RECOMMENDA	ATIONS REPORT	: PART 5 – C	CITY WIDE Q	UALIFYING	MATTER

Table of Contents

1.	Introduction	5
2.	Outstanding Natural Landscapes and Significant Natural Features (ONL/ONF)	8
	Summary of Recommendations	8
	PC 14 as Notified	8
	Submissions and Section 42A Recommendations	8
	Findings and Evaluation	9
3.	Sites of Ecological Significance and Significant Indigenous Vegetation (SES)	9
	Summary of Recommendations	9
	PC 14 as Notified	9
	Submissions and Section 42A Recommendations	9
	Findings and Evaluation	10
4.	Sites of Cultural Significance (SCS)	10
	Summary of Recommendations	10
	PC 14 as Notified	10
	Submissions and Section 42A Recommendations	10
	Findings and Evaluation	11
5.	Waterbody Setbacks	11
	Summary of Recommendations	11
	PC 14 as Notified	12
	Submisssions and Section 42A Recommendations	12
	Findings and Evaluation	13
6.	Slope Instability Hazard Areas	14
	Summary of Recommendations	14
	PC 14 as Notified	14
	Submissions and Section 42A Recommendations	14
	Findings and Evaluation	15
7.	Stormwater Management and High Flood Hazard Areas	15
	Summary of Recommendations	15
	PC 14 as Notified	16
	Specific Localised Flooding Areas	16
	Findings and Evaluation	17
	Upper Halswell River Catchment Stormwater	17
8.	Liquefaction and 'Other Earthquake' Risks	19
	Summary of Recommendations	19
	PC 14 as Notified	19
	Submissions and Section 42A Recommendations	19

	Findings and Evaluation	20
9.	Coastal Hazards (including Tsunami)	20
	Summary of Recommendations	20
	Notified Provisions	21
	Submissions and Section 42A Recommendations	21
	Findings and Evaluation	23
	CHMA Hazards	23
	TMA Hazards	23
	Coastal Hazard and Tsunami Risk Provisions and Zoning	24
10.	Heritage Items, Settings and associated provisions	25
	Summary of Recommendations	25
	PC 14 as Notified	27
	Submissions and Section 42A Report Recommendations	30
	Findings and Evaluation	39
	Section 32AA Evaluation for Recommended Changes	51
11.	Electricity Transmission Corridor	53
	Summary of Recommendations	53
	PC 14 as Notified	53
	Submissions and Section 42A Report Recommendations	56
	Submitter evidence and representations	56
	Council Section 42A Reporting	57
	Issues	58
	Findings and Evaluation	58
	Section 32AA Evaluation of Recommended Changes	62
12.	Lytttelon Port Influences Overlay	63
	Summary of Recommendations	63
	PC 14 as Notified	63
	Submissions and Section 42A Recommendations	63
	Findings and Evaluation	63
13.	Inland Port Influences Overlay	64
	Summary of Recommendations	64
	PC 14 as Notified	64
	Submissions and Section 42A Recommendations	64
	Findings and Evaluation	65
14.	New Zealand Rail Setbacks	66
	Summary of Recommendations	66
	PC 14 as Notified	66
	Submissions and Section 42A Recommendations	67
	Findings and Evaluation	67

15.	Waste Water Constraints Area	67
	Summary of Recommendations	67
	PC 14 as Notified	68
	Submissions and Section 42A Recommendations	68
	Findings and Evaluation	68
16.	Industrial Interface	69
	Summary of Recommendations	69
	PC 14 as Notified	70
	Submissions and Section 42A Report Recommendations	71
	Submitter evidence and representations	71
	Council Section 42A/Reporting	74
	Joint Witness Statements	74
	Findings and Evaluation	75
17.	City Spine	78
	Summary of Recommendations	78
	PC 14 as Notified	78
	Submissions and Section 42A Report Recommendations	80
	Submitter evidence and representations	80
	Submitter presentations and evidence	80
	Council Section 42A Reporting	80
	Issues	82
	Findings and Evaluation	82
18.	Residential Heritage Areas and Interface Overlays	86
	Summary of Recommendations	86
	PC 14 as Notified	87
	Submissions and Section 42A Recommendations	89
	Issues	91
	Findings and Evaluation	92
19.	Residential Character Areas	96
	Summary of Recommendations	96
	PC 14 as Notified	97
	Submissions and Section 42A Recommendations	100
	Issues	101
	Findings and Evaluation	102
20.	Riccarton Bush Interface Area (Interface Area)	107
	Summary of Recommendations	107
	PC 14 as Notified	108
	Submissions and Section 42A Recommendations	110
	Issues	111

	Findings and Evaluation	. 111
21.	Significant and Other Trees	. 116
	Summary of Recommendations	. 116
	PC 14 as Notified	. 117
	Submissions and Section 42A Recommendations	. 120
	Issues	. 121
	Findings and Evaluation	. 122
22.	Open Space Zones	. 126
	Summary of Recommendations	. 126
	Notified Provisions	. 126
	Submissions and Section 42A Recommendations	. 126
	Findings and Evaluation	. 127
23.	Specific Purpose (Ōtākaro Avon River Corridor) Zone (including Fitzgerald Avenue Geotechnical Constraint) (SPOARC)	. 128
	Summary of Recommendations	. 128
	PC 14 as Notified	. 128
	Submissions and Section 42A Recommendations	. 129
	Findings and Evaluation	. 129
	Alternative Zoning	. 129
	Activity Status and Rules	. 129
24.	Specific Purpose (Cemetery) Zone	. 130
	Summary of Recommendations	. 130
	Notified Provisions	. 130
	Submissions and Section 42A Recommendations	. 130
	Findings and Evaluation	. 131

1. INTRODUCTION

[1] This part of the Report evaluates the submissions made in relation to the manner in which the Council has, through PC 14, proposed to make an allowance for qualifying matters (QMs) in terms of making the Operative District Plan (ODP) less enabling of development otherwise provided for by the Medium Density Residential Standards (MDRS) or Policy 3 of the National Policy Statement Urban Development 2020 (NPS-UD). Before we turn to the various QMs captured by PC 14 and the multitude of submission received, we briefly canvas the statutory requirements governing the

Council's approach to applying QMs and by implication the maters we must consider when evaluating the submissions received.

- [2] Under section 77I of Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Housing Supply Amendment Act). A territorial authority may make the MDRS and the relevant building height or density requirements under Policy 3 of the NPS-UD less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate one or more of the specified qualifying matters that are present. The Housing Supply Amendment Act also has similar provisions which allow territorial authorities to apply qualifying matters in application of intensification policies to urban non-residential areas also. ¹
- [3] Section 77I lists nine categories of potential QMs that territorial authorities are able to evaluate as to whether they are appropriate to make development less enabling than provided for in the MDRS and Policy 3. These potential QMs range from RMA s6 matters of national importance (such as the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development; and the management of significant risks from natural hazards) through to specific matters such as ensuring the safe or efficient operation of nationally significant infrastructure.
- [4] If the territorial authority is proposing to make an allowance for a qualifying matter, they must produce an evaluation report referred to in RMA section 32 which must, in addition to the matters in that section, consider the matters in subsections (3) and (4) of s77J as follows:
 - (3) The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter,—
 - (a) demonstrate why the territorial authority considers—
 - (i) that the area is subject to a qualifying matter; and
 - (ii) that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and
 - (b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and
 - (c) assess the costs and broader impacts of imposing those limits.
- [5] Section 77I(j) allows a council to also apply, as a QM, "any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied". Section 77L sets out addition requirements for evaluating those "other matter" QM contained in S77I(j).

_

¹ RMA sections 77O, 77P, 77Q and 77R

- [6] For completeness, section 77K sets out an alternative process for evaluating existing qualifying matters in an ODP.
- [7] PC 14 as notified contained some 31 QMs being a mixture of QM under section 77J, K and L. These QMs were all the subject to submissions; some in support, others in opposition. In addition, some submitters sought additional QM to be applied to development within the area covered by PC 14.
- [8] This Part of the Report evaluates those submissions which relate to QMs on a city wide basis. This covers 23 QMs. In addition it also evaluates QMs which were not part of PC 14 when notified but were requested to be added through submissions (i.e. Liquefaction and Earthquake Risk, Localised Stormwater and Flooding, Lyttleton Inland Port Noise)
- [9] Two other sections of the Report canvas QMs also being:
 - (a) Part 3 which includes on five QMs affecting the Central City and Centres zones (i.e. Cathedral Square Interface and Victoria Street Building Height, Central City Heritage Interface, Arts Centre Height and New Regent Street Height) and Radio Communications Pathway); and
 - (b) Part 4 which includes three QMs which impact the relevant residential zones (i.e. Sunlight Access, Christchurch International Airport Noise Influence Area and Low Public Transport Accessibility Areas – which related to Port Hills slope stability, Loess Soils and Stormwater).
- [10] This Part of the Report is structured so that each of the 23 City Wide QMs and those requested by submitters are evaluated against the relevant criteria in section 77. We have generally followed the order of QM specified in s77I starting with section 6 matters and ending with 77I(j) QM.
- [11] For each QM we generally adopt the following approach to our evaluation:
 - (a) Summary of Recommendations
 - (b) PC 14 as Notified
 - (c) Submissions and Section 42A Recommendations
 - (d) Issues
 - (e) Findings and Evaluation

[12] The level of analysis provided for each QM is commensurate with the degree of scrutiny received via the submission process and on the level of attention received at the hearing.

2. OUTSTANDING NATURAL LANDSCAPES AND SIGNIFICANT NATURAL FEATURES (ONL/ONF)

Summary of Recommendations

[13] The Panel recommends that:

(a) the existing ONL and ONF provisions and mapping in the ODP be accepted as a qualifying matter;

(b) no consequential amendments are required to be made; and

(c) the submission of Harvey Armstrong #244 be rejected.

PC 14 as Notified

[14] PC 14 as notified included the existing Chapter 9.2 provisions of the ODP, that are sought to be retained without amendment to either the provisions or the mapping. There are existing provisions that require resource consent approval for activities and buildings in order to protect the values of identified areas of outstanding natural features and landscapes.

[15] As set out in the Council legal submissions² and the Council evidence³ the ONL/ONF is an 'existing QM' that recognises and provides for a matter of national importance that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect the ONL and ONF values.

Submissions and Section 42A Recommendations

[16] The one submission in opposition from Harvey Armstrong #244.7 sought the removal of the ONL from the property at 75 Alderson Avenue, Hillsborough. No reasons were provided in the submission and the submitter did not attend or present any evidence in support of their submission to the hearing.

³ s42A Report of Anita Hansbury, 11 August 2023, at 6.20.4 to 6.20.6

² Council Legal submissions - City Wide Qualifying Matters, 11 October 2023, at 6.1 to 6.8

Findings and Evaluation

[17] The Panel accept that the ONL/ONF QM meets the evaluative requirements of s77I and s77K for a QM and is the most appropriate method for achieving the objectives of PC 14. For those reasons the Panel recommends that the existing ONL and ONF provisions and mapping in the ODP be accepted as a qualifying matter.

3. SITES OF ECOLOGICAL SIGNIFICANCE AND SIGNIFICANT INDIGENOUS VEGETATION (SES)

Summary of Recommendations

- [18] The Panel recommends that:
 - (a) the existing SES provisions and mapping in the ODP be accepted as a qualifying matter;
 - (b) no consequential amendments are required to be made; and
 - (c) the submission of Trudi Bishop#155 be rejected.

PC 14 as Notified

[19] The existing Chapter 9.1 provisions of the ODP are sought to be retained without amendment to either the provisions or the mapping.

Submissions and Section 42A Recommendations

- [20] As set out in the Council legal submissions⁴ and the Council evidence⁵ the SES is an 'existing QM' that recognises and provides for a matter of national importance that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect the SES values. There are existing provisions that require resource consent approval for activities and buildings in order to protect the values of 133 identified areas of ecological significance (such as indigenous vegetation clearance or plantation forestry).
- [21] The one submission seeking amendment from Trudi Bishop #155.3 sought that no further development be enabled adjacent to the Bowenvale Reserve. No reasons were

⁴ Council Legal submissions - City Wide Qualifying Matters, 11 October 2023, at 5.1 to 5.9

⁵ s42A Report of Anita Hansbury, 11 August 2023, at 6.20.2 to 6.20.6

provided in the submission and the submitter did not attend or present any evidence in support of their submission to the hearing. The evidence of Mr Head on behalf of the Council identified that there are signficant ecological values associated with the Bowenvale Reserve and surrounding area. Ms Hansbury confirmed that neither the Bowenvale Reserve nor the surrounding land is not included as an SES in the ODP, and that PC 14 does not propose to create a new SES for the area.

Findings and Evaluation

[22] The Panel accepts that the SES QM meets the evaluative requirements of s77I and s77K, for a QM and is the most appropirate method for achieving the objectives of PC 14. For those reasons, the Panel recommends that the existing SES provisions and mapping in the ODP be accepted as a qualifying matter.

4. SITES OF CULTURAL SIGNIFICANCE (SCS)

Summary of Recommendations

- [23] The Panel recommends that:
 - (a) the existing SCS provisions and mapping in the ODP be accepted as a qualifying matter;
 - (b) no consequential amendments are required to be made; and
 - (c) the submissions from Carter Group Limited #814 be rejected.

PC 14 as Notified

[24] The existing Sub-Chapter 9.5 provisions of the ODP are sought to be retained without amendment to either the provisions or the mapping.

Submissions and Section 42A Recommendations

[25] As set out in the Council legal submissions⁶ and the Council evidence⁷ the SCS is an 'existing QM' that recognises and provides for a number of matters of national importance that supports a less enabling application of MDRS and Policy 3 NPS-UD, in

10

⁶ Council Legal submissions - City Wide Qualifying Matters, 11 October 2023, at 7.1 to 7.8

⁷ s42A Report of Anita Hansbury, 11 August 2023, at 6.20.4 to 6.20.6

order to protect the values of wāhi tapu/wāhi taonga, ngā tūranga tūpuna, ngā wai and the Belfast Silent File. There are existing provisions that require resource consent approval for buildings in a wāhi tapu/wāhi taonga. In addition where an activity requires resource consent due to the relevant zone and/or district wide chapters and is identified as being within a site of Ngāi Tahu cultural significance, an assessment of the effect on the cultural values is required.

[26] The one submission seeking amendment from Carter Group Limited #814.245 sought that the overlay be removed from either side of Beachville Road, Redcliffs. While the submitter attended hearings on other matters, they did not attend or present any evidence in support of their submission on this matter to the hearing.

[27] Ms Hansbury confirmed that PC 14 does not propose any changes to the extent or provisions of SCS's in the ODP.

Findings and Evaluation

[28] The Panel accepts that the SCS QM meets the evaluative requirements of s77I and s77K for a QM and is the most appropriate method for achieving the object of PC 14. For those reasons, the Panel recommends that the existing SCS provisions and mapping in the ODP be accepted as a qualifying matter.

5. WATERBODY SETBACKS

Summary of Recommendations

[29] The Panel recommends that:

- (a) the existing water body setback provisions in the ODP be accepted as a qualifying matter:
- (b) the extent of the water body setback QM layer be removed from the planning maps;
- (c) the only site-specific consequential amendment is to remove the water body setback notation from the Summerset Group Holdings property at 147 Cavendish Road; and

(d) the submissions requesting the removal of the overlay and amendment of the QM are accepted in part.

PC 14 as Notified

[30] The existing Sub-Chapter 6.6 provisions of the ODP are sought to be retained without amendment to the provisions, but proposed to introduce a new water body setback overlay to the planning map to show where the provisions apply.

Submisssions and Section 42A Recommendations

- [31] As set out in the Council legal submissions⁸ and the Council evidence⁹ the waterbody setback provisions are an 'existing QM' that recognises and provides for a number of matters of national importance that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect the values of water bodies and their margins from inappropriate subdivision, use and development. With waterbody setbacks, resource consent approval is required for a range of activities (such as earthworks, impervious surfaces and fencing design).
- [32] There were submissions in opposition on this provision, ranging from removal of the setback and the proposed inclusion of a mapped water body set back overlay, to removing the proposed mapping of the water body setbacks. There were also a number of submissions in support of the provisions and the proposed mapping.
- [33] In response to submissions opposing the mapping of the waterways (including from Mr Langman on behalf of the Council as submitter #751), Ms Hansbury conceded that having regard to the inaccurate position and extent of some waterways on the maps they should be removed. The existing provisions allow for the ground truthing of the waterway and confirmation of the setback position, which has worked well. Ms Hansbury was of the opinion that this revised position also addressed a number of the site-specific submissions in opposition to the qualifying matter.
- [34] Summerset Group Holdings Limited #443 submitted that in relation to the property at 147 Cavendish Road the waterway no longer existed.

⁸ Council Legal submissions - City Wide Qualifying Matters, 11 October 2023, at 8.1 to 8.13

⁹ s42A Report of Anita Hansbury, 11 August 2023, at 6.19.1 to 6.19.17

Findings and Evaluation

- [35] The Panel concurs with Ms Hansbury that, due to the inaccuracies in the mapping of some waterways, the proposed new overlay should be removed from the planning maps. We understand from Ms Hansbury that the 'descriptive' approach to identifying the location and extent of water body setbacks has worked effectively up until now and therefore not including the proposed overlay will not have any consequences on the undertanding and usability of the ODP with regard to this provision.
- [36] The Panel also concurs with the legal submissions and the evidence from Ms Hansbury and Mr Langman (on behalf of Council as a submitter) that by removing the proposed water body setback overlay, the matters raised in site-specific submissions will be addressed.
- [37] With regard to the submission from Summerset Group Holdings for its property at 147 Cavendish Road, both Ms Hansbury and Ms Styles (planner for the submitter) agree that as the waterway no longer exists the blue line can be removed from the planning map. Ms Ratka (Council planner responsible for natural hazards) confirmed in her rebuttal evidence that both she and Mr Norton (Council's Senior Stomwater Planning Engineer) also agree with the removal of this QM from the property.¹⁰
- [38] Ms Hansbury confirmed that PC 14 does not propose any changes to the extent or provisions of SCS's in the ODP.
- [39] The Panel finds that the water body setback QM meets the evaluative requirements for a QM and with the changes recomended below is the most appropriate method for achieving the objective of PC 14. For those reasons, the Panel recommends that the QM approach is modified so that:
 - (a) the existing water body setback provisions in the ODP be accepted as a qualifying matter;
 - (b) the extent of the water body setback QM layer be removed from the planning maps; and
 - (c) The only site-specific consequential amendment is to remove the water body setback notation from the Summerset Group Holdings property at 147 Cavendish Road.

_

¹⁰ Rebuttal Evidence of Brittany Ratka, 9 October 2023, at 44

6. SLOPE INSTABILITY HAZARD AREAS

Summary of Recommendations

- [40] The Panel recommends that:
 - the existing slope instability area provisions and mapping in Chapter 5 of the ODP be accepted as a QM;
 - (b) no consequential amendments are required to be made; and
 - (c) the submissions are rejected.

PC 14 as Notified

[41] The existing Chapter 5.6.1 Activity status for Slope Instability Management Areas provisions of the ODP with respect to these slope instability natural hazards listed above (only) are sought to be retained without amendment to either the provisions or the mapping.

Submissions and Section 42A Recommendations

- [42] As set out in the Council legal submissions¹¹ and the Council evidence¹² the slope instability areas (ie Cliff Collapse Management Area 1, Cliff Collapse Management Area 2, Rockfall Managment Area 1 and Mass Movement Management Area 1) are 'existing QM' as a matter of national importance, that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to ensure inappropriate development does not occur within these natural hazard risk areas. Resource consent is required for a wide range of activities that could adversely affect slope stability or be adversely affected by slope instability (including subdivision, earthworks, hazard mitigation works, demolition of buildings).
- [43] Ms Rakta (relying on the evidence of Dr Dykstra, Principal Geotechnical Advisor) addressed the matters raised in submissions seeking amendments to the slope instability QM, being:
 - (a) Phil Elmey #231.1 adoption of the Building Code guidance for design of passive protection structures; and

¹¹ Council Legal submissions - City Wide Qualifying Matters, 11 October 2023, at 12.1 to 12.9

¹² s42A Report of Brittany Ratka, 11 August 2023, at 9.4.49 to 9.4.51

(b) Ruth Dyson #240.1 and Karen Theobald #368.1 – rockfall protection structure overlay.

Findings and Evaluation

- [44] None of the three submitters provided any additional evidence or appeared at the hearing. The Panel accepts the evidence of Ms Rakta and Dr Dysksta that the slope instability areas is a qualifying matter and that PC 14 does not propose any changes to the extent or provisions in the ODP.
- [45] The Panel accepts that the Slope Instability Hazard Areas meet the evaluative requirements for a QM and are the most appropriate method for achieving the objective of PC 14. For the those reasons, the Panel recommends that the existing slope instability area provisions and mapping in Chapter 5 of the ODP be accepted as a qualifying matter.

7. STORMWATER MANAGEMENT AND HIGH FLOOD HAZARD AREAS

Summary of Recommendations

- [46] The Panel recommends that:
 - (a) the High Flood Hazard Managment Area and Flood Ponding Management Area are accepted as QMs without change.
 - (b) the Upper Halswell River Catchment Stormwater and the Stormwater Flooding QM, requested by submissions not be accepted as a QM;
 - (c) no consequential amendments are required to be made; and
 - (d) the submissions seeking area specific stormwater related QMs are rejected.
- [47] The Panel notes that the submission by Canterbury Regional Council / Environment Canterbury #689 (Environment Canterbury) requesting a stormwater QM on Port Hills land is assessed as part of the Low Passenger Transport Accessibility Area QM.

PC 14 as Notified

- [48] The existing Chapter 5.4.5 Activities and earthworks in the Flood Ponding Management Area and 5.4.6 Activities in the High Flood Hazard Management Area and provisions of the ODP with respect to these high flood natural hazards are sought to be retained without amendment to either the provisions or the mapping. Submissions and s42A Recommendations.
- [49] As set out in the Council legal submissions¹³ and the Council evidence¹⁴ the high flood hazard areas (i.e. High Flood Hazard Managment Area and Flood Ponding Management Area) are 'existing QM' as a matter of national importance, that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to ensure inappropriate development does not occur within these natural hazard risk areas. Resource consent is required for activities that could have an adverse effect on ponding capacity or the effects from flooding (such as filling and excavation and building)
- [50] Ms Rakta sets out in her s42A report that there were no submissions opposing these QM's.

Specific Localised Flooding Areas

- [51] Ms Ratka discussed the submissions that sought additional controls or QM's in relation to stormwater and/or flooding. These submissions related to specific localised areas and a number of lay submitters addressed the Panel in relation to the specific nature of the stormwater/flooding issues in their respective areas. There were a range of stormwater/flooding factors discussed with the Panel, including areas that had:
 - (a) subsided following the Canterbury earthquakes,
 - (b) been subject to recent residential intensification.
 - (c) 'under capacity' or private stormwater systems, or
 - (d) a mixture of the above factors.
- [52] Ms Ratka concluded in her s42A report that including a 'Stormwater Flooding QM' as an 'other matter' under s77I(j) of the RMA (ie it does not fall to be considered as a matter

¹³ Council Legal submissions - City Wide Qualifying Matters, 11 October 2023, at 13.1 to 13.12

¹⁴ s42A Report of Brittany Ratka, 11 August 2023, at 9.4.1 to 9.4.8 and 9.4.10 to 9.4.40 and Statement of Evidence of Brian Norton, 11 August 2023

of national importance under s6(f) of the RMA) would require a comprehensive assessment to be undertaken in accordance with s77J. As set out in the evidence of Mr Norton (Senior Planning Engineer), the Council does not have the technical information and analysis to support the development of a 'Stormwater Flooding QM'. Accordingly, Ms Ratka's opinion was that progressing such a QM cannot be supported.

[53] In addition, both Ms Ratka and Mr Norton advised that Council is in the process of developing Plan Change 17, which will address the management of land use, development and subdivision with respect to stormwater flooding issues. Plan Change 17 will take into account technical and infrastructure development information, and information that will be provided through the statutory and community consultation process.

Findings and Evaluation

[54] The Panel agrees with the conclusions of Ms Ratka and Mr Norton that a 'Stormwater Flooding QM' cannot be supported. Accordingly, no change to PC 14 is recommended in relation to this matter.

<u>Upper Halswell River Catchment Stormwater</u>

[55] The submission from ECan with respect to the inclusion of a QM to manage stormwater and flooding from the Upper Halswell River catchment, was supported by technical evidence from Mr Surman (Senior River Engineer, Environment Canterbury), and planning evidence from Ms Buddle (Senior Planner, Environment Canterbury) that included supporting s32AA and s77 assessments. Ms Ratka and Mr Norton addressed these matters in their statements of evidence and in their rebuttal evidence.¹⁵

[56] Ms Buddle provided plans of the approximate boundary of the Halswell River Catchment overlain over the zoning maps on Figures 2 and 3 in Appendix 1 to her evidence. Those maps, in addition to her evidence, were helpful to the Panel in its consideration of the conflicting technical and planning evidence between the Council position (adding a QM is unnecessary at this stage) and the Environment Canterbury position (there are specific characteristics that make the MDRS level of development inappropriate).

¹⁵ Rebuttal Evidence of Brittany Ratka, 9 October 2023 at 50 to 54

¹⁶ Rebuttal Evidence of Brian Norton, 9 October 2023 at 9 to 25

- [57] The Panel noted that there was general agreement on the technical stormwater matters between Mr Surman and Mr Norton. The main outstanding matter being the extent to which the release of stormwater from the Upper Halswell Catchment can prolong drainage times for low-lying land near the lower reaches of the Halswell River and what are the affects of that.
- [58] In considering this matter, the Panel noted the following context factors:
 - (a) Part of the Upper Halswell River Catchment is proposed by Council to be included within the proposed Port Hills Stormwater Constraints QM. This matter is discussed in the Residential Zones section of this recommendation report (refer to Part 4 of this Report which recommended that the QM be rejected;
 - (b) Large portions of land zoned for residential purposes has recently be subdivided and developed in accordance with the Residential Suburban, Residential Medium and Residential New Neighbourhood zone provisions (such as areas to the south of Halwsell Junction Road, including Knights Stream and Seven Oaks; between Quaifes Road and Sabys Road; between SH75, Glovers Road and Kennedy's Bush Road; and Quarry View between Cashmere Road and Sutherlands Road). It is noted that each of these areas have stormwater drainage reserves to manage stormwater (such as Quarry View, Creamery Pond, Cox's Quaifes and Knights Stream/Richmond). Accordingly, stormwater effects from these and any other areas still to be developed have been taken into account. Given this recent development of subdivisions, the potential for MDRS development to occur is limited. It is accepted that the older parts of the area in the Aidanfield area may be subject to residential intensification over time; and
 - (c) Council needs to comply with the recently granted Comprehensive Stormwater Network Discharge Consent (CSNDC), which amongst other conditions, specifies the quality of and the manner in which stormwater is to be discharged from the Upper Halswell Catchment. These conditions will have been set to address any adverse effects on land alongside the lower reaches of the Halswell River. As noted in Mr Norton's rebuttal evidence¹⁷ Council will need to monitor stormwater from this catchment and in due course either seek to change/vary the conditions of the CSNDC or propose a change to the district plan to introduce rules requiring some combination of controlled impervious surface and/or use of low impact design.

_

¹⁷ Re<u>buttal Evidence of Brian Norton, 9 October 2023</u>, at 20 and 23

[59] For the above reasons, and that the comprehensive evidential basis needed to support an 'other' qualifying matter, 18 (as required by s77I(j) and s77L of the RMA) has not undertaken, the Panel recommends that an Upper Halswell River Catchment Stormwater not be accepted as a qualifying matter:

8. LIQUEFACTION AND 'OTHER EARTHQUAKE' RISKS

Summary of Recommendations

- [60] The Panel recommends that:
 - (a) a liquefaction and 'other earthquake risk' not be accepted as a QM;
 - (b) no consequential amendments are required to be made; and
 - (c) the submissions seeking liqufaction and earthquake related QMs are rejected

PC 14 as Notified

[61] As notified there was no liquefaction or 'other earthquake' risk QM.

Submissions and Section 42A Recommendations

- [62] Ms Ratka discussed the submissions that sought additional controls or QM's in relation to liquefaction and other earthquake risk¹⁹. Relying on the technical evidence from Dr Dykstra, she concludes that a significant amount of further work would be needed to provide the comprehensive and detailed assessment necessary to support such QMs.
- [63] A number of the submitters listed in Ms Ratka's s42A report addressed the Panel with respect to the ongoing recovery following the 2010-2011 earthquake sequence and the consequences of earthquakes resulting from the Alpine Fault and the Hikurangi Subduction Zone. These matters are discussed and concluded in Part 1 of this Report, and accordingly are not considered further here.
- [64] Ms Ratka sets out the work that has been undertaken by Dr Dykstra to date and the significant amount of additional work that would be required to develop liquefaction assessment into three levels of risk to replace the existing liquefaction provisions in the

¹⁸ Rebuttal Evidence of Brittany Ratka, 9 October 2023 at 54

^{19 &}lt;u>s42A Report of Brittany Ratka, 11 August 2023, at 9.4.41 to 9.4.48</u>

District Plan. She also notes that the matter of liquefaction resulting from earthquakes is not "PC 14 specific", but relates to all other forms of development across the City.

Findings and Evaluation

[65] The Panel concurs with her conclusion that "including a QM addressing liquefaction and earthquake risk would likely be considered an 'other matter' requiring a comprehensive and detailed assessment"²⁰, (as required by s77I(j) and s77L of the RMA) which has not undertaken. Accordingly, the Panel recommends that a liquefaction and 'other earthquake risk' not be accepted as a qualifying matter.

9. COASTAL HAZARDS (INCLUDING TSUNAMI)

Summary of Recommendations

[66] The Panel recommends that:

- (a) the 'Coastal Hazard Management Area' (CHMA) and 'Tsunami Managment Area'(TMA) provisions and mapping be accepted as a QM;
- (b) the application of the Tsunami Management Area mapping and the resulting zonings be undertaken as set out below;
 - (i) apply the TMA only to those properties that are inundated to depths of 0.3m or greater;
 - (ii) apply a 'smoothing' to the 15m grid to remove triangles of TMA thereby producing a contour rather than a 'zig zag' edge;
 - (iii) those Residential zoned properties fully covered by a TMA depth of 0.3m or greater, retain the Residential zoning of the ODP;
 - (iv) those Residential properties covered by a TMA depth of 0.3m or greater over 30% or less of the property are zoned MRZ; and
 - (v) those Commercial and Industrial zoned properties fully covered or covered over 30% or more by a TMA depth of 0.3m or greater, retain the Commercial and Industrial zoning of the ODP.

-

²⁰ s42A Report of Brittany Ratka, 11 August 2023, at 9.4.47

- (c) policies (5.2.2.5, 5.2.2.5.1 and 5.2.2.5.2), rules (5.4A) and definition of 'Residential intensification' as shown in the Panel's recommended provisions in Appendix G be accepted.
- [67] The submissions in support of the CHMA and TMA QM be accepted in part and those opposed are rejected.

Notified Provisions

[68] PC 14 seeks to introduce coastal hazard management as a new section 6(h) RMA matter of national importance as a qualifying matter to restrict the intensity of residential development to less than that enabled by MDRS and Policy 3 of the NPS-UD. A new policy, new rules and new mapping are proposed with respect to coastal hazard (medium and high risk areas) and tsunami hazards. These provisions would manage the construction and replacement of buildings and accessory buildings, earthworks and stormwater management.

Submissions and Section 42A Recommendations

- [69] As set out in the Council legal submissions²¹ and the Council evidence²² the Coastal Hazard High Risk Management Areas, the Coastal Hazards Medium Risk Management Area (together the 'CHMA') and the Tsunami Management Area ('TMA') are proposed as new qualifying matters as they primarily relate to the management of significant risks from natural hazards (s6(h) RMA) and give effect to the New Zealand Coastal Policy Statment 2010 (particularly Policy 25 Subdivision, use, and development in areas of coastal hazard risk) and secondarily to giving effect to various relevant provisions of the Canterbury Regional Policy Statement relating to coastal hazards. The proposed CHMA and TMA apply to both residential and business zones.
- [70] Submissions raised concern as to the application of the CHMA and TMA generally at the zone level²³ through to individual properties²⁴. This has resulted in the amended position by Council and the recommendations set out below.

²¹ Council Legal submissions - City Wide Qualifying Matters and Financial Contributions, 8 April 2024, at 4.1 to 4.10)
²² <u>s42A Report of Sarah Oliver, 11 August 2023</u>, at 13.1 to 13.44

²³ For example South Shore Residents Association #380, Transpower #878 and The Fuel Companies #212, refer to Ibid at paragraphs 13.10 to 13.13

²⁴ For example KI Commercial Limited #694, Heather Woods #107 and Ebin Scaria Jose #1034, refer to Ibid at paragraphs 13.24 and 13.41 to 13.43

- [71] The submissions from Kāinga Ora Homes and Communities #834 (Kāinga Ora) and Otauhtahi Community Housing Trust #877 sought that the CHMA and TMA information be held outside the District Plan. However, neither submitter brought evidence to the hearing in suppport of their submissions and these submissions are recommended to be rejected.
- [72] Other submitters raised more general concerns regarding the application of the proposed policies and rules on pre-existing development rights²⁵ and that residential intensification not be unduly restricted²⁶. As set out below in the amended Council position and the Panel recommendations, the provisions have been amended to address this matter.
- [73] The approach to managing coastal hazards originally proposed in the notified version of PC 14, has been amended by Council as set out in its legal submissions²⁷ and the Reply.²⁸ This was in response to submissions (including from Southshore Residents Association), the *Waikanae* Environment Court decision and the imminent introduction of the coastal hazards provisions plan change (Plan Change 12). In summary the provisions applying to the coastal hazards qualifying matter are now proposed as follows:
 - (a) the spatial extents of the CHMA and TMA only apply to the relevant residential and business zones;
 - (b) the RS and RSDT zones continue to apply where the CHMA and TMA spatial extents (ie there is no 'upzoning');
 - (c) rules only manage development that results in a residential density greater than that provided for under the ODP;
 - (d) amend the activity status for 'Residential intensification' beyond that enabled as permitted and controlled activity to be non-complying in the RS and RSDT zones. The introduction of a definition of 'Residential intensification' to apply to policies and rules clarifies that it only relates to increasing the number of residential units on a site;

²⁵ For example South Shore Residents Association #380, Transpower #878 and The Fuel Companies #212, refer to Ibid at paragraphs 13.11 to 13.13

²⁶ For example North Beach Residents Association #739, refer to Ibid at paragraph 13.20

²⁷ Council Legal submissions - City Wide Qualifying Matters and Financial Contributions, 8 April 2024 at 4.7 and 4.8

²⁸ Council Reply, 17 May 2024 at 13.4

(e) within the RMD and MRZ and commercial zones the status quo provisions of the ODP apply within the CHMA and TMA spatial extents.

Findings and Evaluation

CHMA Hazards

- [74] The Panel is satisfied that Council has responded correctly to the CHMA hazards, in that the approach represents an 'interim' position with respect to MDRS and Policy 3 intensification enablement. This will allow the comprehensive development, consideration and consultation on all coastal hazard provisions and mapping through Plan Change 12 and the regular Schedule 1 of the RMA process.
- [75] We are satisfied that the proposed alternative gives effect to the higher order policy directions of the New Zealand Coastal Policy Statement (NZCPS), NPS-UD and the Canterbury Regional Policy Statement (CRPS). We have concluded that the outcome is most appropriate having considered the s32 Report and further evidence and evaluation undertaken by the Council, satisfies us of the requirements of s32AA.

TMA Hazards

- [76] Two issues were raised by submitters with respect to TMA hazards, being:
 - (a) the appropriate tsunami return event; and
 - (b) the relevance to residential planning purposes of evacuation planning.
- [77] The spatial extent of the TMA is related to the risk of an event over at least the next 100 years (as required by NZCPS Policy 25). The technical evidence of Dr Lane on behalf Council as to the probability of an area being affected by a 100, 500 or 1000 tsunami event was not challenged by any submitter technical evidence. Mr Joll gave planning evidence on behalf of Kāinga Ora and in response to questions from the Panel agreed that he had conflated the management of 1:100 year events with the requirement in Policy 25 to consider potential coastal hazards over the next 100 years.
- [78] The consideration of the most appropriate tsunami event to apply with regard to continuing to enable residential development is discussed in the Council Reply. It concludes that the 1:500 tsunami event profile is the most appropriate to enable status

quo residential development, but not to avoid development altogether.²⁹ The Panel considers that the 1:500 tsunami event approach accords with the 'avoid increasing the risk' and 'avoid redevelopment, or change in land use' directives in NZCPS Policy 25(a) and (b) and the 'avoid from unacceptable risk' Policy 11.3.5 of the CRPS.

[79] The suitability of applying the TMA to residential planning purposes was raised by submitters including Kāinga Ora and Southshore Residents Association. Those submitters agreed that the TMA mapping is a valuable tool in the preparation of evacuation planning. However, its use in managing urban development was questioned by submitters. Comparisons were made with the approach to planning for other known but rare and large events (such as the Alpine Fault), where the primary response is a civil defence one.

[80] In giving effect to the policy direction in both the NZCPS and the CRPS to avoid increasing the risk from coastal hazards, the amended approach set out the Council Reply is appropriate. This is particularly so when the application of the TMA provisions are seen as an 'interim' measure pending the development of Plan Change 12, where issues relating to pre-existing and future development provisions can be considered in amongst the wide range of matters, options and evaluations that are required under section 32 of the RMA.

[81] We are satisifed that the proposed alternative gives effect to the higher order policy directives of the NZCPS, NPS-UD and the CRPS. We have concluded that the outcome is most appropriate having considered the s32 Report and further evidence and evaluation undertaken by the Council, satisfies us of the requirements of s32AA.

Coastal Hazard and Tsunami Risk Provisions and Zoning

[82] The Council Reply provided a suite of policies (5.2.2.5.1 and 5.2.2.5.2), rules (5.4A) and definition of 'Residential intensification', in addition to the proposed zoning within the respective areas, to give effect to the amended approach³⁰. These amended provisions are concurred with.

[83] In addition to these provisions, three options were provided to the Panel to address the issue of where the application of the CHMA and TMA and the underlying zoning resulted in only part of a property being impacted.³¹

Council Reply, 17 May 2024, at 13.5 to 13.22
 Council Reply, 17 May 2024, at 13.27 and Attachment 2

³¹ Ibid at 13.28 to 13.30 and Attachment 7

[84] The Panel prefers Option 3 – *Provide Zoning Criteria to be Applied* as it provides the complete package of provisions and the geographic extent that the provisions apply to, thereby providing a comprehensive recommendation from the Panel to Council as is required by the delegation to the Panel.

[85] Option 3 included a proposal to apply the criteria and apply the zoning solution by the end of August 2024 with the Panel having two weeks to provide a recommendation to Council on the underlying zoning. The Council's attention is drawn to Minute 46³² issued by the Panel on 22 April 2024 that sets out the Panel's directions with respect to technical mapping changes. These directions apply to the mapping of the TMA.

[86] The Panel accepts that the CHMA and TMA QM meet the evaluative requirements for a QM and the provisions, as amended in the Council's Reply are the most approprate method for achieving the objective of PC 14. For those reasons, the Panel recommends that:

(a) the 'Coastal Hazard Management Area' and 'Tsunami Managment Area' provisions and mapping be accepted as QMs;

(b) the application of the Tsunami Management Area mapping and the resulting zonings be undertaken as set out above;

(c) policies (5.2.2.5, 5.2.2.5.1 and 5.2.2.5.2), rules (5.4A) and definition of 'Residential intensification' as shown in the Panel's recommended provisions in Part 8 Appendix G be accepted.

10. HERITAGE ITEMS, SETTINGS AND ASSOCIATED PROVISIONS

Summary of Recommendations

[87] The Panel recommends that:

(a) New heritage items and settings proposed in PC 14 or sought in submissions should be rejected as a QM because they:

(i) have not been sufficiently justified by the Council in terms of s77J of the RMA;

.

³² IHP Minute 46, 22 April 2024

- (ii) limit development capacity in the areas concerned; and
- (iii) would therefore introduce restrictions or limitations on the *status quo* under the ODP beyond the mandatory requirements of an IPI;
- (b) While the Panel recommended the new items and settings are rejected out on scope grounds, on merit grounds the newly proposed items and settings – both as notified and as further recommended by Council in response to certain submissions – would otherwise be appropriate in light of the Council's uncontested evidence.
- (c) Submissions seeking the removal of the following items and settings should be removed are accepted;
 - (i) 471 Ferry Road;
 - (ii) 137 Cambridge Terrace;
 - (iii) 40 Norwich Quay; and
 - (iv) 136 Barbadoes Street.
 - (v) 32 Armagh Street;
 - (vi) 65 Riccarton Road;
- (d) Submissions seeking amendment to the listings in the schedule for the following items and settings are accepted or accepted in part:
 - (i) item 107 at Cathedral Square;
 - (ii) items 452, 453 and associated setting at 165 Racecourse Road;
 - (iii) setting 423 at 27 Glandovey Road;
 - (iv) setting at 32 New Regent Street; and
 - (v) item and setting at 135 High Street
- (e) Submissions seeking the removal of the following items and settings are rejected:
 - (i) 265 Riccarton Road

- (ii) 9 Daresbury Lane;
- (iii) 59 Hansons Lane; and
- (iv) 181 High Street.
- (f) The ODP provisions, including policies, rules and definitions, should be retained in preference to the PC 14 notified and reply version of provisions, noting that in many cases the proposed new provisions introduce restrictions or limitations on the *status quo* under the ODP beyond the mandatory requirements of an IPI and are better resolved through the parallel PC 13 process.
- [88] We have not captured in our findings above the proposed elevation in significance ascribed in PC 14 to certain items, principally because there were no submissions on those changes nor were the changes discussed during the hearing. However, the Panel record here that our findings above as to scope in relation to *new* listings are transferable to those proposed elevated significance ratings. Accordingly, the Panel recommend that the ODP significance be retained for all remaining items in the schedule of historic heritage and recommend that the elevated significance proposed by PC 14 be removed.
- [89] Our findings and recommendations with respect to new heritage items and settings as a QM, in terms of available scope, have been reached by applying our findings in Part 1 of our Report. The Panel has reached the above findings and recommendations on this topic, with reference to separate evaluations on both 'scope' and 'merits'. The Panel concludes with some comments relating to 'process' and its section 32AA evaluation for the recommended changes.

PC 14 as Notified

- [90] Our initial focus here is to outline the ODP approach to the scheduling of historic heritage items and settings, the provisions that apply to those features and the notified amendments to both under PC 14.
- [91] The ODP includes a schedule of significant heritage items and settings in Appendix 9.3.7.2. The schedule is extensive, with several hundred individual listings being included. It records related factual information such as the item or setting's address, suburb, name and planning map reference. The schedule also ascribes unique number identifiers for each item and each setting and an overall Group 1 or Group 2 significance.

This significance rating has relevance for attendant policy direction and regulatory status for various activities under the ODP.

- [92] PC 14 as notified proposes to add 19 items to the schedule, as well as 26 heritage interiors³³. As advised by Ms Richmond, author of the s42A report, the new items have been assessed as meeting relative criteria for protection since the previous District Plan Review was completed. She advised also that the scheduling of these items is supported by the relevant owners.³⁴
- [93] PC 14 also proposes the following additional amendments to various entries in the heritage schedule:
 - (a) deletion of items that have been demolished or have unimplemented resource consent for demolition;
 - (b) elevation of significance for various items from 'significant' (Group 2) to 'highly significant' (Group 1); and
 - (c) amendment to the 'Heritage Aerial Maps' in Appendix 9.3.7.7 of the Plan for various listings in response to subdivisions, partial demolition or other drivers for change.³⁵
- [94] Working in conjunction with the heritage schedule, the primary section of the ODP dedicated to heritage provisions is sub-chapter 9.3. It adopts the common format used in the ODP, being organised to sequentially set out an introduction, objectives and policies, rules and appendices. Sub-chapter 9.3 also makes frequent usage of terms which have specific definitions in Chapter 2.
- [95] There is one objective in sub-chapter 9.3, which states:

9.3.2.1.1 Objective - Historic heritage

- a. The overall contribution of historic heritage to the Christchurch District's character and identity is maintained through the protection and conservation of significant historic heritage across the Christchurch District in a way which:
 - i. enables and supports:
 - A. the ongoing retention, use and adaptive re-use; and
 - B. the maintenance, repair, upgrade, restoration and reconstruction; of historic heritage; and

³³ The Panel note that Plan Change 13 also included these same items and interiors, plus an additional 25 items outside the urban area

^{34 242}A Report of Suzanne Richmond, 11 August 2023, at 6.1.3

^{35 &}lt;u>s42A Report of Suzanne Richmond, 11 August 2023</u>, at 6.1.5 – 6.1.6

- ii. recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them; and
- iii. acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.
- [96] The objective is implemented principally through 11 policies with variable focus on relevant matters, including identification and assessment of historic heritage, and direction as to how subdivision, use and development is to be managed in relevant heritage contexts. Those policies are then implemented by various rules as is commonly adopted throughout the ODP.
- [97] PC 14 does not propose any amendments to the objective, but it does propose amendments to the policies, rules and related definitions.
- [98] Ms Richmond summarised the policy amendments under PC 14 as follows:
 - (a) wording changes are proposed to five of the policies in sub-chapter 9.3 to provide 'a clearer context and policy direction for the reviewed rules';
 - (b) amendments to Policy 9.3.2.2.3 introduce more explicitly the consideration of retaining the level of significance of heritage items through use and development;
 - (c) refinement to the way assessments are structured under Policy 9.3.2.2.8 when considering demolition proposals such that express consideration is given to whether heritage items would meet criteria for scheduling following works that would otherwise be required to retain or repair the item; and
 - (d) introducing the need to maintain or enhance access to heritage items as a relevant consideration for proposals involving ongoing or adaptive re-use of heritage items and settings.³⁶
- [99] The rule changes under PC 14 are more extensive. Ms Richmond described the overarching intent of revisions being for improved simplicity, clarity and workability³⁷. Such refinements include the aggregating of similar activities into combined rules subject to common standards and modifying relevant assessment matters.
- [100] In addition to those 'housekeeping' changes, PC 14 includes more substantive rule changes which have the overall effect of increasing regulatory stringency. For example:

-

³⁶ s42A Report of Suzanne Richmond, 11 August 2023, at 6.1.8 – 6.1.9

³⁷ Ibid at 6.1.10

- (a) works to heritage buildings under the Building Code are excluded from 'Heritage Upgrade Works' but the default status where permitted activity conditions are not met is changed from controlled activity to restricted discretionary status;
- (b) similar changes from controlled to restricted discretionary activity status are proposed for 'reconstruction' and 'restoration' activities where permitted standards are not met;
- (c) non-notification clauses are deleted for various activities which fall as restricted discretionary activities (RDA) for non-compliance with permitted activity standards
 though other activities such as maintenance, repair and works above underground heritage retain non-notification clauses; and
- (d) new, amended or additional standards have been proposed for certain permitted activities such as repair and temporary / investigative works, earthworks, temporary buildings, service systems and tree removal.³⁸
- [101] PC 14 also amends several of the definitions used in sub-Chapter 9.3, including: 'Alteration of a heritage item'; 'Demolition'; 'Heritage fabric'; 'Heritage item'; 'Heritage professional'; 'Heritage setting'; 'Heritage upgrade; 'Heritage value'; 'Reconstruction'; 'Relocation of a heritage item'; 'Repairs'; and 'Restoration'.

Submissions and Section 42A Report Recommendations

[102] The Council received 53 submissions in relation to Heritage Items, settings and associated provisions, collectively requesting 196 separate decisions. Of those 196 decisions requested: 46 expressed support for PC 14 for the notified scheduled items, settings or associated provisions; 71 expressed support subject to conditions or concerns being addressed; and 79 were in opposition to numerous heritage-related aspects of the plan change.

[103] In addition to the above, the Council received several submissions seeking the removal of existing heritage items from the ODP schedule of historic heritage at Appendix 9.3.7.2.

[104] In her s42A Report, Ms Richmond addressed submissions within the following topics:

³⁸ <u>s42A Report of Suzanne Richmond, 11 August 2023</u>, at 6.1.11 – 6.1.18

- (a) support for protection of heritage items or heritage items as a QM (including requests for the inclusion of additional heritage items and additional settings to the schedule);
- (b) opposition to the protection of *new* heritage items;
- (c) removing protection for existing heritage items;
- (d) changes to protection afforded to heritage items and settings;
- (e) support for proposed heritage provisions;
- (f) opposition or amendments to heritage provisions; and
- (g) other heritage-related matters.
- [105] Ms Richmond generally recommended the acceptance of those submissions in support of the plan change though that recommendation generally did not extend to submissions who sought that PC 14 go further in its protection of historic heritage, for example by identifying further additional items and settings to be included in Appendix 9.3.7.2. She also recommended the rejection of submissions in opposition to newly listed items under the plan change and, in all but a few instances, and the rejection of submissions in opposition to or seeking major changes to the proposed changes to policies, rules and other methods relating to historic heritage.
- [106] In response to submissions seeking removal of existing items from the historic heritage schedule or amendments to items and settings, Ms Richmond's recommendations were in support of some but not others. Her view also evolved on these matters over the course of the hearing as the Panel discuss in detail below.

Contested issues resolved before or at the hearing

- [107] Here the Panel summarise amendments sought by submissions which were supported by the Council either in Ms Richmond's s42A report, or subsequently in supplementary evidence or legal submissions. For some of these matters, the amendments have been supported by extensive expert evidence presented at the hearing.
- [108] Given the consensus reached, the Panel have not provided a lengthy summary of that material; however we do record some cogent aspects of that evidence which lend particular support to the agreed outcomes.

- [109] Moreover, there was some commonality between the substance of evidence underpinning these agreed matters and similar matters which remained in contention at the close of the hearing. Accordingly, it is useful for our subsequent evaluation of those contested matters to establish various evidential reference points to draw on here.
- [110] Notwithstanding the further detail the Panel, as set out below, are satisfied that the evidence before us on these matters supports the agreed outcomes.
- [111] Against that backdrop, the resolved matters include:
 - (a) deletion of the listed item and setting from the schedule in Appendix 9.3.7.2 for the following properties:
 - (i) 471 Ferry Road;
 - (ii) 137 Cambridge Terrace;
 - (iii) 40 Norwich Quay; and
 - (iv) 136 Barbadoes Street.
 - (b) amendment to the listings in the schedule for the following:
 - (i) item 107 at Cathedral Square;
 - (ii) items 452, 453 and associated setting at 165 Racecourse Road;
 - (iii) setting 423 at 27 Glandovey Road;
 - (iv) setting at 32 New Regent Street; and
 - (v) item and setting at 135 High Street.
- [112] We discuss each of these in turn below.

471 Ferry Road

[113] There was no evidence presented on this matter by the relevant submitter, but it was addressed in the Council's evidence from Mr Wright, Mr Holmes, Ms Caponi and Ms Richmond. Our understanding of their combined view is that the scheduled dwelling continues to meet the significance threshold for a heritage item and could be repaired

and strengthened such that it continues to meet that threshold without compromising the integrity of the item.

[114] Importantly, while the Council experts did not consider that the scheduling exemption under Policy 9.3.2.2.1.c.iv for engineering matters is applicable, Ms Richmond reached the view that the financial limb of the policy is relevant and determinative.

[115] Mr Wright's evidence indicated an overall cost shortfall for repairs of at least \$545,000 once insurance cover and limited heritage funding assistance are taken into account. Together, he and Ms Richmond considered that amount to be "unreasonable or inappropriate" in the context of Policy 9.3.2.2.1, noting it is significant in the context of the modest scale of building, site and location with limited opportunities for adaptive reuse.³⁹

[116] We accept the Council's evidence on this matter and recommend that the entry for 471 Ferry Road is removed from the schedule in Appendix 9.3.7.2 of the Plan. The corresponding notation on the planning maps and the heritage aerial maps should also be removed as a consequence.

137 Cambridge Terrace

[117] The initial view of the Council's experts as recorded in Ms Richmond's s42A Report was that the Harley Chambers building at 137 Cambridge Terrace should retain its entry in the schedule of historic heritage. Despite being an earthquake prone building, the Council's experts collectively deemed that it currently meets the significance threshold and can be repaired and strengthened so that it continues to meet that threshold in a manner that does not trigger the reasonableness exemption on engineering grounds under Policy 9.3.2.2.1. Drawing on the evidence of Mr Stanely, Ms Richmond's initial view was that the financial implications of strengthening and restoring the building *may* be unreasonable, subject to any evidence presented by the submitter; however, her recommendation at the time was that the submission seeking the removal of the item from the schedule be rejected.⁴⁰

[118] The relevant submitter – Cambridge 137 Limited #1092 – called extensive evidence from the following experts:

(a) Brett Gilmore, structural engineer;

³⁹ s42A Report of Suzanne Richmond, 11 August 2023 at 8.1.60 – 8.1.61

⁴⁰ s42A Report of Suzanne Richmond, 11 August 2023 at 8.1.54 – 8.1.57

- (b) Hayden Doody, valuer;
- (c) Brett Gerrard, insurance advisor;
- (d) Keeley Pomeroy, quantity surveyor;
- (e) John Brown, heritage advisor; and
- (f) Matt Bonis, planner.
- [119] The submitter did not contest the Council's evidence as it related to the heritage significance of the building⁴¹; however, the combined evidence of Messrs Gilmore, Doody and Pomeroy painted a different picture of relevant economic issues compared to the Council's corresponding experts.
- [120] Mr Bonis' evidence⁴² provided a helpful summary of those expert inputs along with Mr Gerrard's contribution to support the submitter's contention that the financial implications for retention are unreasonable, inappropriate and would involve necessary repairs that would diminish the heritage values of the building to a substantial extent. The Panel can further condense the germane aspects of Mr Bonis' precis as follows:
 - (a) the building has been untenanted since the Canterbury earthquakes and its assessed seismic rating of 15% NBS as agreed between by the Council classifies it as *earthquake prone* under s133AB of the Building Act 2004;
 - (b) the repair strategy outlined by Mr Pomeroy to options achieving either 34%, 67% and 100% NBS would require *substantial removal and reduction of heritage fabric*, with *associated repair costs* totalling \$19.4M, \$25.4M and \$27.8M, respectively;
 - (c) the cost of an option involving heritage façade retention only plus new build at 100% NBS was estimated by Mr Pomeroy at \$20.8M, while a modern equivalent 3-level building is estimated at \$13.6M;
 - (d) in post-construction value terms, Mr Doody's evidence was that the 100% NBS option would result in a likely building value of \$13.5M, whilst the 67% NBS option compares at \$13.2M and no assessment of the 34% NBS option was provided due to Mr Doody and Ms Ohs' agreement that such an option is unacceptable to the market; and

⁴¹ Statement of Evidence of Matthew Bonis on behalf of Cambridge 137 Limited, 20 September 2023 at 15

⁴² Statement of Evidence of Matthew Bonis on behalf of Cambridge 137 Limited, 20 September 2023 at 37 - 52

the corresponding loss in value for each of the options assessed was deemed by (e) Mr Doody to be uneconomic from a commercial pragmatic feasibility perspective, with the respective losses for the 67%NBS, 100% NBS and façade retention + 100% NBS options running to \$14.715M, \$16.955M and \$9.795M respectively.

[121] Ms Richmond reconsidered her initial view in light of the above evidence and ultimately shared the conclusion of Mr Bonis that retention of the building on the schedule of historic heritage is not supported due to unreasonable costs. Ms Richmond noted that even if Mr Doody's estimates for the various repair options are conservative that the investment required to reinstate the building would exceed the valuation of the repaired building by 'a significant margin'.43

[122] Like Ms Richmond, the Panel found the evidence called by the submitter on this matter to be compelling and supportive of the shared conclusions reached by Mr Bonis and Ms Richmond that the building be de-listed.

[123] For the above reasons, the Panel recommend that the entry for 137 Cambridge Terrace be removed from the schedule at Appendix 9.3.7.2 of the Plan. The corresponding notation on the planning maps and the heritage aerial maps should also be removed as a consequence.

40 Norwich Quay

[124] Like the Harley Chambers building, the Council's recommendation regarding the Mitre Hotel at 40 Norwich Quay changed after the s42A Reports. Initially, Ms Richmond recommended that the submission from Mitre Hotel Holdings Ltd seeking the deletion of the item and setting from the schedule of historic heritage be rejected.44

[125] Subsequently, Mr Ryan advised in his opening legal submissions⁴⁵ that the building was demolished in response to Dangerous and Insanitary Building notices issued by the Council under the Building Act 2004. As the building has been demolished, the Council no longer opposes the removal of the building from the schedule.

[126] It follows that with the building being demolished, it should no longer be recognised in the schedule at Appendix 9.3.7.2 of the Plan. The Panel accordingly recommend that deletion along with a consequential deletion of its setting, planning map notation and heritage aerial map.

 ⁴³ s42A Report of Suzanne Richmond, 11 August 2023, at 8.1.60 – 8.1.61
 44 s42A Report of Suzanne Richmond, 11 August 2023, at p.51

Legal Submissions of Council, Other Zones, Subdivision and Other Matters, 16 November 2024

136 Barbadoes Street

[127] The item in question at this site is the now demolished Cathedral of the Blessed Sacrament. While the item was removed from the schedule at Appendix 9.3.7.2 as notified, there was an error on the Council's interactive online maps which continued to show the item notation. This prompted the submission from The Catholic Diocese of Christchurch #823 seeking the removal of the map notation.

[128] Ms Richmond identified this as a technical oversight, and recommended the submissions be accepted without any need for detailed evaluation⁴⁶. The Panel accept her recommendation for those reasons and further add the consequential deletion of the relevant notation on the planning maps and the heritage aerial map.

Item 107 at Cathedral Square

[129] Item 107 in the schedule of historic heritage marks the Citizens' War memorial. Heritage New Zealand Pouhere Taonga #193 sought in its submission that the heritage aerial map for this item and setting be amended to show the correct position of the memorial, which has been relocated.

[130] Ms Richmond recommended the submission be accepted, noting further that the heritage aerial map can be updated when the latest Council drone footage is converted to aerial photography in Council's GIS system⁴⁷.

[131] We adopt Ms Richmond's recommendation, noting that the amendment to the aerial map is largely an administrative change to enhance accuracy.

Items 452, 453 and associated setting at 165 Racecourse Road

[132] As notified, PC 14 proposed to amend the two items in the schedule of historic heritage at Riccarton Racecourse, including:

- (a) deletion of Item 453 being the Public Grandstand and its setting (#183);
- (b) amendment of the heritage setting (also #183) for Item 452, being the Racecourse Tea House.

-

⁴⁶ Rebuttal Evidence of Suzanne Richmond, 9 October 2023, at 15-16

⁴⁷ s42A Report for Suzanne Richmond, 11 August 2023, at 8.1.74

[133] In its submission on PC 14 the Canterbury Jockey Club supported the removal of item 453 and its setting but sought a reduced extent of the new setting around the Tea House (now #684).

[134] Relying on the evidence of Ms Ohs⁴⁸, Ms Richmond did not support the specific reduction proposed by the submitter but recommended a reduced and revised setting to better reflect the historical context of the Tea House by protecting important landscape features and the visual connection with the Racecourse itself as spatial elements of the revised extent⁴⁹.

[135] The Canterbury Jockey Club did not appear at the hearing but filed a letter to the Panel dated 14 September 2023 advising of its agreement with the conclusion in the expert evidence and recommendation in the s42A report. Having considered the evidence of Ms Ohs and Ms Richmond, the Panel adopt their shared view that the revised extent is appropriate. The Panel accordingly recommend that the heritage aerial map for Item 452 and (new) setting 684 be amended to reflect the spatial extent defined as "Heritage Setting PC 14 Submission" in Appendix 5 to Ms Ohs evidence dated 11 August 2023.

Setting 423 at 27 Glandovey Road

[136] Setting 423 relates to Item 209 at 27 Glandovey Road. Two submissions sought that the properties at 7 and 9 Thorneycroft Street be deleted from the listed setting; being sites that formerly were part of 27 Glandovey Road.

[137] Ms Ohs agreed with the submissions that the two properties have no physical relationship with, and are not integral to, the contextual heritage values of the listed Item or its function. In her view, it is appropriate to amend setting 423 to omit those properties as requested by the submissions.

[138] Ms Richmond adopted Ms Ohs' rationale, as do we. As there is no longer any assessed relationship between the submission properties and the Glandovey Road properties, it follows that the setting should be reduced as sought.

[139] We accordingly recommend that the heritage aerial map for 27 Glandovey Road be amended to reduce the setting as defined in Appendix 6 of Ms Ohs, 11 August 2023 evidence and labelled "Heritage Setting PC 14 Submission".

37

⁴⁸ Statement of Evidence of Amanda Ohs, 11 August 2023 at 40-44

⁴⁹ s42A Report of Suzanne Richmond, 11 August 2023 at 8.1.73

Setting 336 at 32 New Regent Street.

[140] The relevant entry for 23 New Regent Street is item 404 and setting 336, comprising the New Regent Street Shops. Carter Group Limited and The Catholic Diocese of Christchurch sought an amendment to setting 336 such that the northern extent of the setting ends at the southernmost point of Armagh Street. The existing setting, the Panel observe, extends across the entire width of Armagh Street.

[141] Key to the issue at the heart of the submissions is the impact of the heritage setting immediately to the north at 129-143 Armagh Street. Mr Phillips, on behalf of Carter Group Limited identified that consequence being that the heritage setting's northerly extent imposes consenting requirements on features such as verandas and signage protruding from the south facing façade of buildings on the north side of Armagh Street. Such features would fall within the heritage setting and require resource consent under the corresponding heritage rules. Mr Phillips added that such features are otherwise manged under other rules in the ODP and any structures overhanging the footpath are subject to Council approval as landowner and road controlling authority. He considered such consenting requirements are unnecessary and recommended that the setting is reduced either to the southern edge of Armagh Street, its midpoint, or at least the southern extent of the footpath on the northern side.⁵⁰

[142] In their respective rebuttal evidence, Ms Ohs and Ms Richmond signalled their agreement with Mr Phillips that a reduction in the extent is warranted for the reasons he expressed. Their recommendation was that the extent be reduced to the southern edge of the northern footpath.⁵¹

[143] We adopt that consensus view that the submission should be accepted in part and recommend that setting 336 be reduced to the southern edge of the northern footpath on Armagh Street.

Item and setting at 135 High Street

[144] The last matter here relates to the item and setting at 135 High Street. At the heart of this issue is a perceived increase in the mapped extent of the setting by Duncans Lane Limited #1085 who submitted on PC 14 on this point.

Statement of Evidence of Jeremy Phillips on behalf of Carter Group Limited, 20 September 2023, at 84-86
 Rebuttal Evidence of Suzanne Richmond, 9 October 2023, at 72-73 and Rebuttal Evidence of Amanda Ohs, 9 October 2023, at 50

[145] As noted by Ms Ohs, the mapped extent of the setting was reduced under PC 14; however, upon her close inspection of the corresponding heritage aerial map, she observed that a small area was incorrectly included in the Heritage Item outline. She noted this was in error and recommended a correction be made as set out in Appendix 7 of her evidence. 52

[146] Ms Richmond adopted Ms Ohs' recommendation.

[147] We did not hear from the submitter at the hearing, and it appears from the evidence of Ms Ohs and Ms Richmond that the likely cause of the perceived increase in setting has been remedied. The Panel accordingly adopt the recommendation of Ms Ohs and Ms Richmond to amend the notified heritage setting for 135 High Street as shown in Appendix 7 to Ms Ohs evidence of August 2023.

Issues remaining in contention

[148] Those items remaining in contention as at the close of the hearing can be broadly summarised as follows:

- (a) whether the Panel has scope under the Housing Supply Amendment Act to add new heritage items and settings as QMs, either as notified in PC 14 or sought by submissions;
- (b) independent of any finding the Panel may reach as to (a) above, whether the additions to the historic heritage schedule sought in PC 14 as notified and/or by submissions are appropriate;
- (c) whether certain heritage items and/or settings in the ODP should be removed from the schedule of historic heritage; and
- (d) also independent of any finding the Panel may reach with respect to (a), the extent to which amendments to the historic heritage provisions (policies, rules and definitions) in PC 14 as notified and submissions are appropriate.

[149] Our findings on these matters follows, along with our evaluation of each in turn.

Findings and Evaluation

Evaluation - Scope

⁵² Statement of Evidence of Amanda Ohs, 11 August 2023, at 51-53

[150] Given the commonality of this matter with our previous evaluations in Part 1, and above in relation to other qualifying matters (RHAs, RCAs, and Significant Trees for example

- all dealt with later in this part of the Report), we can be fairly brief here.

[151] Namely, we reiterate our general alignment with legal counsel for submitters Ms Appleyard⁵³ and Mr Matheson⁵⁴ that the new listings and settings have the effect of making residential development harder and cannot be said to give effect to s80E(1)(b) of the RMA which requires they support or are consequential on the MDRS or NPS-UD

Policies 3 or 4.

[152] To the extent that PC 14 proposed amendments to heritage policies, rules and methods that may have the same overall effect of introducing new restrictions or limitations on the status quo - or as framed by Ms Richmond⁵⁵, that provisions include some 'strengthening' – the same logic applies. As with the RCA provisions discussed later in this part of the report we gave careful consideration as to whether we could identify certain amendments to the historic heritage provisions that would be neutral. However, as was the case for RCA's, given the interrelated nature of the heritage provisions, we have not taken that exercise further. We observe also that PC 13 provides an immediate

Schedule 1 process is the more appropriate pathway in that regard.

[153] In all of the above respects, and for the reasons we have already expressed, the Council

opportunity for the Council to pursue these changes and reiterate our view that a

is not legally entitled to make such changes to the ODP under the IPI process.

[154] As to other matters of scope, we are satisfied that submissions seeking the antithesis to the above, for example by removing heritage items/settings from the ODP schedule, are 'on' the plan change. Consistent with our analysis in Part 1, such submissions are within

scope.

Evaluation - Merits

[155] The Panel have organised our evaluation into the following parts:

(a) we briefly deal with the merits of the new items and settings proposed in PC 14

and by submitters for inclusion in the schedule of historic heritage; and

Memorandum of Counsel on behalf of Various Submitters, 1 May 2024 at 35 and 38
 Supplementary Legal Submissions on behalf of Kāinga Ora, 4 December 2023 at 1.4–1.6

s42A Report of Suzanne Richmond, 11 August 2023 at 6.1.10

(b) then turn to submissions seeking removal from the schedule or modification of existing items and settings in the ODP but which remained in contention as at the close of the hearing.

[156] Regarding the merits of the new items and settings proposed by the Council in PC 14, we were not presented with any evidence from submitters to challenge the Council's own analysis. As far as that goes, we find no reason to conclude that the new items and settings fail to meet the relevant requirements for scheduling in Appendix 9.3.7.2.

[157] For the reasons we have set out above, however, that finding is moot due our findings that the changes are beyond the scope of PC 14. To the extent that the Council's experts supported additional items and settings be added in response to submissions, the same principle applies and accordingly we recommend those submissions are not accepted.

[158] Turning to the submissions seeking the 'de-listing' or modification of various items or settings which remained in contest, we sequentially address the items and settings at:

- (a) 32 Armagh Street;
- (b) 65 Riccarton Road;
- (c) 265 Riccarton Road;
- (d) 9 Daresbury Lane;
- (e) 59 Hansons Lane; and
- (f) 181 High Street.

Item 390 and setting 287 at 32 Armagh Street

[159] The Carter Group Limited sought the removal of the item and setting in its submission on PC 14, and called expert evidence in support of that outcome, including from:

- (a) Mr Fulton, heritage architect;
- (b) Mr Brookland, regarding building condition;
- (c) Mr Hill, architect;
- (d) Mr Compton-Moen, urban designer;

- (e) Mr Chatterton, quantity surveyor; and
- (f) Mr Phillips, planner.
- [160] Mr Fulton's evidence only provided an inventory of the various elements of the building fabric that are currently in poor condition. He did not provide an alternative opinion to Ms Ohs as to the heritage significance of the building. Mr Fulton did, however, signal his agreement with Ms Ohs that timber buildings deteriorate due to the nature of that material and it is an accepted part of heritage conservation practice that timber elements are repaired and replaced over time.⁵⁶
- [161] The building's condition was further detailed in the evidence of Mr Brookland, as presented in a property inspection report he had prepared in August 2023. Key observations made by Mr Brookland included that: the building has high weather tightness risks owing to damaged cladding and deferred maintenance; water damage is present in cladding and framing due to numerous instances of water ingress and elevated moisture readings were recorded in internal walls; and that the extent of works required to return the building to a safe operational standard involves almost complete replacement of all build components⁵⁷.
- [162] Mr Hill also discussed the degraded nature of the building and echoed Mr Brookland's view that the building is deteriorated to such an extent that it would have to be totally rebuilt. As far as that goes, Mr Hill expressed disagreement with the proposition put by Mr Holmes for the Council that the building is eminently capable of repair. Mr Hill added that original building elements that are in a state to be reused are minimal, and rebuilding to match the previous form with modern materials would amount to a replica with very limited heritage value.⁵⁸ Mr Hill was cross examined by Counsel for the Council as to his experience with heritage buildings. Mr Hill referenced a number of projects he had worked on. We had no concerns about Mr Hill's expertise on such matters.
- [163] In his evidence, Mr Compton-Moen expressed the view that the cottage is in severe disrepair and does not add any value to either the built form or amenity of the area. Importantly, he added that the building and its curtilage prevent a sizeable part of the site from being developed to its full potential. On the latter point, Mr Compton-Moen advised of a master plan his consultancy had produced for the site with an overall yield

⁵⁶ Statement of Evidence of William Fulton, 11 August 2023, at 10-25

⁵⁷ Statement of Evidence of Kyle Brookland on behalf of Carter Group Limited, 20 September 2023, Appendix 1, p.5

⁵⁸ Statement of Evidence of David Hill on behalf of Carter Group Limited, 20 September 2023, at 9-19

of 54 townhouses. The Blue Cottage and setting reduced the yield by eight dwellings, with a further six dwellings being ruled out due to the protected trees on the site. ⁵⁹

- [164] Mr Chatterton prepared a cost estimate report as a substantive attachment to his evidence. Therein, he provided an estimate of a worst-case scenario for the replacement of all aspects of the existing structure at an overall cost of more than \$1.4M. The report⁶⁰ also distinguished the different scope of works allowed for in Mr Chatterton's assessment compared to that of Mr Stanley for the Council.
- [165] We interpolate here to note a few relevant matters. Firstly, Mr Chatterton's assessment was subsequently addressed in rebuttal evidence by Mr Stanley. Subsequent to that, Mr Chatterton and Mr Stanley conferred and produced a joint witness statement to assist us with our consideration of this matter at our request.
- [166] As part of that conferencing exercise, the two experts refined their respective scope of works then independently assessed both their own scope and the other experts'. That resulted in the following estimates:
 - (a) using Mr Chatterton's scope of works, Mr Stanley's estimate was \$999,810.81, compared to Mr Chatterton's at \$1,397,823.31; and
 - (b) using Mr Stanley's scope, Mr Chatterton's estimate totalled \$861,151.00, compared to \$586,259 as estimated by Mr Stanley. 61
- [167] It is expedient to follow this output of the quantity surveyor joint conferencing with a summary of key matters then canvassed between Mr Phillips and Ms Richmond in their subsequent joint planning conference. Relevantly:
 - (a) the planners agreed that applicable permitted uses of the building would be education activities, education facilities and residential activity;
 - (b) while the building may be adapted for other uses, they would be subject to resource consent and there is no certainty as to the outcome of such processes – and accordingly, the scope of repair work should be based on educational or residential purposes;

43

⁵⁹ Statement of Evidence of Dave Compton-Moen on behalf of Carter Group Limited, 20 September 2023 at 14

⁶⁰ Statement of Evidence of Tom Chatterton on behalf of Carter Group Limited, 20 September 2023 Appendix 1, at page 1-2

⁶¹ Joint Witness Statement of Quantity Surveyors on behalf of Blue Cottage, 29 April 2024, at 14-15.

- (c) the planners noted that the level of agreement between Mr Stanley and Mr Chatterton with regard to measure and rates is significant, and that the cost estimate disparities between them relate primarily to scope, level of risk and contingencies;
- (d) key to that disparity on scope, the planners agreed that Mr Stanley's scope applies a conservation approach which seeks to replace only the minimum heritage fabric needed for the building to achieve habitable status – whereas Mr Chatterton's scope reflects works likely required to bring the building up to a functional and usable state to meet market expectations for intended use;
- (e) notwithstanding the difference in estimates from the quantity surveyors, the planners agreed that the magnitude of costs for repairing or rebuilding the cottage is broadly comparable to 471 Ferry Road (as we have discussed above) based on a conservation repair scope;
- (f) Mr Phillips added in that latter context that value relative to costs was also a relevant factor for Council in relation to the 471 Ferry Road and Harley Chambers examples; and
- (g) while the planners expressed consensus on a range of matters, they did not agree as to whether the evidence from the quantity surveyors supports a finding that the building and setting should be removed from the schedule due to unreasonable financial cost. ⁶²
- [168] Having considered the breadth of evidence before us on this matter, we ultimately consider that the building and its setting should be removed from the schedule of historic heritage on grounds of unreasonableness of the costs required to make the building good.
- [169] In reaching this view, we do not go as far as Ms Appleyard⁶³ to conclude that it would be *fanciful* to suggest a landowner would incur costs to repair a building that does not meet the market for use or sale; however, in the realms of 'reasonableness', being the policy threshold for listing or not in this case, we consider that a degree of real world pragmatism must be factored into what is deemed to be a viable prospect for adaptive reuse of a building in a very poor state. The more pared back, conservation-focussed

⁶³Supplementary Legal Submissions on behalf of Carter Group Limited - Blue Cottage, 8 May 2024 at 9

⁶²Joint Witness Statement of Planning Experts, 2 May 2024, at 10-28

approach adopted by the Council is lacking in that respect, and we consider the more end-use focussed scenario favoured by the submitter's witnesses is more credible.

- [170] We note also that Mr Compton-Moen's evidence illustrates a potential opportunity cost would likely result from retention of the cottage vis a vis reduced development potential. We are careful not to rely upon his masterplan example as a basis for what that cost would be, or could likely be we simply note that the cost is relevant and could be meaningful depending on the intensity of development that might ultimately be established on the site.
- [171] Of greater significance, given that both planners found financial commonality between the cottage and 471 Ferry Road, is that we struggle with Ms Richmond's ultimate view that the conclusion as to unreasonableness is distinguishable between the two. We acknowledge her rationale that the two sites in question have different physical characteristics, but we are not convinced that alone is sufficient to justify the contrasting conclusions she has reached.
- [172] We accordingly recommend the removal of the item and setting from the schedule along with corresponding deletions of the planning map notations and heritage aerial maps.

Item 465 and setting 220 at 65 Riccarton Road, St James Church

- [173] Church Property Trustees #825 sought the removal of St James Church from the schedule of historic heritage.
- [174] Ms Richmond's rebuttal evidence provided a useful summary of the Council experts' views on the submission, which coincidentally is transferable in part to our discussion around 9 Daresbury Lane shortly:
 - 18. Chessa Stevens (Council's conservation architect for St James' Church) and William Fulton (Council's conservation architect for Daresbury) have identified that there are opportunities for repair and reuse by future owners in their primary evidence. Stephen Hogg (Council's engineer for Daresbury) and Clara Caponi (Council's engineer for St James' Church) in their primary and rebuttal evidence disagree with the submitters' engineers on the extent of deconstruction likely to be required for a conservation-based repair methodology and therefore this is reflected in Council's cost estimates.

and

25. In relation to St James' Church, Peter Eggleton's repair estimate for the submitter of \$5.889 million (excluding GST) is of a similar scale to Philip Griffiths' estimate in his primary evidence for Council of \$5.274 million (excluding GST). Mr Griffiths discusses the differences in his rebuttal evidence. Mr Griffiths has estimated a new build of equivalent floor area at \$1.465 million (excluding GST).

- 26. On this evidence, repair is significantly more expensive than a new church building. However while I accept the market for a new owner prepared to take on this repair project is likely to be limited in the Christchurch context, in my view, the scale of investment required may not be considered financially "unreasonable" (in relation to clause c.iv. of the scheduling policy) by a potential purchaser who sees an opportunity to recuperate the investment via an adaptive reuse project. 64
- [175] Church Property Trustees called Mr Carney on structural engineering matters, Mr Eggleton regarding quantity surveying, and Mr Cleese on planning matters.
- [176] Mr Carney signalled that he did not disagree with Ms Caponi's view that there are viable engineering options available to repair the building to a safe and usable condition; however, he expressed the view that the scheme utilised as a basis for assessment by the Council does not achieve the level of strength required due to inadequate strength in the roof diaphragm and its connections to perimeter walls. Mr Carney also identified that the scheme used by the Council was designed to achieve 67% NBS, and he expressed concern that any change of use associated with future strengthening of the building would not be satisfactory to Council in light of s115 of the Building Act 2004.⁶⁵
- [177] As captured in the excerpt from Ms Richmond's evidence above, Mr Eggleton estimated the 67% NBS scheme would cost nearly \$5.9M. He noted Mr Carney's concern about the acceptability of that strength under a change of use scenario, adding that should a scheme to 100% NBS be required, the associated cost would be 'significantly higher'. 66
- [178] Mr Eggleton added that he considered his estimate was slightly higher than that from Mr Griffiths given his observations at site visit stage, and the correspondingly considerable level of damage to existing fabric evident. He did not provide any view on Mr Griffiths' other scenario estimates, which we note included: like for like replacement at \$10.37M; replacement replica at \$6.01M; and modern devotional building at \$1.47M.67
- [179] We also heard from Mr Gavin Holley, a trustee on behalf of the submitter. He tabled a detailed statement and emphasised key points in his presentation to us. Of note in his oral presentation, Mr Holley stressed that the church is surplus to the requirements of the Parish, and having tried to sell the building in its current state on two occasions in recent years, was unable to do so.
- [180] Mr Holley was also emphatic that suggestions in Council's evidence that various funding avenues are available to owners such as the Trust are not well founded. In his words,

⁶⁴ Rebuttal Evidence of Suzanne Richmond, 9 October 2023, at 18, 25-26

Statement of Evidence of Peter Carney on behalf of Church Property Trustees, 20 September 2023, at 13-19
 Statement of Evidence of Peter Eggleton on behalf of Church Property Trustees, 20 September 2023, at 9-11

⁶⁷ Ibid at 12.1-12.3

such funds simply 'don't exist.' He cited a recent example where the Trust applied for \$20K lotteries funding for conservation plan funding for other churches, with both applications being declined. He noted that Heritage New Zealand funding would not be available as the church is not on its schedule of historic heritage. Mr Holley painted the picture as dire for the Trust given their portfolio of assets and operational obligations.

- [181] On the latter point, Mr Holley noted that the Trustees have no right or ability to treat the church as anything other than a property for the benefit of the local Parish, nor could any asset or benefit derived from the building be transferred to other Parishes. Mr Holley noted also that even if the Trustees could somehow raise the nearly \$6M required to strengthen the church, it would be an outright breach of the statutory responsibilities of the Trust to spend that amount of money into a building that would not sell for that amount.
- [182] Mr Clease summarised his understanding of the matter relevantly as follows (noting again this also relates to the Daresbury Lane building discussed shortly):
 - 40 In summary, both buildings:
 - 40.1 Contained heritage value at the time they were listed;
 - 40.2 Are likely to still retain heritage values, albeit degraded as a result of damage to fabric;
 - 40.3 The engineering assessments for both buildings are that the extent of damage is substantial and that the works necessary to repair and achieve acceptable levels of %NBS are significant. This is particularly the case for Daresbury House which in essence involves a near-complete deconstruction and rebuilding:
 - 40.4 The costs of these works are substantial, and will exceed the end value of both buildings once repaired by a significant margin;
 - 40.5 No insurance proceeds are available;
 - 40.6 No heritage grants are likely; and
 - 40.7 No reuse options are plausible in terms of locational sensitivity (Daresbury House) and the very low rate of return on investment given the very high costs of repair.68
- [183] Insofar as the church is concerned, we agree with Mr Clease in all respects above. For those reasons, and recognising also the difficulty faced by the submitter in both selling the property and obtaining funding for repair works, the balance of evidence before us

⁶⁸ Statement of Evidence of Jonathan Clease on behalf of Daresbury Limited and Church Property Trustees, 20 September 2023 at 40

is that retaining the item on the schedule of historic heritage fails the financial reasonableness 'test' under Policy.3.2.2.8.

[184] We accordingly recommend that the item and setting at 65 Riccarton Road be removed from the schedule of historic heritage, and corresponding deletions are made to the planning map notations and heritage aerial maps.

Item 463 and setting 203 at 265 Riccarton Road, Antonio Hall

[185] A submission seeking its removal from the schedule was made by Mr Justin Avi #402.

[186] The Council's combined evidence was neatly summarised by Ms Richmond as follows:

- 8.1.34 Based on the technical evidence of Amanda Ohs, I accept that the former homestead and homestead additions are beyond repair due to fire and earthquake damage, and also note that they could be removed as "make safe" works under the Repairs definition. The chapel and accommodation wing have been assessed by Amanda Ohs as together meeting the significance threshold as a Significant heritage item in c.i. of the scheduling policy 9.3.2.2.1, supported by the heritage values of the heritage setting, including the motor house. The motor house appears to be in poor condition and is physically distant from the other buildings so has not been assessed as continuing to be worthy of protection as part of the heritage item (see heritage aerial map snip below).
- 8.1.35 Engineering evidence from Stephen Hogg indicates it may be possible to repair the chapel and accommodation wing. There is no detailed engineering or cost evidence available for Amanda Ohs to be able to form an opinion that either c.iii. or c. iv. applies which would preclude scheduling. I adopt the technical evidence of Amanda Ohs and propose that the schedule entry in Appendix 9.3.7.2 and mapping is amended to reflect the reduced extent of the item as she recommends, and that the submissions of Justin Avi S402.1, S402.2, S402.5, S402.9, S1037.1, S1037.2 are accepted in part.⁶⁹
- [187] We did not receive any evidence from the submitter in relation this matter. Having carefully considered the Council's recommended amendments, we are satisfied that the scheduling of the item remains appropriate, with the amended reduced setting proposed following substantial damage. We recommend the setting is amended accordingly, as shown in Appendix 20 of Ms Ohs evidence dated 11 August 2023 as defined on the relevant heritage aerial map.

Item 185 and setting 602 at 9 Daresbury Lane, Daresbury

[188] In its submission on PC 14, Daresbury Limited #874 sought to delete the item and the setting from the schedule at Appendix 9.3.7.2. We note that Christchurch Civic Trust and

_

⁶⁹s42A Report of Suzanne Richmond, 11 August 2023 para 8.1.34-8.1.35

Historic Places Canterbury signalled opposition to the removal of the item and setting in their submissions on PC 14.

- [189] As with the Blue Cottage and St James examples above, the key issue that separated the Council and the submitter on this matter was whether or not the costs required to repair the building can meet the reasonableness 'test' under Policy 9.3.2.2.1.
- [190] On that key matter, we heard evidence from Mr Stanley for the Council and Mr Harrison for the submitter, who provided estimates in their capacity as quantity surveyors. Both considered multiple repair/redevelopment scenarios, and while there were initially substantial differences in assessed costs between them, that narrowed significantly through the exchange of evidence and rebuttal. In the scheme of things, we are prepared to align with the Council's appraisal of the ultimate end point of those exchanges, being that the differences in relation to scope and cost of repair works are 'relatively minor'. Accordingly, we do not find the need to overly focus on the residual differences.
- [191] The repair options were estimated to cost in the realms of \$8M, which we note is considerable. However, in some contrast to the Blue Cottage and 137 Cambridge Terrace examples and this could be said to be determinative for us the repair cost for Daresbury is not dissimilar to a modern building of the same size. In this respect, we share Ms Richmond's view that this is a relevant matter to consider in determining the reasonableness of the repair cost in the context of Policy 9.3.2.2.8.⁷⁰
- [192] Furthermore, while we heard from Mr Shalders for the submitter that the heritage 'listing' on the property may affect value due to lower subdivision potential, Ms Richmond clarified that a subdivision consent has already been granted for the northwestern portion of the site. This, along with the \$4.6M bare land value ascribed to the site by Mr Shalders, tempers Ms Appleyard's concerns about the opportunity cost for redevelopment at least to some degree in our view.
- [193] Ultimately, we were not convinced that the repair costs are unreasonable when all relevant economic factors before us are considered. We accordingly adopt Ms Richmond's recommendation that the item and setting be retained, and the submission rejected.

⁷⁰ Rebuttal Evidence of Suzanne Richmond, 9 October 2023, at 24

- [194] PC 14 proposed that heritage setting (#196) be reduced considerably compared to the ODP setting. The Rannerdale Trust's submission on PC 14 sought to reduce the setting further on the basis that the notified extent does not reflect the existing, modified environment and that the vehicle access and parking areas that serve the house do not meet the definition of 'heritage setting'.
- [195] The submitter did not present any evidence on the matter at the hearing.
- [196] In considering the submission, Ms Ohs expressed the view that the modified setting in the notified plan change does reflect the existing modified environment and meets the definition of 'heritage setting.' She added that the attendant grassed and sealed areas to the northeast of the house reflect the historical landscape elements of the site dating back to the 1960s and provide vital open space that enabled the large-scale building to be viewed. In Ms Ohs' view, it is important to retain that part of the historical landscape given the extent of change that has occurred on the balance of the site. She also considered that inclusion of the access into the setting ensures access to the item is a key aspect of any future adaptive reuse, noting that access in this context is contemplated both under the definition for 'heritage setting' and the matters of discretion for relevant rules.⁷¹
- [197] Adopting Ms Ohs' analysis, Ms Richmond recommended that the submission be rejected and the notified setting retained.
- [198] In the absence of any alternative analysis to challenge the Council's evidence, the Panel adopt the evidence of Ms Ohs for the reasons she has expressed. Accordingly the Panel recommend that the setting 196 be retained as notified in PC 14.

Item 1313 and setting 555 at 181 High Street, Former AJ Whites Building

- [199] 181 High Limited lodged a submission in relation to item 1313 and sought the reduction of the setting around the Former AJ Whites Building to align with the façade of the building only.
- [200] Ms Ohs did not support the amendment. She noted that the setting, which was unchanged by PC 14 compared to the ODP, is already less than the wider site on which the building is located. In her view, the setting is integral to the contextual heritage values

-

⁷¹ Statement of Evidence of Amanda Ohs, 11 August 2023 at 35-39

of the item and meets the definition of 'heritage setting.' Ms Ohs added that the setting reflects the historical extent of the building prior to the Canterbury Earthquakes, though only the façade now remains.⁷²

[201] Ms Richmond adopted Ms Ohs rationale and added that retention of the setting behind the façade allows for the assessment and potential mitigation of effects of a new building behind the façade, which has the potential to visually dominate views of the item.

[202] We received no evidence from the submitter on this matter and find no reason not to adopt the assessment and recommendation of Ms Ohs and Ms Richmond. The Panel accordingly recommend no change to setting 555 as per the ODP and PC 14.

Evaluation - Process

[203] We have previously concluded that there might be facility for the Council to introduce the proposed controls (or similar) relating to other unsuccessful QMs through a Schedule 1 process. The Panel can reach the same conclusion with respect to the newly proposed items, settings and associated provisions in the knowledge that Plan Change 13 contains provisions relating to same. The merits of such amendments to the ODP considered through that process for the reasons the Panel have already canvassed above.

Section 32AA Evaluation for Recommended Changes

[204] In s32AA terms, the Panel's evaluation of changes to the notified provisions is captured above, both as it relates to matters remaining in contention at the close of the hearing and those that were resolved. This has allowed our summary of relevant considerations under s32AA here to be brief.

[205] For the changes to the listed items and/or settings which we have identified above as being resolved between the parties, we have adopted the evaluation of the Council's experts and, where relevant, submitters' experts. These amendments ostensibly fall into one or more of three categories: items that have already been demolished; errors in the plan change documentation itself; or items that do not meet the reasonableness test for retention in the schedule.

[206] Regarding the former two categories, the Panel notes that the amendments we have recommended essentially reflect what is 'on the ground', either in correcting the location

⁷²lbid at 50

of items mapped incorrectly, presenting the most appropriate setting for a given object, or in recognition that the listed item no longer exists. Retaining the provisions as notified is unjustified for these reasons and could result in inefficient administration of the ODP if not remedied.

- [207] For those items and settings failing to meet the reasonableness test for retention, we have summarised the relevant evidence we rely on above. That evidence ultimately has led us to conclude that the recommended deletions and amendments to scheduled heritage items and settings, as summarised above, represent the most efficient and effective means of achieving the enabling purpose of the Housing Supply Amendment Act, NPS-UD Policy 3 and PC 14 and the relevant ODP provisions relating to Historic Heritage.
- [208] We observe that the same conclusion applies to the changes to items and settings we have recommended on the matters remaining in contention at the hearing as summarised above. These recommendations can be distinguished from the uncontested changes insofar as we have relied upon the Council's experts in some instances and submitters' experts in others. This in turn has resulted in our navigating the space between the relevant ODP and PC 14 housing supply and historic heritage directions to determine the most efficient and effective outcome for various scheduled items and settings. For the reasons we have stated above, we consider that the changes we recommend are the most appropriate in that regard.
- [209] Furthermore, and following on from our finding that the case for new listed items and settings and more stringent provisions for historic heritage as QMs has not been made, our recommended retention of the ODP provisions represents a valid means of ensuring that the objectives of the Housing Supply Amendment Act, NPS-UD Policy 3 and PC 14 are achieved. It is our position that no further justification or evaluation under s32AA is required in that respect.
- [210] Finally, we are satisfied that there are no information gaps or uncertainties in the subject matter and effect of the provisions we recommend. We find no need to conduct a risk of acting or not, given that lack of uncertainty. We note in any case, that PC13 is also a live planning process that will allow further evaluation of the nexus between historic heritage and other environmental outcomes in the ODP outside the Intensification Streamlined Planning Process (ISPP) process which frames PC 14.

11. ELECTRICITY TRANSMISSION CORRIDOR

Summary of Recommendations

[211] The Panel recommend that the Electricity Transmission Corridor QM be retained as proposed by the Council, including the provisions, as proposed in the Reply and accepted by the Panel in the recommended provisions in Part 8 Appendix G.

[212] We also recommend addition of an advice note to be added to the zone chapters of the Plan standards relating to setbacks as follows:

(a) Building setback requirements are further controlled by the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001). All work must be a safe distance away from overhead lines. Please refer to NZECP34, table 2 for the distances that apply.

[213] The Panel recommends that submissions that support the Council's approach are accepted or accepted in part. Submissions that supported the Council but sought additional restrictions over and above those the Council proposed are rejected (there were no submissions opposed to this QM).

PC 14 as Notified

[214] As notified, PC 14 included provisions relating to existing 220kV, 110kV and 66kV national transmission lines; 66kV and 33kV distribution lines; and an 11kV Heathcote to Lyttleton distribution line. These sit across both residential and commercial zones. The QM requires buildings to be set back from the lines, with buildings within the setback area proposed to be a non-complying activity. These rules and the setbacks are as per the Operative District Plan (ODP).

[215] The relevant zone bult form standards are as follows:

- (a) MRZ 14.5.2.7 Minimum building setbacks;
- (b) HRZ -14.6.2.3 Setbacks;
- (c) Mixed Use
 - 5.10.2.2 Minimum building setback from road boundaries; and

 15.10.2.3 Minimum building setback from residential zones and internal boundaries; and

(d) Centres

(i) Town Centre

- 15.4.2.3 Building setback from road boundaries / street scene; and
- 15.4.2.4 Minimum building setback from residential zones and internal boundaries;
- 15.4.3.2.2 Building setback and size (Belfast / Northwood Outline Development Plan Area;

(ii) Local Centres

- 15.5.2.3 Building setback from road boundaries / street scene
- 15.5.2.4 Minimum building setback from the internal boundary with a residential zone
- 15.5.2.9 Minimum building setback from railway corridor
- 15.5.4.2.1 Minimum building setback from road boundaries (Prestons)
- 15.5.4.2.2 Minimum building setback from zone boundary (Prestons)
- 15.5.5.2.1 Minimum building setback for residential activities on sites adjoining Yaldhurst Road

(iii) Neighbourhood Centres

- 15.6.2.2 Building setback from road boundaries
- 15.6.2.3 Minimum building setback from residential zones
- 15.6.2.8 Minimum building setback from railway corridor outside the Central City

(iv) Commercial Banks Peninsula

- 15.7.2.3 Building setback from road boundaries / street scene
- 15.7.2.3 Minimum building setback from the boundary with a Residential Zone
- 15.7.2.8 Minimum building setback from railway corridor

(v) Large Format Retail

- 15.8.2.2 Minimum building setback from road boundaries
- 15.8.2.3 Minimum building setback from residential or open space zones

15.8.2.8 Minimum building setback from railway corridor

(vi) Commercial Office

- 15.9.2.2 Minimum building setback from road boundaries
- 15.9.2.3 Minimum building setback from the boundary with a residential zone
- 15.9.2.9 Minimum building setback from railway corridor

(vii) Mixed Use

- 15.10.2.2 Minimum building setback from road boundaries
- 15.10.2.3 Minimum building setback from residential zones and internal boundaries
- 15.10.2.8 Minimum building setback from railway corridor

(viii) City Centre

- 15.11.2.1 Building setback and continuity
- 15.11.2.10 Minimum setback from the boundary with a residential zone or from an internal boundary

(ix) Central City Mixed Use Zone

- 15.12.2.7 Minimum setback from the boundary with a residential zone or from an internal boundary
- 15.12.2.10 Building setbacks

[216] The Panel adopt the Council's legal submissions' summary of the QM (footnotes included)⁷³:

... this QM proposes to carry over rules from the operative district plan which place limitations on the location of buildings in proximity to electricity distribution and transmission corridors. Any new building within the corridor setbacks is a non-complying activity. The NPS-UD identifies the National Grid transmission network as being 'nationally significant infrastructure', while the remaining lines (see footnote 13) are 'regionally significant infrastructure' in the CPRS. The sections of the Orion network covered by this QM are 'regionally' rather than 'nationally' significant, and are therefore an 'other' QM for the purposes of sections 77I(j) and 77O(j), rather than a prescribed QM under sections 77I(e) and 77O(e).

[217] Ms Oliver, in her s42A report described the effect of the QM as being⁷⁶:

⁷³ Legal Submissions of Council, Citywide QMs and Financial Contributions, 8 April 2024 at 7.1(c)

⁷⁴ PC 14 includes setbacks from Electricity Transmission Corridors (220kV, 110kV and 66kV National Grid lines, and 66kV, 33kV electricity distribution lines, and the 11kV Heathcote to Lyttelton electricity distribution line, with these corridors identified as a QM

⁷⁵ Defined as 'strategic infrastructure' in the CRPS

⁷⁶ s42A Report of Sarah Oliver, 11 August 2023 at paragraph 12.74

... to apply the setback for buildings, but not to amend density, with the height and density provided for by the MDRS to remain. It will, however, remove the ability for development within the corridors of the transmission and distribution network corridors, where any building will remain a non-complying activity.

[218] The s32 evaluation supporting the provisions⁷⁷ provided additional explanation of the importance of the QM, although made the argument that all of the lines proposed to be subject to the QM had a national significance. By the time of Ms Oliver's s42A report and later Council legal submissions, Council had accepted that several of the lines were of regional but not national significance.

[219] The key alternatives considered as part of the s32 evaluation were to either include the QM, and qualify the MRDS, or exclude the QM and not qualify the MDRS.

[220] The key s32 conclusion was that the QM was warranted on the basis that it was necessary in terms of the NPSET and RPS, and best-provides for the safe and efficient operation of the transmission infrastructure (including safety of people using land over which a line crosses).

Submissions and Section 42A Report Recommendations

Submitter evidence and representations

[221] Submitters Transpower New Zealand Limited #878 #2060 (Transpower) and Orion New Zealand Limited #854 (Orion) supported the QM. In addition, Orion sought that it should additionally apply to 11kV, 400V and 250V overhead transmission lines, and that additional restrictions on conductive fencing beneath the lines should apply. Submitter Kāinga Ora supported the QM but requested it apply only to the specific transmission corridors identified in the National Policy Statement on Electricity Transmission (NPSET), which would remove regionally significant transmission corridors from the QM.

[222] No submitters fundamentally opposed the QM.

[223] Orion provided pre-circulated expert evidence from Mr O'Donnell⁷⁸ (corporate) and Ms Foote⁷⁹ (planner). The evidence focused on the additional corridors that Orion sought the QM to apply to, as well as its further submission in relation to Transpower's submission.

⁷⁷ Part 2 of Christchurch City Council s32 and s77 Evaluation of Qualifying Matters, part 6.19.

⁷⁸ Statement of Evidence of Anthony O'Donnell, 20 September 2023

⁷⁹ Statement of Evidence of Melanie Foote, 20 September 2023

[224] Kāinga Ora provided pre-circulated evidence across the PC 14 process but that did not include specific analysis of this QM or the further submission made by Kāinga Ora opposing the expansion of the QM sought by Orion. However, on its behalf Mr Joll did provide rebuttal evidence⁸⁰ responding to Orion's evidence. Mr Joll disagreed with the relief sought by Orion's experts and instead proposed an advice note, which he constructed as:

Building setback requirements are further controlled by the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001). All work must be a safe distance away from overhead lines. Please refer to NZECP34, table 2 for the distances that apply.

- [225] Orion was represented at the hearing by Counsel Ms Appleyard. Mr O'Donnell and Ms Foote each spoke to a summary of their evidence and in addition a fuller written s32AA RMA evaluation was provided to support the proposed additional setback and non-complying activity status proposed.
- [226] Mr Joll also spoke briefly to his rebuttal evidence and why he considered Orion's requested relief was not appropriate. Although Kāinga Ora attended the hearing and Mr Joll addressed us, it did not pursue its primary submission point of seeking to withdraw the QM from the regionally significant corridors included in PC 14 to only those of national significance. In fact, we completed the hearings with no evidence at all from Kāinga Ora on that point.
- [227] On 9 May 2024 Counsel for Orion submitted a brief memorandum⁸¹ confirming that it would be able to provide mapping of the 11kV, 400V and 230V lines that Orion sought the QM to extend to, should we seek that.

Council Section 42A Reporting

- [228] The relevant s42A report was authored by Ms Oliver. In it she evaluated submissions received from four parties. Her key conclusion and recommendation were that the QM be retained without change.
- [229] Ms Oliver recommended all four submissions be accepted in part, to the extent that they supported the QM.

⁸⁰ Rebuttal Evidence of Tim Joll, 9 October 2023

Memorandum of Counsel for Orion, 9 May 2024

[230] Ms Oliver provided rebuttal evidence⁸² on behalf of the Council in response to the evidence provided by Orion. In summary Ms Oliver remained of the view that no changes to the notified QM were warranted. Ms Oliver also identified that the additional land that would be subject to the expanded QM sought by Orion had been sufficiently identified to allow the necessary s77L RMA evaluation to be undertaken. She indicated that there could be room for an alert-layer or similar, which we understood as being along the same lines as the advice note proposed by Mr Joll.

[231] Ms Oliver confirmed her opinion that no change to the notified QM was required, but she reiterated her general comfort with the prospect of an advice note or similar being provided that led people to the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) and, from there, Orion.

[232] In the Council's Reply, the Council confirmed that it had not changed its position on the QM as presented at the hearing.

Issues

[233] The evidence fundamentally raised one issue, being whether or not the QM should be expanded from the notified version of PC 14 to the relief Orion sought. A related secondary issue, and only if the Orion relief was not agreed with, was whether an advice note such as proposed by Mr Joll could be an appropriate addition to the proposed QM.

Findings and Evaluation

[234] The provisions of the NZECP 34:2001 and its relationship with the District Plan came into sharp focus. There was general agreement between the parties on the issues of underbuilding and proximity of buildings to line corridors (which include line swing zones), and the potential adverse effects that might arise on landowners, developers, building occupants, and Orion. The question was whether or not in light of the existence of that Code, it was necessary and appropriate to further qualify the MDRS "in parallel" with the requirements of NZECP 34:2001. Specific subsequent requirements including the procedure to be followed in creating a QM and the approach that we have eventually determined to be necessary following *Waikanae* are also relevant.

_

⁸² Rebuttal Evidence of Sarah Oliver, 9 October 2023

- [235] The Panel prefer the evidence of Ms Oliver and Mr Joll and do not agree with Orion or its witnesses that the QM should be expanded to include setbacks and non-complying activity status on additional lines to those notified as part of PC 14. Our reasons are:
 - (a) The submitter did not identify or assess the effects of its relief on all of the land that would be subjected to it. Our understanding was that it would be a significant number of properties.
 - (b) We do not accept that NZECP 34:2001 cannot be properly administered and enforced without the addition of the Council separately requiring a consent to be obtained.
 - (c) We disagree that the Orion relief would provide any efficiency benefit, and would at best be neutrally effective (including because of our finding in (b) above). In terms of efficiency, we see the requirement for a potentially unnecessary setback (loss of efficient use of land), or alternatively a resource consent from the Council where the only issue in-play would be NZCEP 34:2001, which the Council has no authority or decision-making responsibilities under as not being an appropriate use of time and resources. We also find that once triggered a noncomplying activity, which due to the consent principle of 'bundling' would then become the status under which an entire proposal and any other normally restricted discretionary requirements would fall to be considered as, could undermine the intent and purpose of the MDRS, being to help bring about a faster, easier delivery or more affordable houses.
 - (d) Orion did not provide satisfactory evaluation of its expanded QM in terms of s77L of the RMA and the circumstances where it is permissible to qualify the application of the MDRS. We remain unclear on exactly what and how many properties would be affected by the relief sought. The additional mapping that Counsel for Orion confirmed could be provided (9 May 2024), would not of itself address this. Still required would be a precise calculation of affected properties, identification of the loss of utility and resource consent costs (including on the Council, which would otherwise have no resource management interest in the required applications (where infringement was sought), and overall analysis of whether that was appropriate.
 - (e) Accepting the Orion relief would remove existing District Plan enablement from a significant (but unspecified) number of properties, which as we have discussed in

Part 1 of our decision exceeds what we find to be the lawful remit of the ISPP instrument.

- (f) Having considered the adverse effects that might arise from an improperly positioned building, we are not satisfied that this is an inevitability or that there are not remedies available to Orion should the need for rectification arise. Ultimately, the RMA is only one statutory regime relevant to undertaking development and in addition to NZECP 34:2001 we are aware of numerous other obligations that might fall on a landowner or developer. These include the Building Act and Regulations; Local Government Act (Development Contributions), and the Historic Places Act. It falls to the individuals involved to properly inform themselves and be aware of all relevant obligations.
- (g) We are however sympathetic to the practicalities of multiple separate procedures running in parallel but separately to one another, and to that end we are persuaded to agree with Mr Joll that the addition of an advice note alerting people to the potential that they may need to address NZS: ECP 34:2001 (which may involve them providing a greater setback, or could after engagement with Orion result in no additional setbacks being required such as by agreeing to a line undergrounding outcome) would be the most appropriate outcome. We also consider this to be more effective and efficient than either the notified QM provisions alone (without the advice note), or Orion's preferred relief.
- [236] At a high level, and in terms of s77I and s77O, we accept that the QM would impose the least possible imposition on the enablement of the MDRS and the NPS-UD Policy 3 or 4 response. It would not diminish any density enablement or associated standards other than providing for an additional setback and clearance (non-complying activity) area. We are satisfied that it inherently seeks to qualify the MDRS and Policy 3 or 4 responses to the least extent necessary.

[237] The QM is otherwise relevant to several aspects of the QM-focused parts of the RMA:

- (a) s77I(b) and (e) (and s77K), and s77O(b) and (e) (and s77Q), in the case of those identified corridors associated with the national transmission system (220kV, 110kV and 66kV National Grid lines); and
- (b) s77I(j) (and s77L and s77K)) and s77O(j) (and s77R and s77Q), in the case of those identified corridors that form part of the regional transmission network (66kV,

- 33kV electricity distribution lines, and the 11kV Heathcote to Lyttelton electricity distribution line); and
- (c) s77I(j) (and s77L and s77J) and s77O(j) (and s77R and s77P), in the case of those additional lines identified by Orion.
- [238] In terms of the additional lines sought by Orion for including in the QM, and as noted earlier, we find that Orion has not satisfied s77L or s77R. Specifically, Orion did not adequately address each of s77L(3)(c) or s77R(3)(c) in paragraph [3](c) of each section, which requires a site-specific analysis. Orion did not identify what land would be subject to its expanded QM, although we understood it would include a significant number of properties across Christchurch (effectively everywhere adjoining an above-ground / overhead electricity line). Notwithstanding our findings on the evidence, we would not have been able to recommend Orion's relief even had its technical evidence been otherwise persuasive.
- [239] Turning to paragraph [3](a), we agree with the Council's evaluation and the supporting submissions of Transpower, Orion, and Kāinga Ora in this regard. The QM has been correctly identified and assessed, and as the corridors are already mapped within the ODP, they are inherently well-identified and spatially specific.
- [240] Turning to paragraph [3](b), the Council's s32 evaluation included the regionally significant transmission corridors in what was described as nationally significant infrastructure. This was noted by Ms Oliver in her s42A Report and we agree with her. We have subsequently undertaken our own additional s77L and s77R evaluations noting that the corridors in question have been spatially well-identified and the land subject to the proposed QM understood. Having worked through these, we have come to the same (but mis-categorised) conclusions as were set out in the Council's s32 evaluation and we accept those albeit in the frame of s77I(j) and s77O(j). We note that Transpower and Orion both agreed with and supported the Council's proposal in this respect. Although Kāinga Ora submitted that only nationally significant infrastructure be included in the QM, it did not specifically identify which of the Council's notified corridors it considered should be included or excluded, nor indicate whether it disagreed with the way the Council's s32 evaluation had characterised all of the notified QM corridors as being of national significance. It did not otherwise pursue this matter in any of its expert evidence to us. On this basis we did not had any reason to revisit our conclusions.

[241] Taking into account the approach in Part 1 of this report we find that the QM as proposed by the Council and supplemented by Mr Joll's additional advice note will be consistent with and give effect to the NPS-UD, specifically in terms of Objective 1 and Policy 1.

Section 32AA Evaluation of Recommended Changes

- [242] In this instance, the Panel has largely adopted the Council's s32 evaluation but also supplemented that with the expert and rebuttal evidence received, Orion's own s32AA evaluation, and the answers we were provided to our questions at the Hearing.
- [243] No formal s32AA evaluation was undertaken by Mr Joll to support the advice note he recommended but in fairness to him, his recommendation was given more in the spirit of an outcome he felt might 'split the difference' between he and Ms. Foote than a firmly confined expert recommendation. However, having undertaken our own s32AA evaluation, we have adopted parts of Orion's position, and have concluded that:
 - (a) The addition of the advice note will not materially change the Council's QM and the principal benefits described within the Council's s32 evaluation;
 - (b) But it will be slightly more effective and efficient in terms of helping 'head off' circumstances where a landowner's awareness of NZS: ECP 34:2001 may slip beneath notice and create difficulties when a building was sought to be erected.
 - (c) This makes the overall QM + advice note package slightly more appropriate than the QM alone.
- [244] Because of the material similarity between the notified QM and our recommendation, we find that the above summary evaluation is sufficient and that no additional reporting on that is required.
- [245] On the basis of this, the Panel recommend retention of the QM and addition of Mr Joll's advice note. However, Mr Joll only discussed that in the context of the MRZ. We were told that the lines of interest to Orion sit across many zones in the Plan, and we understand that is specifically those zones that allow taller buildings very close to front boundaries that is the key. We have identified that this is the MRZ, HRZ, Mixed Use, and Centres zones and we recommend the advice note be added to all of them as part of the setback standards they each contain.

12. LYTTTELON PORT INFLUENCES OVERLAY

Summary of Recommendations

[246] The Panel recommends that:

- the existing Lyttleton Port Influences Overlay provisions and mapping in the (a) Operative District Plan (ODP) be accepted as a qualifying matter;
- (b) no consequential amendments are required to be made; and
- (c) the submissions on this matter be accepted.

PC 14 as Notified

[247] As set out in the Council legal submissions⁸³ and the Council evidence⁸⁴ the Lyttleton Port Influences Overlay is an 'existing QM' in the ODP that recognises and provides for Lyttleton Port as 'nationally significant infrastructure' (National Policy Statement on Urban Development 2020 (NPS-UD) definition) and 'regionally signficant infrastructure' (Section 6 Canterbury Regional Policy Statement (CRPS) definition), that supports a less enabling application of Medium Density Residential Standards (MDRS) and Policy 3 NPS-UD, in order to protect the efficient and effective operation of the port from potential reverse sensitivity effects. The QM retains the existing maximum building height of 12m and associated provisions (cf 14m in Local Centre zones) that recognise the distinct character of the built form and access to sunlight on the southern slopes.

Submissions and Section 42A Recommendations

[248] There were three submissions in support and no submissions in opposition to the Lyttleton Port Influences Overlay being retained as a qualifying matter. The s42A Report author recommended that the overlay be adopted.85

Findings and Evaluation

[249] The Panel finds that the Lyttleton Port Influences Overlay meets the requirements of s77I and K, and is the most appropriate method and we recommend that the existing

⁸³ Council Legal submissions - City Wide Qualifying Matters and Financial Contributions, 8 April 2024, at 7.1(a)

⁸⁴ s42A Report of Sarah Oliver, 11 August 2023, at 12.89 to 12.94 s42A Report of Sarah Oliver, 11 August 2023

Lyttleton Port Influences Overlay provisions and mapping in the Operative District Plan (ODP) be accepted as a qualifying matter.

13. INLAND PORT INFLUENCES OVERLAY

Summary of Recommendations

[250] The Panel recommends that:

- (a) the proposed 'Inland Port Influences Overlay' provisions and mapping not be accepted as a Qualifying matter.
- (b) no consequential amendments are required to be made; and
- (c) the submissions opposed to the proposed QM be accepted and those supporting the QM be rejected.

PC 14 as Notified

[251] PC 14 as notified included an Industrial Interface qualifying matter along Port Hills Road properties opposite (west of) the Inland Port, but did not include an 'Inland Port Influences Overlay' which was subsequently requested in a submission by the Lyttleton Port Company. Those properties were also subject to the Low Public Transport Accessibility Area and Slope Hazard qualifying matters.

Submissions and Section 42A Recommendations

[252] As set out in the Council legal submissions⁸⁶ and the Council evidence⁸⁷ the Lyttleton Port Company sought that the properties opposite the Inland Port also be subject to an 'Influences Overlay' with associated provisions relating to acoustic treatment of habitable spaces of residential units. The Port Company proposed that the overlay would apply to approximately seven (7) residential properties on the western side of Port Hills Road.

[253] Expert evidence on the background to the establishment of the Inland Port and the conditions of resource consent, particularly with respect to noise conditions as they

_

⁸⁶ Council Legal submissions - City Wide Qualifying Mattrs and Financial Contributions, 8 April 2024, at 7.1(a)

⁸⁷ Rebuttal Evidence of Sarah Oliver, 9 October 2023, at 31 and 32

relate to adjoining residential properties, was provided by Ms Lenky (Company), Mr Hegley (Acoustics) and Mr Purves (Planning).

[254] In her s42A report, Ms Oliver concluded that the influences overlay had merit with respect to redevelopment to the MDRS levels or greater, but that the proposed application of acoustic treatment to new habitable spaces to existing residences had the potential to be outside the scope of PC 14.

[255] Mr Hegley noted that the traffic noise standards in relation to permitted residential development adjacent to Port Hills Road would achieve the same level of acoustic insulation as that sought by Lyttleton Port Company with the overlay⁸⁸. He concluded that having both forms of noise control is transparent and that it could not be guaranteed that reliance on the traffic noise rule would also address noise control from the Inland Port.

Findings and Evaluation

[256] The Panel has found that the Inland Port Influence Overlay is outside of the scope of PC 14 as it is not supportive of or consequential on the MDRS.

[257] The zoning maps accompanying the Council's Reply identify the following provisions that would apply to the residential properties subject to the Port Company's requested *Inland Port Interface Overlay*:

- Medium Density Residential Zone
- Residential Hills Precinct
- Industrial Interface QM
- Loess Soil Management Area QM
- Slope Hazard QM

[258] Of particular relevance to the need and effectiveness of the requested *Interface Overlay* is the proposed *Industrial Interface QM*, as that includes provisions to manage reverse sensitivity effects between existing industrial zones and the new medium density zone. New residential noise limits are proposed, as are mechanical ventilation, air conditions and balcony requirements for permitted activities. As set out in Part 5 of this Report, the Panel has recommended that the *Industrial Interface QM* be accepted as a qualifying matter.

[259] The proposed *Industrial Interface QM* was notified as part of PC 14. However, the *Inland Port Interface Overlay* was proposed by Lyttleton Port Company in its submission. The

_

⁸⁸ Statement of Evidence of Nevil Hegley, 20 September 2023, at 28 - 31

matter of scope is discussed in Part 1 of this Report and is not repeated in any detail here. In summary, the Panel finds that the submission is not 'on' PC 14 as the proposed *Inland Port Interface Overlay* is not consequential on the MDRS or Policy 3 NPS-UD (s80E(1)(b) RMA)) as it is an existing situation that is recognised in the resource consent conditions applying to the development of the Inland Port. Also, the owners and occupiers of the residential properties directly affected by the Lyttleton Port Company submission were not adequately informed of what was being requested in the submission.

[260] For the above reasons, the Panel recommends that the proposed '*Inland Port Influences*' Overlay' provisions and mapping not be accepted as a qualifying matter.

14. NEW ZEALAND RAIL SETBACKS

Summary of Recommendations

[261] The Panel recommends that:

- (a) the existing railway setback provisions and mapping in the ODP be accepted as a qualifying matter;
- (b) no consequential amendments are required to be made; and
- (c) the submissions in support of the QM be accepted and those opposed be rejected.

PC 14 as Notified

[262] As set out in the Council legal submissions⁸⁹ and the Council evidence⁹⁰ the setback rules from the rail corridor were notified as an 'existing QM' that recognises and provides for the railway network as 'nationally significant infrastructure' (NPS-UD definition) and 'regionally significant infrastructure' (Section 6 CRPS definition), that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect the efficient and effective operation of the railway network from potential reverse sensitivity effects. The purpose of the QM is to carry over the existing Operative District Plan 4m setback from the railway network, rather than apply the 1m setback set out in Standard 13(1) Schedule 3A of the MDRS.

⁸⁹ Council Legal submissions - City Wide Qualifying Matters and Financial Contributions, 8 April 2024, at 7.1(b)

⁹⁰ s42A Report of Sarah Oliver, 11 August 2023, at 12.82 to 12.88

Submissions and Section 42A Recommendations

[263] There was agreement between Ms Heppelthwaite (Planner for KiwiRail), Ms Grinliton-Hancock (Corporate for KiwiRail) and Ms Oliver (Council planner) with respect to the need to retain the existing 4m setback provisions, and for the consequential inclusion of this provision within the High Density Residential Zone (HRZ) (to align with other zones).

[264] Ms Oliver discussed the suitability and application of a 'Rail vibration alert overlay' as an information tool for landowners.⁹¹ She was equivocal as to the effectiveness of such an overlay in the district plan or its inclusion on property files and Land Information Memorandum. The Panel notes that the overlay was not included in the final set of PC 14 provisions recommended in the Council Reply.

Findings and Evaluation

[265] The Panel finds that the existing rail corridor setback rules meets the requirements of s77I and K, and are the most appropriate method. For those above reasons, the Panel recommends that the existing railway setback provisions and mapping in the ODP be accepted as a qualifying matter. The Panel agrees with Ms Oliver that the inclusion of an 'alert layer' needs to be carefully considered, and as such is better to be included in a future plan change or review under the standard Schedule 1 process.

15. WASTE WATER CONSTRAINTS AREA

Summary of Recommendations

[266] The Panel recommends that:

- (a) the 'Waste Water Constraint Area (Vacuum Sewer)' provisions and mapping be accepted as a QM;
- (b) the zonings of the residential areas and the 'alternative zone' for the Special Purpose (School) zone are to be amended to be as per the ODP (renamed to the equivalent zone name in Table 13 of the National Planning Standards); and
- (c) the submissions in support of the QM be accepted and those opposed be rejected.

.

⁹¹ Rebuttal Evidence of Sarah Oliver, 9 October 2023, at 33 - 35

PC 14 as Notified

[267] As set out in the Council legal submissions⁹² and the Council evidence⁹³ the Waste Water Constraint Areas Overlay (Vacuum Sewers) is proposed as a new 'other' qualifying matter applying to areas in Aranui, Shirley and Prestons. These vacuum sewer systems are at or near to capacity and there are no immediately feasible technical or financial alternative options to service greater intensification (ie the whole system would need to be upgraded simultaneously). Accordingly, Council proposes the qualifying matter in order to support a less enabling application of MDRS and NPS-UD Policy 3, in order to ensure residential intensification does not occur within these areas. The Operative District Plan includes controls on subdivision where wastewater is constrained (Rules 8.4.1.3 and 8.6.8). However, there are no rules controlling residential intensification where subdivision is not proposed. This has led to resource consents being granted for residential intensification, only to be prevented from construction stage as building consent cannot be issued.

Submissions and Section 42A Recommendations

[268] The Panel was assisted by the clear evidence provided by Ms McDonald (Team Leader, Asset Planning Water and Wastewater) setting out the manner in which the vacuum system operates and the significant technical and financial difficulties in either upgrading or replacing these vacuum systems.⁹⁴

[269] Ms Oliver advised that the vacuum sewers overlay is supported by submitters, with one submitter (Ms McEwan) seeking that it be applied to Merivale. Ms McEwan did not provide any additional evidence to the Panel. It is noted that Merivale is not serviced by a vacuum wastewater system.

Findings and Evaluation

[270] The Panel notes the proposed residential zoning of these areas as set out in the Council's Reply and that in the ODP (in brackets) is as follows:

- (a) Aranui MRZ (RS)
- (b) Shirley HRZ (RMD and RS)

⁹² Council Legal submissions - City Wide Qualifying Matters and Financial Contributions, 8 April 2024 at 8.1 to 8.4

^{93 &}lt;u>s42A Report of Sarah Oliver, 11 August 2023</u> at 12.95 to 12.103

⁹⁴ Statement of Evidence of Michele McDonald, 11 August 2023 at 16 to 79

⁹⁵ s42A Report of Sarah Oliver, 11 August 2023 at 12.99 and 12.100

- (c) Prestons MRZ (RNN)
- [271] The Panel considers that it is not transparent for plan users to show a residential area with a name and provisions that purport to enable residential intensification, to then have a qualifying matter that effectively means that no such intensification is realistic. It is more transparent to zone these residential areas with a less enabling zone, as well as applying the vacuum sewer overlay.
- [272] It is noted that the overlay applies to other zones (such as Local Commercial, Specific Purpose (School) and Open Space Community Parks). These are discrete areas that through PC 14, do not enable significant intensification and development. However, with respect to the Specific Purpose (School) zones, the 'alternative zone' set out in the appendices in 13.6.6 of the ODP should be amended to reflect the residential zoning surrounding them with the areas where the Waste Water Constraint Areas Overlay.
- [273] The Panel accepts that the 'Waste Water Constraint Area (Vacuum Sewer QM meets the evaluative requirements for a QM and the provisions (as we have recommended to be amended) are the most appropriate method for achieving the objective of PC 14. For those reasons, the Panel recommends that the 'Waste Water Constraint Area (Vacuum Sewer)' provisions and mapping be accepted as a qualifying matter and the zonings of the residential areas and the 'alternative zone' for the Special Purpose (School) zone are to be amended to be as per the ODP (renamed to the equivalent zone name in Table 13 of the National Planning Standards).

16. INDUSTRIAL INTERFACE

[274] This section relates to a proposed Residential – Industrial Interface Qualifying Matter (Industrial Interface QM) which provides for height, setback provisions for residential properties adjacent to or adjoining Industrial zones.

Summary of Recommendations

- [275] The Panel recommends that the Industrial Interface QM is accepted by the Council subject to the following amendments:
 - (a) buildings within 40m of an industrial zone to be limited to 8m in height;
 - (b) all land within 240m of the south side of the Ravensdown site at Main South Road to be zoned MRZ and include provisions requiring:

- (i) all glazing above 8m height within that 240m to be stain-resistant;
- (ii) buildings higher than 14m height to be a non complying activity.
- [276] The Panel also draw to the Councils attention our related recommendations in Part 3 of the Report. The Industrial Interface QM proposed for Hornby overlaps with our recommendations in relation to NPS-UD Policy 3(d) commensurate catchments.
- [277] We recommend that the submissions that supported the Industrial Interface QM are accepted in part and those that opposed it be rejected.

PC 14 as Notified

- [278] As notified PC 14 zoned relevant residential land as either MRZ or, where NPS-UD Policy 3(d) applied, HRZ, subject to an additional limitation on building height to 7m within 40m of an industrial zone. No other limitations to density or development standards were proposed. Buildings that infringed the height within the 40m setback standard would fall to be restricted discretionary activities.
- [279] The s32 evaluation report accompanying PC 14 addressed the Industrial Interface QM at Part 2, section 6.22⁹⁶. Legal counsel for the Council summarised the rationale for the QM as follows:⁹⁷:

Some MDRS areas and some policy 3(c) and (d) areas – i.e. the areas within walkable catchments or adjacent to the relevant centres – intersect with industrial zones, which will enable a greater density of residential development at greater building heights in close proximity to industrial activities. This has the potential to give rise to effects on future occupants of the residential development, as well as reverse sensitivity effects on established industrial activities. Noise is a particular issue, with modelling suggesting that there is potential for greater noise exposure at the third storey level of a residential development, resulting in new non-compliances for existing industrial activity with noise rules in the District Plan.

- [280] The concern was that taller buildings close to industrial zones may have a more direct line of sight to noise emissions that is less practical to measure or mitigate, coupled with a potential for a greater number of receivers living in such exposed locations.
- [281] The s32 evaluation considered three alternatives⁹⁸, being:
 - (a) Apply the Medium Density Residential Standards (MDRS) with no restrictions;
 - (b) The PC 14 proposal (option 2)

_

⁹⁶ Part 2 of Christchurch City Council s32 and s77 Evaluation of Qualifying Matters, part 6.22.

⁹⁷ Council Legal submissions - Residential Zones, 26 October 2023, at 4.36.

⁹⁸ Ibid at 6.22.12.

- (c) An option similar to PC 14 based on the rule only applying to properties within 15m of an industrial zone (derived from a calculation of where existing compliant noise emissions at a 2-storey building would achieve compliance at a third storey).
- [282] The key s32 evaluation conclusion was that the QM would be a justified qualification of the MDRS, and most appropriate overall outcome.
- [283] We note that in the s32 evaluation report only the prospect of MDRS was evaluated. There was no mention of any HRZ that might be required as a result of NPS-UD Policy 3(d). However, the notified PC 14 included the Industrial Interface QM rules in both the MRZ and HRZ zones.

Submissions and Section 42A Report Recommendations

- [284] The relevant s42 report was authored by Ms Ratka. In it she evaluated submissions received from 13 parties across four key issues. These key issues were:
 - (a) to reject the QM (three submitters);
 - (b) add additional requirements to the QM (one submitter);
 - (c) provide additional site-specific requirements to the QM (six submitters); and
 - (d) support for the QM (five submitters).
- [285] Ms Ratka's conclusion was that the Industrial Interface QM should be retained without change other than to increase the permitted height limit within the 40m setback from 7m to 8m (i.e. the Operative District Plan permitted standard), and minor amendments to policy 14.2.12.1.

Submitter evidence and representations

- [286] Submissions in support of the Industrial Interface QM raised numerous other related aspects including air quality, reverse sensitivity, and they proposed additional changes to PC 14 so as to safeguard existing lawfully established industrial activities from what could be a notable increase in nearby residential density.
- [287] Submissions opposed to the Industrial Interface QM emphasised the existence and ability of standards (such as noise limits) to manage nuisance effects, that industrial activities had ongoing underlying obligations such as under s17 of the Resource

Management Act 1991 (RMA) to avoid, remedy or mitigate their adverse effects, and that otherwise there was no need for the loss of development capacity that the Industrial Interface QM would result in, to be in place.

[288] Lay and expert evidence and legal submissions from submitters on the QM was received from several parties. Submissions either raised city wide support or opposition to the Industrial Interface QM or were location-specific in the case of Ravensdown and Lyttleton Port Company activities.

City wide submissions

[289] City wide concerns about the application of the QM were typified by the submission from Kāinga Ora, who called evidence in opposition to the Industrial Interface QM from Mr Liggett⁹⁹ (corporate) and Mr Joll¹⁰⁰ (planner). Mr Joll argued that the Industrial Interface QM was unnecessary and onerous, and that it would be more appropriate to rely on other standards based on industrial operators managing the nuisances they emitted. Mr Joll also suggested that the demand for industrial zoned land might be being overstated and that at least some of the industrial zoned land in question could be put to a better business or mixed use zoned use. Mr Liggett's evidence that supported the evidence of Mr Joll.

[290] The Fuel Companies (BP Oil NZ Ltd, Mobil Oil NZ Ltd, and Z Energy Ltd #212) filed a statement dated 30 November 2023 prepared by Mr Dixon¹⁰¹ (planner), confirming that they agreed with and accepted Ms Ratka's s42A Report recommendations.

Ravensdown site, Hornby

[291] A location specific issue was raised by Ravensdown Ltd #234, an operator of a fertiliser manufacturing and related industrial activity that involves emissions other than noise capable of causing adverse effects on persons and buildings, including sulphur dioxide and fluoride. Legal Counsel for Ravensdown Mr Christensen presented legal submissions¹⁰²and called expert evidence from Ms Whyte¹⁰³ (planner) and Mr Chilton¹⁰⁴ (air quality).

Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023
 Hearing Statement of Jarrod Dixon on behalf of The Fuel Companies (BP Oil New Zealand and Ors), 30

¹⁰² Legal Submissions of Counsel for Ravensdown Limited, 15 November 2023

¹⁰³ Statement of Evidence of Jane Whyte on behalf of Ravensdown Limited, 20 September 2023

Statement of Evidence of Richard Chilton on behalf of Ravensdown Limited, 20 September 2023

[292] Ms Whyte proposed amendments to PC 14 Policy 14.2.12.1. She recommended an increase to the setback distance adjacent to the Ravensdown site from 40m to 240m. Ms Whyte included in her evidence an extensive s32AA evaluation of the amendments she recommended.

[293] Also of concern to Ravensdown Ltd was that the residential land south of its site at Main South Road was proposed to be zoned HRZ. Mr Chilton identified in his evidence that height of up to 4-storeys could be acceptable, but that above this air-quality effects could become problematic. He also supported a 240m setback, or that in the alternative the HRZ land proposed be 'down-zoned' to MRZ.

[294] The Panel asked several questions about Ms Whyte's recommendations including the justification of the 240m setback she proposed. A matter of particular discussion related to the effects of chemical emissions on buildings, including glass clouding, and the consequences of that.

[295] The Panel also heard from a nearby resident Mrs Marilyn Goulter #161 who provided us with helpful information on how adverse effects from the Ravensdown site had changed over time and what is currently being experienced.

[296] The Panel indicated that there may be benefit in ongoing discussion and an expert conference in relation to Ravensdown's industrial emissions (see next section).

Lyttleton Port Company Inland Port, Woolston

[297] Another location specific submission was received from Lyttleton Port Company #853 #2054, who filed evidence from Ms Lenky¹⁰⁵ (corporate), Mr Purves¹⁰⁶ (planner), and Mr Hegley¹⁰⁷ (noise). Mr Purves summarised the history of development at the Inland Port at Woolston and indicated that Ms Ratka's s42A report recommendations (discussed below) would be acceptable provided that a requirement for acoustic treatment also applied within the 40m setback area.

¹⁰⁵ Statement of Evidence of Crystal Lenky on behalf of Lyttelton Port Company Limited, 20 September 2023

¹⁰⁶ Statement of Evidence of Andrew Purves on behalf of Lyttelton Port Company Limited, 20 September 2023

¹⁰⁷ Statement of Evidence of Nevil Hegley on behalf of Lyttelton Port Company Limited, 20 September 2023

Council Section 42A/Reporting

- [298] Ms Ratka's s42 report was supported by evidence of Mr Osborne¹⁰⁸ (economics), Mr Scallan¹⁰⁹ (development capacity), and Mr Trevathan¹¹⁰ (noise).
- [299] Importantly, Ms Ratka's s42 report included evaluation of the Industrial Interface QM including its impact on housing capacity, including both the MRZ and HRZ proposed, and otherwise comprehensively addressed the effect of the QM in both zones.
- [300] Rebuttal evidence was filed by Ms Ratka¹¹¹, and Mr Osborne¹¹². Neither changed their position.
- [301] The Panel asked questions of Ms Ratka relating to the issues raised by the submitters including potential alternatives to the 40m setback she recommended.
- [302] The Council's Reply confirmed its acceptance of Ms Ratka's updated position reached after expert conferencing had occurred.¹¹³

Joint Witness Statements

- [303] A JWS was completed by Ms Ratka and Ms Whyte dated 18 April 2024. This detailed ongoing discussions the two planners had been having regarding the Ravensdown site.
- [304] As a result of the conferencing, Ms Ratka changed her recommendation to support Ravensdown's 240m buffer on the southern side of the Ravensdown site, along with additional plan methods relating to remediation of glass clouding. She also recommended that within that 240m buffer the MDRS should be withheld entirely, with the Operative District Plan Residential Suburban zone retained. This is a significant change in the scheme of PC 14 and to that end the JWS included an extensively updated s32 evaluation (performing the function of a s32AA further evaluation).

-

¹⁰⁸ Statement of Evidence of Philip Osborne, 11 August 2023

¹⁰⁹ Statement of Evidence of John Scallan, 11 August 2023

¹¹⁰ Statement of Evidence of Jeremy Trevathan, 11 August 2023

¹¹¹ Rebuttal Evidence of Brittany Ratka, 9 October 2023

¹¹² Rebuttal Evidence of Philip Osborne, 9 October 2023

¹¹³ Council Reply, <u>17 May 2024</u> at 10.94-10.98

Findings and Evaluation

- [305] The Panel generally accepts the recommendations of the Council's s42A planner Ms Ratka¹¹⁴ in relation to this Industrial Interface QM, as it applies city wide, except in relation to the Ravensdown site at Hornby.
- [306] In relation to the residential areas within 240m of the Ravensdown site at Hornby the Panel find that the Industrial Interface QM should be retained and modified in accordance with Option 5 from the JWS updated s32 evaluation as it is the most appropriate outcome. This will replace the notified HRZ with MRZ within the 240m buffer south of the Ravensdown site and provide a resource consent framework within which the MDRS will be incorporated subject to the least necessary constraint, as shown in in Figure 1 below.¹¹⁵ This includes amendments to PC 14 as set out in Appendix 3B of the JWS (planners) on Ravensdown Industrial Interface, 18 April 2024.



a. The residential sites outlined below are within the 240m Ravensdown air discharge buffer.

(Placeholder image - final image to have HRZ within 240m buffer changed to MRZ)

Figure 1

[307] The Panel's principal reasons are:

(a) We are persuaded to agree with the Council's analysis that there are potential adverse effects associated with development adjacent to industrial zones that can be impractical to avoid, remedy or mitigate and which justify a qualification of the MDRS.

¹¹⁴ s42A Report of Brittany Ratka, 11 August 2023

¹¹⁵ Joint-Witness-Statement-Planners-Ravensdown-Industrial-Interface-18-April-2024 page 58

- (b) We accept that there are many existing activities on industrial zoned land and there is a clear framework across the Canterbury Regional Policy Statement (CRPS) and District Plan that recognises reverse sensitivity effects.¹¹⁶ It would not be appropriate to allow an unfettered provision of MDRS or HRZ around those without suitable mediating Plan provisions.
- (c) We prefer the Council's planning evidence to that of Mr Joll's opinion (Kāinga Ora) that there may be a better use for the existing industrial zoned sites in question and that a higher intensity business or mixed use might be warranted in some locations. In any event, Mr Joll's proposal would do nothing to stop existing effects created by existing industrial / residential interface issues given that a change of zone does not necessarily mean that existing industrial activities will vacate the zone.
- (d) We find that an 8m height limit within 40m of industrial zoned land, and additional requirements above 8m height within 240m of the south side of the Ravensdown site at 312 Main South Road, will not unreasonably restrict development capacity noting that in the MRZ in particular, 2-storey terraced housing can deliver a density similar to 3-storey terraced housing.
- (e) We agree that in light of the practical health and other effects possible above 14m in height within the 240m Ravensdown site buffer, the appropriate zone outcome is MRZ and that HRZ would not be appropriate or efficient (noting that the limitation on height may result in an MRZ level of real-world development in any event).
- (f) In terms of NPS-UD Policy 3(d), we refer to Part 3 of our Report where we identify what we find to be the appropriate area of adjacent land to Hornby centre. This extends, in part, into the 240m Ravensdown buffer area. We have considered this in terms of RMA s.77G, s.77I, and s.77L and find that it is appropriate to qualify the HRZ to align with the 240m buffer area based on the MRZ framework we recommend
- (g) The principal reason we disagreed with Ms Ratka to retain the Operative Residential Suburban zone in the 240m Ravensdown site buffer is that the obligation under s77G(1) RMA is clear and that qualifying the MDRS (and NPS-UD Policy 3) is only permissible under s77G(6) and s77I "to the extent necessary"

76

¹¹⁶ Christchurch District Plan, Objective 16.2.3 – Effects of industrial activities (part a.) and Policy 16.2.3.2 – Managing effects on the enfironment (parts a. and b.)

to accommodate the qualifying matter. We are satisfied that the JWS Option 5 achieves this, and that no further qualification of the MDRS can be on that basis allowed.

- [308] We find that our preferred option (Option 5 of the JWS, 18 April 2024) is appropriate based on the requirements of s77G, s77I, and s77L of the RMA. Specifically:
 - (a) The combined information and evidence before us meets the three limbs of s77L, including s77L(c)(i) to (iii).
 - (b) The Industrial Interface QM is an appropriate 'other' QM permissible under s77I(j), and we find that the issues and effects proposed to be managed are justifiable and make an un-qualified enablement of the MDRS or a NPS-UD Policy 3 response inappropriate.
 - (c) Under s77I our recommended option will limit the MDRS and NPS-UD Policy 3 only to the extent necessary to accommodate potential noise and air quality effects.
- [309] We find that the QM as we recommend will be consistent with the NPS-UD and recognise the practical human health and safety hazards associated with co-locating residential and industrial activities. Specifically in terms of the submission from Kāinga Ora we are persuaded by the Council's evidence including that of Mr Osborne that the retention of industrial zoned land, even though resulting in a consequence of the Industrial Interface QM will be a modest reduction in residential development opportunity, is the correct and appropriate outcome.
- [310] In terms of Policy 3(d) in particular, the Hornby centre will still be supported by a substantial area of adjacent land upzoned to HRZ an achieve the well-functioning urban environment outcomes intended to be derived from enabling density and scale adjacent to centres of activity.
- [311] The Panel generally adopt the s32AA analysis provided by Ms Whyte in her evidence, along with the updated s32 evaluation appended to the JWS (planning) dated 18 April 2024.
- [312] However, we have reached a different conclusion as between Options 5 (our preference) and 7 (Ms Ratka's preference). We find that Option 5 is the most appropriate because it satisfies s77I and that the MDRS are to be qualified "only to the extent necessary" to accommodate the Industrial Interface QM. We find that Ms Ratka's preference for Option

7 involved going beyond what was necessary, including by withholding the MDRS in full from any residential zoned land within the 240m Ravensdown site buffer. Because of that, Option 7 is invalid.

17. CITY SPINE

Summary of Recommendations

- [313] The Panel recommend that the City Spine QM be deleted.
- [314] The related provisions proposed in association with it also be deleted as shown in the Panel's recommended provisions in Part 8 Appendix G.
- [315] Submissions that requested removal of this QM are accepted, and those supporting it are rejected.

PC 14 as Notified

[316] As notified, PC 14 included provisions relating to those parts of the City Spine corridors where the existing road reserve (not the formed carriageway) was less than 24m. Standards were proposed requiring a 4m front yard setback (Rule 14.5.2.18 in the Medium Density Residential Zone (MRZ), and Rule 14.6.2.17 in the High Density Residential Zone (HRZ). The rules also limited front fence heights, and would exclude outdoor living spaces from being positioned closer than 1.5m from the road boundary. Infringements of this standard would be a restricted discretionary activity with specific restrictions at Rule 14.15.j.ii (three matters). Ms Oliver, in her s42A report, described the intent of these requirements as being to¹¹⁷:

...manage the site design and layout of buildings to ensure most importantly, adequate space is required for tree planting along the road frontage. The rule will also have the benefit of managing the location of permanent and unmoveable structures and required (compliant) outdoor living spaces, so they do not foreclose future potential transport improvements (form and function) along this corridor.

- [317] The Council summarised the City Spine QM in legal submissions' (footnotes included)¹¹⁸:
 - 9.1 The City Spine QM provides for a building setback applying to parts of the main northern and western corridors where the road width [road reserve] is 24m or less.

118 Council Legal Submissions, Citywide Qualifying Matters and Financial Contributions, 8 April 2024, at 9.1-9.3.

¹¹⁷ s42A Report of Sarah Oliver, 11 August 2023, at paragraph 12.105.

In particular, the relevant proposed rules require a 4m setback in residential zones.

- 9.2 This is an 'other' QM for the purposes of 771(j) or 77O(j).
- 9.3 The City Spine Transport Corridor has been identified under a number of planning and transport plans as a core public transport route connecting major centres from the north and west, including the Greater Christchurch Spatial Plan that has been adopted by all councils in Greater Christchurch. 120 The corridor is planned as a city-shaping corridor to attract the greatest population densities, connecting the city to the neighbouring districts of Selwyn and Waimakariri. 121 The City Spine QM is multi-purpose, in that it seeks to provide for a level of amenity (particularly in requiring adequate space for tree planting along the road frontage), while also ensuring that new builds do not significantly compromise future transport options for the corridor.
- [318] The effect of the City Spine QM would be to impose a front yard setback that was greater and more onerous than the Medium Density Residential Standards (MDRS) or National Policy Statement on Urban Development 2020 (NPS-UD) Policy 3 response would otherwise have led to. No other density or related standards are proposed to be affected.
- [319] The s32 evaluation supporting the provisions¹²² provided a broader rationale for the QM¹²³.
- [320] Despite the s32 Report acknowledging that alternative methods could include "business cases, designations and strategic land purchase"124, the only two alternatives that were formally evaluated were the City Spine QM as proposed, and the full or unqualified MDRS / NPS-UD Policy 3 response.
- [321] The key s32 conclusion was that the City Spine QM is warranted on the basis that it "achieves better land use transport integration and long-term outcomes and city objectives for this priority corridor" 125.
- [322] Supporting analysis from the alternatives assessment offered the following as reasons why the proposed City Spine QM would be the most appropriate approach¹²⁶:

As a minimum, sufficient space needs to be provided for tree planting so to better integrate with the main transport corridor, providing better amenity for the development site and residents, whilst also contributing to the greening and environment conditions of a high activity urban environment. The cost to the development site is deemed minor

¹¹⁹ Rule 14.5.2.18 in the Medium Density Residential Zone and rule 14.6.2.17 10.2 in the High Density Residential

¹²⁰ https://greaterchristchurch.org.nz/urbangrowthprogramme/greater-christchurch-spatial-plan/draftgreaterchristchurch-spatial-plan [Greater Christchurch Spatial Plan : Greater Christchurch]

121

242A Report of Sarah Oliver, 11 August 2023, at 12.109

Part 2 of Christchurch City Council s32 and s.77 Evaluation of Qualifying Matters, part 6.31.

¹²³ Ibid at 6.31.2 -6.31.4

¹²⁴ Ibid

¹²⁵ Ibid, Table 6.31.14.

¹²⁶ Ibid.

given a 4m setback still provides significant opportunity to achieve the anticipated site density for the Medium Density and High Density Zones.

[323] The Panel note at this point the frequent reference made in the s32 evaluation to the planting of trees and the benefits that this could provide the corridor. The proposed methods do not include any requirement or matter of any associated discretion relating to the planting of any trees within the setback area that the City Spine QM would impose.

Submissions and Section 42A Report Recommendations

Submitter evidence and representations

[324] In total there were nine submissions received on the City Spine QM. Two were in support (Environment Canterbury and Josie Schroder #780), with the remainder opposed (Ministry of Housing and Urban Development #859; Kāinga Ora; Diane Gray #504; Waka Kotahi NZ Transport Agency #805; Carter Group Limited; The Catholic Diocese of Christchurch; and Ōtautahi Community Housing Trust).

Submitter presentations and evidence

[325] Kāinga Ora provided pre-circulated evidence opposed to the City Spine QM. This was from Mr Liggett¹²⁷ (corporate) and Mr Joll¹²⁸ (planning). Mr Joll was in particular critical of the Council's framing of the City Spine QM as being related to an infrastructure outcome. By way of direct quotes from the evidence of the Council's experts Mr Morahan and Mr Field, Mr Joll argued that the City Spine QM was in fact focused on providing an amenity outcome.

[326] Waka Kotahi also provided pre-circulated evidence opposed to the City Spine QM. Prior to the hearing, Waka Kotahi withdrew the evidence. 129

Council Section 42A Reporting

[327] The relevant s42A Report was authored by Ms Oliver. In it she evaluated submissions with an emphasis on the submission made by Waka Kotahi (opposed). The three principal issues Ms Oliver identified from the Waka Kotahi submission (which was in her opinion representative of the submissions opposed to the City Spine QM) were:

¹²⁷ Statement of Evidence of Brendan Liggett, 22 September 2023

¹²⁸ Statement of Evidence of Tim Joll, 20 September 2023

¹²⁹ Memorandum of Counsel for Waka Kotahi, 19 March 2024 and Memorandum of Counsel for Waka Kotahi, 24 April 2024

- (a) whether a designation would have been a more appropriate method;
- (b) the impact of the QM on development capacity; and
- (c) whether the QM is valid as a basis to qualify the MDRS or relevant NPS-UD policy 3 response.
- [328] Ms Oliver concluded that the City Spine QM should remain although she agreed with several aspects of Waka Kotahi's submission relating to a designation being the appropriate method to determine any additional road reserve width. As a result of this, Ms Oliver recommended that two of the three proposed restrictions of discretion should be deleted, as follows¹³⁰:
 - "...Minimum road boundary setback Qualifying Matter City Spine Transport Corridor
 - i. Whether the reduced setback, location of outdoor living space and fencing would provide sufficient space in the front yard to contribute positively to street amenity and provide for the planting of medium to large specimen trees.
 - ii. Whether the reduced setback, location of outdoor living space and fencing would provide sufficient opportunity to achieve well integrated and multiple land use and infrastructure outcomes, including as a minimum and to achieve best practice guidelines, two traffic lanes, pedestrian, cycle and public transport services; landscape amenity and tree planting; and stormwater retention and treatment facilities, residential street relationships and servicing, and CPTED principles
 - iii. Whether buildings, the location of outdoor living space and fencing enabled through a reduced setback from the road would impede widening of the road through designation and / or land acquisition."
- [329] The s42A report was supported by statements of expert evidence prepared by Mr Morahan¹³¹ (transportation) and Mr Field¹³² (urban design).
- [330] Ms Oliver provided a brief of rebuttal evidence¹³³ and in that she responded to the criticisms of the City Spine QM made by Mr Joll on behalf of Kāinga Ora. Ms Oliver disagreed with Mr Joll's specific point that the QM would not require any tree planting, by referring to other proposed rules relating to tree canopy and financial contribution, concluding that¹³⁴ (our emphasis added): "Should the tree canopy financial contribution provisions be adopted, then the property owner would be **more likely** to use that space to plant the required trees. Therefore, I consider the setback is successful in its intent and will facilitate well-planned and designed development from the outset".

¹³⁰ s42A Report of Sarah Oliver, 11 August 2023 at 12.120.

¹³¹ Statement of Evidence of Chris Morahan, 11 August 2023)

¹³² Statement of Evidence of William Field, 11 August 2023

Rebuttal Evidence of Sarah Oliver, 9 October 2023

¹³⁴ Ibid, paragraph 44.

[331] At the hearing, Counsel for the Council provided an overview of its position, including confirming in response to a question from the Panel that the City Spine QM was being promoted on the basis of it being primarily about street amenity and secondly about future traffic options. We asked questions of the Council's witnesses Mr Field, Mr Morahan and Ms Oliver.

[332] Of note is that Ms Oliver confirmed that she had changed her opinion as set out in her s42A report and no longer supported deletion of the two restrictions of discretion that she indicated, and instead recommended that the City Spine QM as notified remain.

[333] In the Council's Reply, the Council confirmed that it had not changed its position on the City Spine QM as presented at the hearing.

Issues

[334] The key issues in relation to this QM are:

- (a) Whether the proposed approach is the most appropriate approach, specifically given there is the potential for a Notice of Requirement to be pursued once a final decision as to the future form and function of the road corridor has been made;
- (b) Whether the City Spine QM represents an appropriate qualification of the MDRS or NPS-UD Policy 3 response; and
- (c) Whether the City Spine QM on merit is justifiable and more appropriate than an un-qualified MDRS and NPS-UD Policy 3 response.

Findings and Evaluation

[335] The Panel prefer the evidence of Mr Joll on behalf of Kāinga Ora. The proposed City Spine QM is not appropriate for several reasons.

[336] We accept that the key corridors have been identified as a long-term passenger transport route and that this is in time hoped to become a high quality, high amenity part of the City. As of this time no transport solution has been determined. Although we were told by Ms Oliver and Mr Morahan at the hearing that the technical work completed to date did include an option that would require all of the existing road reserve space, up to 20m width, and have no space available for any trees. We stress that this was one option and that no formal decisions had been made as of the time of the hearing.

[337] At all levels we found the Council's evidence unpersuasive:

- (a) We received insufficient evidence to confirm that there was no scenario that trees or other landscaping to an acceptable standard of amenity could be accommodated within the road reserve.
- (b) A key driver of the setback being to merely 'enable opportunities' for more trees along the edge of the street is not a sufficient basis to require the setback proposed. As we see it, either a specific tree-based amenity outcome is necessary in resource management terms, or it is not. Despite several invitations to the Council's witnesses via our questions at the hearing, none went as far as to recommend that any particular tree planting should be required. This significantly undermined the strength of the Council's arguments.
- (c) Following on from that, we accept the principle that a QM based on an amenity outcome could be demonstrated to be appropriate. But it would need to be very precisely framed in terms of what specific amenity outcome was sought, what impositions and requirements on land would be required to deliver that, and why. The Council's approach would effectively lead to a 4m setback that might be inconsistently and intermittently landscaped in whatever species or types of trees (or no trees) that landowners preferred. This was not a compelling picture.
- (d) We could not understand how, despite no final decisions or plans being yet arrived at for the corridor, there was nonetheless sufficient certainty available to impose definitive standards along the corridor's sides at this time or reach definitive opinions on what would be required to protect a minimum of corridor amenity or functionality.
- (e) We received no evaluation of why the well-functioning urban environment and high-quality design of buildings that the Council seeks across the City would not inherently provide a sufficient form of visual amenity for any users of the City's roads to look at and enjoy. In short, the adverse built form effect that additional trees and setbacks would be required to mitigate was never actually established to us, and we found ourselves in the position where we wondered whether Mr Field's evidence was in fact undermining the Council's entire position on the acceptability of the MRZ and HRZ standards elsewhere across the City.
- (f) We agree with Mr Joll, and Ms Oliver in terms of the rationale provided in her s42A Report (subsequently abandoned at the hearing), that a Notice of Requirement

and designation is the most appropriate method to provide for any additional width in the road corridor. Also, as we see it, trees and landscaping seen as being an essential part of the road should be included in that corridor space or can be separately negotiated with adjoining landowners in a commercial sense. That the s32 evaluation itself mentioned a designation as a valid option but then did not include it in the evaluation of alternatives, presents as a quite substantial defect in that evaluation.

- (g) It was not adequately explained to us why development occurring on private land now under the MDRS would inherently compromise any future road widening that may come to be sought. At most it might make it more expensive, but we do not accept that this is a determinative resource management concern. As Mr Joll explained to us in his evidence, the Council has powers under the Public Works Act to acquire land when it sees that as necessary. To the extent that the Council has been able to identify an 'interim' City Spine QM package based on a 4m setback as part of PC 14, by the same token it would be able to formulate a Notice of Requirement on the same land noting that designations to provide route protection ahead of a final transport solution being determined are common across the country. In this respect we do not accept the Council's argument that a designation could not occur until after a final transport solution had been determined, and that therefore the Plan gives the only opportunity to safeguard land ahead of development occurring on it.
- [338] The Panel is left unable to agree with the Council's argument either in terms of corridor amenity, or future potential functionality. On this basis, the City Spine QM must fail.
- [339] On the basis of our findings on the evidence, the City Spine QM will not be generally justifiable under s77I or s77O of the RMA. This requires that any qualifying matter with the effect of making a Plan less enabling of development than the MDRS or relevant NPS-UD Policy 3 or 5 response would enable, may only do so to the extent "necessary". We find that the City Spine QM is not necessary and would disenable the MDRS and NPS-UD Policy 3 response more than would be necessary, such as by using a Notice of Requirement / designation.
- [340] Notwithstanding that, we agree with the Council that the City Spine QM falls under the auspices of s77I(j) and s77O(j). In these respects, when we considered s77L and s77R of the RMA, we have not been persuaded that the characteristics identified by the Council (the opportunity for landowners to provide trees visible from the road, and a less

complicated pathway for the Council to widen the corridor in the future should it determine to do so) make the level of urban development required by the MDRS and the NPSUD Policy 3 response "inappropriate" (s77L(a) and s77R(a)).

- [341] Following on from that, we are not persuaded that the characteristics identified by the Council "justify" (s77L(b) and s77R(b)) the reduction in development opportunity that the QM would result in.
- [342] In terms of s77L(c) and s77R(c), these sections each have three clauses ((i) to (iii)), we accept that the Council's proposed City Spine QM did sufficiently identify the sites that the matter relates to and did provide an acceptable evaluation of the geographic area where intensification would need to be compatible with the matters identified. These satisfy the first two clauses. But in terms of the third clause in each section, we find the Council did not satisfactorily evaluate an appropriate range of options to achieve the greatest heights and densities available. Specifically, a designation should have been formally evaluated, as should other options that might have resulted in a requirement for tree planting within front yards that may have been less onerous than the setbacks proposed, but at least satisfied the Council's concern with inadequate amenity being provide for.
- [343] Lastly on this point, before the Council looked to impose requirements on land adjoining the corridors in question, it should have completed a definitive investigation ruling out any plausible provision of amenity within the corridor (having clearly specified what that level of amenity should be and how it might be measured). Simply advising us that one option tested based on an unknown brief and assumptions did not allow for any trees within the existing corridor fell short of this standard.
- [344] We find that there is no valid case of likely adverse amenity effects or other built form / amenity outcomes required along the corridor (noting that the Council proffered no specific objectives or policies to support its bespoke standards) that would justify the proposed standards. We do not agree that the NPS-UD, CRPS or District Plan objectives and policies can be read in a manner that would lead to these roads being singled out for a different and more restrictive land use management framework than other streets.
- [345] Having not established any specific adverse effects or other resource management basis to justify the proposed rules, it follows that they must be less effective and less efficient than the 'default' MDRS and NPS-UD Policy 3 provisions that would, and in our view should, apply.

- [346] The costs of the City Spine QM were in our view understated in the Council's analysis, offset in part by speculative claims that higher amenity streets (premised on tree provision that was not actually required by the method) would lead to increased land values for landowners subject to the greater front setback rule. We similarly find that benefits were overstated based on overreliance that other proposed rules would effectively force landowners to plant trees in the setback area. There was no basis for that assumption and the lack of specific built-in tree planting requirements compromised the Council's reliance on that aspect of potential benefits.
- [347] Because our recommendations have arrived at an unqualified application of the MDRS and NPS-UD Policy 3 response along the City Spine, we find that no additional s32AA reporting or justification is required.

18. RESIDENTIAL HERITAGE AREAS AND INTERFACE OVERLAYS

Summary of Recommendations

- [348] The Panel recommends that the RHA and Interface Overlay as proposed in PC 14 should not proceed as a QM for the following reasons:
 - (a) the Council has not offered a sufficient case in accordance with the requirements of s77J of the RMA that the RHA and Interface Overlay provisions constitute a 'listed' QM under s77I(a);
 - (b) further, the provisions proposed to be introduced via PC 14 to limit development capacity in the areas concerned (as notified and as amended during the course of the hearings) would introduce restrictions or limitations on the *status quo* under the ODP beyond the mandatory requirements of an IPI; and
 - (c) that the merits of the proposed provisions, even if they were justified on grounds of scope under an IPI (which they are not), are not appropriate in the context of the required RMA s32 evaluation.
- [349] Our findings and recommendations with respect to the RHA and the Interface Overlay as a QM, in terms of available scope, align with the broader conclusions we have reached in relation to a range of proposed QMs, as set out in Part 1 of our Recommendation Report. We have reached the above findings and recommendations in this respect, with reference to separate evaluations on both 'scope' and 'merits' as

follows. We conclude with some comments relating to 'process' and a section 32AA evaluation for our recommended changes.

PC 14 as Notified

- [350] The ODP identifies one heritage area at Akaroa. No direct consent triggers apply under this overlay. Rather, the relevant matter of discretion (9.3.6.3) is only engaged where consent is required under the underlying Commercial Banks Peninsula Zone.
- [351] PC 14 proposes to introduce eleven new Residential Heritage Areas (RHA) around Christchurch City. The notified provisions differ significantly from those relating to the Akaroa Heritage Area which, given that it is located outside the Christchurch Urban Area, is not subject to PC 14.
- [352] The intent of Council in identifying RHA is to protect those particular residential areas of the City which feature buildings and features that, collectively, exhibit heritage values that go to their status as distinctive and significant residential environments, from more intensive development.
- [353] The Council's position is that these values constitute 'historic heritage' within the meaning of s6(f) of the RMA and therefore assume the status of a matter of national importance. As such, they have been categorised as a 'listed' QM under s77I(a).
- [354] Under ODP amendments introduced by PC 14, the eleven new RHA would be subject to:
 - (a) amended Policies 9.3.2.2.2 and 9.3.2.2.8 relating to heritage areas and demolition respectively;
 - (b) new rules requiring most new buildings, alterations to buildings, demolitions of buildings and alterations to front fences of over 1.5m in height (with some exceptions) to obtain a restricted discretionary activity consent, to enable assessments of effects on heritage values;
 - (c) matters of discretion similar to those applying to scheduled items, albeit with a primary focus on the collective values of the RHA concerned and a secondary focus on individual buildings 'defining' and 'contributing' to those heritage values, as a basis for assessing whether the values of the RHA will be progressively degraded over time;

- (d) specific built form rules that resemble those for RCA, except for certain omissions(e.g., windows to street, landscaping and fencing requirements);
- (e) subdivision standards matching those for RCA; and
- (f) a new restricted discretionary activity rule applying to an 'Interface Overlay' for new buildings on sites sharing a boundary with five RHA, where the adjoining zone is HRZ or Visitor Accommodation Zone.
- [355] The Interface Overlays are intended to 'mitigate the contrast' between heritage values in the subject RHA and the density and height enabled in the immediately adjoining site(s).
- [356] The new RHA were estimated by the Council (in the context of the relevant s32 Report) to have an 'impacted development capacity' of 3,380 dwellings, whereas that relating to the Interface Overlay amounts to 640 dwellings.
- [357] As a deemed s77I(a) QM, but one that involves the introduction of essentially new provisions, the Council subjected it to the evaluation process under s77J(3).
- [358] With respect to the RHA itself, the resulting s32 Report concluded that the proposed package controlled the effects of development (on heritage values) via 'the least onerous consent viable' to ensure that development was not 'unduly deterred'. On balance, the Council considered it to represent the most appropriate way to achieve the outcomes of the ODP and higher order direction.
- [359] Where the Interface Overlay is concerned, the s32 Report concluded that it was the preferred option as it controlled the effects of development 'over the whole historic heritage area, which includes the surrounds.' Without this control, the s32 Report found, 'inappropriate development in the affected sites could compromise protection of historic heritage.'
- [360] The technical work underpinning the identification of RHA and the Interface Overlay by way of PC 14 was primarily undertaken by Dr Ann McEwan of Heritage Consultancy Services, on behalf of and for the Council. Dr McEwan had been part of the interdisciplinary team responsible for developing the methodology for identifying and assessing RHA in 2009. Sidelined by the Canterbury earthquakes, the work was revisited once Council initiated PC 14.

Submissions and Section 42A Recommendations

- [361] The RHA provisions received submissions from 60 submitters generating 241 submission points. Site-specific matters associated with the RHA attracted a further 42 submissions with 93 decisions requested.
- [362] In her technical evidence, Dr McEwan primarily addressed submissions on the following topics:
 - (a) site-specific requests with respect to the Chester St East / Dawson St, Macmillan Avenue, Inner City West, Heaton St, Church Property Trustees (CPT) / North St Albans, Shelley / Forbes, Piko / Shand State Housing and Lyttleton RHAs; and
 - (b) requested additional RHA.
- [363] Dr McEwan recommended the rejection of most of the applicable requests. With respect to those seeking the addition of properties to various proposed RHA, she was of the view that the sites or areas concerned lack the requisite authenticity and historic heritage significance. For the same reasons, and also with reference to the extent of modification in the areas concerned, she indicated that she did not favour any of the requests by various submitters to identify additional RHA.
- [364] With respect to those submitters seeking the removal of certain properties from proposed RHA, Dr McEwan concluded that the sites or areas concerned retained a high level of authenticity and integrity and significant historic heritage values.
- [365] The only submissions Dr McEwan recommended acceptance of, in whole or in part, were as follows:
 - (a) to amend the boundary of the Chester St East / Dawson St RHA to only include a 5m strip along the southern frontage, with a consequential conversion of the previous RHA area to an Interface Overlay and the removal of Interface Overlay on adjoining land further to the north, in response to a submission from Fire and Emergency New Zealand #842 (FENZ);
 - (b) to alter the schedule reference for the Macmillian Avenue RHA to record that it included the homes of iconic citizens, in response to a submission from Bruce Harding #1079; and

(c) to remove the majority of the property at 32 Armagh St from the Inner City West RHA and redefine it as Interface Overlay, in response to a submission from the Carter Group #812 #824.

[366] In her s42A Report, Ms Glenda Dixon primarily addressed submissions on the following topics:

- (a) those opposing RHA generally or opposing the number of RHA proposed;
- (b) those supporting RHA generally or seeking more RHA;
- (c) those requesting that the RHA provisions be amended to make them less restrictive;
- (d) those seeking to clarify how the RHA rules work and/or requesting minor amendments to improve their efficacy;
- (e) those either supporting or opposing the proposed Interface Overlay;
- (f) those questioning and/or opposed to the underlying zoning associated with RHA; and
- (g) those raising other miscellaneous RHA related matters.

[367] Ms Dixon recommended the rejection of the majority of submissions, including those generally opposed to RHA¹³⁵. Her reasons for doing so can be summarised as follows:

- (a) RHA exhibit distinguishing, significant features that are worthy of retention;
- (b) the proposed restricted discretionary activity status does not represent overregulation;
- (c) the RHA do not conflate special character and heritage; and
- (d) the loss of development capacity in RHA is offset by increases enabled by PC 14 elsewhere.

[368] Ms Dixon otherwise recommended a limited number of further amendments as follows:

90

¹³⁵ These included Logan Brunner #191, the Property Council #242, Carter Group Limited #814, The Catholic Diocese #823, Kāinga Ora #834, the Ōtautahi Community Housing Trust #877, Richard Abbey-Nesbit #1009, Kristin Mokes #1025, Sam Spekreijse #1033 and Peter Earl #1038

- (a) to matters of discretion under Rule 9.3.6.4 to contemplate papakainga housing, in response to a submission from Te Hapu o Ngati Wheke (Rāpaki) Rūnanga #695;
- (b) to Rules 9.3.6.4 and 9.3.4.1.3 to, among other things, insert exceptions for modifications to buildings where they are for the purposes of sustainability or energy efficiency, in response to submissions from Melissa Macfarlane #135 #1003 and Jayne Smith #1017; and
- (c) various bespoke, minor changes to RHA submissions to improve clarity¹³⁶.
- [369] Ms Dixon referenced Dr McEwan's evidence and preparatory work on the RHA methodology at various points in her own evidence. She also referenced the economic evidence of Mr Philip Osborne of Property Economics Ltd who assessed the costs and benefits of RHA, for the Council.

Issues

- [370] Those issues remaining in contention during the course of the hearing as highlighted in evidence to us can be summarised as follows:
 - (a) whether the Panel has scope under the Housing Supply Amendment Act to impose the QM in the manner proposed; and
 - (b) relatedly, questions regarding the rigour and objectivity of RHA and Interface Overlay identification.
- [371] Aside from Dr McEwan and Ms Dixon as expert witness and primary s42A Report author for the Council, respectively, we also heard from:
 - (a) Mr Osborne for the Council on economic matters;
 - (b) planning witness Mr Jeremy Phillips for the Carter Group Limited #812 #824;
 - (c) counsel Ms Appleyard for the Carter Group Limited, Daresbury #874 and The Catholic Diocese of Christchurch #823;
 - (d) planning witness Mr Tim Joll, heritage planner Mr Brown and counsel Mr B Matheson for Kāinga Ora; and
 - (e) planning witness Ms Boulton for Christ's College Canterbury #699.

¹³⁶ In response to submissions from FENZ #842, Melissa Macfarlane #1003 and Hughes Developments #1062

[372] It is the matters outlined above that we now turn our attention to in the sub-section below.

Findings and Evaluation

Evaluation - Scope

[373] Firstly, on matters of scope, Ms Appleyard reached the same conclusion on the RHA and the Interface Overlay that she has with respect to the Significant and Other Trees QM (i.e., that the Council was not legally entitled to include these changes to the ODP by way of PC 14). In her view, the relief sought by the submitters, seeking the deletion of the new provisions in their entirety and/or the rejection of the proposed changes and reversion of the provisions to their current operative form, should be accepted¹³⁷. This went to her broader position regarding the limitations imposed by the Housing Supply Amendment Act on the Council with respect to the ability to 'disable' *status quo* development rights)¹³⁸.

[374] In our view, Mr Matheson's legal submissions on behalf of Kāinga Ora¹³⁹, with respect to the lack of available scope for RCA apply equally to RHA. These are covered in some detail in the following section on RCA, but can be summarised as follows:

- (a) the proposed overlay provisions cannot be in scope of PC 14 (as an IPI) if they make residential development harder¹⁴⁰; and
- (b) provisions that do so cannot be said to give effect to s80E(1)(b) of the RMA which requires that they support or be consequential on the MDRS, or Policies 3 and 4 of the NPS-UD¹⁴¹.
- [375] We also remain doubtful that the RHA provisions 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, which remained the Council's position at the close of the hearing¹⁴².
- [376] In this respect, we do not take issue with Ms Dixon's contention that 'historic heritage' does not have to be of 'national significance' to make the grade under s6(f)¹⁴³. Rather,

¹³⁷Memorandum of Counsel on behalf of Various Submitters, 1 May 2024, at 35 and 38

¹³⁸ Ibid at 29

¹³⁹ <u>Supplementary Legal Submissions on behalf of Kāinga Ora - Residential Provisions and Related Qualifying Matters, 4 December 2023, at 1.3</u>

¹⁴⁰ Ibid at para 1.4

¹⁴¹ Ibid at para 1.6

¹⁴² Council Reply, 17 May 2024, at 10.56

¹⁴³ s42A Report of Glenda Dixon, 11 August 2023, at 8.13.2

we more fundamentally disagree with the Council's position that the areas to which RHA would be applied constitute 'historic heritage' in the first instance.

[377] In questioning the extent to which RHA are supported by a robust evidence base that justifies these areas as s6(f) 'historic heritage', Mr Philips, planning witness for the Carter Group, suggested that, at most, the areas concerned might 'feature atypical characteristics or a greater proportion of older buildings' or be of 'a more pronounced character than the norm or one which simply includes a number of listed heritage items'144. Mr Joll for Kāinga Ora, was similarly of the view that the key driver of the Interface Overlay 'is a desire to manage amenity outcomes rather than to maintain heritage values."145

[378] In our view, these observations of Mr Philips and Mr Joll, while relating to individual sites, offer a salutary critique of the RHA provisions as a whole. In seeking to identify areas as RHA alongside, in some cases, Interface Overlays, we consider (notwithstanding Ms Dixon's assertion to the contrary) that the Council has conflated what are at most s7(c) 'amenity values' to the level of s6(f) 'historic heritage', without significant foundation. The areas concerned may exhibit characteristics that the Council considers worthy of retention but that does not justify their constitution as a 'listed' QM under s77I(a). We agree with Mr Philips that the ODP provisions already provide a suitable means for managing the effects of new builds on at least the character (if not heritage values per se) of residential areas¹⁴⁶. No further overlay of additional regulatory control is warranted or required, in our view. In practice, this goes to our findings with respect to both scope and merit.

[379] On the former matter, we conclude that the Council does not have scope to introduce new RHA or Interface Overlay controls under an IPI mechanism and that this QM should not proceed on this basis.

Evaluation - Merits

[380] Turning now to the merits of the RHA proposal, Mr Joll, for Kāinga Ora, posed two questions similar to those he had posited on the RCA provisions (as discussed in the next section of this Part of the Report). Namely:

Statement of Evidence of Jeremy Phillips on behalf of Carter Group Limited, 20 September 2023, at 46 and 111
 Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023, at 6.24

¹⁴⁶ Statement of Evidence of Jeremy Phillips on behalf of Carter Group Limited, 20 September 2023, at 43 - 45, 49

- (a) whether the methodology for identifying and assessing RHA was appropriate, and met the requirements of s6(f) of the RMA; and
- (b) whether the proposed RHA provisions are appropriate¹⁴⁷.
- [381] On the first matter, Mr Joll summarised the concerns that Mr Brown, heritage expert for Kāinga Ora, had raised in his own evidence¹⁴⁸ regarding the robustness of the Council's methodology. Mr Brown provided us with a thorough evaluation of that methodology. While he concluded that the criteria for assessment were generally appropriate, Mr Brown drew our attention to elements of the criteria that contribute to the potential for the blurring or conflation of character and heritage values and also examples of specific concerns regarding the inconsistent, unclear application of the methodology to particular sites.
- [382] Mr Joll also correctly in our view took issue with Dr McEwan's interpretation that unimplemented consents or certificates of compliance (for demolition) should not form part of the existing environment. Ms Boulton made similar submissions with respect to certificates of compliance for building demolition that her client (submitter Christ's College) held for its properties potentially subject to the Inner City West RHA¹⁴⁹.
- [383] The issues that Mr Joll and Mr Brown raised do not give us the confidence we would otherwise anticipate holding that the methodology used to identify and assess RHA is appropriate and sufficiently robust, particularly with reference to our earlier observations about conflation of character and heritage.
- [384] On the second matter, and with respect to the Interface Overlay provisions, Mr Joll offered a useful comparison with the limited footprint of 'setting' controls where individual heritage buildings are concerned¹⁵⁰. To his mind, Mr Brown's¹⁵¹, and ours, this raised the question as to why peripheral controls in relation to RHA were more onerous than those relating to scheduled heritage items. While Ms Dixon acknowledged in rebuttal that the impact with respect to large adjoining sites was 'unfortunate' it was her view that the matters of discretion were sufficiently limited and defined¹⁵².
- [385] Mr Joll recommended a number of improvements to relevant RHA objectives, policies, rules and matters of discretion, in the event that we, as a Panel, were minded to retain

¹⁴⁷ Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023, at 6.5

¹⁴⁸ Statement of Evidence of John Brown on behalf of Kāinga Ora, 20 September 2023

¹⁴⁹ Statement of Evidence of Catherine Boulton on behalf of Christ's College, 20 September 2023, at 23 - 25

¹⁵⁰ Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023 at 6.28

Statement of Evidence of John Brown on behalf of Kāinga Ora, 20 September 2023 at 6.2 - 6.3

¹⁵² Rebuttal Evidence of Glenda Dixon on behalf of Council, 9 October 2023 at 60 - 66

the RHA as a QM. As indicated above, we are not, but we thank him for his efforts in this regard.

[386] Broadly, it is the Council's position that the RHA provisions, including controls on demolition, are a necessary means of addressing the 'fragility' of the areas concerned, but will have a minimal effect on housing capacity and are 'not overly onerous' 153. In her rebuttal evidence, Ms Dixon observed that very few applications for consent for restricted discretionary activities are declined by the Council and that the consent process is a 'navigable' one 154. Such a statement is as yet untested, and as such we prefer Mr Philips's perspective that the proposed RHA constraints on building height and intensification are significant relative to those that would otherwise apply, with reference to the comparative analysis that he provided us with. The Interface Overlay provisions represent a further degree of over-reach in his view, and we agree¹⁵⁵.

[387] Our concerns regarding the personal impost of the RHA provisions were ably illustrated by Emily Arthur #395 #1036 who owns a property at 128 Chester St East; identified by the Council as a 'contributing' property where the relevant RHA is concerned. As much as she appreciated the character of the current dwelling on purchasing it around 2020, she had subsequently found that it was badly built and required substantial remedial work, well outside her budget. Her preference, therefore, was to rebuild, 'in character'. In the circumstances it was unclear to her why she would need to obtain resource consents for both demolition and the new build, when, if the overall intent was to enable redevelopment while maintaining character, then at most only the latter process was necessary.

[388] Ms Arthur also found it contradictory that while the Council sought to maintain character through the RHA provisions, the underlying zone in the ODP imposed side yard and site coverage controls that did not reflect the current appearance of areas such as Chester St East, which feature dwellings occupying a high proportion of small sites, located in very close proximity to one another. She could not see how these tensions might be reconciled through one or more consent processes. It was clear to us that Ms Arthur appreciated the character of the area and the 'symmetry' of current built form (in fact, this was a factor in her purchasing the property), but she felt burdened by the prospect of a double consent pathway under the RHA provisions as notified.

Council Reply, 17 May 2024 at 10.55 - 10.56, 10.61, 10.64
 Rebuttal Evidence of Glenda Dixon on behalf of Council, 9 October 2023 at 18 and 20

¹⁵⁵ Statement of Evidence of Jeremy Phillips on behalf of Carter Group Limited, 20 September 2023 at 50 - 54

[389] Overall, we remain unconvinced about the merits of the RHA and Interface Overlay approach, given issues with:

(a) the formulation and application of Council's methodology that we have been alerted to by expert witnesses,

(b) the apparent conflation or 'standing in' of character for heritage,

(c) the not insignificant impost of the provisions on property owners and developers, and

(d) our conclusion that, to the extent that character is something to be maintained and enhanced, the role that existing, ODP provisions will continue to play in that regard¹⁵⁶.

[390] As we propose no substitute for the RHA and the Interface Overlay provisions in the ODP, we are not obliged to undertake a s32AA evaluation. We simply record for completeness that we reject the Council's own s32 evaluation and findings regarding the supposed 'effectiveness' and 'efficiency' of the proposed provisions.

Observation - Process

[391] The Panel observes, that to the extent that the proposed controls (or similar) relating to RHA are relevant resource management issues for the protection of heritage values, then PC 13 contains mirroring provisions relating to same, and these will be tested in due course through the initiated Schedule 1 process.

19. RESIDENTIAL CHARACTER AREAS

Summary of Recommendations

[392] We find that the RCA as proposed in PC 14 should not proceed as a QM for the following reasons:

(a) the Council has not offered a sufficient case in accordance with the requirements of s77J and 77L of the RMA that the RCA provisions constitute a QM under s77I(j); and

¹⁵⁶ Statement of Evidence of Jeremy Phillips on behalf of Carter Group Limited, 20 September 2023 at 47

- (b) that the merits of the proposed provisions, even if they were justified on grounds of scope under an IPI (which we have found they are not), are not appropriate in the context of the required RMA s32 evaluation.
- [393] Accordingly, the Panel recommends that the ODP provisions relating to existing RCA are retained, subject only to:
 - (a) the acceptance of amendments to them proposed under the notified version of PC 14 to delete two existing RCA (Esplanade and Clifton) and reduce the spatial extent of eight others (Cashmere, Beckenham, Piko, Heaton, Malvern, Francis, Dudley and Englefield); and
 - (b) the acceptance of recommendations by Ms White to delete two existing RCA (Beverley and Ranfurly) and further reduce the spatial extent of two others (Dudley and Heaton).
- [394] Our findings and recommendations with respect to RCA as a QM, in terms of available scope, align with the broader conclusions we have reached in relation to a range of proposed QMs, as set out in Part 1 of our Recommendation Report. We have reached the above findings and recommendations in this respect, with reference to separate evaluations on both 'scope' and 'merits' as follows. We conclude with some comments relating to 'process' and a section 32AA evaluation for our recommended changes.

PC 14 as Notified

- [395] The ODP identifies fifteen Residential Character Areas (RCA) as neighbourhoods that are distinctive from their wider surroundings, and which are considered to have a special character that, on the whole, the Council considers worthy of retention. Under the ODP, Policy 14.2.4.7 provides direction in relation to RCA, seeking that the identified special character values of these areas, which arise from those elements which are listed in the policy, are maintained or enhanced.
- [396] The ODP provisions pertaining to RCA are contained in area-specific rules included in each relevant residential zone. In broad terms, these rules:
 - (a) require relocations, new buildings, alterations and additions to existing buildings, accessory buildings, and fences and walls associated with the previous buildings, (hereafter referred to as 'building works') to obtain consent as a controlled

activity¹⁵⁷, where visible from the street, located between the road boundary and the main residential unit on the site or involves changes to the front façade of the main residential unit, and subject to also meeting site density standards;

- (b) set site density standards of 600m² where the RCA is within the Residential Suburban Zone; 400m² where within the Residential Suburban Density Transition Zone or Residential Medium Density Zone; and 500m² within the Beverley Character Area;
- (c) require the planting of a landscape strip along the length of the road boundary (excluding access areas); and
- (d) establishes a restricted discretionary activity status for residential units that do not comply with the site density standard and a controlled activity status for activities that do not comply with the landscaping requirements.
- [397] In all other respects, the ODP provisions pertaining to RCA apply the built form standards and requirements of the residential zone within which the RCA is located, such as building heights, setbacks, site coverage, daylight recession planes, requirements for outdoor living spaces, and so on.
- [398] The purpose of modifying these provisions via PC 14, according to the Council, is to enable residential activity while maintaining and enhancing the special character values of these areas. The nature of those amendments can be summarised as follows:
 - (a) changes to the areas subject to the provisions to:
 - (i) remove the Esplanade and Clifton RCAs;
 - (ii) reduce the extent of the Cashmere, Beckenham, Piko, Heaton, Malvern, Francis, Dudley and Englefield RCAs;
 - (iii) add three new areas centered on the Bewdley, Roker and Ryan neighbourhoods; and
 - (iv) expand the Beckenham and Lyttelton RCAs;
 - (b) provide a permitted activity status for interior conversions of an existing residential unit into two residential units or in the Lyttelton RCA, for a minor residential unit;

-

¹⁵⁷ With the exception of the Lyttelton and Akaroa Character Areas, where a restricted discretionary activity status applies.

- (c) apply a controlled activity status for the erection of a new residential unit to the rear of an existing residential unit on the same site, where it is less than 5m in height and the built form standards (refer (f) below) are met;
- (d) require building works, as well as demolitions or removal of buildings above 30m², to obtain consent as a restricted discretionary activity;
- (e) impose a restricted discretionary activity status for residential units that do not comply with the number of residential units per site, or activities that do not comply with the landscaping requirements or, in the Lyttelton RCA, non-compliance with various built form standards;
- (f) introduce a suite of built form standards specific to each character area, including height, front entrances and facades, landscaping, number of residential units per site, setbacks, building coverage, outdoor living space, glazing, fencing, location of garages and carports, and internal separation; and
- (g) apply minimum net site areas for subdivision within each RCA.
- [399] As set out in the s32 Report, the Council considered the areas represented by RCA to be those that are special and unique enough to warrant specific management and therefore related to s7(c) of the RMA (i.e., a matter to have particular regard to with respect to the maintenance and enhancement of amenity values). The Council saw these values in the areas concerned to be at risk from intensification, thereby undermining the 'integrity and coherence' of each area.
- [400] As such, while the Council noted that the ODP does contain RCA and associated provisions, given the scale of the amendments proposed, it determined that the RCA provisions constituted an 'other' QM under s77I of the RMA and, as such needed to be subject to the evaluations required under both s77J(3) and s77L (inclusive of site-specific analysis).
- [401] These evaluations were informed by an Investigation of *Qualifying Matters Ōtautahi* Christchurch Suburban Character Areas and a Technical Analysis of Proposed Character Area Provisions undertaken by Ms Jane Rennie, urban designer (and others) at Boffa Miskell on behalf of the Council during the development of PC 14. Taking into account the various changes in spatial extent proposed, the Council determined that a total of 3,039 individual properties would be affected.

[402] The s32 Report outlined the methodology used to conduct the evaluations. It also determined that the 'impacted development capacity' or theoretical effect of all the RCA as notified in 'suppressing' development that might otherwise occur absent the provisions amounted to 9,846 dwellings.

[403] Notwithstanding this, the s32 Report concluded that the provisions as proposed represented the most effective option for achieving all outcomes sought by PC 14 including providing an appropriate means to manage the features of the areas subject to RCA.

Submissions and Section 42A Recommendations

[404] The RCA provisions as notified attracted a total of 183 submission points that can be grouped into three broad categories:

- (a) those expressing their support for the provisions and seeking their retention;
- (b) those requesting amendments to the general approach taken and/or to specific provisions; and
- (c) those opposed to the general approach taken and/or to specific provisions and seeking their deletion.

[405] In her s42A Report, Ms Liz White recommended a series of amendments to the RCA provisions, relying as she did to a considerable extent on the technical evidence of Ms Rennie. These amendments can be summarised as follows:

- (a) Removal of the Beverley and Ranfurly RCAs and associated provisions and apply a HRZ zoning to these areas, in response to a submission by Waka Kotahi;
- (b) Reduction in the extent of the Dudley RCA in response to a submission from Waka Kotahi:
- (c) Amendment to, and in doing so slightly reduce, the boundaries of the Heaton RCA to reflect the outcomes of Ms Rennie's technical assessment;
- (d) the identification of Cashmere View as an additional, new RCA in response to a request from individual submitters¹⁵⁸;

100

¹⁵⁸ Namely Martin Jones #15, Christine Parkes #25, Steve Parkes #27, Andrew Lawrie #92, Ros Pheloung #101, Deborah Brown #124, Simon Brown #125, Chris Wells #126, Sean Walsh #179, Alex Prince #227, Joanne Nikolaou #581, Jaimita de Jongh #583.

- (e) amendment of Rule 14.5.3.1.2 C1 to also apply to additions which are less than 30m² in area and 5m in height, are not visible from the street or involve the front façade and meet the applicable built form standards, in response to a request from Melissa Macfarlane;
- (f) amendment of Rule 14.5.3.1.3 RD14 to increase the permitted size for demolition of buildings, provision of an additional exemption for alterations to an existing building which are not visible from the street or made to the front façade, and explicitly require compliance with built form standards, again in response to a request from Ms Macfarlane;
- (g) amendment of Rules 14.5.3.2.3, 14.5.3.2.8, 14.5.3.2.9, 14.5.3.2.10, 14.5.3.2.11, 14.5.3.2.14 and 14.8.3.2.4 in relation to building height, setbacks, building coverage, outdoor living space per unit, windows to street, internal separation and site coverage, to ease the level of constraints somewhat, in response to submissions by the New Zealand Institute of Architects Canterbury Branch #762 and others; and
- (h) amendment of Rule 14.15.27 to add specific reference to Papakāinga/Kāinga Nohoanga in response to a request by Te Hapū o Ngāti Wheke (Rāpaki) Rūnanga #695.
- [406] Ms White otherwise recommended the rejection of requests by submitters; notably the broad request from Kāinga Ora that all new or extended RCA not be proceeded with; again, reliant on the technical advice of Ms Rennie in doing so.

Issues

- [407] Those issues remaining in contention during the course of the hearing as highlighted in evidence presented to us can be summarised as follows:
 - (a) whether the Panel has scope under the Housing Supply Amendment Act to impose the QMs in the manner proposed and, in doing so, accept notified or submitterprompted new RCA or extensions to existing RCA; and
 - (b) somewhat independent of any finding we may reach with respect to (a) above, whether the notified proposals or submitter requests to entirely remove or further reduce the footprint of certain, existing RCA should be entertained; and

(c) also independent of any finding we may reach with respect to (a) above, whether changes to the provisions proposed via the notified PC 14 or by the s42A Report author in response to submissions should be proceeded with on the basis of a merits assessment.

[408] Aside from Ms White and Ms Rennie for the Council, we also heard from planning witness Mr Tim Joll and counsel Mr Bal Matheson on behalf of Kāinga Ora on matters of scope and from Mr Joll on the matter of 'merits' of the provisions as proposed.

[409] As for other QMs then, the issues remaining in contention relate to scope, in the first instance, and the merits of the provisions, in the second. These are the topics we turn our minds to in the sub-section below.

Findings and Evaluation

Evaluation - Scope

[410] Mr Matheson, for Kāinga Ora, initially addressed the matter of scope specifically in relation to RCA in his opening legal submissions on residential provisions and related QMs¹⁵⁹. We accept his view that 'the various options considered by the Council (which could include restricted discretionary status) would make consenting new buildings more onerous than what is currently provided for under the Operative District Plan.'

[411] In supplementary legal submissions, Mr Matheson returned to the example of RCA (and incidentally RHA) in concluding that:

A change in an overlay (e.g., RCA or RHA) that restricts residential development would be within scope of PC14 if it made that residential development easier (i.e., if it removed an overlay from a residential lot), but it would not be within scope if it made residential development harder (i.e., if it added an overlay onto a residential lot that was not previously subject to that overlay). ¹⁶⁰

[412] This position then went to two key submissions that Kāinga Ora were at pains to stress during the hearing:

- (a) It is difficult to understand how changes made under PC14 that make the provision of housing more difficult (or even more stringent than currently exists in the operative plan), could be said to "support or be consequential on the MDRS, or Policies 3 and 4 of the NPS-UD" (s 80E(1)(b), RMA)
- (b) Section 80E(1) cannot be applied in the incredibly broad manner seemingly proposed by counsel for the Council if such a wide interpretation were lawful (i.e.,

¹⁵⁹ <u>Legal Submissions of behalf of Kāinga Ora - Residential Provisions and Related Qualifying Matters, 22</u> November 2023, at 5.11

¹⁶⁰ Supplementary Legal Submissions on behalf of Kāinga Ora - Residential Provisions and Related Qualifying Matters, 4 December 2023, at 1.4

if one could rely on Objective 1 and a "well-functioning urban environment" to justify any changes under an IPI) there would be no need for any qualifying matters because virtually every restriction could be argued to fall within the scope of that objective. ¹⁶¹

[413] At the close of the hearing, the Council remained of the view that the Panel was entitled to consider s7(c) amenity implications through an IPI and should do so in determining the fate of proposed RCA provisions that sought to promote the maintenance and enhancement of those amenity values. The Council also sought to downplay the impact of the provisions that it considered would have a minimal effect on housing capacity given the lack of any issue in that respect in an Ōtautahi Christchurch context¹⁶².

[414] While in the Council's view the impact may not be significant at a City scale, our view of those effects, in terms of potential consenting and investment uncertainty, would only be too apparent to individual property owners subject to new or expanded RCA and ratcheted-up development controls. In that regard, the Council has itself acknowledged that these proposals would have 'some effect on status quo development rights ¹⁶³. With regard to proposed demolition controls, the Council has further acknowledged that they are more restrictive than the equivalent provisions in the ODP. With respect to RCA, however, and unlike the situation with RHA, the Council is not in a position to advance an argument that the operative and hence status quo provisions were in any case altered by duplicating provisions simultaneously introduced by Plan Change 13¹⁶⁵ (they are limited in their application to heritage-related provisions).

[415] We cannot fault Kāinga Ora's position that we outlined previously in this respect. It comes to our finding as to whether the Council has scope to introduce new RCA, expand existing RCA and/or tighten up controls pertaining to both under an IPI mechanism. We conclude that it is does not, and that this QM should not proceed on grounds of scope.

Evaluation - Merits

[416] Turning now to the merits of the RCA proposal, Mr Joll, for Kāinga Ora, helpfully identified two key questions, namely:

(a) whether the methodology for identifying RCA was appropriate; and

¹⁶¹ Supplementary Legal Submissions on behalf of Kāinga Ora - Residential Provisions and Related Qualifying Matters, 4 December 2023 at 1.6

¹⁶² Council Reply, 17 May 2024, at 10.71

¹⁶³ Ibid at 3.18

¹⁶⁴ Ibid at 10.61

¹⁶⁵ Ibid at 10.62

- (b) whether the proposed RCA activity status provisions are appropriate 166.
- [417] On the first matter, it was Mr Joll's view that, for the properties Kāinga Ora maintained an interest in, the level of investigation carried out by the Council failed to account for unimplemented resource consents or certificates of compliance (in this case for demolition) and that the relevant properties could not therefore be considered to host 'primary' or 'contributory' dwellings where the relevant RCA were concerned.
- [418] This led Mr Joll to a measured view that, at the very least, the boundaries of the RCA (specifically in the case of the Piko RCA) might need to be reconsidered, and if not also provide Council with pause for further reflection about the area's overall integrity and coherence¹⁶⁷.
- [419] We find ourselves in agreement with Kāinga Ora's submission that the 'environment', as defined in the RMA, does indeed include resource consents for demolition that are able to be implemented¹⁶⁸, and it logically follows that it 'makes no sense to assess heritage or character against an illusory baseline, where the properties that contribute towards those values are likely to be demolished.⁷¹⁶⁹
- [420] On the second matter, while Mr Joll indicated that he agreed with Ms White and Ms Rennie that a restricted discretionary pathway for new builds could provide an appropriate basis for managing the specific characteristics of RCA, he continued to question (as do we) the need for greater restrictions on built form standards proposed by the Council in RCA when compared to the ODP¹⁷⁰. He had not seen (and neither have we) convincing evidence from the Council that the continuity and/or coherence of existing character had been adversely affected by the ODP's existing built form standards¹⁷¹.
- [421] In response to a request from us, the Council provided further details relating to RCA during the course of the hearing as well as in association with the Reply. This included information regarding the degree of spatial overlap between RCA and RHA. It was Ms White's view, as expressed in her rebuttal evidence, that the inclusion of an area within an RHA did not have any bearing on whether it should also meet RCA criteria for inclusion. She suggested that were an RCA to be removed it would have limited impact

¹⁶⁶ Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023, at 9.20

¹⁶⁷ Ibid at 9.21 – 9.22

Legal Submissions on behalf of Kāinga Ora - Residential Provisions and Related Qualifying Matters, 22 November 2023, at 5.2 – 5.9

¹⁶⁹ Ibid at 5.7

¹⁷⁰ Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023, at 9.26, 9.28 – 9.29

¹⁷¹ Ibid at 9.28

in terms of enabling further intensification given that the RHA restrictions would remain¹⁷². We accept Ms White's point but consider it largely moot given our recommendation in the preceding section that the RHA also not be proceeded with.

- [422] To our minds, the Piko state houses are but one example of homes built for a very specific reason, being to cater for the needs for New Zealand families that existed at the time. They, together with private dwellings in areas located across the City, may need to be replaced by new homes catering for the needs of Aotearoa New Zealand families as they exist now. Fundamentally, that is the purpose that PC 14 is obliged to serve; not the maintenance of character. The Council's broad approach to extending the footprint of RCA and (in an overall sense) tightening controls with them tends to upend those nationally-mandated priorities.
- [423] It is for these reasons that we consider that the merits of the Council proposal as it now stands, inclusive of the addition of new RCA, extensions to existing RCA and the tightening of controls that would apply in both new and existing RCA, are insufficient in terms of achieving the wider purpose of the RMA to justify their being proceeded with.
- [424] The only exceptions to this broad finding on merits are situations where PC 14 as notified proposed to remove existing RCA or reduce the extent of existing RCA, or where the s42A Report author has recommended additional amendments that involve removing or reducing RCA.
- [425] The notified amendments in this regard that we recommend the adoption of comprise the removal of two existing RCA (Esplanade and Clifton) and reductions in the spatial extent of eight others (Cashmere, Beckenham, Piko, Heaton, Malvern, Francis, Dudley and Englefield).
- [426] The s42A Report author recommendations (that we recommend the adoption of) comprise the removal of two further existing RCA (Beverley and Ranfurly) and further reductions in the spatial extent of two others (Dudley and Heaton).
- [427] With respect to the above, we accept Ms White's position that, with reference to Ms Rennie's evidence, and on balance, the objectives of the NPS-UD and CRPS would be better served in realising the benefits of increased density (i.e. rezoning to either HRZ

¹⁷² Rebuttal Evidence of Elizabeth Jane White on behalf of Council, 9 October 2023, at 3

and MRZ) in the adjoining Beverley and Ranfurly locations, ¹⁷³ and that for similar or other reasons the Dudley and Heaton RCA should be further reduced in extent ¹⁷⁴.

[428] For completeness, we do not recommend the acceptance of requests from submitters to reduce the extent of other existing RCA where these requests are not supported in technical or planning evidence provided on behalf of the Council (the submitters not having fielded comparative evidence of a technical nature themselves).

[429] In closing, we note that the s42A Report author had earlier recommended a series of changes to the RCA provisions, including those we summarised at paragraph [101](e) - (h) above. During the course of deliberations, we gave careful consideration as to whether it might be possible to identify amendments which facilitate some further enablement of development (albeit limited) in existing, retained RCA. However, having undertaken a forensic review of the proposed amendments recommended by the s42A Report author, we concluded that matter is not as straightforward as we had hoped, in that it is problematic attempting to unstitch and progress enablement 'gains' from the amendments as notified and recommended by Ms White.

[430] To illustrate this, we note by way of example, that the amendments proposed to Rule 14.5.3.1.2 C1 would flip the architecture of a previously self-contained controlled activity rule to frame what were exemptions to its application (part b. of the rule) to become the basis for control and hence the potential to default to a higher activity status if not met. By way of explanation, the amendments to this particular rule recommended by the s42A Report author would make activities not meeting the conditions for controlled activity status default to restricted discretionary activity status under Rule 14.5.3.1.3 RD12 whereas under the operative framework any new build activity in RCA under this particular rule would not transit beyond controlled activity status. In other words, under the s42A Report author recommended amendment, any prospect of enablement is likely to be theoretical only given the likely default activity status that would result if the exemptions were not met. In reality there would be additional rather than lesser control in this particular example.

[431] Given the level of complexity involved and briefly touched on above, we have not attempted to take the exercise further and therefore conclude that no changes to operative RCA provisions as notified or as subsequentially recommended by the s42A Report author should proceed (beyond the spatial changes identified above). However,

¹⁷³ s42A Report of Elizabeth Jane White, 11 August 2023, at 8.2.24 – 8.2.25

¹⁷⁴ Ibid at 8.2.32 and 8.2.36

we would note that the Council has the facility to pursue improvements to the provisions applying to the RCA that survive through a Schedule 1 process.

[432] In s32AA terms, it is our position that the retention of the ODP provisions relating to existing RCA subject only to the deletion of four existing RCA and reductions in the spatial extent of nine others, as summarised above, represents the most efficient and effective means of the achieving the enabling purpose of the Housing Supply Amendment Act, NPS-UD Policy 3 and PC 14. For completeness, we note that arriving at this finding we are rejecting the s32 evaluation prepared by the Council to support this candidate for QM status.

Observation - Process

[433] In the event the Council wished to add to the Operative RCA's the Council would need to initiate a Schedule 1 process.

20. RICCARTON BUSH INTERFACE AREA (INTERFACE AREA)

Summary of Recommendations

[434] We find that the Riccarton Bush Interface Area should not proceed as a QM for the following reasons:

- (a) the Council has not offered a sufficient case in accordance with the requirements of s77J, 77L, 77P and/or 77R of the RMA that the values associated with the Bush would be adversely impacted by more intensive development in the Interface Area otherwise enabled by PC 14 to the extent that they would compromise a matter (or matters) of national importance in terms of s6;
- (b) accordingly, in our view, the matter does not therefore constitute a 'listed' QM under s77I(a) and s77O(a) of the RMA;
- (c) further, the provisions proposed to be introduced via PC 14 to limit development capacity in the area concerned (as notified and as amended during the course of the hearings) would introduce restrictions or limitations on the *status quo* under the ODP beyond the mandatory requirements of an IPI; and

- (d) that the merits of the proposed provisions, even if they were justified on grounds of scope under an IPI (which they are not), are not appropriate in the context of the required RMA s32 evaluation: and that
- (e) the ODP provisions, including that relating to height, minimum site area, minimum density, permitted site coverage and building setback (including from the boundary with the Riccarton Bush), should be retained in preference to the proposed provisions.
- [435] Our findings and recommendations with respect to the Riccarton Bush Interface Area as a QM, in terms of available scope, align with the broader conclusions we have reached in relation to a range of proposed QMs, as set out in Part 1 of our Recommendation Report. We have reached the above findings and recommendations in this respect, with reference to separate evaluations on both 'scope' and 'merits' as follows. We conclude with some comments relating to 'process' and a section 32AA evaluation for our recommended changes.

PC 14 as Notified

- [436] As set out in the relevant s32 Report, Riccarton Bush is the 'last remaining' remnant of podocarp forest on the low Canterbury Plains and one of the oldest documented protected natural areas in New Zealand. In the ODP all areas directly adjoining Riccarton Bush are zoned for low density purposes (a combination of Residential Suburban Zone and Residential Medium Density Zone) and are subject to attendant controls on the height, setback and coverage of buildings in proximity to the bush area.
- [437] The nearby Riccarton commercial centre has been classified by the Council as a 'Large Town Centre'; as such, areas adjacent to the centre demand a high density of urban form intensification response under s77G of the RMA and NPS-UD Policy 3(d). In PC 14, this has been translated into a MRZ zoning to be applied across much of the southern side of the Riccarton Bush Interface Area, with the RS zoning continuing to apply on the southeastern and northern sides. The 'Interface Area' has been defined by the Council within the context of PC 14 as an overlay area encompassing some 296 properties; a considerable increase on the 40 immediately adjacent properties to which the operative controls referred to above apply.
- [438] Beyond the increased spatial extent of control proposed within the new Interface Area overlay, some of the controls on building density themselves are proposed to be tightened under PC 14. The following description of the notified provisions, relative to

the operative provisions, draws on the summary s42A Report authors provided to us on request during the course of the hearing (we had found the relationship difficult to follow)¹⁷⁵. In summary:

- (a) an 8m height limit would be imposed in the expanded Interface Area (this compares with an 11m limit applying in areas zoned Residential Medium Density Zone in the ODP and a 12m MDRS height limit applying in the proposed MRZ outside the Interface Area);
- (b) altered outdoor living spaces, daylight recession planes, building setbacks and fencing requirements on road boundaries would apply in the proposed MRZ (in comparison with the operative Residential Medium Density Zone);
- (c) more specifically, and notably, a side yard setback of 3m would be imposed, to retain views of Riccarton Bush down existing driveways when viewed from the road (in comparison with 1m in the ODP); and
- (d) breaches of height, setback and site coverage controls would assume fully discretionary activity status under the PC 14 provisions, rather than the restricted discretionary activity status in the ODP.
- [439] With respect to Riccarton Bush's identified ecological, heritage and landscape values, the Council determined that these constitute a matter of national importance under s6 of the RMA, as the "Riccarton Bush Significant Tree Area". Consequently, the Interface Area constitutes a 'listed' QM under s77I(a) and s77O(a) of the RMA. The Council further determined that while the RBIA QM contained some existing, operative elements that might deem it subject to the alternative evaluation processes for 'existing' matters under s77K and s77Q, the extent of change proposed meant that it constituted a 'new' matter and, overall, should be subject to the evaluations required under s77J(3) and s77P(3). In the context of the s32 Report, the Council also elected to undertake the further evaluations (including site-specific analysis) set out under s77L and s77R.
- [440] Having undertaken these evaluations, the s32 Report concluded that the proposed package of controls as notified represented an 'acceptable compromise' between an appropriately enabling MDRS and NPS-UD Policy 3 response and the means to protect the values of Riccarton Bush.

¹⁷⁵ Memorandum of Counsel for Council, 29 November 2023 at Appendix L

[441] The conclusions that the s32 Report reached in this respect, and the subsequent confirmation of the Interface Area as a QM, can largely be traced to a *Pūtaringamotu Riccarton Bush Heritage Landscape Review* undertaken on behalf of the Council by Dr Wendy Hoddinott, heritage landscape architect at WSP NZ Ltd.¹⁷⁶ Dr Hoddinott's review had identified Riccarton Bush (or 'Pūtaringamotu' as it is also referred to¹⁷⁷) as a sensitive heritage site and setting with high landscape, heritage and ecological values. She went on to make recommendations for interface controls that then informed the preparation of the Interface Area provisions.

Submissions and Section 42A Recommendations

- [442] This QM received submissions from 21 submitters, generating 43 submission points. All submission points, understandably, were focused on restrictions on NPS-UD Policy 3 enabled intensification sought to be introduced through the Interface Area provisions. More specifically, submitters sought to (variously):
 - (a) support and retain the provisions as notified;
 - (b) seek extensions to areas over which the overlay applies and/or a blanket 8m height limit within it;
 - (c) reduce the extent of the area to which the overlay applies, either to the original 40 properties or only on the northern side, away from the transport corridor and Riccarton commercial centre; or
 - (d) oppose and seek removal of the provisions.
- [443] In his s42A Report, Mr Ike Kleynbos recommended the rejection of all submitter requests to alter or delete the relevant provisions with the exception of requests by the Riccarton Bush Kilmarnock Residents' Association #188 and Waipuna Halswell-Hornby-Riccarton Community Board #902 to include within the overlay areas in the vicinity of Kahu Street, Riccarton House and the Bush, on the basis of Dr Hoddinott's technical evidence supporting the said inclusion.
- [444] It was also this technical evidence of Dr Hoddinott's that Mr Kleynbos relied on in arriving at his recommendation to reject the remaining requests, noting that, at that point, the submitters had not fielded any evidence of their own.

-

¹⁷⁶ Pūtaringa Riccarton Bush Heritage Landscape Review, WSP, 20 December 2022, Part 2 – Qualifying Matters Appendix 43

¹⁷⁷ Also referred to 'Pūtarikamotu' in some briefs of evidence.

Issues

[445] Those issues remaining in contention during the course of the hearing, as highlighted in evidence presented to us can be summarised as follows:

(a) whether the Panel has scope under the Housing Supply Amendment Act to impose the QM in the manner proposed; and

(b) assuming that is the case, whether the provisions as notified or as subsequently proposed to be amended are entirely necessary for the purposes of protecting the values associated with Riccarton Bush (i.e. have sufficient 'merit').

[446] Aside from Mr Kleynbos and Dr Hoddinott for the Council, we heard from:

(a) Mr Schulte, Mr B Matheson and Ms Everleigh, counsel for Riccarton House and Bush Pūtaringamotu Trust Board #44, Kāinga Ora #834 and Kauri Lodge Rest Home 2008 Limited #751 (Kauri Lodge), respectively, on the scope matter; and

(b) corporate witness Mr Brendon Liggett, and planning witness Mr Tim Joll (for Kāinga Ora) and landscape architect witness Ms Sophie Strachan (also for Kāinga Ora). We also heard from these witnesses, and also Ms Kim Seaton (for Kauri Lodge), on the matter of 'merits'.

[447] We also heard from Mr Hardie of JG & JL Hardie Family Trust #1011 (the Trust) who is the owner of the property at 48 Rata Street. We assess and determine the matters raised by the Trust in the following section dealing with Significant and Other Trees.

[448] In response to a broad direction from us as to opportunities for expert conferencing, we were also presented with a Joint Witness Statement prepared by Dr Hoddinott and Ms Strachan for the purposes of reporting on discussions to identify, discuss, and highlight points of agreement and disagreement on Pūtaringamotu Riccarton Bush Interface Area issues relevant to PC 14.

[449] Broadly speaking, then, the issues remaining in contention relate to scope, in the first instance, and the merits of the provisions, in the second. These are the topics we turn our minds to in the sub-section below.

Findings and Evaluation

Evaluation - Scope

[450] Firstly, on matters of scope, Mr Schulte, for the Riccarton House and Bush Pūtaringamotu Trust Board, acknowledged that opposition to the extent of the Interface Area rested partly on those matters. He went on to posit that if the provisions in their current guise (including either their extent and constituent controls, or both) were found not to be within scope on particular sites then those sites could be severed from the provisions with the *status quo* protection (i.e., the 10m boundary setback buffer) remaining in place¹⁷⁸. Given our findings on both scope and merit with respect to all properties subject to the Interface Area provisions, we take considerable assurance from this position.

[451] In response to the evidence of Kāinga Ora's witnesses, Mr Kleynbos indicated that he did not consider that the tests under s77L are relevant to this QM as, given the Bush's status as a s6 matter, only the evaluations under s77I and s77J were necessary¹⁷⁹. This does not appear to square with the Council's own s32 Report on this matter (refer to above).

[452] Ms Seaton's evidence, for Kauri Lodge Rest Home 2008 Ltd, provided us with a detailed and useful comparison between the OPD provisions and equivalent provisions introduced via the Interface Area¹⁸⁰. To us, this clearly demonstrated the extent to which PC 14 was less enabling than the ODP across a number of standards. Ms Everleigh, also for Kauri Lodge Rest Home 2008 Ltd, took the position that more onerous side boundary setbacks (as proposed) did not support and were not consequential on application of MDRS (as required by s80E) because they were not applied to restrict further intensification through application of the MDRS - "they instead disenable operative CDP provisions for development" 181. We agree, in adopting Ms Everleigh's argument with respect to the Interface Area provisions as a whole.

[453] In its reply statement, the Council suggested that "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." The Council went on to observe that a majority of submitters were supportive of the QM. Our recommendation

 $^{^{178}}$ Synopsis of <u>Legal Submissions of Riccarton House and Bush Pūtaringamotu Trust Board, 15 November 2023</u> paras 3, 6 and 22

¹⁷⁹ Rebuttal Evidence of Ike Kleynbos, 16 October 2023 at 15

¹⁸⁰ Statement of Evidence of Kim Seaton on behalf of Kauri Lodge Rest Home 2008 Limited, 20 September 2023 Attachment 1: Figure 4

¹⁸¹ Legal Submissions on behalf of Kauri Lodge Rest Home 2008 Limited, 8 November 2023, at 21 - 24

¹⁸² Council Reply, 17 May 2024, at 10.75

in this respect must be founded on a principled, considered approach to scope and merits.

[454] We agree that Riccarton Bush itself clearly hosts ecological, heritage, and landscape values that are significant in s6 terms. However, that has been obvious for some considerable time; it is something that is expressly acknowledged in the ODP. What we do not agree with the Council and some submitters on, however, is that those values would be compromised by intensification otherwise enabled by PC 14 in the surrounding area to the extent that the provisions proposed by the Council can be justified with recourse to their identification as a QM.

[455] We have not been presented with any material evidence that the *ecological* values associated with the Riccarton Bush are at risk from that intensification, such that the Riccarton Bush would require any additional measures beyond the 10m setback from the perimeter predator-proof fence that already applies with respect to development adjoining the Riccarton Bush Significant Trees Area (another proposed QM that we consider in the next section).

[456] With respect to heritage and landscape values, we start with Dr Hoddinnot's observation that "the views of the kahikatea forest canopy above the adjacent houses are considered a distinctive and defining element across the skyline, and what we see today relates to depictions in early paintings of the area." 183. In her view, "the expanse of Riccarton Bush above the rooftops of adjacent houses would still be significantly obstructed with building heights restricted to 12m, creating adverse visual effects not only adjacent to Pütaringamotu, but also Riccarton Grounds, Riccarton House and the former Deans' farm buildings, weakening their connection with the setting." 184 We understood that she was primarily alluding to the broader heritage setting when she referred to these adjacent properties. As such, we note that they are already subject to the ODP provisions relating to setback, height and the like.

[457] Where broader *landscape* values are concerned, we consider that the Riccarton Bush needs to be seen in the context of its urban setting. It is already identified as an Outstanding Natural Feature. Practically, its value in that context is not strongly tied to views of it from particular vantage points, given that it surrounded by urban development. Its value in landscape terms is more related to 'internal' perspectives i.e., from the vantage point of being within the Riccarton Bush itself or from properties immediately

113

¹⁸³ Statement of Evidence of Wendy Hoddinott on behalf of Council, 11 August 2023 at 24

¹⁸⁴ Statement of Evidence of Wendy Hoddinott on behalf of Council, 11 August 2023 at 26

adjacent to it). Views to and of the Riccarton Bush from elsewhere are already limited by the relatively flat nature of the surrounding topography and existing built form.

[458] To us, that is the simple reality. It means that while landscape values associated with the Riccarton Bush may be significant in s6 terms, views of its full profile (as opposed to the top of the canopy) from anywhere other than adjacent areas are not readily obtainable. These 'full profile' views cannot therefore be considered significant, in our opinion (we explore this aspect further in relation to the merits of the provisions, below). It then follows that the extensive, and prescriptive controls proposed by the Council are not sufficiently justified under the limited scope provided by an IPI. They fail on scope, in the first instance.

Evaluation - Merits

[459] Turning now to the merits of the proposal, and sequeing from matters of scope, we start by noting the challenges we have faced gaining an understanding of the quantum of PC 14 provisions that are intended to serve this proposed Interface Area QM. How the Interface Area provisions compare and contrast with ODP provisions was also an issue for us, notwithstanding the further explanations we sought and received from the Council.

[460] That aside, we note that Mr Liggett, for Kāinga Ora, spoke to the agency's opposition to additional built form controls and also suggested that the Council had not assessed what views of the Riccarton Bush would remain if even the 8m height limit was fully realised. He concluded that it might not be justified when considered against s77I and s77L of the RMA¹⁸⁵. Mr Joll, also for Kāinga Ora, indicated his support for an 8m height limit in planning terms but not the need for additional built form controls¹⁸⁶.

[461] Both the Kāinga Ora corporate and planning witnesses indicated support for the evidence of Ms Strachan, who was of the view that an 8m height limit would adequately protect the proposed landscape and heritage values of Riccarton Bush, and that the additional controls proposed by Dr Hoddinott are unnecessary. In her assessment, views of the tree canopy above 8m rooflines from public areas would remain available but that other proposed controls, such as increased side yard setbacks to preserve viewshafts, were of questionable value given the extent to which available views were interrupted by trees, fences and the like located on the properties concerned¹⁸⁷.

Statement of Evidence of Brendon Liggett on behalf of Kāinga Ora, 22 September 2023 at 9.2
 Statement of Evidence of Tim Joll on behalf of Kāinga Ora, 20 September 2023 at 6.1

Statement of Evidence of Sophie Strachan on behalf of Kāinga Ora, 20 September 2023 at 3.1 – 3.14

- [462] Ms Seaton indicated her opposition to the package of proposed provisions inclusive of the 8m height limit, as it would apply to non-residential activities with an MRZ zoning. She shared her observations over the extent to which views of the Riccarton Bush from the Riccarton Road frontage are obscured by buildings and are only 'fleeting at best' down intervening driveways. She also provided an illustration of how permitted 11m high buildings located outside the Interface Area could block views of the Bush from Riccarton Road¹⁸⁸. Ms Eveleigh also acknowledged that, absent any controls on planting within side boundary setbacks, views of the Riccarton Bush could be blocked by vegetation on the relevant properties. She also observed that the existing pattern of front and rear lots between the road and Riccarton Bush would make the consistent application of a 3m setback problematic¹⁸⁹.
- [463] In their Joint Witness Statement, Dr Hoddinott and Ms Strachan reported on areas of agreement and disagreement¹⁹⁰. By this time, as noted by Mr Matheson for Kāinga Ora, the agreements were relatively expansive when compared to the disagreements¹⁹¹. In brief, the witnesses were able to reach agreement on the need to protect viewshafts and elements relating to height, site coverage, setbacks, lot sizes and the principle of limiting residential units per site. They demurred only with respect to coverage where it related to the MRZ, side yard setbacks and the number of residential units to which sites should be limited.
- [464] Apart from referencing the Joint Witness Statement, and in response to Ms Seaton's concerns, Dr Hoddinott recommended further amendments to the provisions in her rebuttal evidence, including a reduction in the side yard setback to 1m and 3m either side of dwellings to provide for driveways while maintaining the views afforded¹⁹².
- [465] In his own rebuttal, Mr Kleynbos indicated his support for the modified provisions latterly proposed by Dr Hoddinott as a means to address Ms Seaton's concerns¹⁹³. These, as noted above, would see the side yard setback reduced either side of dwellings.
- [466] By the time that the Council had prepared its reply statement, however, Mr Kleynbos and Dr Hoddinott had come to a different position on the proposal to protect views of the Riccarton Bush down existing driveways via a side yard setback. At this point, they were

¹⁸⁸ Statement of Evidence of Kim Seaton on behalf of Kauri Lodge Rest Home 2008 Limited, 20 September 2023, at 28 – 31

¹⁸⁹ Legal Submissions on behalf of Kauri Lodge Rest Home 2008 Limited, 8 November 2023, at 25 - 28

Joint Statement of Landscape Experts - Putarikamotu Riccarton Bush Interface-Area, 27 September 2023

¹⁹¹ Legal Submissions on behalf of Kāinga Ora - Residential Provisions and Related Qualifying Matters, 22 November 2023, at 8.1 – 8.2

¹⁹² Rebuttal Evidence of Wendy Hoddinott - Pūtaringamotu Riccarton Bush Interface Area, 9 October 2023

¹⁹³ Rebuttal Evidence of Ike Kleynbos, 16 October 2023, at 18 - 20

of the view that the *status quo* side yard setback should be retained, due to valid issues being raised at the hearing regarding the merits of this aspect of the proposal¹⁹⁴. The Council remained of the view that the Interface Area provisions as otherwise modified should proceed, drawing our attention to the 'high degree of consensus' between the experts regarding the merits and details of the QM¹⁹⁵.

[467] Notwithstanding the consensus the landscape witnesses may have reached, we conclude that the proposed Interface Area QM fails on merits. In this respect, we prefer the planning evidence of Ms Seaton and Mr Joll that the provisions are in general overly prescriptive and likely ineffective, and do not outweigh the benefits of increased housing density in close proximity to the Riccarton commercial centre and public transport network.

[468] Following on from our finding that the case for the Riccarton Bush Interface Area as a QM has not been made, we further find that the retention of the ODP provisions, which we recommend, represents a more effective and efficient means of ensuring that the objectives of the Housing Supply Amendment Act, NPS-UD Policy 3 and PC 14 are achieved. It is our position that no further justification or evaluation under s32AA is required.

[469] We address the matter of a proposed increase in the setback from the predator-proof fence associated with the Riccarton Bush Significant Trees Area in the sub-section Significant and Other Trees, following, as it is tied to that separate proposal for a QM.

21. SIGNIFICANT AND OTHER TREES

Summary of Recommendations

[470] We find that the Significant and Other Trees proposal should not proceed as a QM for the following reasons:

(a) the Council has not offered a sufficient case in accordance with the requirements of s77J, 77L, 77P and/or 77R of the RMA that the values associated with scheduled trees and groups of trees would be adversely impacted by more intensive development in urban environments otherwise enabled by PC 14 to the

_

¹⁹⁴ Council Reply, 17 May 2024, at 3.19, 10.78 – 10.79

¹⁹⁵ Ibid at 3.19, 10.77

extent that they would compromise s6(f) or other matters of national importance under the RMA;

- (b) accordingly, in our view, the matter does not therefore constitute a 'listed' QM under s77I(a) and s77O(a) of the RMA;
- (c) that the proposal to replace the 'dripline' method for defining the setback distance for works from trees with a 'tree protection zone radius' measurement likely has merit, in terms of its technical efficacy, but would have an impact on development capacity that cannot be supported through an IPI process on grounds of scope (as above); and that
- (d) the ODP provisions and associated tree schedule should be retained in preference to the proposed provisions. Acknowledging that, in our view, the Council has the facility to pursue the proposal (inclusive of a change in measurement methodology) through a Schedule 1 process.
- [471] Further to the above, we recommend that no requests to be remove trees from the schedule be entertained given that the submitters concerned did not field any technical evidence countering the Council's own supply of same.
- [472] As before, our findings and recommendations with respect to the Significant and Other Trees QM, in terms of available scope, align with the broader conclusions we have reached in relation to a range of proposed QMs, as set out in Part 1 of our Recommendation Report. We have reached the above findings and recommendations in this respect, with reference to separate evaluations on both 'scope' and 'merits' as follows. We conclude with some comments relating to 'process' and a section 32AA evaluation for our recommended changes.

PC 14 as Notified

[473] The ODP currently identifies significant trees and groups of significant trees that contribute to community amenity values, environmental services, and social and cultural health and wellbeing and seeks to retain these qualities for current and future generations. With respect to those trees and groups of trees located on private land, it does this by:

- (a) listing trees and groups of trees in an Appendix (9.4.7.1) and, where relevant, ascribing any 'exceptional values' accorded them (i.e., 'landscape', 'heritage' and/or 'botanical');
- (b) providing for pruning and felling and gardening within the dripline of said trees as a permitted activity, subject to activity specific standards;
- (c) providing for comprehensive ongoing maintenance and management of said trees in accordance with a certified plan, as a controlled activity;
- (d) providing for the works described in (b) and (c) above as restricted discretionary activities where they do not meet the relevant standards or conditions dictating either permitted or controlled activity status; and
- (e) providing for pruning and felling of trees with exceptional values where not otherwise provided for, as a discretionary activity.
- [474] In identifying scheduled trees on private land as a QM, the Council seeks to protect them from the likely effects arising from permitted intensification of development otherwise enabled through PC 14.
- [475] Aside from those that may have died and/or been removed all trees in the ODP schedule have been mapped into the schedule as revised by PC 14. In each case, the Council has applied one of two means for the assumption of status as QMs. The subsequent evaluation pathways reflect that status.
- [476] Firstly, where trees or groups of trees are determined to meet s6(f) of the RMA (i.e., where the heritage values accorded them constitute 'historic heritage' within the meaning of that clause) they have therefore assumed the status of a matter of national importance and, as such, have been categorised as a 'listed' QM under s77I(a) and s77O(a) of the RMA. As such, the proposed provisions relating to them have been evaluated in accordance with s77J(3) and s77P(3).
- [477] Secondly, where trees or groups of trees are not defined as 'heritage' trees but are still considered to 'contribute to well-functioning urban environments' and are worthy of a level of protection, they have been subject to the same evaluations referred to above as well as the further evaluations (including site-specific analysis) set out under s77L and s77R.

[478] Of further note is the proposal under PC 14 to replace the 'dripline' method for defining the setback distance for works from trees with a 'tree protection zone radius' measurement. This is defined as equivalent to 15 times the trunk diameter measured at 1.4m (in relation to an unspecified point), with the maximum extent restricted to 15m. From a technical perspective, the Council considered this substitution necessary as the existing 'dripline' method often failed to capture a sufficient extent of a tree's root system to provide it with the necessary protection during construction. As a 'new' provision, this proposal has been subject to both sets of evaluations referred to above.

[479] Having undertaken these evaluations, the s32 Report concluded that:

- (a) with respect to the application of the proposed provisions to 'heritage' trees, the costs in terms of a reduction in development capacity would be outweighed by the benefits of retaining the trees concerned and/or avoiding overshadowing and crowding effects; and
- (b) with respect to the application of the proposed provisions to 'other' trees and also the implementation of the new setback method, these elements represented the most appropriate way of achieving the objectives of the ODP and higher order direction.
- [480] Overall, the s32 Report placed considerable emphasis on an argument that the ODP already established an approach to protecting trees, that no additions to the schedule are proposed, and that PC 14 is largely focused on 'rolling' those provisions over. According to the Council, 266 properties are affected in the sense that they host trees identified in the schedule¹⁹⁶.
- [481] The technical work underpinning the outcomes of the s32 Report evaluations rests largely in the *Significant Trees Qualifying Matters Technical Report* authored by Council arborist Mr Toby Chapman and Council landscape architect Ms Hilary Riordan, during the development of PC 14. It is worth noting at this point that the trees defined as having 'heritage' value (in s6(f) terms) were those identified by Council's environmental consents arborist Mr John Thornton as being over 100 years old. All trees identified in the schedule as constituting a QM (be they 'heritage' or 'other' trees) must also have met the requirements under the Christchurch Tree Evaluation Method (CTEM) methodology, with respect to their health and structural integrity.

_

¹⁹⁶ Memorandum of Counsel for Council, 11 April 2024, Appendix A - Attachment G2 to Table G

- [482] Works to or in vicinity of trees otherwise not identified as QMs through their failing to meet the CTEM requirements or being located outside areas slated for intensification (for example) have not been removed from the schedule but are essentially permitted without specific constraint and, as such fall outside the scope of our consideration.
- [483] It is also worth noting that the selection of the new setback method by the Council was based on the recommendations of urban tree ecophysiologist Mr Andrew Benson of The Tree Consultancy Company.

Submissions and Section 42A Recommendations

- [484] This QM received submissions from 20 submitters, generating 37 submission points. Those submission points can be grouped into three broad categories:
 - (a) those supporting the notified provisions and/or seeking amendments to further strengthen them;
 - (b) those opposed to the provisions and/or seeking amendments to reduce the degree of control or delete them; and
 - (c) those seeking to remove specific trees or groups of trees from the schedule.
- [485] In her s42A Report, Ms Brittany Ratka recommended the rejection of the majority of submitter requests to alter or delete the relevant provisions. Having said that, she did recommend that two amendments be made in response to submissions by the Carter Group Limited #814 and on the basis of technical advice from Mr Benson, as follows:
 - (a) to alter the definition for 'tree protection zone radius' to specify that the diameter of a trunk be measured at 1.4m 'above ground level'; and
 - (b) to amend the assessment criteria in Rule 9.4.6 to refer to the circumstances in which a 'technical arborist' should be involved in works proposed within the said radius.
- [486] Relying in part on the technical evidence of Mr Benson and Ms Riordan, Ms Ratka provided us with two alternative recommendations on the basis of a request by Riccarton Bush (Pūtaringamotu) Trust #44 that Rule 9.4.4.1.1 be amended to maintain the ODP setback of 10m from the predator-proof fence associated with the Riccarton Bush Significant Trees Area (in preference to the proposed radius measurement). If we were minded to accept the Riccarton Bush Interface Area and/or the extended Airport Noise

Contours as QMs, her recommendation was to retain the 10m setback. If we were not, leading to a consequential increase in the enabling of intensification in this area, then she recommended that the radius method be adopted.

[487] It was also partly on the basis of the technical evidence of Mr Chapman, Mr Benson and Ms Riordan that Ms Ratka relied in arriving at her recommendation to reject the remaining requests.

Issues

- [488] Those issues remaining in contention during the course of the hearing as highlighted in evidence presented to us can be summarised as follows:
 - (a) whether the Panel has scope under the Housing Supply Amendment Act to impose the QM in the manner proposed;
 - (b) whether the definition for 'tree protection zone radius' is valid in the above context and also worded appropriately;
 - (c) the correct method for managing works in vicinity to Riccarton Bush; and
 - (d) contested requests to delete certain trees from the schedule.
- [489] Aside from Ms Ratka for the Council, we heard from planning witness Mr Phillips and counsel Ms Appleyard, for the Carter Group Limited and Daresbury Limited, and counsel Ms Booker (for Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited #705), on the scope matter. We also heard from Ms Ratka and Mr Phillips in relation to the definition, and from Ms Ratka, Mr Thornton and planning witness Ms Parrish (for Foodstuffs) on requests to delete certain trees. There was no expert arborist evidence filed by submitters.
- [490] We also received submissions from a lay submitter, Mr John Hardie representing JG & JL Hardie Family Trust (the Trust) who is the owner of the property at 48 Rata Street, Riccarton.
- [491] Finally, and in response to a query from us seeking advice on an appropriate setback from Riccarton Bush for works that might otherwise harm or damage the relevant trees, we were presented by a Joint Witness Statement prepared by Mr Benson and Professor David Norton (on behalf of Riccarton Bush (Pūtaringamotu) Trust).

[492] Broadly speaking, then, the issues remaining in contention relate to scope, in the first instance, and the merits of the provisions, in the second. These are the topics we turn our minds to in the sub-section below.

Findings and Evaluation

Evaluation - Scope

[493] Firstly, on matters of scope, it was the submission of Ms Appleyard, with respect to the Significant and Other Trees QM, that the Council was not legally entitled to include these changes to the ODP by way of PC 14. In her view, the relief sought by the submitters, seeking the deletion of the new provisions in their entirety and/or the rejection of the proposed changes and reversion of the provisions to their current operative form, should be accepted¹⁹⁷. This went to her broader position that the Housing Supply Amendment Act only allowed the Council to make the MDRS and the relevant building height and density requirements under NPS-UD Policy 3 less enabling of development to the extent necessary to accommodate QMs and that it would not be in keeping with the 'enabling' purpose and context of the Housing Supply Amendment Act for an IPI to be a mechanism to make anything beyond those higher level directions less enabling (i.e., affect *status quo* development rights)¹⁹⁸.

[494] Relatedly, Mr Phillips alluded to what he considered to be a level of duplication in the proposed provisions when compared to the operative provisions. He noted that the ODP provisions already limited the extent to which any development (irrespective of its height or density) could occur in the vicinity of scheduled trees; thereby providing a framework for their protection or management. He indicated that he could not see how those trees might be threatened by intensified development to extent that they warranted categorisation as a QM. On that basis, he concluded that there were insufficient grounds to support a specific QM¹⁹⁹.

[495] For Foodstuffs, and in relation to a particular scheduled tree (T1118), Ms Booker also questioned the robustness of the Council's approach in identifying the elm as a 'QM tree' on the basis it constituted 'historic heritage' given her observation that the Council's technical evidence focused in the main on health and safety matters. She sought to remind us that "the Enabling Act is focused on removing barriers and enabl[ing]

¹⁹⁹Statement of Evidence of Jeremy Phillips on behalf of Carter Group Limited, 20 September 2023 at 29 - 33

¹⁹⁷ Memorandum of Counsel for Various Submitters, 1 May 2024 at 35

¹⁹⁸ Ibid at 29

intensification and commensurate development in commercial areas to give effect to the NPS-UD."²⁰⁰

[496] In response to the position taken by the Carter Group and Foodstuffs on these matters, Ms Ratka observed in her rebuttal evidence that the proposed schedule did seek to distinguish between trees making the grade as QMs and those that did not, and that only the former provided the basis for limiting intensification in line with the MDRS and NPS-UD Policy 3. She questioned whether PC 14 provided an appropriate avenue to consider the removal of trees from the schedule (as opposed to a separate Schedule 1 process)²⁰¹.

[497] To conclude on the evidence presented to us on matters relating to scope, it essentially remained the Council's position as set out in its Reply that the schedule as proposed correctly delineated between QM trees and non-QM trees and that, with respect to former, the Council had fielded a robust methodology for identifying trees of significance in historic heritage terms²⁰².

[498] On matters of scope we find that we prefer the evidence presented on behalf of submitters who contended that the ODP provisions provide a generally adequate basis for protecting and otherwise managing works in the vicinity of significant trees or groups of trees.

Evaluation - Merits

[499] In terms of merits, we accept that the Council has employed a relatively robust means and technical basis for identifying trees with 'heritage' values as outlined by Mr Chapman²⁰³. However, we consider that the Council has not fielded a sufficiently convincing *planning* argument that any additional threats to the trees cannot be adequately managed via those operative provisions. Accordingly, the effect of the proposed provisions in disenabling intensification has not been adequately justified, in terms of an IPI process.

[500] This finding extends to the proposal to replace the 'dripline' method for defining the setback distance for works from trees with a 'tree protection zone radius' measurement. While we accept that the proposal likely has technical merit, we are conscious that it has

²⁰⁰ Legal Submissions of Foodstuffs South Island Limited and Foodstuffs South Island Properties, 17 October 2023 at 42 - 45

²⁰¹ Rebuttal Evidence of Brittany Ratka, 9 October 2023 at 12 – 13, 47 - 48

²⁰² Council Reply, 17 May 2024 at 13.31 – 13.38

²⁰³ Statement of Evidence of Toby Chapman, 11 August 2023 at 21 - 25

the potential to extend the areas to which works would be subject to control and thereby reduce the development capacity of sites in proximity to trees, relative to the current method. The fact that it would extend the application of controls over a broader area in many instances is something that Mr Chapman verbally acknowledged during the course of the hearing and that counsel for Council confirmed in its reply statement²⁰⁴.

- [501] As such, we do not agree that with the Council that it can be considered a 'related provision' consequential on the MDRS and NPS-UD Policy 3, in terms of s80E(1)(b)(iii). In our view, the merits of the proposal would need to be further tested through a Schedule 1 process.
- [502] As we concluded earlier, we consider that no requests by submitters to either add or remove trees from the ODP schedule should be entertained. Crucially, no expert arborist evidence was fielded by the submitters concerned and we are therefore obliged to rely on the technical evidence and recommendations of Mr Thorndon for the Council in these respects²⁰⁵.
- [503] Finally, with respect to an appropriate setback from the predator-proof fence associated with the Riccarton Bush Significant Trees Area, this was a case where we did have the benefit of expert evidence from more than one party. Before we address that expert evidence, we briefly canvass the submissions presented to us by Mr Hardie of JG & JL Hardie Family Trust (the Trust) who is the owner of the property at 48 Rata Street.
- [504] Mr Hardie told us that Riccarton Bush abuts two sides of the property. He appraised us of the 2010 Council promulgated Plan Change 44 which affected setback controls on the Trust property relating to those parts which abut Riccarton Bush. Those controls set a 10m setback restricting development on the property, but the 10m was measured from a predator proof fence situated 4m inside the Bush property. Thus the setback on the Trust property was effectively 6m.
- [505] Mr Hardie advised the Panel that the Trust had reluctantly accepted the setback in PC 44 but is opposed to the setbacks in PC 14 as they are proposed on a completely different basis of determining a setback whereby the distance is calculated based on the diameter of all trees in the bush. He concern was this method of calculation is unworkable as it appears to apply to all trees are not just the closest kahikatea tree to the Trust's property. In his view, that would require all trees in the bush to be measured

²⁰⁴ Council Reply, 17 May 2024 at 13.18

Rebuttal Evidence of John Thornton, 9 October 2023

on a continuing basis because of a change in trunk diameter. He advised that the Trust would accept a continuation of the rule that existed in the Plan prior to the introduction of the proposed new rule.

[506] Turning to the expert evidence, (which is also relevant to the matter raised by Mr Hardie) Professor Norton, for the Riccarton Bush (Pūtaringamotu) Trust, explained the adverse impacts that higher density housing on the margins of Pūtaringamotu could have on the forest ecosystem and its species including through damage to tree root systems, loss of greenspace, microclimate effects, increased fire risk and reverse sensitivity effects²⁰⁶. In his view, the only ecologically sound basis for defining a setback would be to consider Pūtaringamotu as a single entity, rather than individual kahikatea trees.

[507] Subsequently, Professor Norton and Mr Benson (for the Council) presented us with their agreed position that the simplest approach to ascribing a construction setback from Riccarton Bush would be to establish a setback from the predator-proof fence; and that setback should be 15 metres²⁰⁷.

[508] We note that in her rebuttal evidence and in response to a query from us Ms Ratka sought to amend her s42A recommendation²⁰⁸ on the basis of the agreement reached by Professor Norton and Mr Benson. She was now of the view, in the event that we were minded to allow for greater intensification adjoining Riccarton Bush, that a 15m setback for buildings and earthworks should be imposed (in preference to the radius method)²⁰⁹.

[509] We appreciate the willingness of Professor Norton, Mr Benson and Ms Ratka to consider options and amend their positions in this regard. However, we are unable to recommend its inclusion in PC 14, given our broader finding above that amendments impinging on status quo development rights are not countenanced by the IPI process. Returning to the example of the Trust's property at 48 Rata Street, the setback would increase to 15 from 10m (effectively 11m for that property given that predator fence is 4m off the boundary). The Rata street example is a case in point where the ODP provisions provide an adequate basis for protecting and otherwise managing works in the vicinity of significant trees or groups of trees.

[510] The merits of any alternative proposal to that in the ODP proposal can only be further tested and confirmed through a Schedule 1 process (noting that Plan Change 13 does

²⁰⁶ Brief of Evidence of Emertius Professor David Andrew Norton on behalf of Riccarton Bush Trust, 20 September

²⁰⁷ Joint Expert Witness Statement of Arboriculture Experts, 2 October 2023
²⁰⁸ As summarised previously in our report

²⁰⁹ Rebuttal Evidence of Brittany Ratka, 9 October 2023, at 39 - 43

not contain any mirroring provisions in relation to 'heritage' trees). In the interim, it is our recommendation that the ODP 10m setback should remain.

[511] As noted above, we have determined that the Significant and Other Trees proposal,

inclusive of a revised and restructured tree schedule and adoption of dripline method for

defining setback of works from said trees should not proceed, as the Council has not

proffered a sufficient case.

[512] The subject matter and effect of the retained ODP provisions, which we recommend,

are well understood, given their operative status and, in our view represent a reasonably

efficient and effective means of providing for the management of significant trees, to the

extent this can be justified, without compromising the enabling purpose of the Housing

Supply Amendment Act, NPS-UD Policy 3 and PC 14. In s32AA terms, therefore, we

are not obliged to further consider the risks of acting or not acting to adopt the proposal.

22. OPEN SPACE ZONES

Summary of Recommendations

[513] The Panel recommends that:

(a) the existing Open Space Zone provisions and mapping in the ODP be accepted

as a QM;

(b) no consequential amendments are required to be made; and

(c) the submissions seeking changes to the QM are rejected.

Notified Provisions

[514] The existing Open Space Zones provisions set out in Chapter 18 of the ODP are sought

to be retained without amendment to either the provisions or the mapping.

Submissions and Section 42A Recommendations

[515] As set out in the Council legal submissions²¹⁰ and the Council evidence²¹¹ the Open

Space Zones are an 'existing QM' that recognises and provides for the protection of

²¹⁰ Legal Submissions of Council, 11 October 2023 at 9.1 - 9.10

211 s42A Report of Anita Hansbury, 11 August 2023 at 6.22.1 - 6.22.7

126

public open space that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect the values of open space from inappropriate subdivision, use and development. The provisions provide for open space activities from small corner parks through to large built up urban parks, as well as parks focusing on the natural environment, biodiversity and landscapes. Accordingly, there are restrictions on the types of activities (recreation and accessory) and built urban form (such as height, setback and building footprints).

[516] The submission from Christchurch Civic Trust #908.1 and Historic Places Canterbury #835.12 and #835.13 sought amendments to the application of the Open Space Zone QM in relation to Hagley Park, Cranmer Square and Latimer Square, including the introduction of an Interface Area or Buffer Area Overlay as a qualifying matter. The Christchurch Civic Trust appeared and provided additional written²¹² and oral evidence in support of the Buffer Area Overlay. In particular, the Trust highlighted the provisions of the Hagley Park Management Plan which included the value of uninterupted 'sky scape' views out of the Park. The Trust accepted that the necessary technical modelling to determine the necessary building height gradients around the identified areas and the public consultation with those people potentially affected by the proposed provision had not been undertaken.

Findings and Evaluation

[517] The legal submissions sets out a percieved ambiguity in the NPS-UD with respect to the application of Policy 3 on 'urban non-residential zones', noting that in terms of s770 RMA, the term is undefined. However, the term is defined in s77F RMA as follows:

"urban non-residential zone means any zone in an urban environment that is not a residential zone."

[518] The Panel notes that Policy 3 NPS-UD relates to tier 1 'urban environments'. That term is defined in both the NPS-UD and s77F RMA as follows:

"urban environment means any area of land (regardless of size, and irrespective of territorial authority or statistical boundaries) that-

- (a) is, or is intended by the specified territorial authority to be, predominantly urban in character; and
- (b) is, or is intended by the specified territorial authority to be, part of a housing and labour market of at least 10,000 people"

-

²¹² Christchurch Civic Trust, 16 November 2023 lines 11 - 197

[519] A review of the 'Introduction' and the 'Objectives and Policies' (particularly the role, functions and activities for the seven Open Space Zone set out in Table 18.2.2.1) confirm that as the Open Space Zones provide for active and passive recreation, major sports facilities and community facilities, they represent an integral part of the urban environment. Accordingly, the Panel finds that the Open Space Zones meet the definition of an 'urban non-residential zone' and as such are subject to the application of Policy 3 NPS-UD.

[520] The Panel accepts the Council's position that no buffer overlay is required for the reasons set out in Ms Hansbury's evidence²¹³.

[521] Ms Hansbury confirmed that PC 14 does not propose any changes to the extent or provisions of the Open Space Zones in the ODP.

[522] For the above reasons, the Panel recommends that the existing Open Space Zone provisions and mapping in the ODP be accepted as a qualifying matter

23. SPECIFIC PURPOSE (ŌTĀKARO AVON RIVER CORRIDOR) ZONE (INCLUDING FITZGERALD AVENUE GEOTECHNICAL CONSTRAINT) (SPOARC)

Summary of Recommendations

[523] The Panel recommends that:

- (a) the existing SPOARC provisions in the ODP be accepted as a QM;
- (b) consequential amendments are made to amend the wording in Rule 13.14.3 to clarify the application of the rules and to Rule 13.14.4.1.3 to provide for restricted discretionary activity status for non-complicance with built form standards as set out in Part 8, Appedix G of this Report); and
- (c) the submission of the Glenara Family Trust #91 be accepted in part and the submissions opposed to the QM are rejected.

PC 14 as Notified

[524] Through PC 14, the existing SPOARC zone provisions in Chapter 13.14 of the ODP are sought to be retained without amendment to the provisions, other than for some private

²¹³ s42A Report of Anita Hansbury, 11 August 2023 at 6.22.4 to 6.22.6

sites (238, 254-256 Fitzgerald Avenue, 5 Harvey Terrace and 57 River Road) that are subject to 'alternative zone' rule provisions.

Submissions and Section 42A Recommendations

[525] As set out in the Council legal submissions²¹⁴ and the Council evidence²¹⁵ the SPOARC provisions are an 'existing QM' that recognises and provides for public use of open space along the Ōtākaro Avon River Corridor, that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect the relevant open space values from inappropriates subdivision, use and development. The existing provisions promote the regeneration of the area as a primarily restored natural environment along with increased opportunities for recreation and other compatible activities.

[526] Submissions were received from the Glenara Family Trust as owners of the specific properties and from Kāinga Ora (deletion of the QM) and Larissa Lilley #671 (directing high density housing to the 'red zone').

[527] The Panel notes that there are two issues requiring consideration with respect to the private sites, being:

(a) the applicable 'alternative zone'; and

(b) the activity status and rule provisions for development not meeting an activity standard.

Findings and Evaluation

Alternative Zoning

[528] The Panel's recommendation for the alternative zoning for the three properties is set out in Part 7 of this Report.

Activity Status and Rules

[529] Ms Hansbury provided a planning analysis, revised rule provisions and a s32AA analysis in her s42A report and summary evidence. Mr Mountford concured with and adopted Ms

²¹⁴Legal Submissions of Council, 11 October 2023 at 10.1 to 10.13

²¹⁵ s42A Report of Anita Hansbury, 11 August 2023 at 6.23.1 to 6.23.10

Hansbury's analysis and proposed rule amendments.²¹⁶ The Panel accepts the proposed amendments.

[530] For the above reasons, the Panel recommends that the existing SPOARC provisions in the ODP be accepted as a QM and consequential amendements are made to to amend the wording in Rule 13.14.3 to clarify the application of the rules and to Rule 13.14.4.1.3 to provide for restricted discretionary activity status for non-complicance with built form standards

24. SPECIFIC PURPOSE (CEMETERY) ZONE

Summary of Recommendations

[531] the Panel recommends that:

- (a) the existing Specific Purpose (Cemetery) Zone provisions and mapping in the ODP be accepted as a QM;
- (b) no consequential amendments are required to be made; and
- (c) the submissions be accepted.

Notified Provisions

[532] The existing Chapter 13.2 provisions of the ODP are sought to be retained without amendment to either the provisions or the mapping.

Submissions and Section 42A Recommendations

[533] As set out in the Council legal submissions²¹⁷ and the Council evidence²¹⁸ the Specific Purpose (Cemetery) Zone is an 'existing QM' that recognises and provides for an open space and in some instances historic heritage, that supports a less enabling application of MDRS and Policy 3 NPS-UD, in order to protect their open space and historic heritage values from inappropriate subdivision, use and development. The permitted activities are limited to cremation and cemetery activities, with complementary built form standards (such as building setback and height).

²¹⁶Statement of Evidence of David Mountfort, 20 September 2023 at 53 - 57

²¹⁷ Legal Submissions of Council, 11 October 2023 at 11.1 to 11.5

²¹⁸ s42A Report of Anita Hansbury, 11 August 2023 at 6.24.1 to 6.24.2

[534] Ms Hansbury confirmed that the submissions were in support of the Specific Purpose (Cemetery) Zone being a QM and that PC 14 does not propose any changes to the extent or provisions of zone in the ODP.

Findings and Evaluation

- [535] The Panel accepts that the Specific Purpose (Cemetery) Zone meets the evaluative requirements for a QM and is the most appropriate method for achieving the object of PC 14.
- [536] In the next Part of the Report we consider related matters by the Council, namely the Tree Canopy and Finanical Contributions provisions (which are not a QM, but an additional matter the Council can include in an IPI) and Subdivision provisions related to incorporation of the MDRS, NPS-UD Policy 3 enablements.