence of Professor Norton and Mr Benson a 15m setback for buildings and earthworks from the

[369] As recommended by Ms Ratka in her summary statement at week 9 hearing.
[370] Summary Statement, Brittany Ratka, dated 16 April 2024, Appendix 2.

predator proof fence should be imposed. However, where the Riccarton Bush QM and/or the extended Airport Noise Contours are retained, the existing 10m setback should remain. The setback requires a 10m setback for RDA for four or more units otherwise the activity becomes discretionary.

13.35 During the hearing the Panel asked that the Council consider potential options for a greater setback to the Riccarton Bush Significant Trees Area where development goes beyond the permitted enablement in terms of density and building heights. It also requested that the Council consider potential for limited notification to Riccarton Bush Trust (request #74). In her summary statement presented to the panel in the Week 9 hearing Ms Ratka outlined her position.

13.36 Ms Ratka explained that her section 32AA analysis attached to her summary statement recommends a requirement for a greater setback of 15m from the Riccarton Bush Significant Trees Area predator proof fence where either development goes beyond the permitted number of units (i.e. four or more units are proposed) or building height. Where this setback is not achieved a restricted discretionary activity would apply and would rely on the existing assessment matters in Rule 9.4.6 a. - o. Ms Ratka's evidence is that she does not recommend any changes to the notification requirements for Riccarton Bush Significant Trees Area.

13.37 In support of a submission seeking the removal of tree T1118 from the Tree Schedule, counsel for Foodstuffs said that the tree T1118 did not meet the threshold of 'national significance' warranting protection under section 6 RMA.[371] This submission confuses the wording of section 6(f), which provides that the protection of historic heritage from inappropriate subdivision, use, and development is a matter of national importance to be recognised and provided for. It does not require that a tree must be of national importance before it has heritage values that are a matter to be recognised and provided for under section 6.

13.38 As Mr Thornton's rebuttal evidence for the Council explains, the tree is over 100 years old, and this contributes to its overall Christchurch Tree Evaluation Method (CTEM) score (which is already reasonably high without considering its heritage values).[372] Based on Mr Thornton's assessment, Ms Ratka

[371] See recording of hearing – 25 October 2023 – Afternoon Session 2.
[372] Rebuttal evidence of John Thornton, dated 8 October 2023 at paragraph 13.

considers T1118 should remain in the significant tree schedule as a proposed QM tree.[373]

Airport noise QM

13.39 Paragraphs 6.1 to 6.8 of the Council's legal submissions provides an overview of the Airport noise QM.[374] There is no dispute that the Airport is nationally significant infrastructure, for the purposes of section 77I(e) and 77O(e) of the RMA.

13.40 The Council agrees with Christchurch International Airport Limited (**CIAL**) that the new spatial extent for the proposed airport noise QM, which is based on the Remodelled 50dB Ldn Air Noise Contour (**Remodelled Contour**) can be classified as a section 77I(e) 'existing' QM because it is an updated version of the 50dB Ldn Air Noise Contour (**50dB Ldn Contour**) that is contained in the operative District Plan. The Remodelled Contour is based on updated technical evidence, identifying where levels of 50dB Ldn will be experienced by residents in the future.

13.41 In the event the Panel considers the Remodelled Contour cannot be classified as an 'existing' QM, the Council has in any case undertaken a comprehensive evaluation of the airport noise QM (and its new spatial extent) through preparing PC14 and in its section 42A reporting, sufficient to satisfy the requirements of section 77J for a 'new' QM. The Council's recommendations relating to the airport noise QM are those "*only to the extent necessary*" to accommodate the QM. While that evaluation was not formatted in a single document entitled "*section 77J analysis*", the essence of what that section requires has been addressed in detail by Council officers. To assist the Panel, **Attachment 5** contains a table of matters required by section 77J with reference to the various PC14 documents that support them.

13.42 The Airport Noise QM addresses two types of effects:

(a) community health and amenity; and

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

13.43 These effects are inextricably linked and could be considered together under section 77I(e) and/or section 77I(j). Section 77I(j) imports additional

[373] Rebuttal evidence of Brittany Ratka, dated 8 October 2023 (here) at paragraph 12.
[374] Legal submissions for the Christchurch City Council dated 8 April 2024 (here).

evaluation requirements in section 77L. All section 77L matters have also been evaluated by Council officers, albeit not contained in a single location. To assist the Panel, **Attachment 5.3** also outlines where the substance of the section 77L evaluation is contained.

13.44 With the exception of a HRZ proposed north of Riccarton Road (discussed at paragraphs 13.76 to 13.78 below), the Council's position is that avoiding residential intensification greater than that provided for as a permitted or controlled activity under the Operative District Plan within the Remodelled Contour is an appropriate option at this time, as a "Provisional Airport Noise QM" until after the CRPS review process has been completed. This will ensure PC14 is in accordance with the provisions of the NPD-UD, CRPS and the District Plan's Strategic Directions objectives in light of the comprehensive evidence provided in relation to the airport noise QM topic.

The CRPS, the operative District Plan and the approach to section 77G(8)

13.45 The application and relevance of section 77G(8) of the RMA is outlined in paragraph 5.13(d) above. Section 77G(8) does not restrict the CRPS from being a relevant consideration for QMs, as anticipated by s77G(6). Section 77G(8) is not stated as overriding the consideration of the CRPS under section 77G(6), nor does it override the statutory requirement to still "give effect" to the CRPS in section 75(3)(c) of the RMA. Accordingly, the CRPS remains a matter that is to be considered when evaluating the proposed use of a QM, including the airport noise QM.

13.46 The CRPS provisions remain highly relevant to the evaluative step for the airport noise QM. As observed by the Chair during the Airport Noise QM hearing, policy 6.3.5(4) of the CRPS was addressed extensively in submissions and evidence. Policy 6.3.5(4) is highly directive and states "*including by avoiding noise sensitive activities within…*". Applying the Supreme Court in *Port Otago*[375] commentary to interpreting this policy, it is important to look at the words which follow the word "avoid" to determine what it is that is to be "not allowed" or "prevented".[376] The activity that is to be "avoided" is in the present case is noise sensitive activities, specifically new higher density residential development (that would otherwise enabled through the application of MDRS and/or NPS-UD policy 3).

[375] *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112 at [61] and [62].
[376] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

13.47 The majority of the Supreme Court, in the context of the proposed new East West Link arterial road along Māngare Inlet, recently stated that the "*careful and strong language of the objectives and policies matters as much as the softer form of direction*" in those sections. However, the Court was clear that genuine exceptions will not subvert policies.[377]

13.48 Subclause 6.3.5(4) provides an exception for activities "*within an existing residentially zoned urban area*". However, that exception cannot be read in a vacuum for reasons outlined below.

13.49 Firstly, the limits of the exception in terms of how to manage density in the context of the residential zones of Christchurch City have already been tested by the Panel considering the Christchurch Replacement District Plan (**Replacement Plan**) following the Canterbury earthquakes. The operative District Plan provisions reflect the Panel's findings and are relevant to the Panel's consideration of the airport noise QM in PC14. The section 32 evaluation exercise undertaken by the Panel in 2016 determined the extent to which further noise sensitive activities in existing residentially zoned land within the 50dB Ldn Air Noise Contour should be provided for.

13.50 The Christchurch context must be considered and contrasted to other New Zealand cities which are facing bigger growth pressures and have not undergone a plan review process to expedite recovery of the city post-earthquake. As explained in Council's opening legal submissions for the Week 1 hearing, Christchurch already has, in its operative District Plan, "at least sufficient development capacity" to meet expected demand for housing and for business land over the medium to long-term, as required under policy 2 of the NPS-UD.[378] PC14 proposes considerably more capacity. Ms Hampson for CIAL observes that the feasible capacity provided by PC14 is substantial, and that the reduction in capacity is a minor opportunity cost on account of PC14 (with all its QMs) providing at least sufficient capacity to meet long-term demand and beyond.[379] There is no compelling evidence to suggest that there are capacity reasons to provide yet more enablement beyond what the Council is proposing in PC14 within the Remodelled Contour.

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[377] *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* (SC 25/2021)[2024] NZSC 26 at [108]-[109].
[378] Opening legal submissions for Christchurch City Council dated 3 October 2024 (here), at paragraphs 1.7 to 1.10 and 3.3 to 3.9.
[379] Statement of evidence of Natalie Hampson dated 20 September 2023 (here) at paragraphs 12 and 25.

13.51 Secondly, the exception in 6.3.5(4) does not provide a basis to ignore other CRPS provisions. It remains relevant to consider:

(a) CRPS Objective 5.2.1(2)(g) which requires development to be located and designed in a way that "*avoids adverse effects on significant natural and physical resources including regionally significant infrastructure, and where avoidance is impracticable, remedies or mitigates those effects on those resources and infrastructure; …*";

(b) the direction in CRPS 6.3.5(5) to manage "… *the effects of land use activities on infrastructure, including avoiding activities that have the potential to limit the efficient and effective, provision, operation, maintenance or upgrade of strategic infrastructure and freight hubs*"; and

(c) the principal reasons and explanation text for CRPS policy 6.3.5 on page 81 which states "…*It is better to instead select development options, including activities such as commercial film or video production which are compatible with the strategic infrastructure, where such reverse sensitivity constraints do not exist."*

13.52 As the Panel for the Replacement Plan has observed, sub-clauses (4) and (5) of policy 6.3.5 are compatible, not in competition. The Panel states in Decision 10:[380]

> [194] … While the clauses are slightly differently expressed, the relevant aspects of both concern effects on the efficient operation, use, development and upgrade of strategic infrastructure. It is not disputed that the Airport is a form of strategic infrastructure. Clauses (4) and (5) of Policy 6.3.5 are compatible, not in competition. There is no need to read back Policy 6.3.5(5)'s direction on "managing the effects of land use activities on infrastructure" (including the Airport) in order to give proper effect to cl (4)'s direction as to "only providing for development" that does not have the clause's specified effects on strategic infrastructure.
>
> [195] In essence, the position we reach is that:
>
> (a) There is no absolute direction to avoid any further noise sensitive activities in existing residentially zoned land within the 50 contour, but
>
> (b) There is a need to evaluate whether we should avoid or restrict such activities so as to give proper effect to Policy 6.3.5 and related CRPS objectives and policies.

[380] IHP Decision 10 Residential, dated 10 December 2015 (here), at paragraphs 194 to 195.

13.53 Furthermore, provisions in the operative District Plan also remain relevant. Section 77G(8) does not refer to district plans, and cannot purport to override district plan objectives and policies from the outset of the intensification exercise. The operative District Plan contains provisions that mirror the CRPS direction within the 50dB Ldn Air Noise Contour, directing the avoidance of:

(a) new noise sensitive activities within the 50dB Ldn Air Noise Contour;

(b) reverse sensitivity effects on strategic infrastructure; and

(c) intensification if it will have reverse sensitivity effects.[381]

Which contour?

13.54 The CRPS policy position relating to the air noise contour will be a matter for the future CRPS review. However, there is a need to consider the Remodelled Contours in terms of the MDRS, and policies 3 and 7 of the NPS-UD as it relates to PC14. As observed by Ms Oliver for the Council and Mr Kyle for CIAL, the contour shown in Map A of the CRPS is not a barrier to considering whether or not to limit the MDRS through a QM.[382]

13.55 Rather, the relevant policies of the CRPS do not specifically link the direction to avoid noise sensitive activities to areas within the 2008 contours shown on Map A. The updating of the noise contours affects only the application of the policy, not the policy itself. Ms Oliver compares this to other policy approaches to manage (or avoid) activities within areas that have specific characteristics, for example High Flood Hazard Management Areas.[383] The planning response must be aligned with the best technical information available as to where 50dB Ldn will be experienced.

13.56 The Remodelled Contours are the most up-to-date evidence demonstrating where the effects of aircraft noise will be experienced. They have been confirmed, on a technical basis, by an Independent Expert Panel appointed by ECan[384] and no party is suggesting that the 2008 contour shown on Map A is a legitimate substitute on the evidence. The Christchurch District Plan

[381] See Chapter 3 strategic directions objectives 3.3.12(b) and 3.3.14, and Chapter 14 residential zone policies 14.2.2.2 and 14.2.3.1.
[382] Section 42A report of Sarah Oliver (here), at paragraphs 12.13 to 12.14; Statement of John Kyle dated 8 April 2024 (here) at paragraph 5, agreeing with the statement of evidence by Mr Darryl Millar dated 10 September 2023 (here) including at paragraph 44.
[383] Section 42A report of Sarah Oliver (here) at paragraph 12.14.
[384] This was confirmed by Ms Meg Buddle for the Canterbury Regional Council during cross-examination by Ms Appleyard at the Airport Noise QM hearing on 24 April 2024.

will eventually need to be amended following the CRPS review regardless of which contour is ultimately used to form the basis of the airport noise QM.

13.57 It is incumbent on a local authority to make decisions on the provisions and matters raised in submissions, considering argument and evidence presented, and to weigh the matters raised. The Council's recommendation for the airport noise QM to be based on the Remodelled Contour must be evaluated on the merits, noting that the 2008 Map A CRPS contour is not representative of the best technical information available as to where 50dB Ldn will be experienced.

13.58 There are two versions of the Remodelled Contours, based on an Annual Average methodology and an Outer Envelope methodology. Ms Oliver observes that while both methods are technically valid, the preferred approach for Canterbury has not yet been confirmed.[385] As the Independent Expert Panel appointed by ECan concluded:[386]

> "This review does not consider which contour set is appropriate. That decision resides with Environment Canterbury and requires a thorough planning process, including public consultation, before the Operative noise contours are updated in the CRPS. Based on its review, the Independent Expert Panel finds that the finalised aircraft noise contours are suitable for informing future land use planning controls and that the appropriate 65dBA Ldn contour (either the Annual Average Contour or Outer Envelope Contour) can be used to set a noise limit for managing potential adverse effects of aircraft noise".

13.59 CIAL seeks that the geographical extent of the Airport Noise QM is based on the Remodelled Outer Envelope Contour (**Remodelled OE Contour**), considering that a precautionary approach is warranted until the CRPS review determines which contour is appropriate for land use planning in Canterbury.[387] The Council agrees it would be very difficult, if not impossible, to unwind any inappropriate development that occurs in the meantime.

13.60 Counsel for the CIAL submitted that the cost of this approach is small, because if the Remodelled OE Contour is not accepted through the CRPS review, then the impact is limited to developers being subject to short delay. This delay is not detrimental in the context of Christchurch having more than sufficient housing capacity, which the Council accepts.

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[385] Section 42A report of Sarah Oliver (here) at paragraph 12.22.
[386] Christchurch Airport Remodelled Contour, Independent Expert Panel Report prepared for Canterbury Regional Council, dated June 2023 (here) at page 49 of the pdf.
[387] Legal submissions on behalf of Christchurch International Airport Limited dated 16 April 2024 (here), at paragraph 79.

13.61 In addition to a cautious approach being warranted, there is an effects-based reason to implement the Remodelled OE Contour for Christchurch City. The Council understands that the 2008 Air Noise Contours for Christchurch were modelled to include a three-month seasonal noise exposure for aircraft movements on the north-west runway. This three-month weighting is consistent with the approach recommended in NZS6805. The Outer Envelope methodology takes account of the busiest three months on each of the runways whereas the Annual Average methodology does not.

13.62 The north-west runway is particularly relevant for PC14 as the flight paths for that runway go over residential areas in Christchurch City. If the Annual Average methodology was adopted for the airport noise QM, a greater number of people would be exposed to a more adverse noise environment over the summer periods as the north-west approach being used more intensively in the spring/summer months. These months are likely to be when residents wish to open windows and doors and utilise outdoor areas.

Effects

13.63 When considering effects on the environment, it is important to note that the RMA definition of *"effect"* includes future and potential effects, while the definition of *"environment"* includes the social and economic conditions which affect people and communities.[388] As Ms Oliver and CIAL witnesses explain, the air noise contours are not a measure of aircraft noise experienced today, but they measure future effects that are to be expected when the airport is operating at ultimate capacity.[389] It is critical that this future potential noise level is evaluated in order address the effects of Christchurch Airport's operations on people and communities in the future. This will enable land use planning to limit the scale of future noise effects on sensitive activities, thereby protecting the health and amenity of affected populations.

13.64 In evaluating the effects of aircraft noise on a community, the Panel on the Replacement Plan accepted Mr Day's evidence that "*the proportion of people likely to be highly annoyed by airport noise inside the 50 contour is in the order of 10-15 per cent, and that 12 per cent is a sensible basis for our evaluation.*"[390]

[388] Sections 2 and 3 of the RMA.
[389] Section 42A report of Sarah Oliver (here) at paragraphs 12.20 to 12.62; Statement of evidence of Christopher Day dated 20 September 2023 (here), at paragraph 85; Statement of evidence of Laurel Smith dated 20 September 2023 (here), at paragraphs 22 to 28 and 60.
[390] IHP Decision 10 Residential, dated 10 December 2015 (here), at paragraph 203.

13.65 The Panel now has a more comprehensive and updated suite of expert evidence which points to the percentage of people highly annoyed now being higher. Evidence provided by CIAL is that there are adverse effects at 50dB Ldn on the basis that 18-33% of people will be highly annoyed between 50dB and 55dB Ldn.[391] Four out of five experts agree that the WHO 2018 curve provides a reference for aircraft noise annoyance response showing that 18-27% of people will be highly annoyed between 50dB and 55dB Ldn.[392]

13.66 At a general level, annoyance is a proxy for stress and stress is a proxy for amenity and health effects in terms of sections 5 and 7 of the RMA. In answering Panel questioning, Mr Day (while acknowledging he is not a health expert) explained his understanding that health effects are tied up with the annoyance factor. If someone is highly annoyed, their stress levels and hypertension go up, which is measured in the health studies. Thus, there are health effects when people are highly annoyed.[393]

13.67 While there is disagreement between the acoustics experts as to the appropriate threshold of "Percentage Highly Annoyed" to trigger a land use planning response, as the Panel on the Replacement Plan has observed, "*the choice of the 50 contour is already made by the CRPS*".[394] This is also one of the reasons that the Environment Court has previously decided in favour of the 50dB Ldn Contour.[395] It is submitted that it is neither appropriate nor necessary to depart from the choice of the 50dB Ldn threshold as the basis for an airport noise QM at this time. There are more appropriate locations for greater (higher) intensification and a level of residential intensification will still be enabled through those activities permitted and controlled under the Residential Suburban and Residential Suburban Density zones, to provide housing choice (NPS-UD policy 1) and ensure long-term housing sufficiency requirements are met (or in the case of Ōtautahi Christchurch exceeded).

[391] Statement of evidence of Christopher Day dated 20 September 2023 (here), at paragraph 18.
[392] Rebuttal evidence of Christopher Day dated 14 November 2023 (here), at paragraph 9.2
[393] Panel questioning on 23 April 2024, afternoon session 1, at 1:12:10 to 1:13:35 (here).
[394] IHP Decision 10 Residential, dated 10 December 2015 (here), at paragraph 203.
[395] *Robinsons Bay Trust & Ors v Christchurch CC*, C 60/2004, 13 May 2004, Smith J (EnvC) (Interim decision) at [64]; *BD Gargiulo v Christchurch CC*, C 137/2000, 17 August 2000, Jackson J (EnvC) at [39].

Reverse sensitivity

13.68 Reverse sensitivity is well established as an adverse effect that is to be avoided, remedied or mitigated under the RMA.[396] Effects relating to reverse sensitivity are recognised throughout the CRPS[397] and the Operative Plan.[398]

13.69 The first principle is that the activity causing the adverse effect (i.e. operations at Christchurch Airport) should internalise those adverse effects. However, where internalisation is not reasonably possible, then the only feasible means of protecting that activity is to control land use in the surrounding area. This is particularly important in circumstances where the activity in question is a regionally and nationally significant infrastructure asset, as is the case with Christchurch Airport.

13.70 Total internalisation of effects arising from airport operations is not possible. Ms Hayman for CIAL explained the methods by which Christchurch Airport internalises its effects.[399] However, beyond that, a land use planning response is the only available option to protect Christchurch Airport from reverse sensitivity effects.

13.71 There was some discussion at the week 10 hearing as to the point at which there is a reverse sensitivity effect and how that effect may come to bear. Ms Appleyard for CIAL described the pressure at previous planning processes to reduce the Christchurch Airport compliance contour (which is the 65dB Ldn Contour) which would result in restrictions on airport operations. CIAL's witnesses elaborated on examples from other New Zealand and international airports.[400]

13.72 If more people are subjected to an undesirable noise environment, the risk that the evidence of adverse effects on people convinces decision makers to impose restrictions on Christchurch Airport increases; there will be a tipping point where reverse sensitivity kicks in. It is difficult to predict exactly when that tipping point will be reached but, once it is, inadequate land use planning provisions cannot prevent the reverse sensitivity effect being realised nor can it be reversed. It is submitted that the airport noise QM and planning

[396] See for example commentary in *Ngatarawa Development Trust Limited v The Hastings District Council* W017/2008 [2008] NZEnvC 100 (14 April 2008). Reverse sensitivity as it relates to airports is discussed at length in *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 from [54].
[397] For example, CRPS Objective 5.3.9 Regionally Significant Infrastructure "…*1. Avoid development which constrains the ability of this infrastructure to be developed and used without time or other operational constraints that may arise from adverse effects relating to reverse sensitivity or safety*."
[398] For example, Strategic direction objective 3.3.12.
[399] Statement of evidence of Felicity Hayman dated 16 April 2024 (here) at paragraphs 24 to 30.
[400] Statement of evidence of Christopher Day dated 20 September 2023 (here), at paragraphs 56 to 77, 100 to 109; Statement of evidence of Sebastia Hawken dated 20 September 2023 (here), at paragraphs 62 and 114.

provisions recommended by Ms Oliver is a balanced approach that appropriately protects Christchurch Airport against that risk.

Positive effects

13.73 The RMA definition of "effect" includes positive effects.[401] Mr Osborne for the Council outlines the economic benefits that do and will result from Christchurch Airport's operations and related activities.[402] Ms Billie Moore for New Zealand Airports Association Incorporated gave evidence that airports support a WFUE, and is a facility with considerable scale to grow its economic contribution, and to properly service the growth of Christchurch.[403] The existing and future benefits of Christchurch Airport operating without unnecessary constraint are relevant when considering the appropriate planning response in PC14.

Appropriateness of mitigation measures and covenants

13.74 Kāinga Ora and Miles Premises Limited / Equus Trust Limited prefer a mitigation approach involving acoustic insulation and mechanical ventilation to address the effects of aircraft noise within the 50dB Ldn Contour. However, the acoustics experts agree that mitigation is only a partial solution.[404] There is evidence before the Panel that:

(a) A standard house will achieve noise limits that comply with the Operative Plan standards – no additional insulation is required for new dwellings.[405]

(b) Insulation / ventilation does not solve the issue when windows and doors are open, nor in outdoor living areas. The Operative Plan provisions for residential zones contemplate outdoor living areas, and these become more significant as densities increase.[406]

(c) Insulation does not solve non-acoustic factors.[407]

13.75 During the hearing, the appropriateness of other planning mechanisms such as no complaints covenants were also raised as an alternative approach to limits on density. Ms Oliver mentioned that the difficulty of no-complaints covenants is that they do not address the effects on residents, noting that it is

[401] Section 3 of the RMA.
[402] Statement of primary evidence of Philip Mark Osborne dated 11 August 2023 (here), at paragraph 98;
[403] Oral evidence presented on 24 April 2024, morning session 1 (here) particularly from 06:55 to 07:20.
[404] Joint Expert Witness Conferencing of Airport Noise Experts – 7 November 2023 (here).
[405] Statement of evidence of Christopher Day dated 20 September 2023 (here) at paragraph 87.
[406] Rebuttal evidence of David Compton Moen dated 14 November 2023 (here) at paragraph 9.
[407] Joint Expert Witness Conferencing of Airport Noise Experts – 7 November 2023 (here).

not the developers that end up with the effects, but the future residents.[408] While no-complaints covenants might be perceived to mitigate the risk of reverse sensitivity on Christchurch Airport, they do not:

(a) address the adverse health and amenity effects of aircraft noise on people;[409]

(b) practically operate to prevent affected residents from participating in public processes such as PC14 hearings.

The Riccarton HRZ

13.76 The Panel's information request #57 asked the Council to consider whether there are any areas within the airport noise influence area that might warrant a different management approach, due to the suitability of the area otherwise for intensification.

13.77 Ms Oliver confirmed during the hearing that the Council did consider whether there are such areas, and it is her recommendation for land north of Riccarton Road to be zoned HRZ to facilitate greatest population densities within a walkable catchment of a Town Centre, a major public transport route, and potential mass rapid transit stops.[410]

13.78 For reasons given in paragraphs 12.56 to 12.62 of her s42A report,[411] it is Ms Oliver's view that some level of trade-off or acceptance for a reduced level of amenity is necessary in relation to the land north of Riccarton Road to ensure Christchurch is well-positioned to facilitate greater populations along the Riccarton Road corridor, and to ensure that the commensurate response to this major Town Centre is appropriate. However, upzoning beneath the contour is restricted to that land only. Ms Oliver considers both the protection of the airport's long term operations and maintaining a competitive housing market (with adequate housing choice) can be achieved without further upzoning within the Remodelled OE Contour area. Mr Kleynbos considers the compensatory HRZ approach due to the updated contour in paragraphs 6.1.82 to 6.1.99 of his s42A report.

Redrafting of rules 14.4.1.3 RD34 and 14.12.1.3 RD26

[408] Panel questioning on 23 April 2024, morning session 1 (here) particularly from 1:20:40 to 1:21:04.
[409] As the Environment Court in *Ngatarawa Development Trust Ltd v Hastings District Council* W017/08 observed a paragraph 27 "*Such covenants do not avoid, remedy or mitigate the primary effects – nothing becomes quieter, less smelly or otherwise less unpleasant simply because a covenant exists*…".
[410] Hearing Week 10 Summary Statement Sarah Oliver paragraphs 18 and 19
[411] Section 42A report of Sarah Oliver (here) at paragraphs 12.56 to 12.62.

13.79 The panel requested Ms Oliver drafted changes to the restricted discretionary rules as recommended in paragraph 30 of her rebuttal evidence. This has been drafted as requested in **Attachment 2** to ensure the restricted discretionary activity rules with limited notification to the CIAL apply where there is an increase in residential units above that provided for as a permitted or controlled activity.

City spine transport corridor

13.80 Paragraphs 9.1 to 9.5 of the Council's legal submissions, which is not repeated here, provides an overview of the city spine transport corridor QM.[412]

13.81 Mr Joll for Kāinga Ora suggests the City Spine QM does not meet the requirements of section 77I. However, the Council has provided section 32 analyses (incorporating additional evaluative requirements under sections 77I to 77R) with associated evaluative and background appendices for the city spine transport corridor QM.[413]

13.82 The Council also provides technical evidence on the city spine transport corridor QM, through Mr Morahan and Mr Field.[414] Evidence on economic impacts are provided by Mr Osborne.[415] Planning and rebuttal evidence is provided by Ms Oliver.[416]

13.83 Further information provided in response to Panel information requests on the City spine QM was provided by memorandum of counsel dated 19 April 2024, including a list of the objectives and policies in the Operative District Plan that are particularly relevant to evaluating the proposed City Spine QM.[417]

13.84 The proposed City spine QM applies to only to properties that directly adjoin the following arterial roads and where the road width is 24m or less:

(a) Main South Road (Carmen/Shands to Riccarton Roads);

(b) Riccarton Road (Yaldhurst to Deans Avenue);

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[412] Legal submissions for the Christchurch City Council dated 8 April 2024 (here).
[413] Section 32 report, Part 2 (Part 3) (here) in section 6.31; Section 32 report, Part 2, Appendix 45 Background information in support of the City Spine Transport Corridor (here).
[414] Statement of primary evidence of Chris Morahan dated 11 August 2023 (here); Statement of primary evidence of William Hemming Field dated 11 August 2023 (here).
[415] Statement of primary evidence of Philip Mark Osborne, dated 11 August 2023 (here).
[416] Section 42A report of Sarah Oliver (here); Statement of rebuttal evidence of Sarah-Jane Oliver dated 9 October 2023 (here) at paragraphs 41 to 45.
[417] Memorandum of counsel for Christchurch City Council regarding Gazette Notice and matters arising in week 9 of the hearing, dated 19 April 2024 (here) at paragraphs 10 to 11 and appendix 2.

(c) Papanui Road (Bealey Avenue to Harewood Road); and

(d) Main North Road (Harewood to Northcote Roads).

13.85 This City Spine transport corridor is now also recognised as a core public transport route including a potential mass rapid transport corridor in the recently adopted Greater Christchurch Spatial Plan (Spatial Plan),[418] which the Panel must have regard to.[419]

13.86 The City Spine QM is an 'other matter' QM that relates only to the building setback from the road boundary adjoining this core corridor, to ensure new building development does not significantly limit sought outcomes for this core corridor and achieves good land use transport integration. It aims to widen the setback from the road boundary from MDRS 1.5m to 4m in the residential zone and add a setback of 1.5m in the commercial zones where the road width is less than 24m. The rules also require that this land be used for landscaping including a minimum of 1 tree for every 10m of site boundary length.

13.87 Whilst the City spine QM provisions are principally designed to ensure adequate amenity and tree canopy is provided for along this corridor, the Panel through questioning, also heard from Ms Oliver that 'future proofing' of the corridor was important. While future proofing had been removed from the matters of discretion in the section 42A provisions, on reflection, Ms Oliver expressed her preference to retain the notified provisions regarding the protection of the future proofing for the corridor, with the location of outdoor living space being set back 1.5 metres, and included as a matter of discretion.[420]

Wastewater constraint areas

13.88 The wastewater constraint areas QM reflects major wastewater constraints within parts of Aranui, Shirley and the Prestons areas where vacuum sewer systems are at or near capacity. There are no immediately feasible alternative options to service greater intensification of these areas. As Ms McDonald explained to the Panel, this is particularly because the nature of

[418] Greater Christchurch Spatial Plan 2024 (here).
[419] Clause 3.17(1)(a) of the NPS-UD.
[420] Panel questioning on 16 April 2024, morning session (here) particularly from 59:24 to 1:05:27. The relevant proposed provisions are rules 14.5.2.18, 14.6.2.17, 14.15.1.j, 15.4.2.10, 15.5.2.10 ,15.6.2.11, 15.8.2.13, 15.10.2.10, 15.12.2.13 and 15.14.5.3.

the vacuum sewers means that the whole system would need to be upgraded simultaneously and at significant cost.[421]

Electricity transmission corridors and infrastructure

13.89 The electricity transmission corridors and infrastructure QM is uncontested. However, Orion New Zealand Limited (**Orion**) seeks an additional QM providing for a setback for its lower voltage (11kv, 400V or 230V) networks. The Council agrees that the relevant setbacks are appropriate, but does not consider it is necessary to duplicate in the plan what is already a requirement under New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34: 2001).

13.90 While Counsel for Orion explained in a memorandum dated 9 May 2024 that mapping of these setbacks could be possible, there would remain significant administrative and practical constraints to such an approach being integrated with the plan, given that it would need to be frequently updated and relies on information from a third party. As such, the Council's preferred approach is to draw developers attention to the requirements of NZECP 34: 2001 through and alert layer similar to the Operative District Plans flood floor level map.

Lyttelton Port overlay

13.91 Within the Lyttleton Port overlay QM, Ms Oliver recommends retaining rules permitting minor extensions and replacements of existing residential units (subject to limits) and any new noise sensitive activities as a non-complying activity.

13.92 The Lyttelton Port Company (**LPC**) requested additional provisions relating to the 'inland port' in Woolston, which would require noise insulation for residential properties within close proximity to the inland port. Whilst Ms Oliver considers there is some merit in acoustic insulations requirements, she does not recommend any new requirements for residential activities beyond those permitted or controlled under the operative plan and notes that the residential / industrial interface QM provisions are relevant to the area.[422]

NZ Rail network interface

13.93 Ms Oliver recommends retaining the operative building setback rules (including the operative general rule 6.1.7.2.1 Sensitive activities near roads

[421] 16 April 2024 - afternoon session, from around 5:00.
[422] Sarah Oliver - Summary Statement Coastal and City Infrastructure QMs, 16 April 2024 at paragraph 22.

and railways). Ms Oliver agrees with the submission by KiwiRail that there should be a 4m setback in the HRZ (to align with the setback in other zones) and this is reflected in the final set of PC14 provisions recommended by the Council planners in **Attachment 2**. It is noted that the railway setback rules were incorrectly omitted from the s42A set of provisions. These standards have been reinstated as built form standards as rules 14.6.2.20 within the High Density Zone and rule 14.5.2.21 within the Medium Density Zone.

13.94 Ms Oliver agrees with Ms Hepplewaithe (on behalf of KiwiRail) advice during the hearing that Ms Oliver's reference to non-compliance with the railway setback rule was incorrectly stated as non-complying and should be restricted discretionary.

14. FINANCIAL CONTRIBUTIONS FOR TREE CANOPY COVER – HEARING WEEK 9

14.1 As set out in opening legal submissions, the financial contributions and tree canopy cover provisions are proposed pursuant to sections 77E(1), 77T and 80E(1)(b)(i). Together, these sections of the RMA specifically and directly provide for financial contributions provisions to be included in the District Plan via this IPI process.

The lawfulness of the proposed provisions

14.2 During the hearing, the Panel flagged its concern in respect of the vires of the proposed financial contributions provisions. The legal submissions for Kainga Ora also focussed on the lawfulness of the provisions, arguing that the proposed provisions are not properly enabled by sections 77E(1), 77T and 80E(1)(b)(i), because:[423]

(a) the provisions do not prescribe a "clean" requirement for the payment of financial contributions, because they give developers the option to provide tree canopy cover as an alternative to paying the equivalent financial contribution;

(b) the requirements would apply to all residential zones within the Christchurch City area;

[423] Refer in particular to sections 3 and 4 of those submissions: Kainga-Ora-834-2083-2099-Legal-Submissions-City-WideQMs-Hearing-week-9-12-April-2024.pdf (ihp.govt.nz)

(c) the provisions are 'disenabling' compared to the status quo, and therefore contrary to *Waikanae*; and

(d) the requirement to provide tree canopy cover goes beyond the MDRS density standards in Schedule 3 of the RMA.

14.3 The Council does not consider that any of these points render the provisions *ult*ra *vires*. Dealing with each in turn:

(a) It is difficult to see, on the face of sections 77E(1), 77T and 80E(1)(b)(i) or on any purposive reading of those provisions, how the optionality that has been built into the FC / TCC provisions renders them *ultra vires*. The optionality provided by the rule framework gives flexibility for developers in mitigating the effects of the development they propose, and as such is directly aligned with good plan-making practice and resource management principles. A finding that this optionality in favour of applicants is *ultra vires* would, with respect, represent a perverse outcome.

(b) For completeness, counsel note that sections 77T and 80E(1)(b)(i) specifically enable "*financial contributions provisions*" / "*provisions relating to financial contributions*", which must on any sensible reading include an alternative that developers can adopt to avoid being liable for the financial contributions being introduced.

(c) The Council proposes to apply the financial contributions provisions to all relevant residential zones, within Christchurch City (not Banks Peninsula). This is the geographical scope of PC14 generally, and as such there is no legal issue to respond to.

(d) As set out above, we consider *Waikanae* to have been wrongly decided. In any event, though, the decision in *Waikanae* addresses what a qualifying matter can lawfully do: the finding of law made by the Environment Court was that a new qualifying matter can (in s77I terms) make development less enabling than the standard MDRS provisions, but cannot make development less enabling than the *status quo*. The sections of the RMA that give the Council the ability to pursue financial contributions provisions were not considered by the Court; in fact, the

Environment Court explicitly omitted s80E(1)(b)(i) when setting out its analysis of section 80E.[424]

(e) There is of course nothing in sections 77E(1), 77T and 80E(1)(b)(i) that indicates financial contribution provisions cannot go beyond obligations under the status quo. To the contrary, new financial contributions by their nature represent an additional obligation applicable to proposed new development.

(f) Section 80E provides for an IPI to change the District Plan in a manner that must incorporate the MDRS, and may also include provisions relating to financial contributions. In our submission, the proper reading of those provisions is that financial contributions provisions may impose obligations additional to the MDRS. Again, new financial contributions provisions – which are specifically able to be included in an IPI – by their nature prescribe additional obligations beyond those set out in the MDRS. The ability to instead provide tree canopy cover simply provides an option for developers wishing to avoid that additional obligation.

(g) Even if the Panel was to consider the tree canopy cover option in isolation, the Council's position remains that the proposed 20% tree canopy cover standard is not an impermissible density standard in terms of the MDRS. The definition of the term density standard in the MDRS makes no reference to tree or tree canopy provision.[425]

(h) The closest defined density standard is landscape area: the MDRS includes a 20% landscaping area standard. The MDRS also includes a 50% building coverage standard.[426] Even if the proposed tree canopy cover requirement, in isolation, is considered by the Panel to be a landscape area standard or a building coverage standard, the tree canopy cover requirement is complementary to rather than additional to those standards, and is not less enabling of development. The required tree canopy cover can be entirely co-located with the 20% landscaping areas, or, if the developer chooses not to take that approach, can readily be accommodated in the 50% of the net site area that is required to be free of buildings under the MDRS.

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424 *Waikanae* at [26].
425 Refer to clause 1 of Schedule 3A.
426 Clause 14 and Clause 18 of Schedule 3A.

14.4 The legal submissions for Kainga Ora cited the High Court decision in *Infinity Investments*,[427] in terms of the "*well-established principle applying to the charging of financial contributions*".[428] We consider *Infinity Investments* to be instructive, in terms of the legality of the proposed financial contributions provisions.

14.5 The appellant in that case took issue with proposed district plan provisions that it said would *"command"* financial contributions from new developments to subsidise affordable housing.[429] The High Court dismissed the appeal, with the Court agreeing with the Environment Court's decision that the proposed provisions were lawful. The provisions were within the scope / purpose of the RMA and district plans under section 72 of the RMA, because they:[430]

(a) were within the ambit of the district council's functions under sections 31(1)(a) and (b) of the RMA, to put in place plan provisions to achieve integrated management and to control any actual or potential effects of the use or development of land.[431] The Court cited with approval *New Zealand Rail Ltd v Marlborough District Council,* which in respect of those functions emphasised their broad scope, referring to the "*deliberate openness about the language, its meanings and its connotations which (...) is intended to allow the application of policy in a general and broad way*";[432] and

(b) came within the ambit of the sustainable management purpose of the RMA, being targeted at affordable housing (and therefore social or economic wellbeing).[433]

14.6 The High Court went on to conclude that the proposed provisions had the necessary RMA objective, in vires terms, notwithstanding that they potentially involved direct interference in the marketplace.[434] In deciding that the proposed provisions were lawful, the Court observed:[435]

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427 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* [2011] NZRMA 321 (HC)

428 Kainga Ora week 9 legal submissions at 2.6.

429 *Infinity Investments* at [3].

430 *Infinity Investments* at [44] – [47].

431 *Infinity Investments* at [42].

432 *Infinity Investments* at [40], citing *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC) at 86.

433 *Infinity Investments* at [46].

434 *Infinity Investments* at [51].

435 *Infinity Investments* at [52].

"*These conclusions do not mean that the floodgates will open. Like any other proposed plan or change, those concerned about PC24 had the opportunity to challenge it by way of submission and ultimately appeal to the Environment Court where the merits can be examined. In this respect PC24 is no different from any other innovative plan*."

14.7 That observation applies equally to the financial contributions provisions proposed in PC14. While novel (and, the Council says, innovative) the provisions:

(a) are clearly directed at achieving integrated management and controlling the actual or potential effects of the use of land; and

(b) address core elements of the sustainable management purpose of the RMA set out in section 5 (including social wellbeing, safeguarding the life-supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment).

14.8 In *Infinity Investments*, the High Court also specifically addressed section 108, and how that section empowers financial contributions conditions. The Court referred to the Supreme Court decision in *Waitakere City Council v Estate Homes Ltd*, where the Court held that:[436]

"*In order for that requirement to be validly imposed it had to meet any relevant statutory stipulations, and also general common law requirements that control the exercise of public powers. Under these general requirements of administrative law, conditions must be imposed for a planning purpose, rather than one outside the purposes of the empowering legislation, however desirable it may be in terms of the wider public interest. The conditions must also fairly and reasonably relate to the permitted development and may not be unreasonable*."

14.9 Reflecting on that finding, the High Court then observed:[437]

"But even taking into account for those constraints, Parliament has clearly entrusted territorial authorities with wide powers to impose financial and development contributions which, by their very nature,

[436] *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112 at [61].
[437] *Infinity Investments* at [56].

involve an element of subsidisation and might conceivably be regarded as a form of tax or charge."

14.10 The Council accepts that there must be a sufficient nexus between the provisions and the residential development they regulate in order to be lawful. In *Estate Homes* terms, that means the provisions must fairly and reasonably relate to effects arising from residential development, while in s108AA terms that means the provisions should be "*directly connected*" to the adverse effects of residential development.[438] Either way, the evidence of Ms Hansbury (and the Council's technical experts) establishes that nexus / connection, in terms of the lawfulness of the provisions.

14.11 The legal submissions for Kainga Ora cited the High Court's observation in *Western Bay of Plenty District Council v Muir* that if a power granted for one purpose is exercised for a different purpose, that power has not been validly exercised.[439] At the hearing, counsel for Kainga Ora expanded on that point: we understood the submission essentially to be that because the Council's preference is for developers to physically provide tree canopy cover rather than elect to pay financial contributions, the financial contributions mechanism has been used based on an improper purpose.

14.12 The Council does not accept that premise, or that there is any improper purpose behind the financial contributions provisions. The provisions are intended to address adverse effects of residential development, by ensuring that an adequate level of tree canopy cover is provided in order to mitigate those adverse effects, and more broadly to maximise the benefits that tree canopy cover provides for residents and the city. This is the purpose of the financial contributions provisions, in terms of section 77E(2)(a) of the RMA.

14.13 Financial contributions provisions are enabled in the IPI process, and the provisions as proposed by the Council provide:

(a) a strong direction for tree canopy cover to be provided; and

(b) optionality for developers as to how they will provide for that tree canopy cover: either by doing so directly, or by paying a financial contribution so the Council is able to do so. The fact that the Council

[438] Section 108A(1)(b).
[439] Kainga Ora week 9 legal submissions at 5.4, citing *Western Bay of Plenty District Council v Muir* [2000] NZRMA 353 at [27]..

would generally prefer developers to provide tree canopy cover directly does not render the scheme of the provisions improper.

14.14 Put simply, the Council has taken the opportunity presented by sections 77E(1), 77T and 80E(1)(b)(i) to put forward a package of financial contributions that provide a robust basis for ensuring that an appropriate level of tree canopy cover will be provided with residential development. In doing so, the Council is targeting its 'integrated management' and 'controlling effects' functions, and addressing the sustainable management purpose of the RMA. In our submission, that accords directly with the purpose of those sections of the RMA, and of plan provisions generally.

14.15 Finally, and for completeness in respect of the legality of the provisions, in our submission case law addressing development contributions under the Local Government Act 2002 (**LGA**) is of little assistance in terms of assessing the legality of the financial contributions provisions. In the *Tauranga City* case cited by counsel for Kainga Ora,[440] the Environment Court emphasised the different contexts, and the differences between the LGA and RMA regimes, and that therefore the LGA cases (including *Neil Construction*[441]) were of limited application when considering legality in the RMA context.[442]

14.16 Ultimately, whether the proposed financial contributions provisions should in fact be recommended by the Panel is a merits question, rather than a matter of legality, as per the High Court's observation on the provisions subject to appeal in *Infinity Investments.*

The merits of the financial contributions provisions

14.17 Ms Hansbury and the Council remain of the view that the financial contributions are, in merits terms, appropriate and properly justified including in section 32 terms.

[440] Kainga Ora week 9 legal submissions at 2.6(b), citing *Tauranga City Council v Minister of Education* [2019] NZEnvC 032 at [58] – [62]
[441] *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC) cited in week 9 legal submissions for Kainga Ora at 5.5.
[442] *Tauranga City* at [90] – 91].

14.18 The section 32 reporting and the expert evidence presented by the Council witnesses (Ms Hansbury,[443] Mr Chapman,[444] Dr Meurk[445] and Dr Morgenroth[446]) together demonstrates:

(a) tree canopy cover provides significant benefits, in terms of 'eco-system services' (a number of which directly relate to the impacts of residential intensification), amenity and social wellbeing;

(b) a 20% tree canopy cover target is appropriate, and representative of the level present in the natural ecosystems ('biomes') of Christchurch City. That level of cover is also reflected in the targets set for residential zones in the recently adopted Council strategy - Christchurch Urban Forest Plan. The Council considers that meeting that target would be in accordance with the sustainable management purpose of the RMA;

(c) tree canopy cover levels in Christchurch City are relatively low, and declining;

(d) the decline is the biggest in the residential zones and can be attributed at least in part to residential development, and residential development must play a key role if the 20% tree canopy cover target is to be met;

(e) there are effects of residential development (and correlated benefits of tree canopy cover) that need to be addressed via tree canopy cover provided on or as close as possible to development sites. Simply mass planting 'spare' Council land would not be an equivalent solution; and

(f) in any event, there is not sufficient 'spare' Council owned land to achieve 20% tree canopy cover (refer to the discussion below).

14.19 The Council's view also continues to be that the optionality provided in the financial contributions provisions is appropriate, as well as lawful (as discussed above). In that respect, we note the discussion between the Panel and Ms Comfort (giving planning evidence for various clients) at the hearing. Ms Comfort explained that she had no issue with the intention behind the provisions, or the optionality – and indicated that at least some of her clients

[443] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/11-Anita-Hansbury-Section-42A-Report-FINAL.PDF ; https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/11.-Rebuttal-evidence-Anita-Hansbury-10-October-2023.pdf
[444] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/17-Toby-Chapman-Statement-of-Evidence-final.PDF
[445] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/40-Colin-Meurk-Statement-of-evidence-final.PDF
[446] https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/43-Justin-Morgenroth-Statement-of-evidence-final.PDF

would prefer to take the financial contribution option rather than be responsible for the long-term maintenance of trees.

Further section 32 analysis of options

14.20 The effects nexus between residential development and the loss of tree canopy cover (and therefore of all the benefits tree canopy cover delivers) is most obvious where a site is cleared, including of trees, to allow for residential development. However, even where an already cleared site is converted to residential development (and no tree canopy cover is provided), there is a direct effects nexus, in that:

(a) the site is likely to be 'lost' in terms of the overall ability to meet the 20% tree canopy cover target due to excess impervious surface areas and lack of open soil suitable for tree planting, and the significant benefits that achieving that target would bring; and

(b) there are a number of effects of residential development that are not able to be mitigated if no tree canopy cover is provided. Those effects include stormwater runoff, air quality effects, noise effects, loss of biodiversity and wildlife habitat, and amenity effects.

14.21 There was some discussion at the hearing about the section 32 analysis carried out by the Council in respect of the financial contributions provisions. Having reflected on that discussion, Ms Hansbury has carried out a section 32AA analysis that assesses the proposed approach against two further options:

(a) Option 2: Retaining the overall scheme (permitted activity rules with an option to provide either physical tree canopy cover or financial contributions), while amending the rules to either:

(i) reduce the amount of FC payable to only reflect the cost of the tree/s, planting and maintaining the tree/s on Council land; and / or

(ii) remove the consent notice requirement.

(b) Option 3: Amend the scheme so that it applies to development of four or more units only, which is proposed to be a restricted discretionary activity by default in Chapter 14. Under this option, associated matters of discretion would apply if the 20% tree canopy cover or equivalent

financial contributions are not provided. The Chapter 6.10A rules would need to be adjusted to apply to 4+ unit developments only.

14.22 Ms Hansbury's analysis is included in **Attachment 5** to this reply. Her overall conclusion is that the current scheme is more appropriate than those other options, in addition to being preferable to the other options considered in the original s32 report. With that further analysis in mind, Ms Hansbury and the Council consider that the provisions as proposed have been properly justified in s32 terms.

14.23 Submitters who oppose the provisions focussed on:

(a) The cost of the financial contributions; and

(b) The practicalities of providing 20% tree canopy cover on residential sites, especially for MDRS development.

14.24 In response, and to reiterate points made by the Council in evidence and at the hearing:

(a) The level of financial contribution has deliberately been set so that it properly reflects the true cost of providing tree canopy cover by the Council in lieu of the developer, including the provision of land, and planting and maintenance costs. The Council considers that to be fair and reasonable.

(b) Contrary to assertions made by Kainga Ora (including through Mr Clease's evidence[447]), 'spare' Council land cannot readily be used to provide for tree canopy cover. In response to questions from the Panel, Mr Chapman reiterated that the Council would need to acquire additional land to carry out planting (where developers elect the financial contribution option). Following the discussion at the hearing, Mr Chapman has provided additional data (including as **Attachment A** to Ms Hansbury's section 32AA analysis, which itself is in **Attachment 5.1**) on that point. The Council already has a 40% tree canopy cover target for its parks. Mr Chapman's analysis confirms that if parks were also relied on to provide the tree canopy cover intended to be provided in residential zones, the Council would not be able to provide an appropriate level of open space for recreation and other activities.

[447] Microsoft Word - (Bal 19.9 2023) PC14- Tree FC - Planning - Jono Clease - Final[72].docx (ihp.govt.nz)

(c) The Council's position is that developers (not ratepayers) should meet the cost of providing tree canopy cover to address the effects of residential development, noting of course that developers can instead choose to provide tree canopy cover onsite.

(d) In evidence, Ms Strachan discussed recent medium-density developments progressed by Kainga Ora.[448] Much of her evidence addressed a hypothetical situation where a different version of the provisions as proposed would make it difficult for those developments to meet the 20% tree canopy cover permitted activity standard.

(e) However, in her evidence,[449] and during cross-examination, Ms Strachan confirmed the simple point that when applying the provisions as proposed by the Council, all of the Kainga Ora development she discussed comfortably met the 20% requirement. That reflects the pragmatic approach the Council has taken.

(f) Put simply, there is no real evidence before the Panel that it would in fact be difficult for developers to meet the 20% tree canopy cover requirement, particularly in light of the 20% landscaping and 50% site coverage standards already set out in Schedule 3A.

14.25 Ms Hansbury's section 32AA analysis acknowledges the potential benefits of the additional options she considered. A version of 'Option 2' that removed the land value element of the financial contributions would mean considerably less cost for developers who choose to pay financial contributions, while removal of the consent notice requirement for those who choose to physically provide tree canopy cover would reduce the administrative burden on Councils.

14.26 However, Ms Hansbury and the Council consider the costs and administrative effort associated with the provisions to be justified, and appropriate. That is reflected in Ms Hansbury's conclusion that the proposed option is more efficient and effective than all other options she has considered.

[448] chch2023.ihp.govt.nz/assets/Evidence-20-September/Kainga-Ora-Homes-and-Communities-834-2082-2099-Evidence-Sophie-Strachan-Landscape.pdf
[449] At paragraph 4.13.

The permitted activity rules: P1 and P2

14.27 Having reflected on the discussion at the hearing, and comments made by submitters and the Panel, Ms Hansbury now proposes a number of 'tidy-ups' to the two permitted activity rules that set the tree canopy cover standards: 6.10A.4.1 P1 and P2. Ms Hansbury has included an explanation of her proposed amendments to those rules in her section 32AA document. In summary, the changes proposed are as follows:

(a) more explicit reference to the rules addressing "residential development or subdivision" at the start of each rule. This is intended to address the concern expressed by Ms Comfort about the possibility of 'double-dipping', whereby developers could potentially be captured by the rule both in respect of the entire development site, and then again in respect of each subdivided allotment (and roads within the subdivision). As has been made clear, there is no intention for such 'double-dipping' to occur, or to be enabled;

(b) rearranging the text so that the key distinction between the two rules – whether or not new roads are to vest in the Council – is made clear from the outset; and

(c) in P2, deleting the requirement for tree canopy cover provided in the road corridor to meet "*the needs and requirements of the Council as the future road owner/manager*". On reflection, Ms Hansbury accepts that renders the permitted activity standard too uncertain.

14.28 More generally, the Council acknowledges that the proposed provisions are relatively detailed. That is in large part a function of:

(a) The two options provided by the provisions: the Council is strongly of the view that the optionality is beneficial and appropriate, but it does require provisions to be drafted that cater to both options; and

(b) The Council's desire to ensure the provisions can be worked through systematically by plan users, so that they can identify exactly what is required to meet the financial contribution or tree canopy cover requirements. The provisions are intended to be a detailed guide for plan users. That said, for example, the online calculator provides a

very simple alternative option for calculating the required canopy or financial contribution.[450]

14.29 Ms Hansbury's view is that with her proposed amendments to P1 and P2, the provisions as a whole are not overly complex.

14.30 The Panel may of course wish to make further adjustments to the provisions. In that respect, at the hearing Commissioner Munro queried the approach to tree canopy cover that 'overhangs' property boundaries. As explained at the hearing, the Council's position is that the provisions as notified provide a pragmatic solution:

(a) landowners are required by the provisions to provide the necessary number of trees, across the various size classes, that add up to a 20% canopy cover. The provisions do not require an individual measurement of each tree: a set level of canopy cover is assumed based on average canopy size for the tree size class;[451]

(b) the relevant landowner will receive the 'credit' for any tree planted / retained on their property. That includes any area of canopy that 'overhangs' a property boundary;[452]

(c) if a neighbour decides to trim any overhanging canopy, that has no impact on the amount of canopy cover that is credited to the relevant tree. Two neighbours could, plant trees with canopies that may eventually 'overhang' their shared boundary. In that situation, each landowner could trim their neighbour's tree as necessary / to the extent they wish to, without having any impact in compliance terms.

[450] The online calculating tool is referenced and linked in 6.10A.4.2.1(a).
[451] As per Table 1 at 6.10A.4.2.1.
[452] This position was reiterated by Ms Hansbury and Mr Chapman at the hearing, and there is noting in the provisions to indicate otherwise.

15. CONCLUSION

15.1 The Council again expresses its thanks and gratefulness to the Panel for the high-quality hearing it has conducted, and to submitters for their interest, participation and efforts in contributing to the PC14 process. This has led to the Council now proposing additional changes to PC14, as set out in the attachments.

DATED 17 May 2024

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D G Randal / C O Carranceja / T J Ryan / M L Mulholland
Counsel for the Christchurch City Council

APPENDIX – LIST OF ATTACHMENTS TO THE COUNCIL'S REPLY

Attachment 1: Full list of Independent Hearings Panel Requests for Information

Attachment 2: Final set of PC14 provisions recommended by the Council Reporting Officers:

1. PC14 Reply Provisions – Chapter 2: Abbreviations and Definitions
2. PC14 Reply Provisions – Chapter 3: Strategic Directions
3. PC14 Reply Provisions – Chapter 5: Natural Hazards
4. PC14 Reply Provisions – Chapter 6.1A: Qualifying Matters
5. PC14 Reply Provisions – Chapter 6.1: Noise
6. PC14 Reply Provisions – Chapter 6:2 Temporary Activities
7. PC14 Reply Provisions – Chapter 6.3: Outdoor Lighting
8. PC14 Reply Provisions – Chapter 6.4 Temporary Earthquake Recovery
9. PC14 Reply Provisions – Chapter 6.5: Scheduled Activities
10. PC14 Reply Provisions – Chapter 6.8: Signs
11. PC14 Reply Provisions – Chapter 6.10A: Tree Canopy Cover and Financial Contributions
12. PC14 Reply Provisions – Chapter 6.12: Radio-communication Pathways
13. PC14 Reply Provisions – Chapter 7: Transport
14. PC14 Reply Provisions – Chapter 8: Subdivision, Development and Earthworks
15. PC14 Reply Provisions – Chapter 8.10: Appendices
16. PC14 Reply Provisions – Chapter 9.3: Historic Heritage (including Appendices 9.3.7.1-9.3.7.6)[453]
17. PC14 Reply Provisions – Chapter 9.4: Significant and Other Trees
18. PC14 Reply Provisions – Chapter 9.4.7.1: Appendix
19. PC14 Reply Provisions – Chapter 11: Utilities and Energy
20. PC14 Reply Provisions – Chapter 12: Papakāinga/Kāinga Nohoanga Zone
21. PC14 Reply Provisions – Chapter 13.1 Specific Purpose (Defence Wigram) Zone
22. PC14 Reply Provisions – Chapter 13.2: Specific Purpose (Cemetery) Zone
23. PC14 Reply Provisions – Chapter 13.3: Specific Purpose (Airport) Zone
24. PC14 Reply Provisions – Chapter 13.5: Specific Purpose (Hospital) Zone
25. PC14 Reply Provisions – Chapter 13.6: Specific Purpose (School) Zone
26. PC14 Reply Provisions – Chapter 13.7: Specific Purpose (Tertiary Education) Zone
27. PC14 Reply Provisions – Chapter 13.8: Specific Purpose (Lyttelton Port) Zone
28. PC14 Reply Provisions – Chapter 13.9: Specific Purpose (Golf Resort) Zone
29. PC14 Reply Provisions – Chapter 13.11: Specific Purpose (Flat Land Recovery) Zone
30. PC14 Reply Provisions – Chapter 13.14: Specific Purpose (Ōtakaro Avon River Corridor) Zone
31. PC14 Reply Provisions – Chapter 14.1-14.3: Residential – Introduction/ Objectives and Policies/ How to Interpret and apply the rules
32. PC14 Reply Provisions – Chapter 14.4: Rules - Residential Suburban and Residential Suburban Density Transition Zones
33. PC14 Reply Provisions – Chapter 14.5: Rules – Medium Density Residential Zone (previously Residential Medium Density Zone)
34. PC14 Reply Provisions – Chapter 14.6: Rules – High Density Residential Zone (previously Residential Central City Zone)
35. PC14 Reply Provisions – Chapter 14.7: Rules – Residential Hills Zone

[453] Note: Further Appendices to Chapter 9.3 are not listed here because changes are subject to decisions on mapping listed in Appendix 6

36. PC14 Reply Provisions – Chapter 14.8 Rules – Residential Banks Peninsula Zone
37. PC14 Reply Provisions – Chapter 14:9 Rules – Residential Large Lot Zone
38. PC14.Reply Provisions – Chapter 14.10 Rules – Residential Small Settlement Zones
39. PC14 Reply Provisions – Chapter 14:11 Rules – Residential Visitor Accommodation Zone
40. PC14.Reply Provisions – Chapter 14.12 Rules – Future Urban Zone (previously Residential New Neighbourhood Zone)
41. PC14 Reply Provisions – Chapter 14.13: Rules – Enhanced Development Mechanism
42. PC14 Reply Provisions – Chapter 14.14: Rules – Community Housing Redevelopment Mechanism
43. PC14 Reply Provisions – Chapter 14.15 Rules – Matters of Control and Discretion
44. PC14 Reply Provisions – Chapter 14.16: Rules – Appendices
45. PC14 Reply Provisions – Chapter 15: Commercial
46. PC14 Reply Provisions – Chapter 15.15: Appendices
47. PC14 Reply Provisions – Chapter 16: Industrial
48. PC14 Reply Provisions – Chapter 18: Open Space

Attachment 3: Accept /Reject tables reflecting the Council Reporting Officers' final recommendations:

1. PC14 Reply Accept and Reject Table – Sarah Oliver (Strategic Direction, Infrastructure, Coastal Hazards, Airport Noise)
2. PC14 Reply Accept and Reject Table – Holly Gardiner and Andrew Willis (Central City)
3. PC14 Reply Accept and Reject Table – Kirk Lightbody (Commercial Centres, Industrial Zones)
4. PC14 Reply Accept and Reject Table – Ike Kleynbos (Residential and QMs - Riccarton Bush, Sunlight access, Low Public Transport Accessibility)
5. PC14 Reply Accept and Reject Table – Glenda Dixon (Residential Heritage Areas)
6. PC14 Reply Accept and Reject Table – Suzanne Richmond (Heritage Items)
7. PC14 Reply Accept and Reject Table – Liz White (Residential Character Areas)
8. PC14 Reply Accept and Reject Table – Brittany Ratka (Industrial Interface, Significant and Other Trees, Natural Hazards)
9. PC14 Reply Accept and Reject Table – Clare Piper (Transport)
10. PC14 Reply Accept and Reject Table – Clare Piper (Specific Purpose Zones - Schools, Tertiary Education, Hospital)
11. PC14 Reply Accept and Reject Table – Anita Hansbury (Tree canopy, Financial Contributions, Open Space, Sites of Ecological Significance)
12. PC14 Reply Accept and Reject Table – Ian Bayliss (Subdivisions, Future Urban Zone. Earthworks)

Attachment 4: Zoning Requests Accept/Reject tables reflecting the Council Reporting Officers' final recommendations:

1. PC14 Reply Rezoning Requests Accept and Reject Table – Response to IHP Request #34
2. PC14 Reply Zoning Requests Accept and Reject Table – High Density Residential Zone (HRZ) requests – Ike Kleynbos
3. PC14 Reply Zoning Requests Accept and Reject Table – Medium Density Residential Zones (MRZ) requests – Ike Kleynbos
4. PC14 Reply Zoning Requests Accept and Reject Table – Other Zones – Ike Kleynbos

Attachment 5: Section 32AA and 77J analysis

1. PC14 Reply - Section 32AA analysis – Financial Contributions Tree Canopy Cover – Anita Hansbury
2. PC14 Reply- Sections 77J and 32AA analysis – Port Hills Stormwater Qualifying Matter – Ike Kleynbos
3. PC14 Reply – Sections 77J and 77L analysis – Airport Noise Influence Area Qualifying Matter

Attachment 6: Information record of planning map changes

Attachment 7: Supporting Coastal Hazards Mapping Analysis

Attachment 8: Council Planning Expert Response to Conferencing of Architectural Submitters

Attachment 9: Table of Medium Density Residential Standards versus Building Capture

Attachment 10: Updated Summary of Residential Character Areas (RCAs) and Residential Heritage Areas (RHAs)

Attachment 11: Low Public Transport Accessibility Area (LPTA) Changes

Attachment 12: Updated Residential Character Area map – Cashmere View