

**BEFORE THE INDEPENDENT HEARINGS PANEL**

**UNDER** the Resource Management Act 1991  
**IN THE MATTER** of proposed Plan Change 14: Housing and Business  
Choice to the Christchurch District Plan  
**AND**  
**IN THE MATTER** of Woolworths New Zealand Ltd (Submitter 740)

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**STATEMENT OF EVIDENCE OF MATTHEW BONIS ON BEHALF OF  
WOOLWORTHS NEW ZEALAND LTD  
20 September 2023**

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## Introduction

- 1 My full name is Matthew William Bonis.
- 2 I am a Planner employed by Planz Consultants, a role I have held for over 20 years.
- 3 I hold a Bachelor of Regional and Environmental Planning degree and have been employed in the practise of Planning and Resource Management for 25 years. I am a full member of the New Zealand Planning Institute and also an accredited Commissioner under the 'Making Good Decisions' Ministry for the Environment Certification process.
- 4 My experience in planning and resource management includes policy development, formation of plan changes and associated s.32 assessments; s.42a report preparation and associated evidence; the preparation and presentation of evidence at Environment Court; and the preparation and processing of resource consent applications.
- 5 I have been based on Christchurch since 1999, and have provided planning evidence on behalf of both the Christchurch City Council (Plan Change 86 'the Retail Variation' and Plan Change 31 'the Orion Site'), and Woolworths (District Plan review – commercial provisions and urban design, Environment Court Decision NZEnvC133[2021] for Halswell greenfield development). I have also represented Auckland Regional Council and more recently Auckland Unitary Council in terms of the business and commercial provisions contained in the Auckland Unitary Plan.
- 6 I am familiar with the particulars and the relevant environments as associated with the Woolworths submission.
- 7 Whilst I acknowledge that this is not an Environment Court hearing, I confirm that I have read and am familiar with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving any oral evidence during this hearing. Except where I state that I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## 1.0 Scope of Evidence

- 8 I have prepared this evidence on behalf of Woolworths NZ Ltd (**Woolworths**) (submitter number 740).
- 9 The Woolworths submission (and submission points) is directed at the following matters as introduced through Plan Change 14 (PC14):
- (a) Tree Canopy: Opposing the Tree Canopy provisions in their entirety (Sub 740.1)
  - (b) Amendments to the zone / ODP boundary as associated with the recently approved commercial and residential mixed-use development at 201 Halswell Road (Sub 740.2, Sub 740.9)
  - (c) Amendment to Policy 15.2.2.1 / Table 15.2 to elevate the St Albans Neighbourhood Centre to Local Centre (retail thresholds and the ODP are not sought to be amended) (Sub 740.6, Sub 740.7)
  - (d) Deletion of the amendments introduced by PC14 as notified to **Policy 15.2.4.2** which seek to introduce additional minutiae to the policy governing urban design matters for new development in commercial zones (Sub 740.8).
- 10 Submissions 740.3, 740.4 (retain notified residential densities) and Sub 740.5 (support for National Planning Template nomenclature) are benign and recommended in the s42A reports to be accepted. No further evidence is provided on these matters.
- 11 In preparing my evidence, I have reviewed, amongst others, the following documents:
- (a) Plan Change 14 as notified.
  - (b) Section 32 analysis as associated with:
    - Part 1- Introduction Issues and Strategic Directions, and Appendix 4 Commercial Centres NPS-UD, Urban Design<sup>1</sup>.
    - Appendix 4 – Carry Over Qualifying Matters.

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<sup>1</sup> [https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32-Appendices-1/Technical-Report\\_Commercial-Centres-Urban-Design-and-Built-Form-Descriptors-VERSION-1.PDF](https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32-Appendices-1/Technical-Report_Commercial-Centres-Urban-Design-and-Built-Form-Descriptors-VERSION-1.PDF)

Part 4 – Commercial, and Appendix 1 Background, Appendix 2 Centres: Approach to Alignment with National Planning Standards, Appendix 3 Economics, Appendix 10 Hierarchy of Centres.

Part 7 – Tree Canopy.

- 12 In preparing my evidence, I have reviewed, amongst others, the following evidence:
- (a) Tree Canopy – Anita Hansbury (s42A), Toby Chapman (Arborist), Colin Meurk (Ecologist), Phil Osborne (Economics)
  - (b) Halswell: Commercial boundary – Ian Bayliss (s42A).
  - (c) St Albans centre: commercial centre hierarchy – Kirk Lightbody (s42A); and
  - (d) Policy 15.2.4.2 amendments – Holly Gardner (s42A).
- 13 This evidence is not reliant on expert evidence outside my qualifications and experience, I have however relied on the expert evidence above as referenced in this evidence.

## 2.0 Executive summary

- 14 Within Christchurch, Woolworths operates 13 Countdown Supermarkets and a distribution centre, and is the franchisor for a further 11 FreshChoice and SuperValue supermarkets. A further Countdown is consented at 201 Halswell Road as part of a 27Ha mixed use development in conjunction with the Halswell Key Activity Centre.
- 15 I understand that the Woolworths submission is largely supportive of the Christchurch City Council's (**the Council's**) PC14 planning regime which seeks to enact the Council's responsibilities under the National Policy Statement – Urban Development (**NPS-UD**) and Resource Management (Enabling Housing Supply and Other Matters) Act 2021 (**EHAA / Enabling Act**).
- 16 The submission identifies that enabled extent of intensification has the dual consequences of both intensifying residential catchment demand on the existing distribution and provision of supermarkets, and foreclosing (through increased site fragmentation and redevelopment)

edge of centre opportunities for Supermarket redevelopment to meet that increased demand. Additional amendments to **Policy 15.2.4.2** seek to further impose highly directive urban design constraints as applicable to large scale anchor stores in commercial centres in a manner that is inconsistent with **Objective 3** and **Policy 1(b)** of the NPS-UD which seek to enable business development, and **Objective 3.3.10(b)** which seeks a framework to direct commercial activities primarily to centres.

- 17 In relation to introduced provisions associated with **Tree Canopy** cover and Financial Contributions (including Chapter 6.10A and associated provisions<sup>2</sup>), it is considered that these provisions are:
- (a) not justified in terms of s32(1) and (2) as being appropriate, efficient or effective, nor appropriately considered in terms of the risk of acting or not acting;
  - (b) do not address an adverse effect commensurate with activities (s76(3));
  - (c) represent an incorrect statutory mechanism to proactively increase tree canopy in an existing urban environment;
  - (d) would result in obvious and entirely foreseeable consequences that directly conflict with the purpose of the NPS-UD and EHAA to improve housing affordability by supporting competitive land and development markets<sup>3</sup>, and enable more people to live in areas close to centres, public transport or respond to demand<sup>4</sup>; and
  - (e) would impose considerable economic costs on land development, and associated development feasibility.
- 18 As associated with the **North Halswell Key Activity Centre Commercial zoning boundary** (and North Halswell ODP). Mr Bayliss<sup>5</sup> accepts the submission seeking specific amendments to the ODP and Planning Maps to align to the roading framework approved under

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<sup>2</sup> Including but not limited to:

- a. 8.3, 8.5.1 and 8.7.12;
- b. HDZ Rule 14.6.2.7 / 14.6.1.3 (RD13), and
- c. MDZ Rule 14.5.2.2 / 14.5.1.3 (RD24)

<sup>3</sup> NPS-UD Objective 2.

<sup>4</sup> NPS-UD Objective 3.

<sup>5</sup> S42A Bayliss [8.7, 8.7.6, 8.7.7(c)]

Environment Court Decision NZEnvC133 [2021] and expansion of the Commercial Core zone.

- 19 For completeness, this aligns Appendix 8.10.4, Appendix 15.15.3 and the Planning Maps of the District Plan with the approved plans and central roading corridor demarcating commercial / mixed use from the residential area as associated with NZEnvC133 [2021]. Woolworths and Waka Kotahi are working through an agreement to establish the connecting signalised intersection at Halswell Road, with Waka Kotahi having lodged both an extension to the designation (s181(3)) and Outline Plan of Works (s176A). Works are anticipated to commence early 2024.
- 20 Following the Auckland Unitary Plan Zoning Guidance Note (2015) the amended zoning boundary:
- (a) Is consistent with the objectives and policies of the proposed Commercial Core zone and boundary. Thresholds as to retail and office floorspace are retained to ensure consideration of distributional and agglomeration effects. The structuring elements (such as green corridor and blue corridor) of the ODP are also not sought to be amended.
  - (b) The overall change will be consistent with the CRPS. As above, there is no implications for the distribution of centres, hierarchy, or effects on vitality and viability on the emerging Halswell commercial centre.
  - (c) The zone boundary will be (more) defensible, as it will align with a geospatial feature (the connecting road).
  - (d) The zone boundary will provide separation between less compatible land uses, through separating the HDZ from the CCZ.
  - (e) The zone boundary takes into account the resource consent (and Court Decision).
- 21 Further evidence on this matter is considered unnecessary.
- 22 In relation to the elevation of the **Saint Albans commercial centre to local centre**, it considered that the more appropriate role and function of the St Albans centre is:

- (a) aligned at the Local Centre tier in the centres hierarchy as less consistent with the Neighbourhood Centre tier in Policy 15.2.2.1 given the 'permitted' scale and diversity of activities anticipated by the Plan.
- (b) better accounts for existing and anticipated residential growth (and centre catchment) for the area without resulting in distributional effects on adjoining centres, such as Edgware or agglomeration disbenefits on the Central City, and its recovery; and
- (c) would be the more appropriate in terms of **Objective 3, Policy 1(b), Policy 5** of the NPS-UD, **Objective 6.2.5, Objective 6.2.6 and Policy 6.3.6(4)** of the CRPS, and **Objective 15.2.2 and Policy 15.2.2.4** of the District Plan.

23 Lastly, the notified amendments to **Policy 15.2.4**:

- (a) are not the more appropriate in terms of implementing the Objectives, including **Objective 3.3.10(b)** which seeks to ensure the Plan framework directs commercial activities into centres, **Objective 15.2.2** and **Objective 15.2.4**, particularly in relation to the function and operational requirements of the full range of commercial developments, specifically large format retail activities that anchor a number of the districts commercial centres;
- (b) provide a substantial hurdle under s104(1)(b)(vi), whereas a contextual assessment under the existing assessment matters is the more appropriate and is already in place.

### 3.0 Statutory Framework

24 I acknowledge that the respective statutory framework is largely set out in Part 1 of the section 32 report accompanying the notified provisions for PC14. I acknowledge the contemporary requirements, in addition to those contained with the *Colonial Vineyard vs Marlborough District Council*<sup>6</sup> criteria:

- Incorporating Medium Density Residential Standards into all relevant residential zones(s77G(1));

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<sup>6</sup> [204] NZEnvC, 55, at paragraph [17]

- Giving effect to the urban intensification requirements of Policy 3 of the NPS-UD in residential zones (s77G(2)) and non-residential zones (s77N); and
- Including the objectives and policies in clause 6 to Schedule 3A of the RMA (s77G(5)) relating to a well-functioning urban environment and providing for a variety of housing types and sizes.

25 The Hearings Panel will be aware of the relevant statutory framework. But in summary:

- (a) A district council must prepare its district plan in accordance with, *inter alia*:
  - (i) its functions under section 31;
  - (ii) the provisions of Part 2; and
  - (iii) its obligation (if any) to prepare and have regard to an evaluation report prepared in accordance with section 32.
- (b) Sections 5(2)(a), 7(b), 7(c) and (d), 31(1)(a), 31(1)(aa) and 32 are of particular relevance. The themes of these sections include meeting the reasonably foreseeable needs of future generations, integrated management of land use and infrastructure, and ensuring sufficient development capacity for housing and business land to meet expected demands. All of these sections point to a future-looking planning regime.
- (c) Under section 32(1)(a) the evaluation must examine the extent to which the objectives introduced through PC14 are the most appropriate way to achieve the purpose of the Act. Section 32(1)(b) requires an examination of whether the provisions of the proposal are the most appropriate way to achieve the objectives by identifying other reasonably practicable options for achieving the objectives, assessing the efficiency and effectiveness of the provisions in achieving the objectives, including the costs and benefits of the options, and the risks of acting or not acting, and summarising the reasons for deciding on the provisions.
- (d) Additionally, the overarching principles of section 32 must also be considered, namely:



- (i) Are the objectives the most appropriate to achieve the purpose of the RMA?
  - (ii) Are the policies the most appropriate way to achieve the objectives?
  - (iii) Will the provisions (policies and rules) be an effective and efficient way to achieve the objectives (by assessing benefits and costs - in a quantifiable way if possible - including the opportunities for economic growth and employment)?
  - (iv) Will there be a risk of acting or not acting (ie. including provisions or not including provisions) if there is uncertain or insufficient information?
- (e) In the Christchurch context, the recovery context in **Objective 3.3.1** and **Objective 3.3.2** is to be expressed and achieved in subsequent provisions a manner consistent with those objectives<sup>7</sup>. These provisions are not amended by PC14, and I understand economic advice from Mr Heath identifies that the City Centre (at least) is still in a recovery phase<sup>8</sup>.

#### 4.0 Tree Canopy

26 The notified provisions impose targeted controls associated with residential and subdivision tree protection and planting. The application of financial contributions is the alternative means of establishing tree canopy. The provisions introduced, in summary:

- Require new (residential or subdivision) development to retain or provide tree canopy cover (20% for new residential sites, 15% for vested streets through subdivision), noting an associated land area of 50m<sup>2</sup> per tree<sup>9</sup> and associated covenants on titles; or
- Pay an equivalent financial contribution in lieu of planting (\$2037 per tree + land valuation; that is for the absence of tree planting on a 500m<sup>2</sup> residential site, the financial contribution would

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<sup>7</sup> District Plan. Section 3.3 Interpretation.

<sup>8</sup> EIC Heath [4, 97, 98, 101, 102]

<sup>9</sup> <https://ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/plans/christchurch-district-plan/understanding-the-district-plan/tree-canopy-financial-contributions-calculator>

conservatively equate to at least \$20,797, inclusive of \$1,567 contribution for trees).

27 The submission from Woolworths is predicated on removal of the provisions, including the entirety of Chapter 6.10A and related regulation in other chapters.

28 I consider that the problem definition<sup>10</sup> has been poorly crafted with little or no nexus to the regulation. Principally the resource management issue (**Issue 1**) identified to be addressed is that Christchurch City's existing canopy is comparatively low and decreasing. Looking at each of those matters in turn:

(a) Christchurch City's tree canopy of 13.5% is compared, negatively to Auckland (18%) and Wellington (31%) as the foundation for regulation. However, as noted by Mr Meurk<sup>11</sup>:

*"... it should be noted that the definition of Christchurch in that report [the 2018/2019 study identifying 13.5% canopy] does not include the hills of Banks Peninsula (gully bush is a major part of tree cover in other cities), nor does it allow for the significant area of wetlands and stormwater detention basins. CCC- owned public land has 23% canopy cover".*

(b) There has been a 2% decline in tree canopy between the 2015/2016 survey and the 2018/2019 survey. However, as noted by Mr Meurk<sup>12</sup>:

*"...much of the loss was from Bottle Lake Forest pine forest and recently near Orana Park. These areas are being replanted..."*

29 In terms of Issue 4<sup>13</sup> I would suggest that any stated benefits<sup>14</sup> associated with biodiversity, amenity, carbon sequester, stormwater management and heat island effects (amendments to **Objective 3.3.10(ii)(E)** and **Objective 8.2.6**) associated with tree canopy requirements are expressed in the Council's evidence at a global or urban scale, and not confined to the Residential Zones, to which the provisions are targeted to. For example:

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<sup>10</sup> S32 – Part 7 Tree Canopy [2.2.2]

<sup>11</sup> S32 Muerk [Appendix 1a]

<sup>12</sup> S32 Muerk [Appendix 1a]

<sup>13</sup> S32 – Part 7 Tree Canopy [2.2.14]

<sup>14</sup> EiC Chapman, Muerk

*“This proposed indigenous-exotic mix should be part of achieving a 20% tree cover **in the metropolitan area of the City**, and >25% when incorporating the greater Christchurch area including Banks Peninsula<sup>15</sup>”.*

*“Overall tree canopy for the city should, when compared to other cities, be calculated for the Greater CHCH area – including Banks Peninsula and excluding wetlands and detention basins. It is, nevertheless, accepted that tree cover needs to be increased across the **city environment** in order to achieve the multiple ecosystem services for planetary and human health<sup>16</sup>”.*

- 30 Accordingly, I consider that incorrect regulation has been used; that there is a disjunct between the stated commensurate benefits and the imposition of development costs on residential development rather than the community as a whole; that the s32 analysis is deficient; the regulation is impracticable and contrary to the stated purpose of the NPS-UD; and the notified regulation carries with it substantial (economic) inefficiencies, as appropriately and transparently identified by the Council’s own economic witness Mr Osborne.
- 31 Woolworths is not a major residential developer in this space, albeit that its mixed used development at 201 Halswell Road (**the Halswell Development**) will be impacted by the notified regulation to the extent of increased uncertainty, costs and potentially undermining intensification aims. In terms of a working example:
- For the consented subdivision at 201 Halswell Road, the extent of vested Road Reserve for just Phase 1 at 1.1583ha would attract a financial contribution of \$561,824<sup>17</sup>. Or in this instance a compliant number of medium and large trees has already been proposed<sup>18</sup> as part of the consent. This was to ensure that the public sphere (as to be established and vested by the developer) and shared body corporate spaces provides the heavy lifting in terms of amenity tree planting; and
  - The corollary is that individual allotments to be created within the super-lots are largely devoid of canopy tree planting. By way of

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<sup>15</sup> S32 Muerk [page 2]

<sup>16</sup> S32 Muerk [Appendix 1a]

<sup>17</sup> <https://ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/plans/christchurch-district-plan/understanding-the-district-plan/tree-canopy-financial-contributions-calculator>

<sup>18</sup> Mixture of large to very large trees (Quercus rubra, Quercus robur fatigata, Liquidambar).

example using Stage 2 from NZEnvC133[2021], being Superlots 2 and 10<sup>19</sup> excluding shared Body Corporate areas:

Total Residential site area across 63 allotments: 21,515m<sup>2</sup>

Total required tree canopy: 4,303m<sup>2</sup>

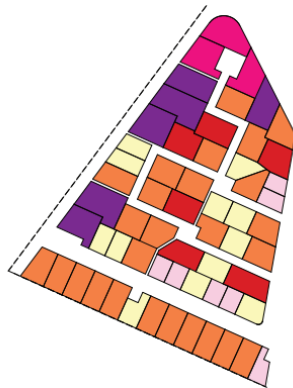
Financial contribution sans trees: \$1.4million

Financial contribution two small trees on each of the 63 allotments: \$1.05million

## VILLAGE A

### DATA:

Lots	
	7 @ <300m <sup>2</sup>
	12 @ 300-400m <sup>2</sup>
	26 @ 400-500m <sup>2</sup>
	6 @ 500-600m <sup>2</sup>
	6 @ >600m <sup>2</sup>
	3 Shared



Existing extent of tree canopy: None



<sup>19</sup> Assuming a conservative \$/m<sup>2</sup> of \$800.

***Is the proposed new Objective (Objective 3.3.9(ii)(E) and Objective 8.2.6) the most appropriate way to achieve the purpose of the Act (s32(1)(a))?***

32 The primary question in terms of s32(1)(a) is whether the operative plan or tree canopy regime introduced through amendments to **Objective 3.3.9(ii)(E)** and **Objective 8.2.6** through PC14 is the most appropriate framework to achieve the Act, as the Act is expressed through the statutory hierarchy provided by Part 2, relevant National Policy Statements, and the CRPS, all of which are to be *achieved* and *given effect to* by the subordinate provisions.

*Part 2 of the Act*

33 The protection, use and development of the residential zones in the District as a highly valued resource extends to the 'way or rate' in which subdivision and residential density opportunities and landscaping are managed to enable the Christchurch District to better provide for its social, economic and cultural wellbeing. No Section 6 matters are relevant to this aspect of the amending proposal.

34 Section 7 (Other matters) identifies a range of matters, in managing the use, development, and protection of natural and physical resources, particular regard is to be had. In my view sections 7(b) and (c) and (f) are of particular relevance (shown in **bold**).

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*
- (b) ***the efficient use and development of natural and physical resources:***
- (ba) *the efficiency of the end use of energy:*
- (c) ***the maintenance and enhancement of amenity values:***
- (d) *intrinsic values of ecosystems:*
- (e) *[Repealed]*
- (f) ***maintenance and enhancement of the quality of the environment:***
- (g) *any finite characteristics of natural and physical resources:*
- (h) *the protection of the habitat of trout and salmon:*
- (i) *the effects of climate change:*
- (j) *the benefits to be derived from the use and development of renewable energy.*

35 Chapter 3 and Chapter 14 in the District Plan are the main Chapters in regulating activities within the Residential zones in achieving and reconciling sections 5, 7(b), 7(c) and 7(f).

36 That statutory framework identifies that:

- (a) An expedited recovery is required, that meets the community's immediate and longer term needs for housing... and fosters investment certainty, and sustains important values of the natural environment (**Objective 3.3.1**);
  - (b) Through its change, interpretation and implementation the District Plan minimises transaction costs and reliance on resource consents as well as extent and prescriptiveness of development controls and design standards (**Objective 3.3.2**).
  - (c) Provides for 'at least' sufficient development capacity for housing, including a range of housing opportunities and densities (**Objective 3.3.4**).
  - (d) A high quality urban environment that increases housing development opportunities in the urban area to meet CRPS intensification targets (**Objective 3.3.7**).
  - (e) A natural and cultural environment where ... *'important natural resources are identified and their specifically recognised values are appropriately managed'* (**Objective 3.3.9**)
  - (f) An increased supply of housing that will:
    - (i) Enable a wide range of housing types, sizes and densities;
    - (ii) Meet the diverse needs of the community;
    - (iii) Assist in improving housing affordability. (**Objective 14.2.1**)
  - (g) High quality sustainable residential neighbourhoods which have a high level of amenity and enhance local character (**Objective 14.2.4**).
- 37 A consideration of the amending proposal in relation to the Tree Canopy provisions largely turns on whether the introduced regulation would be to the detriment of increasing housing development opportunities to provide for 'at least' sufficient development capacity, enable choice and density, assist in improving housing affordability, be undertaken in a manner that reduces excess prescription and transaction costs, and (as measured against other alternatives, including the operative Rule 14.5.2.2 'tree and garden planting') better contributes towards a high level of amenity.

#### *National Policy Statements*

- 38 The requirements of the **NPS-Urban Development (2022)** are known to the Panel. In brief the relevant provisions:

- (a) Seek well-functioning urban environments that enable all people and communities to provide for their wellbeing (**Objective 1**).
- (b) Planning decisions improve housing affordability by supporting competitive land and development markets (**Objective 2**).
- (c) Regional Policy Statements and District Plans enable more people to live in areas of the urban environment including where the area is near a centre zone (**Objective 3**).
- (d) Urban environments, including their amenity values develop and change over time in response to the changing needs of people, communities and future generations (**Objective 4**).
- (e) Urban environments support reductions in greenhouse gas emissions (**Objective 8**).
- (f) **Policy 1** outlines a well-functioning urban environment, including enablement of a variety of homes that meet the needs of different households. It is conspicuous in its absence that amenity considerations are excluded from inclusion in **Policy 1**, with **Policy 6(b)(ii)** noting that a change in amenity values associated with a planned urban built form is not, of itself an adverse effect.
- (g) **Policy 3** seeks that District Plans enable *'in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys'*, with **Policy 4** amending the application of Policy 3 *to modify the relevant building height or density requirements to the extent necessary to accommodate a qualifying matter in that area*. Whilst not expressed as a qualifying matter, the Tree Canopy requirements would modify, to a substantial degree the density outcomes expressed under the NPS-UD and as directed through the Enabling Act.

39 Bluntly, the NPS-UD provides a statutory directive for District Plans to markedly increase the enablement of housing choice and density proximate to centres, with the Enabling Act correspondingly seeking broader enablement through the MDRS provisions. Whilst the application of qualifying matters provides the ability for Councils to adapt and modify building heights and density, the Tree Canopy requirements do not constitute a qualifying matter (clause 3.32 NPS-UD, s771

RMA1991), and where demonstrated to impose reductions in density would clearly be the less appropriate regulation.

40 The relevant requirements of the NPS-IB (2023) seeks to:

- (a) maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date, including by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity (**Objective 1**).
- (b) The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for (**Policy 8**)
- (c) Increased indigenous vegetation cover is promoted in both urban and non-urban environments (**Policy 14**). Associated clause 3.22(3) seeks that Regional Councils must set a *target of at least 10% indigenous vegetation cover* for any urban or non-urban environment that has less than 10% cover of indigenous vegetation, with local authorities to promote the increase of indigenous vegetation cover *in their districts* including provisions to implement the targets set by the respective regional Council (**clause 3.22(4)**).

41 In terms of engaging with these provisions I note the following:

- The residential density zones of the District contain 13.44% canopy cover<sup>20</sup>;
- The district's canopy cover is 13.5%<sup>21</sup>, in excess of the minimum 10% target set for Regional Council's to impose under clause 3.22(3)<sup>22</sup>.
- Whilst there was a 2% decrease in canopy cover since the 2015/2016 survey to 2018/2019, this is largely attributed to the decrease in the tree canopy cover as a result of harvesting in the Bottle Lake Forest plantation and the recent Port Hills fires<sup>23</sup>.
- The targets in the NPS-IB at clause 3.22(3) are directed at an urban (or non-urban environment), they do not apply to any individual urban zoning in isolation.

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<sup>20</sup> S32 Tree Canopy Cover [3.4.21]

<sup>21</sup> S32 Tree Canopy Cover [3.4.20]

<sup>22</sup> Noting the 10% NPS-IB target is indigenous cover, whereas the 13.5% is all cover.

<sup>23</sup> S32 Tree Canopy Introduction.



- The NPS-IB requirements seek a more cogent and integrated response (Policy 14 / Clause 3.22) to indigenous tree canopy cover than the disjointed and directive approach contained in PC14.

- 42 I do not consider that the NPS-IB provisions are directive or prescriptive to the extent that the notified tree canopy provisions are the more appropriate in terms of 'giving effect' to the NPS as pursuant to s75(3)(a). I also note that the NPS-IB does not function in isolation and is also to be considered in the context of the application of the NPS-UD, as both are to be 'given effect to'.
- 43 Looking therefore at the matrix of relevant planning provisions, I consider that there is no tacit support within the NPS-IB for the imposition of a 20% tree canopy requirement on development in the Residential zone or 15% requirement along Road Reserves, as the notified regulation:
- (a) extends well beyond **Objective 1** which seeks to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity;
  - (b) the notified provisions are not predicated on an express target provided by the Regional Council pursuant to cl(3.22(3));
  - (c) the existing district canopy of 13.5% exceeds the minimum 10% threshold<sup>24</sup> within a wider urban context (cl3.22(3));
  - (d) the Tree Canopy financial contribution introduced through PC14 has nothing to require indigenous planting, and regardless has not been considered as the most effective means of increasing tree canopy under the broader context of the NPS-IB; and
  - (e) regardless, the requirements are to be achieved rationally at the district level, they are not identified to be imposed as isolated to new development within residential zones.

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<sup>24</sup> Targeted at indigenous cover.

*Canterbury Regional Policy Statement*

- 44 Section 75(3)(c) of the RMA requires that a district plan must give effect to any operative regional policy statement.
- 45 The Section 32 accompanying the Tree Canopy provisions of PC14 contains a brief consideration of these provisions<sup>25</sup>, but omits those associated with intensification and provision of ‘at least’ sufficient development capacity for housing. I consider that the following matters are absent:
- (a) **Objective 6.2.1:** Recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that (1) identifies priority areas for urban development within Greater Christchurch
  - (b) **Objective 6.2.1a Housing Bottom Lines.** For the period 2021-2051, *at least* sufficient development capacity for housing is enabled, including a 30-year total of 41,300 dwellings in Christchurch City
  - (c) **Objective 6.2.2 Urban Form and settlement pattern.** The urban form and settlement pattern in Greater Christchurch is managed to provide sufficient land for rebuilding and recovery needs and set a foundation for future growth, with an urban form that achieves consolidation and intensification of urban areas, and avoids unplanned expansion of urban areas.
- 46 Overall, the relevant provisions seek to provide certainty to the community (and businesses) as to the urban form patterns and integration of growth and infrastructure to accommodate expected population and household growth, and housing (and business) needs and choice, in an efficient and environmentally sustainable manner. The provisions are not silent as to maintaining the quality of the natural environment, nor indigenous biodiversity in terms of overall urban form, however these are predicated on a cascade where significant values are to be recognised and protected (**Objective 9.2.3**) and the decline in indigenous biodiversity is halted (**Objective 9.2.1**) and restored in *appropriate locations* (**Objective 9.2.2**).
- 47 Accordingly, I am of the view that the absence of a specific objective relating to Tree Canopy as notified through PC14 as associated with **Objective 3.3.9(ii)(E)** and **Objective 8.2.6** is not required to address

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<sup>25</sup> S32 Tree Canopy [2.1.5]

any deficiency in terms of giving effect to the CRPS for the purposes of s74(3)(c).

*Summary in terms of s32(1)(A)*

48 Ultimately the approach that better implements the Planning matrix expressed above is the one that better accounts for:

- (a) increased opportunities for providing at least sufficient development capacity (**NPS-UD Policy 2, Objective 3.3.4**), enabling housing choice and assisting in improving affordability (**NPS-UD Objective 2, Objective 14.2.1**) and provides for residential intensification opportunities in selected intensification areas (**NPS-UD Objective 3, Policy 3, Policy 6; DP Objective 3.3.7, CRPS Objective 6.2.1, 6.2.1(a) and 6.2.2**).

As identified in the comprehensive economic assessment by Mr Osborne for the City Council<sup>26</sup>, and I agree, the imposition of the regulation increases costs for residential development, impacts on affordability and choice, and impacts on feasible capacity as based on an average site cost, *in terms of the financial contribution [the regulation] has the potential to increase land costs by \$20,000 per site*". The proposed Objectives therefore are at best, inconsistent, to these stated Objectives.

- (b) 'High quality residential neighbourhoods' and a high level of amenity (**DP Objective 14.2.4**) is a stated outcome, however the NPS-UD (**Policy 6**) is explicit that a change in amenity is not, of itself an adverse effect. Whilst 'well-functioning urban environments' as contained in Policy 1 of the NPS-UD is not predicated on tree canopy (or any mention of amenity), I consider that Parliament in enshrining the Enabling Act must have had some confidence that requirements for landscaping in the Act<sup>27</sup> 'give effect' to this aspect of the NPS-UD. As stated above, I do not consider that the Tree Canopy objectives are required to 'plug a gap' as associated with the provisions of the NPS-IB, nor provisions associated with natural values in the CRPS

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<sup>26</sup> EIC Osborne [46]

<sup>27</sup> It is also assumed that those drafting Schedule 3A Part 2, Clause 18 of the Enabling Act contemplated that the landscape area requirement in the MDRS (20% at ground floor 'grass or plants, and can include the canopy of trees').

(**Objective 9.2.1 to Objective 9.2.3**) which seek to protect significant values and arrest any decline in indigenous biodiversity through restoration in *appropriate locations*.

- (c) Rather than supporting reductions in Greenhouse Gases (NPS- **Objective 8, Policy 1(e)**, CRPS **Objective 6.3.2**, as a stated ‘benefit’ of the regulation<sup>28</sup>, the economic evidence of Mr Osborne<sup>29</sup> is that the implementation of the regulation will have the entirely predictable but counter consequence of favouring development in more dispersed locations (and I would suggest other urban locations within Greater Christchurch) with the perverse outcome of increases in transport related greenhouse gas emissions. The notified regulation is not the more appropriate in achieving these Objectives.
- (d) Lastly the provisions need to accord with Strategic Directions **Objectives 3.3.1 and 3.3.2**. These provisions are process and implementation Objectives, as embedded in the District Plan through the Order in Council Statement of Expectations<sup>30</sup>. I note that the IHP in setting these Objectives noted that ‘efficiency and cost are critical resource management issues in the context of post-earthquakes Christchurch<sup>31</sup>’ and stated<sup>32</sup>:

*“... as part of a chapter that will have primacy within the Plan, we see these provisions as fulfilling an important ongoing role within the design of the Plan (and in regard to its ongoing implementation and interpretation)”.*

I consider the PC14 provisions relating to tree canopy to be unwieldy, reduce investment certainty, complex and the subject of considerable transaction costs. I note that Mr Osborne identifies similar concerns<sup>33</sup>. The notified tree canopy regulation is not the more appropriate in terms of these Objectives.

- 49 The notified approach as associated with Tree Canopy regulation is not the more appropriate in terms of s32(1)(a).

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<sup>28</sup> S32 Statutory framework [2.1.7] and Issue 4 [2.2.17], s42A Hansbury [4.1.10], EiC Meurk [7]

<sup>29</sup> EiC Osborne [48]

<sup>30</sup> The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (Schedule 4)

<sup>31</sup> [Strategic-Directions-and-Strategic-Outcomes-Decision.pdf \(ihp.govt.nz\)](#) [54]

<sup>32</sup> *ibid* [57]

<sup>33</sup> EiC Osborne [54]

***Are the provisions the most appropriate way to achieve the Objective (s32(1)(b))?***

- 50 Given the conclusion above, that the introduced regulation is not the more appropriate pursuant to s32(1)(a) to achieve the purpose of the Act, and hence the associated regulation is also not appropriate, I have provided a more concise consideration of the benefits and costs of the notified provisions for the purposes of s32AA.
- 51 In terms of the **costs** associated with the regulation I concur with the economic evidence provided by Mr Osborne. These include, but are not limited to the following:
- (a) Increased costs to residential development
  - (b) Increased impacts on feasible capacity, specifically impacting on the distribution of residential feasibility in locations not identified for intensification.
  - (c) Impacts on affordability.
  - (d) The costs of regulation are inequitable, as whilst any stated benefits are largely community wide, the costs will be borne disproportionately by new home buyers.
  - (e) Saleability, uncertainty and administration costs associated with placing covenants on titles for tree retention, duplication of open space reserve contributions.
- 52 I also consider that the imposition of the canopy coverage requirements for new sites result in a reduction in residential site flexibility and use. I disagree with the proposition from Ms Hansbury there is ample opportunity for 20% canopy cover (including pervious surfacing) without reducing development capacity, including overlapping with the MDRS 20% landscaping requirement given the 50% building coverage threshold. I am unaware of any recent examples where this has been set out in practice, and regardless constraints on pervious surfacing would effectively require tree canopy requirements to be met central to outdoor living requirements, having costs associated with solar gain, recreational use and outdoor amenity.
- 53 In terms of the **stated benefits**, as above I consider that these are stated at a global and District wide level in the Council's evidence, and hence at best

overstate the benefits of targeted tree canopy requirements with the costs unequally focused on residential areas, and as set out by Mr Osborne on new home buyers<sup>34</sup>.

- 54 I am unable to find within the Council's evidence quantification as to how benefits associated with enhanced amenity of the urban environment, stormwater attenuation, carbon sequestration, and heat island effects are directly attributable to a sub-set of new home development in Christchurch's urban areas, or whether for example with stormwater detention whether other alternatives have been appropriately considered, noting that the contributory benefits of tree canopy is not included in the City Councils Infrastructure Strategy (2021) in relation to stormwater management, nor quantification against considerations such as increased rates take for planting in Council owned reserves.
- 55 I note that the 20% metric suggested by Dr Meurk is predicated on pre-human state of Christchurch's ecology<sup>35</sup>. That threshold clearly does not in any way account for or seek to reconcile the wider planning matrix, as associated with the enabling purpose of the Act, as then sought to be implemented through subordinate statutory instruments such as the NPS-UD, NPS-IB, Canterbury Regional Policy Statement or existing Operative District Plan provisions.
- 56 Those statutory instruments do not seek to impose a return to a pre-human ecological baseline, but seek to engage with a number of competing matters including delivering the medium density outcomes directed through the Enabling Act, and intensification as expressed within the NPS-UD. Those aims are not unqualified; however, I am unable to find any express statutory directive, or higher order framework that would seek to impose the direction sought in the notified Objective **3.3.10(ii)(E)** and **Objective 8.2.6**.
- 57 Not only do I consider the approach to be the less appropriate (than the status quo, being the provisions prior to notification), I consider them to be directly in conflict with the Objectives of the NPS-UD, and outcomes sought by the Enabling Act.
- 58 I consider that the notified provisions are neither **effective** in that they fail to implement the statutory framework, or **efficient** in that the costs

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<sup>34</sup> EIC Osborne [46(e)]

<sup>35</sup> EIC Meurk s42a [34-35]

exceed any cited benefits, also noting that those costs fall inequitably on new home development given the stated wider societal benefits.

59 Whilst the enthusiasm of the Council's witnesses towards this issue is not doubted, it is respectfully stated that the notified provisions are not appropriate, have not been filtered through the appropriate statutory tests, and rely on catastrophising global and national level effects by targeting deterrents towards housing intensification aims as counter to the purpose of the IPI instrument. By way of example:

*"Given we are facing the 6th Great Extinction, the country has international obligations to protect its contribution to biodiversity, the dependency of NZ wildlife on Indigenous Plant species, the critical importance of visibility in maintaining identity with the indigenous flora, and the expressed wish of citizens to increase native plants in the city, I agree indigenous species should be prioritised and now is the time to begin".<sup>36</sup>*

60 In terms of s32(2)(c), I conclude that the risk of not retaining the tree canopy provisions now (or a variation thereof) is appropriate.

61 I do not consider that there is sufficient analysis in the Council's assessment to conclude that the tree canopy provisions, or a variation within scope of such, are warranted and the risks of not incorporating these provisions through PC14 are, at best, at the margins of being tangible against the Significant Resource Management Issues identified by the Council in providing the foundation for the change.

62 I have identified that the NPS-IB and associated Regional Council response seeks to provide a more cogent, rational and appropriate consideration of the issue in the round. A regional led approach would be the more appropriate statutory vehicle, as pursued through the Schedule 1 process to consider the issue. Lastly, the absence of rights of appeal under the IPI process also weighs heavily against the risk of acting in establishing the tree canopy provisions (or a variation thereof) of PC14.

63 Lastly, I note that Section 76(3) requires regard to be had to '*the actual or potential effect on the environment of activities including, in particular, any adverse effect*' when setting rules. As already identified, at a district level, the 2% reduction in tree coverage between 2015 to 2019 appears to be predicated outside of the residential zones; for Woolworths and

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<sup>36</sup> EIC Muerk [48]

development of 201 Halswell Road the imposition of a substantial area to be covenanted for tree canopy on separate titles, or in the alternative a financial contribution in the millions of dollars does not resolve nor mitigate any effect on the greenfield site which is devoid of trees.

**5.0 Policy 15.2.2.1 / Table 15.2 – Role and Function of St Albans Centre**

- 64 The submission from Woolworths seeks to elevate the role and function of the St Albans Centre from Neighbourhood Centre to Local Centre.
- 65 No other amendments to the existing provisions (District Plan – ODP Appendix 15.15.5), retail thresholds which provides for up to 2,700m<sup>2</sup> of small format retail (3,500m<sup>2</sup> total including an 800m<sup>2</sup> (maximum) supermarket)) are sought. The existing ODP provides for a mix of commercial and community activities, as well as publicly access open space (550m<sup>2</sup>).
- 66 In **summary** the identification of St Albans Centre (1.1ha) as a Local Centre is the more appropriate in terms of the statutory framework, including the Zone Description contained in the National Planning Standards which identifies such as:
- “Areas used predominantly for a range of commercial and community activities that service the needs of the residential catchment”.*
- 67 By comparison the National Planning Standards predicate a ‘Neighbourhood Centre’ as serving the needs of the immediate residential catchment.
- 68 It should also be acknowledged that PC14 seeks to rezone the wider area from Residential Medium Density (RMD) with an anticipated density of 30 dwellings / ha<sup>37</sup> to High Density Residential Zone (HDR) that seeks a minimum of two storey development up to four storeys (14m notified) greatly increasing the adjoining residential catchment (and associated social and wellbeing needs) associated with the St Albans Centre.
- 69 Lastly, the closest Local Centre (Edgware) has a zoned land area of 1.9ha, noting that some 0.35ha is occupied by the 2016 (re)developed

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<sup>37</sup> Policy 14.2.1.1 iii and iv



Health Based Timber Merchant (previously Hardie and Thomson) precluding commercial or community uses.

- 70 Comparable scale Local Centres (under the nomenclature adopted under PC14) include: Aranui (1.06ha), Avonhead (1.25ha), Colombo / Beaumont (1.28ha), Hillmorton (1.18ha) and Redcliffs (0.89ha)<sup>38</sup>.
- 71 The submission is recommended to be declined in the s42A Evidence of Mr Lightbody<sup>39</sup>, specifically that:

*[8.1.53] The key difference between LCZ and NCZ is that LCZ are anticipated to cater for large-scale tenancies while NCZs do not. This distinction is deliberate and reflects the direction of the CDP to give primacy to higher order centres in the hierarchy.*

*[8.1.54] While the NCZ at St Albans enables larger tenancies specific to the centre, this was the outcome of a plan change that provided for a small local centre, comprising a supermarket and small shops serving the immediately surrounding community. Limits were introduced to ensure provision of non-residential activities at a scale to service the 'local neighbourhood', but not to detract from the form and function of other centres. Having regard to the proximity of Edgware and the City Centre, it is appropriate that the role/ function of the centre does not grow unimpeded such that it impacts on higher order centres in accordance with the policy framework. (my emphasis)*

- 72 Mr Lightbody in part recognises the tension between the anticipated role and function of the St Albans Centre and its placement in the Centres hierarchy within Policy 15.2.2.1 / Table 15.2. In addition, the Policy / Table 15.2 explicitly identifies a size constraint 'Up to 3,000m<sup>2</sup>' for Neighbourhood Centres, whereas the specific rules for the St Albans commercial centre anticipate some 3,500m<sup>2</sup> GLFA.
- 73 Further inconsistencies between the orthodox approach to Neighbourhood Centres and the St Albans Centre are that the latter requires (Rule 15.5.3.2.1):
- A maximum total 3,500m<sup>2</sup> GLFA non-residential activities in Areas A and B combined.

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<sup>38</sup> <https://ccc.govt.nz/culture-and-community/statistics-and-facts/facts-stats-and-figures/commercialcentrefactsheets>

<sup>39</sup> S42A Lightbody [8.1.49 to 8.1.55]

- One tenancy may have up to 800m<sup>2</sup> of retail GLFA.
- No other retail tenancy may be greater than 450m<sup>2</sup> GLFA.

74 Subject to these provisions (which are not sought to be amended nor is the spatial extent of zoning), I do not agree with Mr Lightbody's assertion that as deemed a Local Centre, St Albans commercial centre would result in distributional impacts on the form and function of Edgware and the Central City, with the latter being implausible.

75 The harmonization of the appropriate commercial centre in policy terms to its role and function, is appropriate in terms of urban form and growth, access to public transport and open space, and also the anticipated extent of enablement for its surrounding residential catchment.

76 To this end:

- (a) **Objective 15.2.1** seeks to recognise and provide for the importance of commercial and community activity as facilitated by a framework that supports commercial centres.
- (b) **Objective 15.2.2** sets out the centres-based framework for commercial activities, to be focused in a network of centres to meet the wider community's needs, and establishes the hierarchy of centres as predicated on role and function, including supporting a compact and sustainable urban form that integrates commercial activity with residential activity in locations accessible by a range of modes of transport.
- (c) **Policy 15.2.2.1**, as inclusive of **Table 15.1** which sets out the role and function of each layer within the commercial centres hierarchy. Of relevance to this submission:
  - (i) Local Centres (as amended by the notified PC14) are characterised as providing a destination for weekly and daily needs as well as community facilities; are anchored by Supermarkets; primarily serves the immediately surrounding suburbs; are accessible by a range of modes of transport, including one or more bus services; supports proximate High-Density housing; and has a scale of 3,000m<sup>2</sup> GLFA to 30,000m<sup>2</sup> GLFA.

- (ii) Neighbourhood centres (as amended by the notified PC14) are characterised as: a small group of primarily convenience shops and in some instances community facilities; accessible by walking and cycling and on a bus route in some instances; also including standalone supermarkets; and with a scale of up to 3,000m<sup>2</sup> GLFA.

77 In addition, I note that the Commercial Centre harmonisation report<sup>40</sup>, also identifies attributes such as Open Space and Supermarkets as anchor stores as contributors to being considered a Local Centre.

78 Accordingly in terms of the requirements of s32AA, I consider the following:

- (a) For the purposes of **s32(1)(b)** I have noted the tension between the Neighbourhood Centre status with the anticipated outcomes associated with the St Albans commercial centre. I note that St Albans commercial centre:
- anticipates a Supermarket as an anchor tenant, and in conjunction with a range of anticipated commercial and community activities (as permitted) will provide for a range of weekly and daily convenience needs to meet the wellbeing needs of the associated residential catchment;
  - the associated Outline Development Plan seeks to provide accessible and proximate open space;
  - is surrounded by HDZ as provided in the notified PC14;
  - is accessible by a range of transport types within a rapidly intensifying (post 2011) inner city residential suburb, including the No44 Route (Shirley / Westmoorland) which runs down Barbadoes Street and No 28 (Casebrook / Lyttelton) which runs down Colombo Street.
  - exceeds the 3,000m<sup>2</sup> GLFA threshold identified in Policy 15.2.2.1 / Table 15.1, and enables larger tenancies than those provided for in the Neighbourhood Centre zone.

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<sup>40</sup> Boffa Miskell (2022) [Section 5.7, Appendix 3 Attributes] [Commercial Centres NPS-UD \(ccc.govt.nz\)](https://www.ccc.govt.nz)

- is consistent in terms of scale with other 'Local Centres (Small)'.
- retains associated constraints on retail floorspace so as to maintain the role and function of the network of centres (**Objective 15.2.1, Objective 15.2.2, CRPS Objective 6.2.5, Policy 6.3.6(4)**);
- is better aligned with the definition of Local Centre in the Zone Framework – Chapter 8 of the National Planning Standards given the anticipated Supermarket will serve a wider residential catchment than just 'immediate' needs.

Accordingly, I consider that the amendment is the more **effective** (in achieving the plan framework) and likely the more **efficient** (noting that the costs and benefits are modest, and likely more administrative).

79 The recommended amendments are set out in **Attachment A**.

#### **6.0 Policy 15.2.4.2(a)**

80 The submission from Woolworths seeks deletion of the PC14 amendments for Policy 15.2.4.2(a) on the basis that these do not adequately recognise the functional requirements associated with the full range of commercial developments, and would not be the more appropriate in terms of achieving **Objective 3.3.1** and **Objective 3.3.2** of the Plan.

81 I agree, noting: that the provisions are overly prescriptive; are applicable to all commercial activities in all commercial zones; and would provide an inappropriate constraint as applied under s104(1)(b)(vi) to investment certainty in commercial centres, whereas reliance and 'weighing up' of these matters is more appropriately provided for as assessment matters (as they are already incorporated).

82 At the outset, I acknowledge that I am not an Urban Designer, nor providing Urban Design evidence. The assessment below is predicated on the planning framework and my experience as associated with both setting Commercial policy in plans (Christchurch, Auckland, Taupo), and

large scale commercial consents, including the Halswell KAC and University of Otago Education facility on Tuam Street.

- 83 The Woolworths submission is considered in the s42 Report of Ms Gardiner commencing at [8.3.9] of her report. She states that her evidence considers the issues in contention associated the City Centre and Mixed Use zone, whereas Mr Lightbody (commencing at [Section 8.4]) addresses the policy in terms of the broader commercial zones.
- 84 I do not find support for that distinction. **Policy 15.2.4.2** relates to the design of '*any new development*' in any commercial zone.
- 85 Ms Gardiner recommends decline of the Woolworths submissions as set out in [8.3.15 to 8.3.20] of her evidence, with the exception of the removal of policy considerations associated with heat islands, heat reflection and refraction caused by glazing from clause (a)(xi) on the basis of an incomplete 32 accompanying those matters, uncertainty and subjectiveness. I agree.
- 86 In terms of the architecture of the Plan provisions, **Objective 15.2.4** sets out the form, scale and design outcomes associated with development in commercial zones. Importantly, it identifies at clause (iii) that there is recognition as to the scale, form and design of development of '*the functional and operational requirements of activities and the anticipated built form*'.
- 87 The architecture of the Plan essentially requires that new commercial development<sup>41</sup> (or indeed recladding in the Central City Commercial zones) within most zones in the Commercial hierarchy will engage with **Policy 15.2.4.2**.
- 88 Critically, **Policy 15.2.4.2** establishes an explicit hierarchy in terms of achievement of the outcomes listed.
- (a) Under clause (a) the design outcomes are '*required*'. I understand 'required' means '*need, make necessary, or specify as compulsory*<sup>42</sup>'; subservient to this is.

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<sup>41</sup> Rule 15.4.2.1 Commercial Core Zone (4,000m<sup>2</sup> Town Centre, 1,000m<sup>2</sup> Local Centre), Rule 15.10.1.3 Commercial Central City Business Zone (RD1)

<sup>42</sup> Oxford Dictionary

(b) Clause (b) the functional and operational requirements are to be ‘recognised’ which means ‘identify, or acknowledge the existence of’.

89 Therefore, the design outcomes in clause (a) are to prevail over the functional and operational requirements of activities specified in clause (b) where there is a conflict.

90 The concern with the additional design outcomes proposed in the Council’s notified amendments to **Policy 15.2.4.2** is not that these are not laudable aims, but that they are already expressed as relevant assessment matters to the commercial zone urban design provisions, allowing for an appropriate balancing of form vs function within the context of the ongoing development within Commercial centres. As elevated to directive policy ‘to be required’, will provide in some cases an unattainable hurdle to otherwise visually attractive and appropriate commercial development.

91 Accordingly, whilst I agree with Ms Gardiner’s statement that:

*“I agree with Woolworths that large anchor retailers do not necessarily ‘embody a human scale and fine grain’ by their functional and practical requirements.”<sup>43</sup>*

Based on the hierarchical nature of Policy 15.2.4.2, I do not agree that that the notified *requirement* for ‘human scale and fine grain’ as inserted through clause (a)(viii) can be reconciled with the *recognition of functional and operational requirements* as specified in (b) as concluded by Ms Gardiner:

*Notwithstanding this, Clause (b) of the same policy seeks to “Recognise the scale, form and design of the anticipated built form within a site and the immediately surrounding area and the functional and operational requirements of activities”. I therefore consider gives the ability to consider the practicalities of a particular use on a site and the functional requirements associated with the full range of commercial activities<sup>44</sup>.*

Furthermore, I consider that the term ‘human scale’ as sought to be introduced in PC14<sup>45</sup>, remains subjective, is incongruent with larger

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<sup>43</sup> S42A Gardiner [8.3.15]

<sup>44</sup> Ibid

<sup>45</sup> PC14 as notified: *Human Scale means: means incorporating dimensions that result in smaller built components and lower building heights, with attention to the human experience from eye level, relative to the physical size of a person.*

format retail and commercial massing, and provides fertile grounds for debates between urban designers as to acceptable outcomes, thereby increasing uncertainty and transaction costs.

- 92 In terms of Plan architecture, I have the same concerns with the inserted clauses (a)(x – xii).
- 93 Contextually, the function and operation of specific commercial activities, be they large format retail, supermarkets, cinemas, office towers, or small format retail, drives form. Logically, and within certain parameters that function therefore derives design and feasibility.
- 94 At a micro scale as associated primarily with Supermarkets (or as attributable to any large-scale centre retail anchor), I note the following based on my experience both as associated with Woolworths, but also as representing territorial authorities setting the policy balance between design outcomes and enabling and encouraging in-centre commercial development and viability.
- (a) Carparking is to be visible and legible from the access road leading to it. This extends to clear and accessible entry points;
  - (b) Carparking is to be of an adequate size, proportional to the scale of the scale of the Supermarket (the Warehouse, K Mart or similar large format retail provider)
  - (c) The proportions of the buildings must be within the operational tolerances of the format (for example medium scale, full service Supermarkets have a preferred floorplate based on operational need);
  - (d) Back of house is a necessity, with loading docks preferred to be located opposite to customer entry and with an adequate turning circle / or through route;
  - (e) Three sides of a supermarket cannot be glazed – simply supermarket retail area is located centrally within the footprint, as serviced by back of house preparation and storage areas such as cool rooms, freezers, food preparation areas and other such spaces which cannot be glazed to the outside. In terms of feasibility, the prospect of sleeving the periphery on three sides is implausible and greatly increases the extent of floorspace;

(f) Online pick up (which is becoming an increased built form trend post COVID19) is to be accommodated with supporting parking, canopy and vehicle access.

95 At a macro scale, I am unable to find within the Council's accompanying s32 material to PC14 any distinction or compliance costs of the amendments to **Policy 15.2.4.2** based on the function or scale of commercial activities. I note, accepting that it is dated, the Commercial Evidence from Property Economics<sup>46</sup> for the District Plan Review that within the Christchurch Centres network (as at 2014), that Large Format Retail (greater than 500m<sup>2</sup>) accounted for 355,462m<sup>2</sup> of the centre retail supply or 61% of retail GFA, with specialty retail accounting for only 39% as below. I am reliant on this material only to the degree that it demonstrates the important role of larger format retail in terms of the viability of the centre network.

Table 1: Aggregated Christchurch Centre Retail Supply (reproduced from Heath 2015).

	Store Count	GFA (sqm)	Store Count %	GFA%
Speciality Retail	1,903	231,143	91%	39%
LFR Retail	186	355,462	9%	61%
Total	2,089	586,605	100%	100%

96 Invariably and given the above, there are trade-offs between the necessary and fundamental operational needs of the proposed activity, and 'optimal' centre wide design outcomes.

97 The planning framework seeks to enable and direct commercial investment into centres (**Objective 3.3.1, 3.3.5, 3.3.8(a)(v) and (vi), 3.3.10, 15.2.1, 15.2.2**) recognising the critical role of anchors in increasing vibrancy, vitality and role and function within the hierarchy of centres (**Policy 15.2.2.1**). The importance of scale, form and design is expressed in **Objective 3.3.7, Objective 15.2.4** and associated Policies.

98 Overall, a balance must be struck between achieving a 'high quality urban environment' as consistent with **Objective 3.3.7**, and providing a framework which 'primarily directs commercial activity into centres

<sup>46</sup> EIC Heath. IHP (2015). Commercial Stage 1.



consistent with their role' as required by **Objective 3.3.10(b)**, and within the context of the NPS-UD which seeks to ensure sufficient business land development capacity and enablement.

- 99 Simply put, where design requirements start to impede certainty of in-centre enablement as measured against the Planning framework which seeks to direct and enable commercial activity into centres, the policy requirements are not the more appropriate.
- 100 The following identifies that the additional matters notified in PC14 in the amended **Policy 15.2.4.2** are already accounted within respective assessment matters, with the exception of wind related effects. Neither the Woolworths submission, nor this evidence disputes inclusion of these factors as assessment matters.

**Table 2: Matter to be included in Policy 15.2.4.2**

Matter	Notified PC14 Policy 15.2.4.2	Assessment Matters 15.14.1 (Commercial Core Zone)	Assessment Matters 15.14.2.6 (Central City Zone)
Embodies human scale and fine grain.	Clause (a)(viii)	(a)(iv)	(a)(iii)
Prominence of buildings on street corners.	Clause (a)(x)	(a)(ii)	(a)(v)
Potential for adverse effects such as ... wind related effects.	Clause (a)(xi)	-	-
Upper floors, roof and plant are modulated and articulated.	Clause (a)(xii)	(a)(iii)	(a)(iii)

- 101 In conclusion, the matters sought to be included in **Policy 15.2.4.2** are able to be considered as included in assessment matters in the Plan—and consequently considered in context in terms of a determination of effects (s104)(1)(a)). The benefit as assessment matters is that these are to be considered within the wider context of the plan provisions,

including an overall balance with the functionality and massing / design of larger format retail activities, many of which anchor the commercial centre network.

- 102 By elevating such directive design provisions to Policy, and ensuring that such outcomes are '*required*' under clause (a) effectively creates a 'check list' of provisions in terms of s104(1)(b), many of which – for a variety of reasons may be unfeasible for the full range of commercial activities, but where the overall built form and amenity of a given proposal would otherwise contribute to outcomes that are '*visually attractive, safe, easy to orientate, conveniently accessible, and responds positively to anticipated local character and context*' as required by **Objective 15.2.4**.
- 103 Accordingly for the purposes of s32AA I consider that the amendments to **Policy 15.2.4.2** are not the more appropriate in terms of achieving the balance between achieving a 'high quality urban environment' as consistent with **Objective 3.3.7** and providing a framework which 'primarily directs commercial activity into centres consistent with their role' as required by **Objective 3.3.10(b)** and within the context of business enablement under the NPS-UD. I also consider that the provisions would be the less appropriate in terms of fostering investment certainty (**Objective 3.3.1**) and minimising transaction costs (**Objective 3.3.2**).
- 104 **Attachment A** identifies my recommended amendments to the notified Policy 15.2.4.2.



**Matthew Bonis**

**20 September 2023**

## Attachment A – Recommended Amendments

Amend as follows:

Policy 15.2.2.1 (a) Policy – Role of centres

Table 15.1 – Centre’s role

	Role	Centre and size (where relevant)
C.	<p><b>Neighbourhood Local Centre</b></p> <p>A destination for weekly and daily <b>retailing shopping</b> needs as well as for <b>community facilities</b>.</p> <p>...</p>	<p><b>Centres:</b> <b>Spreydon/ Barrington (Key Activity Centre), New ...</b></p> <p><b>Local Centres (small):</b>            Addington, Avonhead, Sumner, Akaroa, Colombo/Beaumont (Colombo Street between Devon Street and Angus Street), Cranford, Edgeware, <b>St Albans</b>, Fendalton, Beckenham, Halswell, Lyttelton, Ilam/Clyde, Parklands, Redcliffs, Richmond, St Martins, <b>Stanmore/Worcester Linwood Village</b>, Sydenham South (Colombo Street between Brougham Street and Southampton Street), Wairakei/Greers Road, Wigram (<b>emerging</b>), Woolston, Yaldhurst (<b>emerging</b>), <b>West Spreydon (Lincoln Road) Hillmorton, Aranui</b>, North West Belfast.</p> <p>Size: 3,000 to 30,000m<sup>2</sup> <b>GFA</b>.</p>

### Policy 15.2.4.2 Design of New Development

(a) Require new development to be well-designed and laid out by:

- viii. achieving a visually attractive setting when viewed from the street and other public spaces, that embodies a human scale and fine grain, while managing effects on adjoining environments; **and**

...

- ~~x. increasing the prominence of buildings on street corners;~~
- ~~xi. ensuring that the design of development mitigates the potential for adverse effects such as heat islands, heat reflection or refraction through glazing, and wind-related effects;~~
- ~~xii. ensuring that the upper floors (including roof form and associated mechanical plant) are well-modulated and articulated to provide visual interest to the building when viewed from beyond the Central City or from adjacent buildings above; and~~

### 15.3 How to interpret and apply the rules

- a. The rules that apply to activities in ...
- b. Area specific rules also apply to activities within the ~~Commercial Core~~ **Town Centre, Local Centre, and Neighbourhood Centre Zones** and ~~Commercial Local Zone~~ in the following areas:

- vii. St Albans Neighbourhood Centre Zone Local Centre (as identified in Appendix 15.15.5) – Rule 15.5.3 15.6.3

#### 15.6.3.1 Activity-specific activities – ~~Commercial Local~~ Neighbourhood Centre Local Centre Zone (St Albans)

##### 15.6.3.1.1 Permitted activities

- a. The activities listed below are permitted activities if they meet the activity specific standards set out in this table and the built form standards in Rule 15.6.3.2

	Activity	Activity Specific Standards
P1	Any activity or building	<p>Compliance with:</p> <ul style="list-style-type: none"> <li>a. All the following key structuring elements on the <del>Commercial Local</del> <b>Neighbourhood Centre Local Centre</b> Zone (St Albans) Development Plan (see Appendix 15.15.5), being: <ul style="list-style-type: none"> <li>i. Public access and circulation within <del>Commercial Local</del> <b>Neighbourhood Centre Local Centre</b> Zone to enable permeability through the site; and</li> <li>ii. Semi-public access and circulation with Residential Zone.</li> </ul> </li> </ul>

....

**15.6.3.1.3 Restricted discretionary activities**

.....

	Activity	The Council's discretion shall be limited to the following matters:
RD1	Any activity or building that does not comply with one or more of the key structuring elements on the <del>Commercial Local</del> <b>Neighbourhood Centre Local Centre</b> Zone (St Albans) Development Plan (see Appendix 15.15.5)	<ul style="list-style-type: none"> <li>a. Development Plan – Rule 15.14.4.5.1</li> </ul>

...

**15.6.3.2.1 Maximum non-residential floor space limits in the ~~Commercial Local~~ **Neighbourhood Centre Local Centre** Zone (St Albans)**

- a. The maximum GLFA for non-residential activity in the ~~Commercial Local~~ **Neighbourhood Centre Local Centre** Zone (St Albans) shall be as follows

	Standard
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i.	There shall be a maximum 3500m <sup>2</sup> GLFA of non-residential activities within combined areas A and B defined on the <del>Commercial Local</del> <b><u>Neighbourhood Centre Local Centre</u></b> Zone (St Albans) Development Plan (see Appendix 15.15.5); and ..
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...

**15.14.4.5 Area-specific rules - Matters of discretion – ~~Commercial Local~~ **Neighbourhood Centre Local** Centre Zone (St Albans)**

....

**Appendix 15.15.5 – ~~Commercial Local~~ **Neighbourhood Centre Local** Centre Zone (St Albans) Development Plan**