Before an Independent Hearings Panel
appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

and: **Carter Group Limited**
Submitter 824

Legal Submissions on behalf of Carter Group Limited – Qualifying Matters and Specific Purpose Zone

Dated: 8 April 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

INTRODUCTION

1 These legal submissions are presented on behalf of Carter Group Limited (*Carter Group*) in relation to the Qualifying Matters hearing for proposed Plan Change 14 (Housing and Business Choice) (*PC14*) to the Christchurch District Plan (*District Plan*).

2 These submissions address Carter Group's interests in the Qualifying Matters hearing topic. Carter Group is also addressing its submission points on the Other Zones (Specific Purpose School Zone) hearing topic as it was unable to present during the relevant hearing week 7 in November 2023.

3 The focus of this hearing will be the Blue Cottage owned by Carter Group, located on the corner of Armagh and Montreal Streets. Carter Group's submission seeks the removal of the Blue Cottage heritage item and setting from the Schedule of Significant Historic Heritage in Appendix 9.3.7.2 of the District Plan (the *Schedule*).

4 Carter Group is a privately held, family-owned and Christchurch-based company. The Carter family are proud Cantabrians who have played a leading role in the rebuild of the City following the Christchurch earthquakes. They are passionate about both the City's heritage (for example, as evidenced through the many historical components of "The Crossing" retail precinct) and its future prosperity.

5 The decision to pursue the delisting of the Blue Cottage has therefore been made carefully and after detailed consideration of the feasible and realistic options for the building and the site.

6 The position Carter Group has reached is that it is neither possible nor practical to repair the building without significant financial implications. Put simply, the costs of repair outweigh both the resulting valuation of the property and the costs of a replacement residential dwelling.

7 The Council has no power to require a property owner to repair a heritage building and in this case continuation of the status quo will simply result in the continued deterioration of the Blue Cottage.

8 Carter Group's position is supported by a comprehensive suite of expert evidence. In our submission, Carter Group's position should be preferred over the position taken by the Council's witnesses, who oppose the delisting. This is particularly in light of the significant concessions made by Council's heritage witnesses during cross-examination in November 2023 and due to the similarity of the circumstances with other delistings the Council has agreed to.

EVIDENCE

9 Evidence relevant to this hearing topic has been provided for Carter Group by:

9.1 **Mr William Fulton** and **Mr Kyle Brookland** – in relation to the physical condition of the Blue Cottage;

9.2 **Mr David Hill** – in relation to adaptive re-use of the Blue Cottage and building upgrade requirements, and redevelopment options for the broader site;

9.3 **Mr Tom Chatterton** – in relation to the costs of repairing the Blue Cottage;

9.4 **Mr David Compton-Moen** – in relation to the spatial/development implications of the listing of the Blue Cottage and setting on the Schedule, as well as general landscape and urban design evidence on other Carter Group submission points; and

9.5 **Mr Jeremy Phillips** – on all related planning matters.

10 These witnesses will present summary statements at the hearing.

11 As we did for earlier hearing topics, we have also prepared copies of **Mr Phillips'** and **Mr Compton-Moen's** evidence with the sections relevant to this hearing topic highlighted (attached as **Appendices 1 and 2** to these submissions).

STRUCTURE OF SUBMISSIONS

12 These legal submissions address Carter Group's relevant submission points as follows:

12.1 an initial section addressing whether the "delisting" relief sought is within the scope of PC14;

12.2 the statutory and planning framework for delistings;

12.3 assessment against the planning framework;

12.4 other heritage-related matters;

12.5 other qualifying matters; and

12.6 Specific Purpose School Zone provisions.

SCOPE OF RELIEF SOUGHT

13 The Council's legal submissions for this hearing topic, dated 16 November 2023, address the scope of submissions seeking the removal of heritage items and settings from the Schedule (paragraphs 6.2-6.4). We agree with Council's position that the Panel has the ability to make recommendations on requests to remove heritage items and settings from the Schedule.

14 We have previously addressed the Panel on the jurisdiction for its decision-making in a memorandum of counsel dated 21 December 2023. The Council's position on delisting requests aligns with the position we set out in that memorandum, namely that the Panel has broad powers to make recommendations within the parameters of section 80E of the Resource Management Act 1991 (*RMA*). Such recommendations are within the lawful scope of PC14, regardless of what Council may or may not have notified.

15 Under cross-examination, Council's heritage planner, Ms Richmond, seemed to suggest that having pursued a delisting through PC14, if unsuccessful, a submitter could "try again" through the subsequent Plan Change 13 (*PC13*) process. We understand that counsel for the Council will clarify this position and have not yet seen a response, but we struggle to see how this could be a possible outcome. Our understanding is that PC14 is the key (and only) process for our clients to pursue delistings and they are accordingly taking the process very seriously, as evidenced by the time and cost invested in engaging a number of experts.

16 Throughout the PC14 process there has been some confusion as to which aspects fall into PC14 or PC13. Despite legal submissions from the Council on this matter at various hearing topics, we continue to have reservations about the legality of some of the "related" amendments proposed to various heritage and other provisions by Council, purportedly as part of PC14.

17 Frankly, we do not understand how these amendments, which Ms Richmond described under cross-examination as "strengthening" the provisions,[1] give effect to the intent and purposes of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the *Amendment Act*). We therefore consider they are out of scope.

18 Carter Group's submission identifies these amendments and sets out specific reasons why they are not considered to be properly connected to the purpose of PC14. **Mr Phillips** has also addressed these amendments from a planning perspective. In our view, these

[1] See hearing recording, Tuesday 28 November – Morning Session 1, at around 23 minutes.

amendments, if pursued, should instead form part of the subsequent PC13 process.

STATUTORY AND PLANNING FRAMEWORK

19 We have addressed the statutory framework for the Panel's decision-making in legal submissions for previous hearings. Without repeating that material, it is important to emphasise that the starting point for both the Council in developing PC14 and the Panel's decision-making is to apply the Medium Density Residential Standards (*MDRS*) and Policy 3 of the National Policy Statement on Urban Development 2020 (*NPS-UD*) in a "blanket manner",[2] before identifying and applying any relevant qualifying matters.[3] The Amendment Act strictly prescribes the requirements in relation to the evaluation of qualifying matters.[4]

20 The reason for our emphasis is that for the purposes of heritage matters, the Council seems to have taken entirely the opposite approach. It was clear from counsel's cross-examination of Ms Richmond that the heritage team's starting point was the existing heritage protection in the District Plan (and in fact, additional protection in many cases, for example, in relation to the "strengthening" of provisions or the inclusion of Residential Heritage Areas).[5]

21 There has been limited consideration by the Council planners addressing heritage matters of the enabling requirements of the Amendment Act, broader RMA considerations, broader District Plan considerations (i.e. the Strategic Objectives) and the costs and benefits of continued scheduling of specific heritage items and settings. These are key relevant factors that the overall case for the Carter Group properly takes into account. In our submission, this lack of specific analysis[6] is a fundamental flaw in the Council's position.

22 Turning to the planning framework, as well as all broader relevant District Plan provisions, a request for removal of a heritage item or setting from the Schedule is guided by Policy 9.3.2.2.1. For ease of reference, Policy 9.3.2.2.1 is set out in **Appendix 3**.

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2 Resource Management Act 1991, section 77G.

3 Resource Management Act 1991, section 77I.

4 Resource Management Act 1991, section 77J-L.

5 See hearing recording, 28 November – Morning Session 1, at around 18 minutes.

6 See Ms Richmond's concessions regarding the lack of site-specific analysis in the hearing recording, 28 November – Morning Session 1, at around 23 minutes.

23 Reading Policy 9.3.2.2.1 in full, it is important to recognise that:

23.1 There are defined criteria for a heritage item or setting to be categorised as "Significant" or "Highly Significant".

23.2 Scheduling (or delisting) is not determined by heritage values alone. A building or setting may meet the requisite level of "Significant" or "Highly Significant", but other factors (i.e. those set out in Policy 9.3.2.2.1(c)(iii) and (iv)) may mean it is not appropriate for the building or setting to be included in the Schedule.

23.3 The Schedule is not set in stone. A building may at one point have appropriately been included in the Schedule. At a later stage, the physical condition or other circumstances relating to the building may mean it is no longer appropriate for it to remain scheduled. The Blue Cottage is one such example.

24 The short point is that the District Plan does not protect heritage values at all costs. If it did, this would be an incorrect application of section 6(f) of the RMA, which requires "*the protection of historic heritage from inappropriate subdivision, use and development*". The word "inappropriate" demonstrates that there may well be instances where subdivision, use or development of historic heritage will be appropriate. It is not a complete prohibition. It would also be an unwarranted elevation of section 6(f) above other Part 2 matters.

25 Heritage values are therefore a relevant factor but not the only factor relevant for scheduling. There will be circumstances, as is the case for the Blue Cottage, where regardless of the heritage values, not scheduling (or delisting) is the appropriate outcome.

26 In our submission, the evidence and position taken by the Council focuses too strongly on the heritage values of the Blue Cottage and does not properly take into account the matters in Policy 9.3.2.2.1(c)(iii) and (iv), as well as the broader District Plan and statutory framework. These matters cannot be overlooked or downplayed in the overall consideration of the delisting request.

27 The expert witnesses for Carter Group have carefully and thoroughly considered the relevant requirements. Based on their evidence, it is clear that:

27.1 The Blue Cottage is in extremely poor physical condition, and the condition has significantly worsened since the previous scheduling decision was made in 2015.

27.2 Significant reconstruction, repair and upgrade work is necessary to make the building able to be occupied and used.

27.3 The associated financial factors similarly make it unreasonable or inappropriate for the building to remain scheduled.

27.4 The restrictive outcomes of the continued scheduling of the Blue Cottage heritage item and setting do not align with the requirements of the District Plan, Amendment Act and RMA, in particular when the relevant evaluation report requirements are considered.

ASSESSMENT AGAINST POLICY 9.3.2.2.1

Heritage values

28 The first part of Policy 9.3.2.2.1 requires consideration of the heritage values of the Blue Cottage (as set out in Appendix 9.3.7.1 of the District Plan), its significance to the Christchurch District, and its authenticity and integrity. The Council's evidence seeks to address these matters. However, this is largely in reliance on the current District Plan Statement of Significance, which is a report dated 3 February 2015.

29 As **Mr Phillips'** evidence points out, while the report addresses, to some extent, the significance of the building to the Christchurch District, there is a lack of detail in the Council's case about the heritage values of the building. More specifically, it is not clear from the Council's evidence that the building meets at least one of the heritage values in Appendix 9.3.7.1 at a significant or highly significant level.

30 Similarly, there has been limited consideration of the integrity of the building (based on how whole or intact it is) to demonstrate its ongoing significance. In our submission, reliance on a 2015 report, when the building has undergone considerable additional deterioration over the nine years to 2024 (as outlined by **Mr Fulton**, **Mr Hill** and **Mr Brookland**), is not appropriate in the context of a substantial plan change process.

31 In the time available, Carter Group was not able to engage its own heritage expert to undertake a fulsome assessment against Policy 9.3.2.2.1(b). However, in the context of PC14, it is the Council that is seeking the inclusion of a qualifying matter and it therefore the Council that needs to properly justify this restriction on the level of development that would otherwise be enabled, with the level of evaluation required under the Amendment Act. In our submission, the Council's evidence and "roll over" of the 2015 report does not establish that the relevant requirements are met.

32 Even if the part (b) requirements are considered to be met, part (c) of Policy 9.3.2.2.1 provides exemptions from scheduling, which we address below.

Physical condition of the building

33 The evidence of **Mr Fulton**, **Mr Hill** and **Mr Brookland** describes the physical condition of the Blue Cottage. All three statements refer to extensive damage across the building, and the need for substantial repairs and replacement of parts of the building.

34 Importantly, their evidence describes the *current* state of the building. Their evidence recognises that various factors have led to significant deterioration of the building condition since 2015. This includes, for example, moisture ingress and the proximity of two trees on the southern boundary dropping leaves and branches and raising ground levels, with impacts on the original stone foundations.

35 It is the current physical condition of the building that is the relevant starting point for Policy 9.3.2.2.1. It is not the 2015 condition or a hypothetical situation where ongoing maintenance works might have occurred. It is not clear why the Council's evidence is "stuck in 2015". Despite what the Council's witnesses seem to suggest, there is nothing in the District Plan that compels an owner to undertake ongoing maintenance works for heritage items or return it to the state it was when it was listed. That would pose an unreasonable (and likely unlawful) burden on heritage property owners.

36 Ms Richmond under cross-examination seemed to suggest that Carter Group could sell the building and that someone else would buy and repair it.[7] The basis for Ms Richmond taking this position was unclear as she has no expertise or qualification in this area. In our submission, the suggestion was fanciful as it would imply that a purchaser was willing to sustain a financial loss and she did not identify any group of means and so minded.

37 The only plausible counterfactual in these circumstances is the status quo, which has now been demonstrated by several previous owners, as will be outlined by **Mr Carter**. That is, the building remains unused, inaccessible and left to deteriorate further, all the while having a significant impact on the development of the remainder of the site, a key central city development site for Christchurch.

38 Ms Caponi has addressed the building condition for the Council. Her evidence rightly notes that the deterioration of the building has accelerated since 2015 and she recognises the significant impacts of moisture ingress. She also outlines (at paragraph 38) that if traces of lead-based paint are found in the weatherboards, "*substantial repairs and strengthening works would be required to retain the cottage and a loss of a significant part of the original heritage fabric*

[7] See hearing recording, 28 November – Morning Session 1, at around 39 minutes.

should be expected". **Mr Brookland's** evidence confirms the existence of lead-based paint extensively on the exterior of the building. We note that **Mr Chatterton's** estimate did not account for the presence of lead-based paint. His summary statement for the hearing will address this matter.

39 The upshot of all of this evidence is that it is clear that the building is in a state of disrepair, and this has only accelerated since the previous scheduling decision was made in 2015. How this has occurred, and whether preventative maintenance could have addressed it, is irrelevant for the Panel's decision-making. Successive landowners have had no obligation to do so, and nor can they be required to spend money to turn back the clock.

Restoration, reconstruction, repair and upgrade work

40 It is clear that substantial work will be necessary to enable the Blue Cottage to be occupied and used. It is acknowledged that the building is capable of repair. However, this will require substantial work and resource/cost.

41 As **Mr Phillips'** evidence has properly noted, it is unclear from the evidence for both Carter Group and the Council whether the necessary work would result in the heritage values and integrity of the heritage item being compromised to the extent that it would no longer retain its heritage significance (i.e. Policy 9.3.2.2.1(c)(iii)).

42 Ms Caponi's evidence, set out at paragraph 38 above, may provide some assistance on this question. Her statement that a loss of a significant part of the original heritage fabric should be expected suggests a significant compromise to the heritage values and integrity of the Blue Cottage.

43 However, regardless of whether the Policy 9.3.2.2.1(c)(iii) exemption is met, Carter Group's position is that the Policy 9.3.2.2.1(c)(iv) exemption is clearly met. That is, there are financial factors related to the physical condition of the building that would make it unreasonable or inappropriate for the building to remain scheduled.

44 Financial factors cannot be established without consideration of what work is required to fix the building. This is where the evidence for Carter Group and the Council substantially diverges. While there are some aspects of the evidence that are likely able to be reconciled, for the most part there is a fundamental difference in approach. In our submission, the Panel's decision-making as to whose approach and evidence is to be preferred may be assisted by consideration of two questions:

44.1 What "work" is provided for to a heritage item under Policy 9.3.2.2.1(c)(iii)?

44.2 What "financial factors" are relevant under Policy 9.3.2.2.1(c)(iv) and how are they to be determined?

Necessary work to the building

45 Policy 9.3.2.2.1(c)(iii) refers to restoration, reconstruction, maintenance, repair or upgrade work. This is a broad list of work that may need to be undertaken to a heritage building. The District Plan defines restoration, reconstruction, maintenance and repair. For ease of reference, the relevant definitions are:

> ***Restoration****: in relation to a heritage item or heritage setting, means to return the item or setting to a known earlier form, using mainly existing materials, by reassembly and reinstatement. It includes deconstruction for the purposes of restoration. It may also include removal of heritage fabric that detracts from its heritage value and Building Code upgrades which may be needed to meet relevant standards, as part of the restored area.*
>
> ***Reconstruction****: in relation to a heritage item or heritage setting, means to rebuild part of a building, structure or feature which has been lost or damaged, as closely as possible to a documented earlier form and using mainly new materials. It includes:*
>
> *a. deconstruction for the purposes of reconstruction; and*
>
> *b. Building Code upgrades which may be needed to meet relevant standards as part of the reconstruction.*
>
> ***Repair****: in relation to a heritage item or heritage setting, means to replace or mend in situ decayed or damaged heritage fabric, using materials (including identical, closely similar or otherwise appropriate material) which resemble the form, appearance and profile of the heritage fabric as closely as possible. It includes:*
>
> *a. temporary securing of heritage fabric for purposes such as making a structure safe or weathertight; and*
>
> *b. Building Code upgrades which may be needed to meet relevant standards, as part of the repairs.*

46 "Upgrade" is not defined but its common meaning is "*to raise something to a higher standard, in particular to improve it by adding or replacing components*".

47 It is clear that Policy 9.3.2.2.1(c)(iii) envisages a range of work being appropriate and that the necessary work will be context-specific. What might be required in one case will be different to what might be required in another case.

48 Carter Group has put forward an approach of reconstruction, repair and upgrade of the building. This approach has been taken so that, based on Carter Group's commercial experience as to a feasible and practical end result, and based on the advice of its expert advisers, the building will ultimately be safely able to be occupied and used. In particular, the evidence for Carter Group addresses the relevant Building Code requirements, which are referred to repeatedly in the above District Plan definitions.

49 By contrast, the Council has simply suggested a "do minimum" restoration. It is unclear from the Council's approach whether this will result in the building actually being able to be occupied and used, and whether this is a practical commercial outcome. Further, the Council's approach takes no account of the fact that this is a heritage building, where inevitably "unknowns" will be encountered leading to increases in the scope of necessary repair works and resulting cost increases. During cross-examination, Mr Stanley confirmed this could be the case and that it might result in increases to his estimate.[8] Indeed, there is ample evidence of scope creep in repairs of Christchurch heritage buildings.

50 In our submission, the Council's "lick of paint" approach is simply theoretical and ignores the practical realities of property ownership and the requirements to make a heritage building fit for proper occupation and use. The approach taken by Carter Group, supported by a comprehensive suite of evidence, must be preferred.

Financial factors

51 Policy 9.3.2.2.1(c)(iv) refers to "*financial factors related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item*". In our submission, the relevant financial factors here include:

51.1 the cost of the necessary repair works;

51.2 the resulting valuation of the property;

51.3 the costs of an equivalent replacement residential dwelling; and

51.4 the implications for development of the broader site.

52 Based on the proper scope of the necessary reconstruction, repair and upgrade works, **Mr Chatterton** for Carter Group has provided a detailed estimate of costs. His estimate is $1.425 million (noting in his summary statement for the hearing he will address the costs associated with the presence of lead-based paint). This is substantially higher than the estimate for the Council (provided by

[8] See hearing recording, 28 November – Afternoon Session 1, at around 14 minutes.

Mr Stanley) of $259,000. However, this is explained by the Council's "do minimum" approach, which simply would not result in a useable building.

53 In addition, Mr Stanley confirmed in cross-examination that his instructions were not take into account any damage to the building that had occurred since 2015, and that subsequent deterioration could have an impact on the costings.[9] These were unrealistic instructions given by the Council. It is clear that Mr Stanley's figure would need to increase significantly to address the deterioration described by **Mr Fulton**, **Mr Hill**, **Mr Brookland** and even Council's own expert Ms Caponi.

54 For the building to be able to be safely occupied or used, the Carter Group approach to the scope of repair works must be preferred. This means that the cost of the necessary works will be substantial, in the order of that estimated by **Mr Chatterton**.

55 Financial factors were the subject of much of counsel's cross-examination of Ms Richmond because it was unclear that these factors had properly been taken into account in the Council's consideration of the delisting request. In particular, Ms Richmond suggested that the building would be "saleable" with repairs undertaken, but the basis of her opinion (and expertise to put forward that potential outcome) was totally absent.

56 In response to these comments from Ms Richmond, **Mr Carter's** evidence will set out the value of the property after the necessary repairs are undertaken to make the building fit for occupation and use, which represent a significant over-capitalisation. It is also relevant in this sense that, despite the Council's comments about adaptive re-use, as **Mr Phillips'** evidence confirms, under the zoning of the site, no heritage adaptive re-use exemptions apply. There would be non-complying consent requirements for almost any non-residential use, leaving the options for future use of a repaired building limited.

57 In addition, **Mr Chatterton's** summary statement will outline an estimate of costs for the replacement of the building with an equivalent, modern residential dwelling. Again, the difference in price from the repair cost is significant.

58 With these three figures in mind, the Blue Cottage situation can be compared with two delisting requests that the Council has agreed to. These are:

58.1 Harley Chambers, where the reason for the Council's support of the delisting is that the investment required to reinstate

[9] See hearing recording, 28 November – Afternoon Session 1, at around 12 minutes.

the building would exceed the valuation of the repaired building by a significant margin.

58.2 471 Ferry Road, where the reason for the Council's support for the delisting is that the owner had advised there was a $500,000 cost shortfall in their own ability to carry out the necessary repairs, meaning it would be unreasonable for the particular owner to be expected to do so.

59 Under cross-examination, Ms Richmond made the somewhat astonishing statements that she considered that a property owner's financial circumstances were relevant to the application of the "financial factors" test in Policy 9.3.2.2.1(c)(iv)[10] and that economic reasonableness or unreasonableness was "absolutely subjective".[11]

60 These were hugely concerning statements from Ms Richmond and we urge the Panel to exercise caution in relation to the position she has taken with the Blue Cottage on this basis. If the explanation for the difference in approach between Harley Chambers/471 Ferry Road and the Blue Cottage is the perceived financial resources of the Carter Group that would be of even greater concern.

61 In our submission, like all plan provisions, the "financial factors" test in Policy 9.3.2.2.1(c)(iv) *must* be applied as an objective test in light of the context of the particular building. In other words, what would a reasonable landowner do in the particular circumstances? The test is not what a Council employee believes a well-resourced landowner ought to do with their own money.

62 It has been demonstrated through the evidence that the costs of repairing the Blue Cottage would be unreasonable from the point of view of any reasonable landowner in Carter Group's position. While Ms Richmond seemed to suggest that the dollar values in the case of the Blue Cottage were comparatively less to, for example, Harley Chambers,[12] that is an inappropriate comparison. It is simply neither reasonable nor appropriate to expect Carter Group to spend the amount of money required for the outcome that will result. There is no evidence that anything other than continued deterioration will occur if the Panel decides to stick with the status quo.

63 **Mr Hill** and **Mr Compton-Moen** have described the spatial implications for the development of the broader site of retaining the building and setting. The opportunity cost is significant. Yet instead of recognising that cost, Ms Richmond, under cross-examination, suggested that the costs of repairing the Blue Cottage could be

[10] See hearing recording, 28 November – Morning Session 1, at around 51 minutes.

[11] See hearing recording, 28 November – Morning Session 1, at around 53 minutes.

[12] See hearing recording, 28 November – Morning Session 1, at around 47 minutes.

"recouped" through the development of the rest of the site.[13] Again, the basis for asserting that Council can determine how a landowner ought to spend their own money was unclear. On Ms Richmond's approach, it could be suggested that any heritage property owner would be required to recoup their repair costs through completely unrelated development. More importantly, it is an incorrect reading of Policy 9.3.2.2.1(c)(iv), which refers to "*financial factors related to the physical condition of the heritage item*".

64 In our submission, these financial factors clearly make it unreasonable or inappropriate for the building to remain scheduled. The financial factors are significant and provide a clear exemption for the ongoing listing of the Blue Cottage heritage item and setting.

OVERALL ASSESSMENT AND COMMENTS ON BLUE COTTAGE

65 The evidence for Carter Group clearly establishes that the building is in extremely poor condition, significant reconstruction, repair and upgrade work is necessary to enable it to be occupied and used, and the associated financial factors overwhelmingly make it unreasonable or inappropriate for the building to remain scheduled.

66 The Council has taken an inconsistent position with respect to other delisting requests and, in our submission, Carter Group's position should clearly be preferred. There are no grounds for differentiation on the basis of Carter Group's financial resources.

67 Equally, the Council has no basis to require Carter Group to repair the Blue Cottage. The counterfactual is simply the status quo – continued deterioration.

68 Taking a broader view, the delisting request must be considered in the context of the full statutory framework, namely the RMA, Amendment Act and District Plan in its entirety. It is clear that in these particular circumstances, the statutory purpose of enablement of development, combined with the financial implications of retaining the heritage listing, favour the removal of the heritage item and setting from the Schedule.

OTHER HERITAGE-RELATED MATTERS

69 **Mr Phillips'** evidence addresses the heritage items qualifying matter generally as well as relevant heritage provisions.

70 As we have outlined above, we have reservations as to the legality of many of the changes proposed by Council to the heritage provisions in the context of PC14. For this reason, Carter Group maintains its submission points on these amendments, however,

[13] See hearing recording, 28 November – Morning Session 1, at around 44 minutes.

has focused on the delisting for the purposes of this hearing presentation.

TREE-RELATED MATTERS

Scheduled trees

71 As outlined in Carter Group's submission, the District Plan already provides a comprehensive suite of provisions for managing development in the vicinity of scheduled trees, which are appropriate, effective and efficient.

72 **Mr Phillips'** evidence addresses these provisions detail and makes the same conclusions from a planning perspective. His evidence is that it is not clear how development enabled under the MDRS would impact these trees any differently to how they might already be impacted under the status quo District Plan provisions. In other words, they are already adequately managed by the operative District Plan provisions regardless of the level of development proposed. The Council's proposed changes are therefore inefficient and unnecessary.

73 Specific to the Blue Cottage (32 Armagh Street) site, there are two significant trees already listed in Appendix 9.4.7.1 to the District Plan, which are proposed to be classified as qualifying matter trees.

74 Similar to the heritage item scheduling, continued scheduling of these trees is opposed by Carter Group given the constraints this imposes on development of this part of the site. **Mr Hill** and **Mr Compton-Moen** address spatial implications for development of site in their evidence. **Mr Phillips** has considered their evidence in an overall planning sense, weighing the public benefits of the trees with the private costs imposed on the landowner through reduced development flexibility and opportunity.

75 Based on this evidence, in our submission, the continued listing of two scheduled trees at 32 Armagh Street is not supported by a fulsome assessment by the Council and instead their retention significantly constrains the development capacity of site. On this basis, the scheduling is not justified in a section 32 sense.

Tree canopy and financial contributions

76 Carter Group's submission sought the deletion of the proposed PC14 tree canopy and financial contributions provisions. **Mr Phillips** has addressed these provisions in detail in his evidence and that detail is not repeated here, except to emphasise that the proposed provisions are:

76.1 uncertain and unworkable and will be difficult to enforce; and

76.2 unreasonable and will have significant implications from an economic perspective that are not justified.

77 On this basis, the proposed provisions should be deleted.

SPECIFIC PURPOSE SCHOOL ZONE

78 Carter Group's submission addressed a number of the Council's proposed amendments to Chapter 13.6 – Specific Purpose (Schools) Zone.

79 Through Ms Piper's section 42A report and the exchange of evidence a number of Carter Group's concerns have been resolved. However, some issues remain with some of the provisions, as set out in detail in **Mr Phillips'** and **Mr Compton-Moen's** evidence. As **Mr Phillips'** evidence has noted, these issues are primarily in relation to amendments that are disenabling relative to the status quo (i.e. raise *Waikanae* scope issues) or are uncertain or unnecessary. For these reasons, Carter Group's relief on the relevant provisions should be preferred.

CONCLUSION

80 The evidence for Carter Group establishes that it is neither possible nor practical to repair the Blue Cottage without significant financial implications. The costs of repair outweigh both the resulting valuation of the property and the costs of a replacement residential dwelling.

81 On this basis, there is no justification for the Blue Cottage heritage item and setting to remain in the Schedule. This is in the specific context of Policy 9.3.2.2.1 (specifically clause (3)(c)(iv)) of the District Plan, as well the broader statutory and planning framework of the Amendment Act, RMA and the District Plan in its entirety.

82 In our submission, Carter Group's relief should accordingly be accepted.

Dated 8 April 2024

J Appleyard / A Hawkins
Counsel for Carter Group Limited

Appendix 3 – Policy 9.3.2.2.1

9.3.2.2.1 Policy – Identification and assessment of historic heritage for scheduling in the District Plan

a. Identify historic heritage throughout the Christchurch District which represents cultural and historic themes and activities of importance to the Christchurch District, and assess their heritage values for significance in accordance with the criteria set out in Appendix 9.3.7.1.

b. Assess the identified historic heritage in order to determine whether each qualifies as 'Significant' or 'Highly Significant' according to the following:

i. to be categorised as meeting the level of 'Significant' (Group 2), the historic heritage shall:

A. meet at least one of the heritage values in Appendix 9.3.7.1 at a significant or highly significant level; and

B. be of significance to the Christchurch District (and may also be of significance nationally or internationally), because it conveys aspects of the Christchurch District's cultural and historical themes and activities, and thereby contributes to the Christchurch District's sense of place and identity; and

C. have a moderate degree of authenticity (based on physical and documentary evidence) to justify that it is of significance to the Christchurch District; and

D. have a moderate degree of integrity (based on how whole or intact it is) to clearly demonstrate that it is of significance to the Christchurch District.

ii. to be categorised as meeting the level of 'Highly Significant' (Group 1), the historic heritage shall:

A. meet at least one of the heritage values in Appendix 9.3.7.1 at a highly significant level; and

B. be of high overall significance to the Christchurch District (and may also be of significance nationally or internationally), because it conveys important aspects of the Christchurch District's cultural and historical themes and activities, and thereby makes a strong contribution to the Christchurch District's sense of place and identity; and

C. have a high degree of authenticity (based on physical and documentary evidence); and

D. have a high degree of integrity (particularly whole or intact heritage fabric and heritage values).

c. Schedule significant historic heritage as heritage items and heritage settings where each of the following are met:

i. the thresholds for Significant (Group 2) or Highly Significant (Group 1) as outlined in Policy 9.3.2.2.1 b(i) or (ii) are met; and

ii. in the case of interior heritage fabric, it is specifically identified in the schedule;

unless

iii. the physical condition of the heritage item, and any restoration, reconstruction, maintenance, repair or upgrade work would result in the heritage values and integrity of the heritage item being compromised to the extent that it would no longer retain its heritage significance; and/or

iv. there are engineering and financial factors related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item.

Before an Independent Hearings Panel
Appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: proposed Plan Change 14 to the Christchurch District Plan

and: **Carter Group Limited**
(Submitter 824)

Statement of evidence of Jeremy Phillips (Planning) on behalf of Carter Group Limited

Dated: 20 September 2023

Reference: Jo Appleyard (jo.appleyard@chapmantripp.com)
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STATEMENT OF EVIDENCE OF JEREMY PHILLIPS ON BEHALF OF CARTER GROUP LIMITED

INTRODUCTION

1 My full name is Jeremy Goodson Phillips.

2 I hold the qualifications of a Bachelor of Science from the University of Canterbury and a Master of Science with Honours in Resource Management from Lincoln University, the latter attained in 2001. I am an intermediate member of the New Zealand Planning Institute, a member of the Resource Management Law Association and a member of the Institute of Directors. I have held accreditation as a Hearings Commissioner under the MfE Making Good Decisions programme since January 2010 and have held endorsement as a Chair since January 2013.

3 I have 21 years' of experience as a resource management planner, working within and for territorial authorities, as a consultant and as an independent Hearings Commissioner. I have particular experience in urban land use development planning in Greater Christchurch, predominantly as a consultant to property owners, investors and developers.

4 Of relevance to these proceedings, I have had extensive involvement in respect the Proposed Selwyn District Plan and associated Variation (IPI) process, providing evidence for submitters on a number of chapters and rezoning proposals, where implementation of the NPS-UD and the RMA was a key consideration. I was also extensively involved in the hearings on the Replacement Christchurch District Plan.

5 In a Christchurch specific context, I have significant experience in all forms of land use planning under the Christchurch District Plan for projects ranging from small scale residential developments and individual houses, through to large scale residential, commercial and civic projects including Te Kaha, Te Pai, The Crossing, Riverside Farmers Market, large-scale suburban retail and industrial developments, and the majority of post-earthquake commercial office developments on the western side of the Avon River. Through that experience I have an excellent practical understanding of the application and implementation of the District Plan provisions.

CODE OF CONDUCT

6 Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to

consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

7 My evidence relates to the submission filed by Carter Group Limited ('CGL') (Submitter 824) on Plan Change 14 ('PC14').

8 Given the broad scope of that submission, my evidence does not canvas all submission points and instead focuses on provisions of particular interest to CGL.

9 My evidence does not fully engage on the concerns of CGL relating to the scope of changes in PC14 on the basis that these will be covered in detail in legal submissions. However, I have indicated my view with respect to scope, based on my understanding of the legislation and the recent *Waikanae*[1] case.

10 Given the nature of CGL's submission points, my evidence addresses:

10.1 Submissions relating to thematic issues, including:

(a) The scope of PC14 as an Intensification Planning Instrument ('IPI') and the implications for proposed changes in PC14;

(b) The relevance of strategic objectives 3.3.1 and 3.3.2 in the District Plan to PC14;

(c) Proposed qualifying matters ('QM') or provisions that are unnecessary given existing Plan provisions, including:

(i) Significant trees as a QM;

(ii) Heritage related QM and provisions;

(iii) Tree canopy provisions;

(iv) Wind rules; and

(v) Other urban design or built form rules.

10.2 Submissions on site-specific matters, relating to:

(a) 184 Oxford Terrace;

[1] *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 56.

(b) 129-143 Armagh Street; and

(c) The former Christchurch Girls' High School ('CGHS') site at 32 Armagh Street (also known as 325 Montreal Street).

10.3 Submissions on chapters or zone-specific provisions, including:

(a) Chapter 3 - Strategic directions

(b) Chapter 7 - Transport

(c) Chapter 8 - Subdivision

(d) Sub chapter 9.3 – Historic Heritage

(e) Sub chapter 13.6 - Specific Purpose (Schools)

(f) Chapter 14 - Residential zones

(g) Chapter 15 - Commercial zones

11 Given the broad scope of PC14, my evidence is confined to the matters set out in my evidence below and in particular those areas where I disagree with the reasoning and/or recommendations in the section 42a ('s42a') report(s) insofar that these relate to submissions by CGL. To the extent that my evidence concludes that provisions introduced or amended by PC14 are not appropriate and should be deleted or amended, I have endeavoured to identify consequential amendments that may also be required (whilst acknowledging that other changes may also be necessary due to the scale/complexity of PC14, and the focus of CGL's submissions and my evidence). I have also endeavoured to draft specific amendments to provisions (with tracked changes) where I consider changes are necessary. However, in some instances this has not been possible due to the magnitude of change required.

12 My evidence does not engage on a number of specific or minor submission points by CGL that have been accepted or accepted in part by Council officers in their s42a reports. However, I generally agree with the rationale expressed in the submission and in the officer reports on those points.

13 In preparing my evidence, I have reviewed:

13.1 The submissions filed by CGL (also referred to as 'the submitter').

13.2 The relevant Section 42A Reports prepared by Council officers. Given the number of different s42A reports, I refer to these as relevant in the body of my evidence.

13.3 The relevant statutory planning documents, including the Resource Management Act 1991 ('the Act') as amended by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 ('the EHS Act'), and the National Policy Statement on Urban Development 2020 ('NPSUD').

SUMMARY OF EVIDENCE

14 I consider a number of further amendments to PC14 are necessary and appropriate, in response to the submissions filed by CGL and for the reasons expressed in my evidence.

15 I have general concerns with the extent to which PC14 proposes amended or new provisions that:

15.1 go beyond the scope of an IPI; and/or

15.2 are inconsistent with strategic objectives 3.3.1 and 3.3.2; and/or

15.3 duplicate operative provisions that otherwise provide for evaluation of the merits or effects of increased height or density, in regards to significant trees, historic heritage, tree canopy coverage, wind and other urban design or built form matters.

16 Accounting for these concerns I consider a number of changes are required to the revised provisions provided by Council in the s42a report(s). Such changes include minor amendments that I have detailed below, whereas others require deletion or more fundamental changes to provisions that I have described in my evidence.

17 In terms of site specific relief sought by CGL, I consider that:

17.1 The proposed Central City Heritage Interface QM is not appropriate insofar that it imposes:

(a) a 45m (rather than 90m) maximum building height for 184 Oxford Terrace; and

(b) a 28m (rather than 90m) maximum building height for 129-143 Armagh Street.

17.2 The operative/existing heritage setting for New Regent Street should be adjusted so as to not extend over the northern footpath of Armagh Street and avoid unnecessary consenting requirements for development of the land to the north.

17.3 The zonings and overlays at 32 Armagh Street / 325 Montreal Street should be amended to:

(a) Delete the heritage listing of the Blue Cottage item and setting at 325 Montreal Street;

(b) Delete the Inner City West RHA generally, and specifically insofar that it relates to the site;

(c) Delete the RHA Interface overlay insofar that it applies to the site;

(d) Provide a 32m building height limit for the site on the building height planning maps; and

(e) Delete the two scheduled trees in the northwest corner of the site.

THEMATIC ISSUES

Scope implications for an IPI

18 As set out in paragrah 18 of the covering letter accompanying its submission, CGL considers that a number of provisions in PC14 as notified are beyond the scope of an IPI, because:

18.1 Section 77I of the RMA only grants Council's the power to impose QM over 'relevant residential zones' and a number of QM have been identified over zones which are not 'relevant residential zones', including industrial, specific purpose, open space, and rural zones.

18.2 Sections 77I and 77O of the RMA only grants Council's the power to modify the MDRS or the height or density requirements of Policy 3 of the NPS-UD through a QM over relevant residential zones and urban non-residential zones 'only to the extent necessary to accommodate [a qualifying matter]'.

18.3 On the authority of *Waikanae,* QM must only relate to making the intensified density standards themselves less enabling, rather than imposing further constraint to the status quo.

19 Where relevant, I note the concerns above in my evidence on provisions below, however I note that a significant number of provisions introduced or amended by PC14 impose further constraints to the status quo.

Conflict with Strategic Objective 3.3.1 and 3.3.2

20 In addition to issues of scope, I also consider that the provisions in PC14 need to be carefully evaluated in the context of the strategic direction provided by Chapter 3 of the District Plan and objectives 3.3.1 and 3.3.2 in particular. Notably, the introduction to the Plan's strategic objectives states that:

> *a. 'For the purposes of preparing, changing, interpreting and implementing this District Plan:*
>
> *i. All other objectives within this Chapter are to be expressed and achieved in a manner consistent with Objectives 3.3.1 and 3.3.2; and*
>
> *ii. The objectives and policies in all other Chapters of the District Plan are to be expressed and achieved in a manner consistent with the objectives in this Chapter*[2]*.*

21 Objective 3.3.1 relevantly seeks recovery and future enhancement of Christchurch in a manner that, among other things, *'fosters investment certainty',* which is a key concern underpinning CGL's submission on PC14. Plan provisions that introduce additional

[2] 3.3 Objectives, Interpretation

requirements for resource consent and/or increase the scope or subjectivity of assessment will obviously diminish certainty. My experience to date interpreting and advising on the implications of the provisions in PC14 is that they create considerable uncertainty for those planning to invest in new residential or commercial developments in the City.

22 Objective 3.3.2 specifically seeks clarity of language and efficiency within the District Plan, and requires that:

> ***'3.3.2 Objective - Clarity of language and efficiency***
>
> *a. The District Plan, through its preparation, change, interpretation and implementation:*
>
> *i. Minimises:*
>
> *a. transaction costs and reliance on resource consent processes; and*
>
> *b. the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and*
>
> *c. the requirements for notification and written approval; and*
>
> *ii. Sets objectives and policies that clearly state the outcomes intended; and*
>
> *iii. Uses clear, concise language so that the District Plan is easy to understand and use'.*

23 I consider a significant number of the provisions proposed in PC14 fail to achieve this objective, insofar that they will not 'minimise' (and will almost certainly increase) transaction costs, resource consent requirements, or the number, extent and prescriptiveness of provisions that diminish innovation and choice. My experience to date with PC14 is that it makes the District Plan considerably less easy to understand and use (notwithstanding the usual challenges of comprehending extensive changes to Plan provisions and the depiction of these through tracked changes).

24 I identify provisions where I hold these concerns in my evidence below.

The necessity of QM or Proposed Provisions

25 As noted above, s77I and s77O of the RMA, provides that QM may make the MDRS or NPS-UD policy 3 height or density requirements, less enabling, only to the extent necessary to accommodate a qualifying matter. In response, PC14 identifies a number of new or existing QM as the basis for limiting height, density or introducing new provisions.

26 However, a number of the QM and new provisions proposed in PC14 are for matters that are already addressed by the operative and established District Plan framework that (either partly or fully)

provides for the evaluation of development proposals and the merits or effects of increased height or density.

27 As stated above, minimising the number and extent of rules is a strategic objective (3.3.2) for the District Plan and relying on (or amending) operative provisions would provide for easier and more efficient interpretation and administration of the Plan and avoid unnecessary duplication.

28 In the case of CGL's submissions, I consider the following QM or new provisions are more efficiently and appropriately managed by operative Plan provisions, and I address these in turn below:

28.1 Significant trees as a QM

28.2 Heritage items and settings as a QM

28.3 Residential Heritage Areas as a QM

28.4 Residential Heritage Areas Interfaces as a QM

28.5 Tree canopy provisions

28.6 Wind provisions

28.7 Other urban design or height rules.

Significant trees as a QM

29 Operative District Plan provisions already limit the extent to which any development (irrespective of its height or density) can occur in the vicinity of scheduled trees, and therefore provide a framework for the protection or management of scheduled trees.

30 Having reviewed the section 32 report[3], I am unable to identify reasoning as to why some trees in Appendix 9.4.7.1 are identified as 'qualifying matter trees' and others are not, or more relevantly, what the implications are of a tree being classified as such.

31 To the extent that PC14 proposes a distinction between QM and non-QM significant trees, I question why a distinction is needed given the protection to trees afforded by existing provisions in chapter 9.4 of the District Plan.

32 Section 6.2.5 of the s32 evaluation report suggests that relying on the operative rules only would result in '*significant environmental costs through the overall lack of protection that the status quo approach will provide for urban tree cover within Christchurch*', and

[3] Plan-Change-14-HBC-NOTIFICATION-Section-32-Qualifying-Matters-Part-3-15-March.pdf (ccc.govt.nz) and Section 32: Appendix 24, Significant Trees Qualifying Matters Technical Report, 30/6/2022, Hilary Riordan

that *'This approach could lead to the loss or damage of numerous trees on the schedule as the status quo affords them with reduced protection in light of the incorporation of the MDRS'*[4]. However, these statements do not explain how or why the current provisions would fail to provide adequate protection from intensified development.

33 Given that the operative provisions manage all works in the margins of listed trees (irrespective of height or density) and prevent the removal of scheduled trees, I do not agree with the reasoning provided and consider there is no need for a specific QM for this matter.

Historic heritage as a QM

34 By way of context, PC14 proposes historic heritage as a QM in order to justify lower heights or densities than that otherwise required by the MDRS or NPS-UD Policy 3[5]. The heritage related QM of relevance to CGL's submission and the methods imposed to reduce or limit density[6] are as follows:

34.1 Sites of Historic Heritage and their Settings, which will continue to be managed predominantly by existing, operative provisions in sub chapter 9.3 (noting some minor changes are proposed to these provisions). This is relevant to the southern part of 32 Armagh Street / 325 Montreal Street.

34.2 Residential Heritage Areas ('RHA'), that will be subject to extensive new built form standards including changes to building heights, the number of residential units permitted per site, setbacks, building coverage, outdoor living space, and minimum lot sizes for subdivision. This is relevant to the southern part of 32 Armagh Street / 325 Montreal Street.

34.3 RHA Interface sites that will be subject to a new consent requirement for buildings. This is relevant to the northern part of 32 Armagh Street / 325 Montreal Street (which is outside of the RHA).

34.4 Central City Heritage Interface sites or areas which are applicable to properties that surround the heritage settings for New Regent Street, the Arts Centre, and the Cathedral Square. This relevantly imposes an alternative built form standard for building height for 184 Oxford Terrace and 129-143 Armagh Street.

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[4] ibid

[5] See page 1 of PC14 s32 and s77 evaluation report: Plan-Change-14-HBC-NOTIFICATION-Section-32-Qualifying-Matters-Part-1.pdf (ccc.govt.nz)

[6] See PC14-QM-s32-Proposed-provisions-s32-Part-2-Appendix-2.pdf (ccc.govt.nz)

35 CGL is concerned at the extent to which these QM are disenabling relative to the status quo, or limit the height and density of development that would otherwise apply under the MDRS or Policy 3. Whilst there is a degree of overlap between the listed heritage item/setting, RHA and RHA interface QMs that apply to 32 Amagh Street / 325 Montreal Street. Each of these QMs is addressed in turn below.

Historic heritage items and settings as a QM

36 For sites with listed historic heritage items and settings, the operative rules in chapter 9.3 manage any new development within those settings or which affects heritage items. To the extent that development of greater building height or density may eventuate under implmentation of MDRS or NPS-UD Policy 3, any impacts on heritage values would remain subject to evaluation under the operative rules, assessment matters and policies relating to heritage, and these provide broad scope to impose conditions or refuse consent as is appropriate to the context. For example, assessment matter 9.3.6.1 applies to alterations, new buildings, and replacement buildings and considers whether a proposal is *'consistent with maintaning heritage values… having particular regard to (i) the form, scale, mass materials, design…'* and whether new buildings will be *'compatible with the heritage fabric, values, and significance of the item'* and its *'impact on views to or from the heritage item'* and *'the relationship between elements'*[7].

37 Accounting for the above, I consider the existing heritage provisions in subchapter 9.3 for listed items and settings provide sufficient protection, and building heights or densities need not be modified in reliance on this QM, given that the realisiation of any building (and its height or density) will ultimately be subject to the broad evaluation of its heritage impacts through the resource consent process.

38 Such an approach effectively says "taller buildings and greater densities are anticipated in this zone/location generally, but may require moderation or refusal based on an assessment of heritage effects". That can be contrasted to an alternative approach which says "for heritage reasons, taller buildings and greater densities are not anticipated in this location". In my view, the former approach is better aligned with the enablement generally sought by the MDRS and NPS-UD policy 3 and the imperative in section 6 of the Act to protect historic heritage from *inappropriate* use and development.

39 Whilst the appropriateness of the heritage listing at 32 Armagh Street is addressed in further detail in my evidence below, I support the approach in PC14 of relying on existing heritage provisions

[7] 9.3.6.1 (d)

(generally) to manage the height and density of development within heritage settings or that directly affects heritage items.

Residential heritage areas as a QM

40 The s32 report states that RHAs are subject to a QM, *'because they contain historic heritage which is noted in the RMA S6 as a matter of national importance. The qualifying matter is incompatible with permitted development specified in the MDRS because it is necessary to control development affecting sites of historic heritage to ensure that the historic value of these sites is protected'*.

41 As stated above in my evidence, I consider that *listed* heritage items and settings are already adequately protected by way of operative provisions in Chapter 9.3. In the event that additional sites or buildings in areas of the City meet the criteria for listing, that can readily occur in order to provide protection for those heritage features.

42 The blanket regulation of areas that is otherwise proposed by way of the RHA QM in PC14 is ultra vires for the reasons given in *Waikanae*. Namely, currently permitted activities (such as demolition or relocation of unlisted buildings, etc) are disenabled and therefore beyond the scope of a QM. Nor is the RHA a related provision consequential on the MDRS or NPSUD Policy 3.

43 Regardless, to the extent that the general or collective heritage characteristics or attributes of wider areas (associated with listed or unlisted buildings) may warrant regulatory control, this is also already provided for by operative provisions in the Plan. For example, in commercial zones, the relationship of new development to heritage assets and the *'exterior design, materials, architectural form, scale and detailing'* of nearby buildings are relevant urban design assessment criteria[8]. In residential zones, the operative urban design rules and assessment matters that apply to developments of four or more residential units in the Residential Central City and Residential Medium Density[9] zones require consideration of *'Whether the design of the development is in keeping with, or complements, the scale and character of development anticipated for the surrounding area and relevant significant natural, heritage and cultural features'*. The introduction to the residential design principles also specifically notes that *'The relevance of the considerations under each residential design principle will vary from site to site and, in some circumstances, some of the considerations may not be relevant at all.* ***For example, c.ii. is likely to be highly relevant to a development***

[8] For example, assessment matters: 15.13.1 Urban design (for Commercial Core zones) and 15.13.2.6 Commercial Central City Business Zone urban design

[9] HDR Rule 14.6.1.3 RD2 and RMD Rule 14.5.1.3 RD1 – both of which require assessment of the residential design principles in Rule 14.15.1

adjacent to heritage items; whereas c.ii. might be less relevant to a development in an area void of heritage items'.

44 The provisions above do not predetermine that taller buildings or higher density developments will necessarily result in adverse outcomes on the areas they are located within, nor should they. Rather, they require proposals to be evaluated on their urban design merits, with specific consideration given to the relationship of the development to any notable heritage or architectural characteristics in the area.

45 For PC14, four or more residential units in the MRZ or HRZ will require consent with regard to the residential design principles (assessment matters) in rule 14.15.1. Accordingly, subject to the design principles for these zones (where RHA are proposed) retaining discretion regarding the architectural or heritage characteristics of the receiving environment, I consider the operative framework to be more efficient and effective than the RHA rule proposed.

46 I otherwise question the extent to which the RHA are supported by by a robust evidence base that justifies RHA as historic heritage in and of itself that qualifies under section 6(f) of the Act (as opposed to areas that feature atypical characteristics or a greater proportion of older buildings). I elaborate on these concerns below with regards to 32 Armagh Street / 325 Montreal Street and the questionable categorisation of the former CGHS Tuck Shop as a 'contributory' building that ultimately supports the identification of an RHA and its associated provisions.

47 In my view, robust justification for the RHA is especially important given that the constraints on building height and intensification that are proposed in reliance on this QM are significant relative to those that would otherwise apply, as summarised in the table below:

Table 1: Comparison of built form standards for the Inner City West RHA

Density provision:	**Operative RCC zone**	**PC14 HDR**	**Per RHA QM**
Base zoning	RCC (HDR)	HDRZ	MDRZ
Minimum net site area (subdivision	N/A (minimum density of 200m^2 is required)	300m^2	450m^2
Maximum building height	14m	14m	11m
Maximum number of residential units per site	N/A	N/A	2
Setbacks	2m front	1.5m front	3m-5m front

	1.8m side/rear	1m side/rear	1m and 3m side 3m rear
Building coverage	N/A	50%	40%
Outdoor living space	24m^2 & 4m dimension	20m^2 & 3m dimension	50m^2

48 For the reasons above, I consider the RHA provisions are not appropriate, should be deleted in their entirety and are not justified as a QM that limits the height or density of development contemplated by MDRS or Policy 3.

49 As stated above, should individual sites or buildings within RHA hold specific heritage values worthy of protection, I consider they should be scheduled. Otherwise, urban design provisions adequately allow for the consideration of surrounding context when assessing new development proposals.

Residential heritage area interface provisions

50 Proposed Rule 9.3.4.1.3 RD8 requires consent for *'Any new building (except buildings of less than 5 metres in height) on a site in the High Density Residential Zone or Residential Visitor Accommodation Zone which is located outside a Residential Heritage Area but shares a boundary with a site or sites in a Residential Heritage Area'*. As this rule is disenabling relative to the status quo and is not conseqential on the MDRS or NPSUD Policy 3, I consider it is ultra vires for the reasons given in *Waikanae*.

51 That aside, for these RHA interface areas, the s32 report reasoning is that *'they are part of the wider surroundings of the historic heritage which is sought to be protected. Historic heritage is noted in the RMA S6 as a matter of national importance. The qualifying matter is incompatible with permitted development specified in the MDRS and policy 3 of the NPSUD because it is necessary to control development affecting sites of historic heritage to ensure that the historic value of these sites is protected'*[10].

52 This explanation does not explain why otherwise permitted development is necessarily incompatible, especially where sites subject to the interface overlay adjoin sites or buildings that are within a residential heritage area but of no particular heritage significance or value.

53 Regardless of the concerns above, I consider that the operative urban design rules and assessment matters that apply in the HDR

[10] See 6.13.5 of Plan-Change-14-HBC-NOTIFICATION-Section-32-Qualifying-Matters-Part-2.pdf (ccc.govt.nz)

and RVA zones[11] (as I have described above) also provide a suitable method for managing development adjacent to heritage areas, irrespective of its scale.

54 For the reasons above, I consider proposed Rule 9.3.4.1.3 RD8 should be deleted.

Tree canopy provisions

55 In my view these provisions are beyond the scope of PC14, accounting for their dis-enablement relative to the status quo and the reasoning in *Waikanae*. Regardless, I consider the appropriateness of these provisions in further detail below.

56 In defining the problem, or issues, that the tree canopy and financial contributions provisions are intended to address, the s32 report[12] states these as follows:

> *'ISSUE 1- Loss of tree canopy cover through development/urban intensification and insufficient replacement tree planting, particularly in residential zones'.*
>
> *ISSUE 2– Insufficient and/or inappropriate tree planting on residential development sites and in the future road reserves of new subdivisions in the greenfield or brownfield development areas.*
>
> *ISSUE 3 – Inadequate soil volume/ tree pits to allow trees to grow healthily to maturity while avoiding damage to infrastructure, and poor tree maintenance*
>
> *ISSUE 4 – Diminishing number of trees and canopy cover in urban environment contributes to the following adverse effects of urban intensification:…'*

57 Whilst established tree canopy may be lost to allow for redevelopment and intensification, that is an accepted consequence of implementing the statutory direction in the Act and NPSUD. Otherwise, as to the extent, adequacy and appropriateness of replacement tree planting that can re-establish tree canopy cover over time, I consider this is already addressed by operative District Plan provisions, including:

57.1 Operative residential objectives and policies, including objective 14.2.4 for high quality residential environments and policy 14.2.4.4 which seeks significant opportunities for landscaping.

57.2 Residential rules, including:

[11] HDR Rule 14.6.1.3 RD2 and RVA Rule 14.11.1.3 RD4 – both of which require assessment of the residential design principles in Rule 14.15.1

[12] Pages 11-15: Plan-Change-14-HBC-NOTIFICATION-Section-32-Tree-canopy-Financial-Contributions-with-no-appendices.pdf (ccc.govt.nz)

(a) Building site coverage, outdoor living space and building setback rules for residential zones[13] which require areas of unbuilt open space (some or all of which may be available for planting and tree canopy provision);

(b) Minimum landscaping and tree planting requirements for multi-unit development in residential zones, which typically specify a minimum landscaping requirement of 20% of the site area, and minimum tree planting requirements[14]; and

(c) Other rules which impose landscaping or tree planting requirements[15].

57.3 Residential assessment matters, including residential design principles, those relating specifically to landscaping rules, and those related to other amenity related rules[16].

57.4 Subdivision objectives and policies[17]; subdivision guidance documents including Infrastructure Design Standards, Construction Standards Specifications, and Waterways, Wetlands and Drainage Guides; and to a limited extent the matters of control[18].

57.5 Resource consent conditions and monitoring requirements, imposed in respect of tree planting and landscaping.

58 Section 3.2 of the s32 report[19] examines the current Christchurch District Plan provisions of relevant to this issue and whilst it considers some policy provisions, it fails to consider the range of *methods* described above (including those that apply to single and multi unit dwelling development) or the extent to which these adequately provide for *replacement* planting.

59 Accounting for the above, I consider the tree canopy cover and financial contributions should be deleted in their entirety (including

[13] For example, rules 14.4.2.4 Site coverage, 14.4.2.5 outdoor living space, and 14.4.2.7 internal boundary setbacks.

[14] For example, rule 14.4.2.2 Tree and garden planting.

[15] For example, rule 14.4.2.9 road boundary setbacks.

[16] For example, rule 14.15.18 Minimum building, window and balcony setbacks

[17] For example, objective 8.2.1 which references the natural heritage objectives and policies including those regarding significant and other trees in Chapter 9, policy 8.2.2.4(a) which requires subdivision to incorporate and respond to site features including trees; and policy 8.2.3.3(b) which seeks to enable street landscaping and trees.

[18] For example, rule 8.7.4.4 regarding landscaping in transport networks.

[19] https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32/Plan-Change-14-HBC-NOTIFICATION-Section-32-Tree-canopy-Financial-Contributions-with-no-appendices.pdf

associated references to the same in the subdivision and residential chapters).

60 Whilst I have not considered the matter in great detail and therefore do not rely on it for my conclusion above, I also question whether the Council's assessment of costs associated with the proposed financial contributions fully accounts for the impact on affordability, where contributions for a shortfall in canopy cover or the development costs (in terms of reduced development yield) are likely to be passed on directly or indirectly to purchasers. By way of example, using Council's online calculator, a 5% shortfall in the 20% tree canopy for CGL's site at 32 Armagh Street would require a financial contribution of approximately $430,000, or $15,358 per unit assuming 28 units were developed at the current minimum density of 200m^2 per unit. Imposing such additional cost has implications in terms of the NPS-UD objective to improve housing affordability.

Wind rules

61 CGL support the amendments (in the s42a report) to provisions for wind in chapter 6.13, insofar that these do not apply to commercial development in the central city where tall buildings (and associated wind conditions) are expressly anticipated.

62 CGL's submission otherwise opposed these provisions on the basis that they will impose uncertainty, cost and practical challenges to those affected by the rules. Those concerns remain.

63 I share those concerns, based on the wording of the provisions and my experience with other operative rules in the Plan that require specialist technical input in order to determine or demonstrate compliance, with associated cost, time and resourcing implications.

64 As worded, proposed rule 6.13.4.1.1 P1 requires evaluation of complex wind speed cacluations by a suitably qualified professional and applications that do no comply with this standard will also require a specialist/expert assessment of the matters of discretion in rule 6.13.5.1. This does not accord with objective 3.3.2 generally, or its specific objective that the District Plan is *'easy to understand and use'*.

65 At a practical level, I am concened at the availability and cost of obtaining specialist assessments from suitably qualified professionals. A google search of 'wind impact consultants New Zealand' directed me to firms or webpages associated with wind energy (rather than wind impacts per se) and the New Zealand Wind Energy Association website only identified four consultancies

providing wind modelling and meteorological services in New Zealand[20].

66 From first hand experience, I have encountered challenges with the availability, timeliness, and cost of experts to address District Plan rules that require specialist expertise in order to determine or demonstrate compliance, including:

66.1 Acoustic engineering experts required to address compliance with rules for acoustic insulation for buildings;

66.2 Lighting experts to address compliance with rules for digital billboards and sports lighting; and

66.3 Urban design experts on a council approved list for urban design certification.

67 Whilst I accept that in some instances expert determination of compliance with rules may be unavoidable, I caution against this where the rule may apply to a considerable number of activities and the pool of expertise is limited, as is potentially the case here.

68 For the reasons above, I hold reservations regarding the efficiency, costs relative to benefits, and appropriateness of the provisions in chapter 6.13.5.1. Whilst I have not considered alternatives in significant detail, I question whether wind impacts could be more appropriately managed through policy and assessment matters (and possible design guidance) that enables assessment of buildings that are considerably taller than what is anticipated by the applicable zoning or which are likely to have demonstrable wind impacts, rather than all buildings.

Other urban design or built form rules

69 My evidence below on provisions in the residential and commercial chapters elaborates on, and provides specific examples of, new or amended rules and assessment matters in PC14 that results in unnecessary duplication and fails to '*minimise…the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice'* as sought by objective 3.3.2.

70 For the residential and commercial zones where intensification is enabled and most likely to occur, urban design standards are ubiquitous and provide an effective and efficient means of assessing the wide variety of buildings, sites and surrounds in a way that is appropriate to the context. Whilst the potentially broad scope of urban design assessment matters requires tempering to avoid a quasi-discretionary activity status, I consider they provide an

[20] https://www.windenergy.org.nz/our-members/directory/industry-directory/wind-resource-modelling-/-meteorological-services

effective method for: ensuring buildings are generally appropriate to their context; prompting assessment of any key issues; and, still encouraging innovation and choice.

SITE-SPECIFIC MATTERS

184 Oxford Terrace

71 The 90m building height limit recommended in the officer's report[21] for the majority of the Central City Zone in 15.11.2.11 is generally supported by CGL. However, the 45m height limit within the proposed 'Cathedral Square Height Precinct' is opposed to the extent that it encompasses 184 Oxford Terrace which is owned by CGL (see **Figure 1**). This property is situated adjacent to Oxford Terrace and the Avon River precinct and is separated by from Cathedral Square by other commercial sites and buildings.

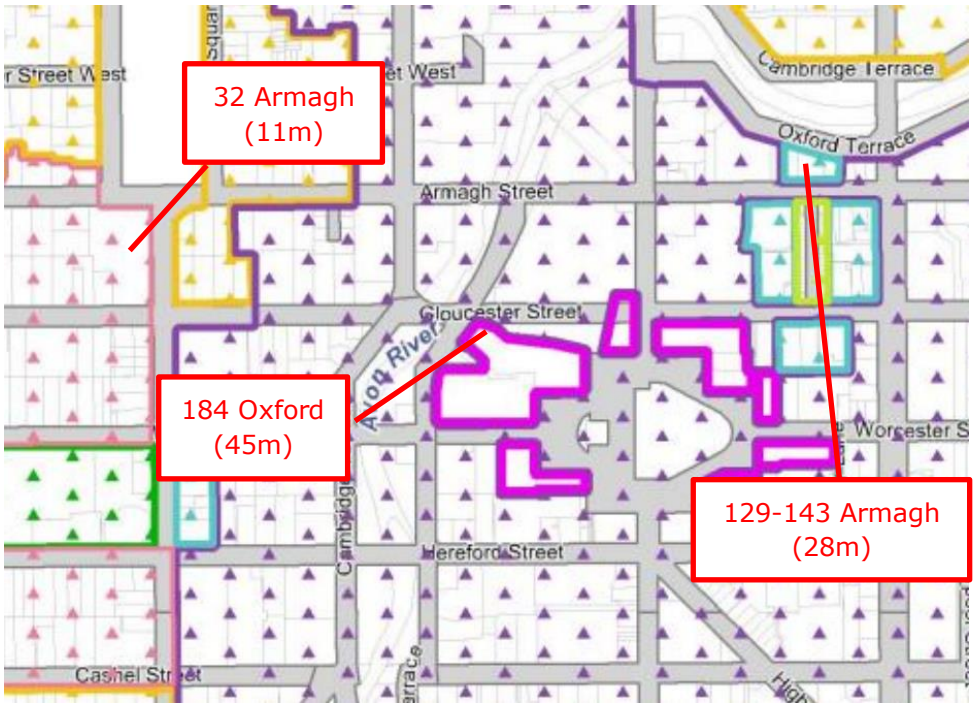

Figure 1: Extract of proposed height limits map[22]

72 I understand from the section 32 reports[23], that the rationale for a height limit of 45m in this location is to limit shading effects on Cathedral Square.

[21] See page 47 of 02-Andrew-Willis-Section-42A-Report-final.PDF (ihp.govt.nz)

[22] Ibid

[23] Plan-Change-14-HBC-NOTIFICATION-Section-32-Commercial-and-Industrial.pdf (ccc.govt.nz) and PC-13-14-Central-City-Heritage-Height-Limits-S32-Heritage-Advice-final.pdf (ccc.govt.nz)

73 Whilst shading diagrams were prepared for the height limits associated with New Regent Street and the Arts Centre I have been unable to locate equivalent shading analysis for Cathedral Square.

74 However, Mr Compton-Moen has provided evidence for CGL on this matter, which includes sun studies showing the shading on Cathedral Square associated with physically existing buildings (e.g. Rydges Hotel), authorised but yet to be developed buildings (e.g. Convention Centre precinct hotels on the north and northwest edges of Cathedral Square) and otherwise permitted buildings accounting for the proposed 45m height limit adjacent to Cathedral Square. Based on his evidence and graphic attachments, enabling 90m high buildings at 184 Oxford Terrace would not result in any greater shading effects on Cathedral Square, than would otherwise occur with the proposed 45m Height Precinct overlay. In simple terms, that is because the shading of Cathedral Square is determined by the intervening sites and buildings.

75 Given that analysis, the attractiveness of 184 Oxford Terrace for intensive development (given its northwest frontage, aspect and views over Oxford Terrace and the Otakaro Avon River precinct), and the imperative to maximise height and density in NPSUD policy 3, I consider this overlay should be deleted for this property.

129-143 Armagh Street

<u>28m Height Limit</u>

76 The submitter has an interest in the undeveloped city block bounded by Colombo/ Armagh / Manchester Streets and Oxford Terrace. This land includes the properties at 129-143 Armagh Street, which are subject to a 28m maximum building height in rule 15.11.2.11 (see **Figure 1**) on the basis of the Central City Heritage Interface Qualifying Matter associated with New Regent Street.

77 The heritage advice underpinning the s32 evaluation of this proposed height limit states:

> *'urban development enablement involving buildings up to 90m high (as per the proposed City Centre zone height limit) in and adjacent to New Regent Street would be inappropriate. Continuation of the operative 28m height limit for sites to the east, west, north and south of New Regent Street will provide sufficient protection of this Heritage item from development of an inappropriate height, which could cause inappropriate contrasts of scale, and downdraughts, as well as impacting the architectural and contextual heritage values. Sun studies have shown that while there is some reduction in shading effects from continuing to reduce permitted height to 28 metres on sites surrounding New Regent Street, modelling demonstrates that the greater benefit from the lower 28 metre height limit is a*

reduction in visual dominance effects from those anticipated by permitted zone heights of 45 to 90 metres on these sites[24].

78 As acknowledged in the statement above and shown in the sun studies referred to[25], a reduced building height achieves 'some' reduction in shading to New Regent Street. More specifically, in equinox periods the shade from a 90m building at 129-143 Armagh Street will start to fall on New Regent Street from 11am, and depart at about 2pm (see **Figure 2** below). The greatest impact is around noon-1pm, when the shade will extend approximately midway along New Regent Street. The sun studies provided by Council do not show the extent of shading on New Regent Street caused by the buildings fronting the street itself, which I presume would be determinative of shading in morning and afternoon periods when the sun is lower, and to the east and west respectively. Nor do the sun studies show the extent to which 90m high buildings to the east or west of 129-143 Armagh Street might be determinative of shading on New Regent Street. The photo in **Figure 3** below illustrates this point, insofar that it shows the shading caused by the tram and verandas due to the angle of the sun which appears to be in late morning, mid-summer given the short shading to the west. At later times of day or at other times of year, I would expect longer shadows to be cast by the tram or building facades in the same photo.

79 Accounting for the above, I do not consider there is sufficient evidence to justify a reduced building height limit on the basis of shading effects on New Regent Street.

Figure 2: Extract of CCC sun studies (equinox)

[24] PC-13-14-Central-City-Heritage-Height-Limits-S32-Heritage-Advice-final.pdf (ccc.govt.nz)

[25] PC-13-s32-Appendix-16-Qualifying-Matter-Central-City-Heritage-Interface-Arts-Centre-and-New-Regent-Street.pdf (ccc.govt.nz)

Figure 3: Image of New Regent Street depicting shading

80 To the extent that the s32 report considers, on the basis of the modelling, that *'the greater benefit from the lower 28 metre height limit is a reduction in visual dominance effects'* it does not elaborate on the significance of those effects, or why tall buildings in the vicinity will necessarily affect New Regent Street's heritage values. Mr Compton-Moen's evidence elaborates on this and the manner in which tall buildings can successfully co-exist with smaller buildings, including those of heritage value. Mr Compton-Moen also specifically addresses why taller buildings around New Regent Street would help define, rather than negatively affect, the space and the buffer that is otherwise provided by the Armagh Street road corridor. I accept Mr Compton-Moen's advice in this regard.

81 Given the above, I do not consider sufficient justification has been provided to warrant a height limit of 28m at 129-143 Armagh Street, relative to the 90m limit otherwise proposed for the balance of that block or the wider CCZ.

<u>Spatial extent of New Regent Street heritage setting</u>

82 129-143 Armagh Street also adjoins that part of the (existing) heritage setting for New Regent Street, which extends across the Armagh Street road reserve. CGL seeks that the heritage setting be removed from all or part of the Armagh Street road reserve.

83 Given that the Armagh Street road reserve is owned and managed by Council as the road controlling authority and will be subject to the typical operational and functional requirements expected in a central city roading corridor, I consider the heritage setting is of limited importance or consequence – to either the future development and use of the land at 129-143 Armagh Street or to the protection of New Regent Street's heritage values.

84 However, a consequence of the heritage setting's northerly extent is the consenting requirements imposed 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.

85 These features are managed by other rules (urban design, signage rules, etc) and are unlikely to affect the heritage values of New Regent Street given their nature, scale, separation from listed buildings and the intervening non-listed/modern buildings that bookend New Regent Street. Any structures overhanging the footpath are also subject to Council approval as the landowner and roading authority, under its structures in streets policy.

86 On this basis, I consider a consenting requirement would be unnecessary (generally and in terms of heritage objectives in the Plan) and inconsistent with strategic objective 3.3.2. Whilst I consider that removal of the heritage setting from the Armagh Street road reserve in its entirety would be appropriate for these reasons, it would suffice to remove it from the northern half or the road, or simply from the northern footpath on Armagh Street (noting structures would not extend beyond this into the carriageway).

32 Armagh Street / 325 Montreal Street

87 CGL owns approximately 5600m^2 of land at 32 Armagh Street / 325 Montreal Street, being the former Christchurch Girls' High School site. That land is predominantly metalled and used for car parking, with the exception of:

87.1 the 'Blue Cottage' building (being listed heritage item number 390)

87.2 an unlisted 1970's concrete block building (the 'CGHS tuck shop building'); and

87.3 two listed trees in the northwest corner of the site.

88 Per the various s42a reports for PC14, the following zoning and overlays are recommended for the site:

88.1 Existing Specific Purpose Schools ('SPS') zoning with underlying High Density Residential ('HDR') zoning to remain[26];

[26] 10B-Clare-Piper-section-42A-report-final.PDF (ihp.govt.nz)

88.2 Existing scheduling of the heritage item and setting for the Blue cottage to remain[27];

88.3 Proposed Residential Heritage Area (RHA) overlay for the southern part of the site, to encompass the heritage setting and item (assessed as 'defining') and the CGHS tuck shop building (assessed as 'contributory') and the RHA Interface Overlay proposed to apply to that part of the site not within the RHA[28].

88.4 Existing scheduling of 2 x significant trees (Appendix 9.4.7.1) to remain, but proposed to be classified as QM trees[29].

89 The submitter supports the proposed SPS zoning (and underlying HDR zoning) of the land but seeks deletion of the notations or overlays in paragraphs 88.2-88.4 above, on the basis that they will limit intensification opportunities for the site, provide benefits that are outweighed by costs, are not justifiable on merit, and are therefore not appropriate. I consider these matters in turn below.

Heritage listing of Blue Cottage

90 In evaluating CGL's submission seeking delisting of the blue cottage in the context of these criteria, Ms Richmond relies on the evidence of:

90.1 Ms Ohs[30] as to the heritage values of the building.

90.2 Mr Stanley[31], who estimates a cost of $259,000 cost to repair the building.

90.3 Ms Caponi[32], as to the extent of repair works required and engineering factors relevant to the listing of the building; and

90.4 Mr Holmes[33], as to repair methodologies and opportunities for adaptive reuse.

91 Having reviewed the Council's evidence, the applicant has obtained evidence of a similar nature from:

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[27] 07-Suzanne-Richmond-Section-42A-Report-final.PDF (ihp.govt.nz)

[28] I note that the figures in Appendix C of Ms Dixon's s42a report do not clearly show the amended boundaries of the RHA, however it is clear from paragraph 8.3.7 that this is intended. See 06-Glenda-Dixon-Section-42A-Report-FINAL.PDF (ihp.govt.nz)

[29] 50-Hilary-Riordan-Statement-of-evidence-final.PDF (ihp.govt.nz)

[30] 45-Amanda-Ohs-Statement-of-evidence-final.PDF (ihp.govt.nz)

[31] chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/53-Gavin-Stanley-Statement-of-evidence-final.PDF

[32] 16-Clara-Caponi-Statement-of-evidence-final.PDF (ihp.govt.nz)

[33] 32-Tim-Holmes-statement-of-evidence-final.PDF (ihp.govt.nz)

91.1 Mr William Fulton, as to the condition of the building;

91.2 Mr David Hill, as to redevelopment options for the site, adaptive reuse of the building and building upgrade requirements;

91.3 Mr Kyle Brookland, as to the building condition;

91.4 Mr Tom Chatterton, as to the costs of repairing the building;

91.5 Mr David Compton-Moen, as to the spatial/development implications of the heritage item and setting.

92 Accounting for the evidence above and based on the statement of significance[34] (as referenced in Ms Oh's evidence) the building clearly has *some* significance to the Christchurch District and evidently meets a number of the heritage values in Appendix 9.3.7.1. However, that statement does not demonstrate how the historic heritage meets *'at least one of the heritage values[35] in Appendix 9.3.7.1 at a significant or highly significant level'* where those values are at a 'significant level' as is required by policy 9.3.2.2.1(b)(i)(A), rather than simply being 'of significance'.

93 In this regard, the statement of significance concludes:

> *'The former dwelling and its setting have **overall significance** to the Christchurch District, including Banks Peninsula. The building has historical **significance** as a c.1875 colonial cottage, the former home of Ernest Empson, and for its association with Christchurch Girl's High School. The former dwelling has architectural **significance** due to the authenticity of its exterior and retention of some of its original interior detailing. As a small colonial cottage this building has landmark **significance** within the inner-city's historic western precinct. It has further contextual **significance** as it stands as a reminder of the style, scale and materials that once dominated the city's colonial built environment. The dwelling and its setting has archaeological **significance** in view of its 19th century construction'.*

94 I consider this distinction is important, insofar that something "being of significance" is often context-dependent and subjective, while "being significant" implies a more objective, absolute and substantial level of importance or impact.

95 Whilst the statement (and conclusion) above refers to the *significance* of the building, it fails to conclude that the relevant

[34] HID 390.pdf (ccc.govt.nz)

[35] The values set out in Appendix 9.3.7.1 for assessing significance are: Historical and social value, Cultural and spiritual value; Architectural and aesthetic value; Technological and craftsmanship value; Contextual value; and Archaeological and scientific significance value.

values will be met at a '*significant or highly significant'* level[36]. On this basis, I consider the building currently fails to meet the criteria for scheduling.

96 Regardless of its qualification for scheduling, part (c) of policy 9.3.2.2.1 provides exemptions from scheduling as follows:

> *…c. Schedule significant historic heritage as heritage items and heritage settings where each of the following are met:*
>
> *i. the thresholds for Significant (Group 2) or Highly Significant (Group 1) as outlined in Policy 9.3.2.2.1 b(i) or (ii) are met; and*
>
> *unless*
>
> *iii. the physical condition of the heritage item, and any restoration, reconstruction, maintenance, repair or upgrade work would result in the heritage values and integrity of the heritage item being compromised to the extent that it would no longer retain its heritage significance; and/or*
>
> *iv. there are engineering and financial factors related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item.*

97 As to the physical condition of the building, this is described by Ms Caponi for Council, and Messrs Fulton, Hill and Brookland for the submitter.

98 Ms Caponi's evidence relevantly notes:

> *'deferred maintenance works have significantly accelerated the deterioration of the building exteriors [since 2015]. The damage has particularly worsened the condition on the South-West Elevation where most of the weatherboards are now beyond salvage due to mould, rot or borer issues. In certain areas, the damage or partial removal of the cladding system has also exposed the inner timber structure to the natural elements potentially causing the onset of mould and moisture in the building materials'. (para 28)*
>
> *'the volcanic stone units used for the ring beam foundation on the North-East and North-West Elevations are in advance state of decay and most of them are beyond salvage' (para 30).*

[36] The statement only uses the term 'significant' when noting that "325 Montreal Street was purchased by Ernest Charles Empson (1880-1970), an Ashburton-born pianist and piano teacher who later gained an international reputation and made a **significant** contribution to the city's music scene"

'the deferred maintenance works might have also adversely affected the building's structural and non-structural internal components. Leaking issues in the wall external fabric and roof cladding might have allowed penetration of rainwater within the internal structures causing the onset of mould and rot issues' (para 31).

'If intrusive investigations prove the damage to the inner structures to be minimal and no trace of lead based paint is found on the weatherboard, only standard repairs and maintenance works would be required to reinstate the building to a good condition. On the other hand, if the damage to the inner structures is proven to be extensive and traces of lead-based paint are found in the weatherboard coating, substantial repairs and strengthening works would be required to retain the cottage and loss of a significant part of the original heritage fabric should be expected' (para 38).

99 Mr Brookland's evidence and inspection report describes extensive damage and the need for substantial repairs and replacement of parts of the building. Notably and with reference to Ms Caponi's evidence regarding the implications of lead based paint being present, Mr Brookland's inspection confirms the presence of such paint extensively on the exterior of the building.

100 Mr Fulton's evidence provides similar conclusions to those of Ms Caponi and Mr Brookland, concluding that the building is in poor condition, albeit Mr Fulton advocates a repair strategy that takes a Conservation approach accounting for the building's heritage listing. Mr Fulton otherwise agrees with Mr Holmes for Council that the building is *'capable of repair'*.

101 Mr Hill's evidence similarly records extensive damage to the building, stating that *'the building is deteriorated to a such an extent that it would have to be totally rebuilt. The original building elements that still exist and are in a state that can be reused, are minimal. To rebuild in this manner will result in a 'replica' of the original of very limited heritage value and would be an expensive exercise'.*

102 Based on the evidence above, I understand repair and reinstatement of the building is *possible*, but such works will likely be significant and costly and therefore call into question whether there are *'financial factors related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item'* per clause (c)(iv) of the policy.

103 I am unclear from the evidence whether the exemption from listing in clause (c)(v) of the policy would also apply, insofar that *'the physical condition of the heritage item, and any restoration, reconstruction, maintenance, repair or upgrade work would result in the heritage values and integrity of the heritage item being*

compromised to the extent that it would no longer retain its heritage significance'.

104 As to whether financial factors make scheduling unreasonable or inappropriate, I note the evidence of Mr Holmes suggests there are *'a wide range of uses that the restored building could be put to'*, including residential or commercial activity, with the latter including consultancies, retail, tourism, hospitality, museums, or galleries etc). I disagree with Mr Holmes that such activities are a given.

105 From a planning perspective, the site is zoned SPS which permits education activities and education facilities, or activities permitted by the underlying RCC/HDR zoning. That being the case, non-residential activities (other than education activities) above 40m^2 are not permitted. To the extent that Mr Holmes suggests residential use, that is also uncertain insofar that operative and proposed rules would potentially require resource consent[37].

106 From a Building Code perspective, Mr Hill's evidence describes the extensive upgrades that would be required for the building in order to repurpose it for permitted education or residential use.

107 From a financial perspective, the evidence of Mr Chatterton provides a detailed estimate of costs to make good the building of $1.452 million, which is substantially higher than Mr Stanley's estimate of $259,000.

108 Lastly, Mr Compton-Moen's evidence describes the spatial implications of retaining the building and heritage setting, in terms of the opportunity cost of otherwise enabling unfettered development and additional household capacity in this location. Based on his previous master planning of the site, the heritage building and setting required the loss of 8 residential units (15%) from a total of 54 units that could be established on the site.

109 In summary, accounting for the above, I consider that:

109.1 The building currently fails to meet the criteria for scheduling in policy 9.3.2.2.1, on the basis that the assessment/ statement of significance does not demonstrate that the building meets at least one of the heritage values in Appendix 9.3.7.1 at a 'significant' or 'highly significant' level.

109.2 Based on the evidence of Ms Caponi for Council and Mr Brookland and Mr Fulton from CGL, it is clear that the building is in poor condition and substantial works would be required to remediate the building. However, it is unclear whether the

[37] E.g. Proposed rule 14.6.2.8 requiring 20% of the street facing façade in glazing; compliance with outdoor living space and minimum unit size requirements would need to be demonstrated; external sound insulation of the building would be required for its use for a sensitive activity in proximity to Montreal Street under rule 6.1.7.2.1.

required restoration, reconstruction, maintenance, repair or upgrade works would result in the heritage values and integrity of the heritage item being compromised to the extent that it would no longer retain its heritage significance, per clause (c)(v) of the policy.

109.3 Based on the evidence Mr Hill, Mr Chatterton and Mr Compton-Moen (and that of Ms Caponi, Mr Brookland and Mr Fulton) the cost and opportunity cost of repairing the building for uncertain future use constitutes a *'financial factor related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item'* per clause (c)(iv) of the policy. I note that this would also be a particularly relevant factor when considering the merits of demolition under policy 9.3.2.2.8.

110 Given the above and the implications for realising the intensification otherwise sought by the Act and Policy 3, I consider the heritage listing of the Blue Cottage item and setting is not appropriate and should be deleted.

The Inner City West RHA

111 As set out in my evidence above on RHA's generally, I consider insufficient evidence has been provided to justify RHA as constituting historic heritage of a national importance level, rather than being an area of more pronounced character than the norm or one which simply includes a number of listed heritage items.

112 In the case of the Inner City West RHA and 32 Armagh Street specifically, PC14 as notified classified the entire site as a 'defining' site. Ms Dixon's s42a report has since acknowledged an error in the classification of this site, suggesting that the listed heritage item be classified as 'defining', the former tuckshop building be classified as 'contributory' and the significant majority of the balance of the site be identified as 'intrusive' and therefore removed from the RHA. Ms Dixon's report also notes other errors and reclassifications of sites within the same RHA, such as the very large YMCA site which was reclassified from 'defining' to 'neutral' and 'intrusive', and is therefore to be removed from the RHA.

113 Whilst I am not a heritage expert, having walked and observed the Inner City West RHA I question the rigour or objectivity of the mapping and classification of sites. For example, sites with frontages dominated by garaging and high walls (e.g. 275 Montreal Street or 16 Armagh Street), modern townhouse developments (e.g. 29-31 Gloucester), sites subject to consents for demolition (e.g. extensive Christs' College landholdings), and sites with undeveloped areas that could be readily redeveloped (e.g 277 Montreal or 21 Gloucester) are classified as 'defining' or 'contributory'.

114 I understand that the threshold for classifying an area as an RHA is that at least 50% of the sites/buildings are assessed as 'contributory' or 'defining'. Accordingly, reclassifying sites or redefining the boundaries/extent of the RHA (as is proposed by Ms Dixon) calls into question the validity of these areas. By way of example, the Inner City West RHA as notified north of Gloucester Street would no longer appear to meet the 50% threshold following the reclassification now proposed by Ms Dixon, if the focus were on that area alone.

115 In terms of the RHA applying to the southern part of 32 Armagh Street specifically, the former CGHS tuckshop building is classified as a 'contributory' building, despite being a utilitarian concrete block structure from circa 1970, with no notable relationship to Gloucester Street (see **Figure 4** below), and in a position that will not be visible from Armagh or Montreal Street when the balance of the site is developed. The site evaluation report underpinning the classification concedes that the building itself has no particular heritage values of significance, with the reason for rating the building as 'contributory' being that it is *'the only school building to survive from the campus of Christchurch Girls' High School'*. All other reasons given in the site listing relate to the wider area. On this basis, I do not consider that the building is 'contributory', or that the RHA overlay should apply to that part of 32 Armagh Street occupied by the former tuckshop.

Figure 4. 'Contributory' CGHS tuck shop building (Google Maps)

116 To the extent that the Blue Cottage is relevant to the RHA, if this building were removed (as is sought by the submitter), then this part of the site would presumably be reclassified as 'intrusive' as is the case for other undeveloped land and would warrant removal from the RHA like the balance of the site to the north. Otherwise, this item and setting is already protected in the District Plan and the RHA is unnecessary as it does not afford any additional protection or benefit to this land.

117 In summary, I do not consider sufficient evidence has been provided to confirm that the Inner City West RHA as a whole is an item of historic heritage that warrants the regulatory protection proposed,

as a matter of national importance. For 32 Armagh Street, I consider Council's own evaluation of the former CGHS tuckshop building warrants its reclassification as a 'neutral' or 'intrusive' building. The Blue Cottage is currently a listed heritage item that is afforded protection which makes the RHA redundant, and in the event that its listing is removed (as sought) it would no longer justify inclusion in the RHA. For these reasons and otherwise noting my earlier evidence on RHA generally, I consider the RHA should not apply to 32 Armagh Street.

The RHA Interface Overlay

118 Whilst Ms Dixon proposes that the undeveloped area of 32 Armagh Street (presently used for car parking) should be removed from the RHA, she proposed that it be subject to the RHA Interface Overlay.

119 As noted earlier in my evidence, the consequence of this Overlay is to require resource consent under proposed Rule 9.3.4.1.3 RD8 for *'Any new building (except buildings of less than 5 metres in height) on a site…* [that] *shares a boundary with a site or sites in a Residential Heritage Area'*.

120 The rule is not limited to a distance from a boundary with a RHA, nor does it provide any distinction for sites that adjoin buildings in the RHA of a lower classification (e.g. intrustive, neutral, contributory). 32 Armagh Street borders modern townhouse developments along the majority of its western boundary with the RHA (neutral or contributory), with its southwest corner adjoining a defining site and building at 33 Gloucester Street (see **Figure 5** below). At its widest point, the site is some 65m from the RHA boundary. As a result, the rule will apply to and affect development of those parts of the site that are distant from the RHA and have no direct impact on adjacent sites, or buildings, particularly those assessed as making a defining contribution to the RHA. Imposing this consenting requirement would be disenabling relative to the status quo, contrary to objectives 3.3.1 and 3.3.2, and unnecessary given the urban design (and other) rules that I have described earlier that specifically manage the effects of development in this location on adjacent sites and areas.

121 Given the above and my evidence opposing RHA generally and in this location especially, I do not consider this interface overlay and rule Rule 9.3.4.1.3 RD8 are appropriate for the site.

Figure 5: 32 Armagh interface

Building Height Limit

122 As shown in **Figure 1** above, the proposed planning maps for building height limits (as appended to Mr Willis' s42a report) have not been amended to revise the height limit for that part of 32 Armagh Street that is proposed to be removed from the RHA. On the basis of this land no longer being within the RHA, and the underlying zoning being HDR, a height limit of 32m should apply as otherwise applies to the HDR zone in the surrounding area.

Significant Trees

123 CGL's submission sought the removal of the two listed trees in the northwest corner of the site given the constraint they impose on development of this part of the site.

124 I am unaware of any evidence that the trees are in poor state of health that would warrant their delisting. Accordingly, I consider the merits of scheduling or delisting/removing the trees is a function of weighing the public benefits of these trees with the private costs imposed on the landowner through reduced development flexibility and opportunity. Mr Hill's evidence notes that the northwest corner of the site is the best part of the site for residential or mixed use development given its orientation for sun and its distance from the busy Montreal / Armagh St corner and the trees will reduce development flexibility and opportunity and otherwise shade any

buildings that are built close to them. Mr Compton-Moen's evidence refers to the master planning he previously undertook for the site and notes that the trees required the removal of 6 (11%) of the 54 units planned for the site. I agree with Mr Hill's observations and accept Mr Compton-Moen's advice and consider these clearly represent costs. However, I acknowledge I have no economic evidence to quantify the benefits of retaining the trees as a counterpoint to the costs of their removal.

125 In the event that the trees are to remain in the Plan, it is appropriate that further consideration of their removal be provided for by policy 9.4.2.2.7 (which provides guidance for the felling of scheduled trees). As worded, that policy only refers to 'significant trees', not 'qualifying matter trees'. As stated earlier in my evidence, I am unclear on the reason or need for this distinction, but if it is to remain, I consider policy 9.4.2.2.7 should be amended to refer to *'the felling of significant or qualifying matter trees'*.

CHAPTERS OR ZONE-SPECIFIC PROVISIONS

Chapter 3 - Strategic directions

126 CGL sought amendments to objective 3.3.8(a)(viii) which have been adopted in the s42a report. To the extent that additional changes are proposed to objective 3.38, these are generally supported.

127 However, proposed objective 3.3.8(a)(vi) seeks an urban environment that *"(vi) Ensures the protection and/or maintenance of specific characteristics of qualifying matters"*. Given that the characteristics and significance of qualifying matters will vary in different contexts, and will require different responses in those contexts, more nuanced wording is required and I consider this objective should instead seek to 'recognise and provide for' the specific characteristics of QM, rather than necessarily 'ensure protection or maintenance', as follows:

(vi) ~~Ensures~~ Recognises and provides for the protection and/or maintenance of specific characteristics of qualifying matters.

Chapter 6.10A – Tree Canopy Cover

128 For the reasons stated above in this evidence, I consider the provisions in this chapter should be deleted in their entirety.

Chapter 7 - Transport

129 CGL's primary submission point on the proposed changes to Chapter 7 transport is that the proposed provisions in their entirety *'are onerous and unnecessary and are not necessary for the purposes of implementing the NPSUD or EHS Act*'. I agree, and accounting for my earlier evidence on scope for an IPI per *Waikanae,* I consider the changes proposed to Chapter 7 should be rejected on this basis.

130 I also note that a number of changes to transport provisions (especially those changes proposed following the notification of PC14) may be prejudicial to those who have not submitted and participated in PC14 because they are not within relevant residential or non-residential zones. However, the transport provisions apply to all forms of land use across all zones in the District and therefore changes proposed in PC14 will have far reaching, unintended and prejudicial consequences.

131 In regards to CGL's submission points on policy 7.2.1.9 (pedestrian access), and other transport rules and assessment matters, I rely on and agree with the evidence of Ms Lisa Williams who addresses those provisions in detail.

Chapter 8 - Subdivision

132 For the reasons set out in more detail in my evidence above on the Tree Canopy and Heritage provisions, and otherwise noting my evidence on the limited scope of an IPI, I agree with CGL's submission points and requested relief seeking:

132.1 Deletion of those provisions in Chapter 8 related to urban tree canopy cover and financial contributions[38]; and

132.2 Deletion of amendments to Rule 8.6.1 Table 1 – Minimum net site areas – residential, insofar that this specifies minimum net site areas for residential heritage areas.

Chapter 9.3 – Historic Heritage

133 CGL's submission opposed heritage areas and all associated provisions relating to heritage areas. I agree with that relief, accounting for my evidence above regarding specific concerns with the merits of heritage areas which I do not repeat here.

134 However, I do stress concerns with amendments to policy 9.3.2.2 (which provides the basis for heritage areas), given this provides no framework or guidance as to how buildings or features are assessed as being of *'defining or contributory importance to the heritage area'*. This is a key criteria for identifying heritage areas and imposing significant regulatory constraint, yet there is no framework within the policy that provides for the robust identification, assessment and classification of 'contributory buildings' and 'defining buildings' (e.g. in the same manner that policy 9.3.2.2.1 does for heritage items). Whilst 'contributory building' and 'defining building' are defined terms in the Plan, the definitions do not provide that framework either. Whilst I consider heritage areas and all associated provisions should be deleted for the reasons stated earlier in my evidence, if such areas are to remain, I consider policy

[38] Objective 8.2.6 and policies 8.2.6.1-8.2.6.3, Rule 8.3.1 (e) and (f), Rule 8.3.3 (b), Rule 8.3.7, and Rule 8.7.12 Tree canopy assessment matters

9.3.2.2 requires amendment to better provide for the identification, assessment and classification of contributory and defining buildings.

135 Policy 9.3.2.2.8 relates to the demolition of heritage items. I agree with CGL's submission that the amendments to clause (a) of the policy should be deleted on the basis that heritage areas are generally inappropriate, and that the effect of this change would be to elevate the importance of defining or contributory buildings by requiring the same tests to be met for demolition as listed 'heritage items', despite not meeting the criteria for listing. If the demolition of defining or contributory buildings in RHA is to be regulated, then a more nuanced policy framework is required to recognise their different status.

136 I also agree with the submitter's request to delete the amendments in clause (a)(ii) of the policy, on the basis that it would introduce a new 'test' for evaluating the demolition of historic heritage that presents an unreasonable and inappropriate threshold that materially changes and undermines the policy. By way of example, the proposed wording may preclude the otherwise justifiable demolition of heritage items that are significantly (physically) compromised, on the basis of one or more (non-physical) heritage values (e.g. historical/social or cultural/spiritual value) remaining. Such a change is not consequential on the MDRS or Policy 3 and is therefore also beyond the scope of the IPI.

137 CGL opposed the removal or reduction of exemptions from rules in Appendix 9.3.7.4, on the basis that these are an important tool for incentivising the adaptive reuse and ongoing protection of heritage items. In response, Ms Richmond's s42a report[39] states that *'proposed changes to this appendix are not for the purpose of reducing exemptions for heritage items and settings. The proposed changes are to improve consistency and fairness to applicants by adding exemptions to rules which fall within the intended scope of the "type of exemption" applied in the operative plan but were omitted in error for particular residential and commercial zones covered by the existing appendix'* and *'The intention is that the same types of exemptions currently applied are consistently provided across residential and commercial zones to support a wider range of uses in heritage buildings while balancing this against other environmental effects of allowing these activities'.* Appendix 9.3.7.4 was not included in Council's updated provisions or in Ms Richmond's s42a report and I have been unable to locate these provisions otherwise. However I support Ms Richmond's suggestion that the proposed changes 'are not for the purpose of reducing exemptions' for the same reasons expressed in CGLs submission.

[39] See para 8.1.139 of 07-Suzanne-Richmond-Section-42A-Report-final.PDF (ihp.govt.nz)

138 For completeness, I note that my earlier evidence has otherwise addressed those parts of sub chapter 9.3 relating to specific heritage items and areas.

Chapter 13.6 - Specific Purpose (Schools)

139 Recommended amendments to provisions in Ms Piper's s42a report have addressed a number of CGL's submission points.

140 However, concerns remain insofar that other amendments to provisions that are proposed to remain in PC14 are disenabling relative to the status quo and are ultra vires, per *Waikanae*. Specifically, the submitter opposes and my evidence addresses the following provisions:

140.1 Proposed clause 13.6.4.2(a) regarding heritage items and settings

140.2 Rule 13.6.4.2.4 Internal setbacks

140.3 Rule 13.6.4.2.5 Height

140.4 Rule 13.6.4.2.6 Landscaping

140.5 Rule 13.6.5.1 (e) and (i) assessment matters

Clause 13.6.4.2(a)

141 The SPS provisions as notified include an explanatory note in 13.6.4.2(a) which states that the built form standards *'do not apply to those parts of school sites occupied by heritage items and settings'* and *'Development of heritage items and/or settings is controlled by Chapter 9.3 Historic Heritage'.*

142 CGL opposes this provision on the basis that *'built form standards remain a relevant basis for establishing permitted built form, given that the heritage provisions in chapter 9.3 will otherwise provide a framework for determining whether that built form is appropriate in the context of relevant heritage values'.*

143 At para 8.9.21 of Ms Piper's s42a report, the relief is rejected on the basis that this would mean that *'school sites containing heritage items and settings would need to comply with both Chapter 9.3 built form standards, and the Chapter 13.6.4.2 built form standards'*. Ms Piper otherwise refers to the rationale in Part 8 of the s32 report, albeit that simply notes that the intent is to control built form in SPS zones by way of the heritage rules.

144 With respect, Ms Piper misses the point that the heritage provisions in chapter 9.3 on their own provide no guidance as to what is anticipated in terms of the scale or density of development for that locality generally. For example, I am unclear how a property owner,

architect, neighbour, or Council consent planner would establish what an appropriate building height, site coverage and boundary setbacks might be based the provisions in chapter 9.3.

145 In my view, the built form standards for the SPS zone must apply in order to provide a frame of reference for built development. I agree with the submission that whether a building that complies with these is appropriate in terms of heritage values will then be a matter separately determined by the heritage provisions.

146 I note that other zones (in the operative Plan and as proposed in PC14) do not include an equivalent advice note setting aside built form standards for sites containing heritage items and settings. As such, CGL's requested relief is consistent with the approach adopted in other chapters and I do not see any reason to treat the SPS zone differently.

Rule 13.6.4.2.4 Internal setbacks

147 The s42a report proposes a new 'continuous building length' rule 13.6.4.2.4(iv) in order to *'mitigate potential adverse visual dominance of bulk of long and continuous building facades adjacent to HRZ' and 'help ensure there is a degree of modulation and a scale compatible with the residential zone adjacent (which typically have a finer grain of architectural detail)'*[40].

148 As worded, the rule would apply to any building regardless of its relationship or orientation relative to adjacent residential boundaries. Given the purpose of the rule, I consider the rule should be amended as follows, or in a similar format:

> a. ~~The building~~ The wall of any building which is parallel to, and within 6m of a boundary with a residential zone, shall either:

Rule 13.6.4.2.5 Height

149 As noted in paragraphs 8.9.43-8.9.44 of the officer's report CGL support the notified changes made to the maximum building heights, in that they are increased from the status quo. The officer notes *'As these submissions do not seek any changes and are supportive of the changes as notified, I recommend they are accepted'.*

150 For the SPS zone at 32 Armagh Street, PC14 as notified proposed a height limit of 14m within 10m of an internal boundary, and otherwise a height limit of 32m applies.

[40] Paragraph 8.9.12 10B-Clare-Piper-section-42A-report-final.PDF (ihp.govt.nz)

151 The officer's report now recommends a height limit *'as specified on the Central City Maximum Building Height Planning Map'*. As described above, the revised building height planning map appended to Mr Willis' s42a report still shows the site with an 11m height limit that reflects the original/notified extent of the RHA. As stated above (and with reference to Mr Compton-Moen's evidence) this map should be amended to show a 32m height limit, consistent with the surrounding residential area.

Rule 13.6.4.2.6 Landscaping

152 No landscaping requirement currently applies to the SPS zone. Accordingly, the introduction of new requirements for landscaping in proposed Rule 13.6.4.2.6 (as notified, and as amended in the s42a report) entails further constraint to the status quo which is not consequential on the MDRS or Policy 3 and is therefore beyond the scope of an IPI.

153 Scope issues aside, the extent of landscaping required by the proposed rule (10% and tree planting requirements to boundaries) does not appear onerous or inconsistent with the requirements of residential zones that typically surround SPS zones.

Chapter 14 - Residential zones

14.2 Residential policies

154 CGL's submission opposed a number of policies in the residential chapter, insofar that they stipulate prescriptive design requirements that are not otherwise required by, or are inconsistent with, the NPS-UD and Amendment Act. Those policies of concern that remain in the amended provisions accompanying the s42a reports include:

154.1 Policy 14.2.3.7 insofar that this states that increased buildings heights should 'only' be provided for where the matters listed in i-v. of the policy are achieved. Whilst the listed matters are relevant considerations for such proposals, they should not be the *only* considerations. I consider the following (or similar) nuanced wording is appropriate:

'a. Within medium and high density zoned areas, ~~only~~ provide for increased building heights beyond those enabled in the zone or precinct where the following is achieved:

154.2 Policy 14.2.5.1 which stipulates site layout and building design requirements (in clauses (a)(i)-(vii)), in a prescriptive and inflexible manner that conflicts with objective 3.3.2. The policy should be amended to make these considerations or desirable outcomes rather than *requirements* or quasi-rules, as follows or with wording of similar effect:

a. Provide for individual developments in all residential areas (as characterised in Table 14.2.1.1a), which contributes to a high quality environment ~~through~~ and promotes a site layout and building design that:

154.3 Policy 14.2.5.3 which has the same issues as policy 14.2.5.1 above and requires similar moderation as follows:

a. Residential developments of four or more residential units contribute to a high quality residential environment through site layout, building and landscape design ~~to achieve~~ that promotes:

14.5 MDR Zone Rules

155 In terms of MDR zone rules, accounting for *Waikanae,* I agree with the submitter that rules that conflict with or are less enabling than the mandatory MDRS and/or impose additional constraints relative to the status quo require deletion or amendment. Those rules include:

(a) Rule 14.5.2.13(b) – regarding storage space, and

(b) Rule 14.5.2.17 – regarding the location of mechanical ventilation, and

(c) Rule 14.5.2.19 – regarding building length,

which all unnecessarily prescribe design requirements, impose greater regulatory obligations than the status quo, are not required in response to MDRS or Policy 3, and conflict with objective 3.3.2.

156 Rule 14.5.2.2 (an advice note referencing provisions for tree canopy cover and financial contributions) is also inappropriate for the reasons expressed on that chapter earlier in my evidence.

157 Rule 14.5.3.1.3 RD15 is an area-specific restricted discretionary activity for activities not meeting one or more built form standards for RHAs in Rule 14.5.3.2[41]. For the reasons expressed earlier in my evidence regarding RHAs I oppose rule RD15 and the associated built form standards that are specific to RHAs.

14.6 HDR Zone Rules

158 Like the MDR zone rules above and for the same rationale, I also oppose the proposed HDR zone rules that are unnecessarily prescriptive, impose greater regulatory obligations than the status

[41] Being Rules: 14.5.3.2.3 Building Height, 14.5.3.2.7 Residential units per site; 14.5.3.2.8 Setbacks; 14.5.3.2.9 Building coverage and 14.5.3.2.10 Outdoor living space per unit

quo, are not required in response to MDRS or Policy 3, and/or conflict with objective 3.3.2. Those rules include:

(a) Rule 14.6.2.5 which imposes building separation requirements that among other things are disenabling relative to the status quo (no such rule applies).

(b) Rule 14.6.2.6 which replaces existing fencing and screening rules with more onerous and prescriptive requirements than the status quo.

(c) Rule 14.6.2.12 which introduces a building coverage limit of 50%. Whilst this change is depicted in red text in PC14 as a mandatory change per the MDRS minimum standard, this amendment is disenabling to the status quo where no site coverage limit applies.

(d) Rule 14.6.2.11(b) (storage areas), Rule 14.6.2.15 (location of mechanical ventilation) and Rule 14.5.2.19 (building length) all of which are unnecessarily prescriptive and impose greater regulatory obligations than the status quo.

159 For Rule 14.6.2.1, I oppose clause (b) and (c) on the basis that it is unnecessarily prescriptive in a manner that is contrary to objective 3.3.2 being neither clear, concise or easy to understand. To the extent that the rules endeavour to achieve a given design outcome, I question whether that is necessary, and if so, suggest it is better achieved through the urban design rule and principles that otherwise apply to development in this zone.

14.15 Residential assessment matters

160 CGL's submission sought an amendment to assessment matter 14.15.3 concerning impacts on neighbouring property to reference 'planned urban built character' which is accepted in the Council's revised provisions. The submission also sought deletion of the matters in clauses (i)-(xi), however these remain and I consider they are appropriate.

161 I also support the specific assessment matters in clause (c) relating to height breaches, subject to:

161.1 Deletion of the words *'mitigation of the effects of additional height'* in clause (c), on the basis that not all of the subsequent matters are mitigating factors, so they simply need 'considering' as is otherwise prompted by the clause.

161.2 Deletion or simplification of clauses (c)(iii) and (x) noting these are both unnecessarily prescriptive, complex, unclear and seek a multitude of different things.

Chapter 15 - Commercial zones

15.2 Commercial Policies

162 A number of the commercial objectives and policies were supported by CGL, or have been modified in s42a reports in response to CGL's submission points. To the extent that CGL still opposes provisions, I address these below.

163 CGL opposed clauses (a)(x)-(xv) of Policy 15.2.4.2 insofar that these policy requirements are uncertain, unreasonable, and/or do not support the purpose of PC14. I consider these provisions are well intentioned and generally appropriate, and consistent with my evidence above, I consider such provisions can offer a suitable alternative to prescriptive rules (by providing guidance to decision makers and those undertaking urban design or planning assessments of applications). However, the following clauses require amendment to ensure they appropriately frame the outcomes sought:

163.1 Clause xi - Consistent with my evidence above on wind provisions and moderating that framework to manage wind impacts through policy (rather than rules) that is targeted at particularly tall buildings relative to that anticipated (rather than all buildings), I consider clause (xi) should be refined as follows (or with wording of similar effect):

xi. ensuring that the design of development that is distinctly higher than anticipated mitigates the potential for adverse wind-related effects;

163.2 Clause xiv requires moderation given that mixed use zones have mixed character with multi purpose buildings that are designed to accommodate or adapt to a range of uses over time, including residential activity. In this context, a 'high quality of residential development' may be an unrealistic and unreasonably high bar that serves to discourage residential development in mixed use zones. Revised wording as follows would temper the policy without undermining its intent:

xiv. recognising that mixed use zones are in transition and promoting ~~require~~ a high quality of residential development ~~to be achieved~~ to mitigate and offset….

163.3 Clause xv. also requires moderation to avoid it being prescriptively imposed as a rule, particularly given that the term 'large scale developments' is subjective and the lanes, greenways and pedestrian connections sought may not always be practicable or desirable. Again, I consider minor wording changes would be appropriate as follows:

xv. for larger scale developments in Mixed Use Zones, encourage ~~provide for~~ future access lanes, greenways and mid-block pedestrian connections, that will contribute to a finer grain block structure that supports walking.

15.11 CCZ Rules

164 The new or amended residential activity standards in rule 15.11.1.1 P13 (e), (f), (h) and (i) are disenabling relative to the status quo and are therefore beyond scope per *Waikanae*. They are otherwise inappropriate with reference to objective 3.3.2. As such, these amendments should be deleted.

165 Amendments to rule 15.11.1.2 C1(iii) are also disenabling relative to the status quo. The amendments are otherwise unnecessary, noting that if the rules referred to in clause (iii)[42] are breached, they will necessitate resource consent and evaluation under separate rules and assessment matters that deal with distinct matters. Whether a building complies with these standards or not, does not diminish the relevance of the urban design outcomes in rule 15.14.2.6 or the appropriateness of the urban design certification pathway provided for by rule 15.11.1.2 C1. The amendments to this rule should be deleted.

166 Rule 15.11.1.3 RD5(m) and the corresponding built form standards referred to in Rules 15.11.2.14 (tower setbacks), 15.11.2.15 (tower dimensions/coverage), and 15.11.2.16 (tower separation) are unnecessarily prescriptive, are not necessary or appropriate for the purposes of promoting intensification and conflict with objective 3.3.2. To the extent that these rules seek to manage the design of taller buildings, I consider the operative urban design rules[43] and corresponding matters of discretion[44] provide sufficient scope to assess and manage these issues. These are further bolstered by existing and proposed policies for the commercial zones which are relevant considerations for resource consents and provide further guidance on the outcomes sought or encouraged in regards taller buildings. For these reasons, and with objective 3.3.2 in mind especially, I consider these provisions should be deleted.

167 I am unclear on the distinction between Rule 15.11.1.3 RD11 and Rule 15.11.1.4 D1 insofar that these both appear to relate to

[42] Rule 15.11.2.3 Sunlight and outlook for the street; and Rule 15.11.2.12 Maximum road wall height

[43] 15.11.1.2 C1 and 15.11.1.3 RD1

[44] 15.13.2.6, which relevantly considers '*The extent to which the building or use: (i) recognises and reinforces the context of a site, having regard to the identified urban form for the Commercial Central City Business Zone, the grid and diagonal street pattern, natural, heritage or cultural assets, and public open spaces; …(ii) in respect of that part of the building or use visible from a publicly owned and accessible space, promotes active engagement with the street, community safety, human scale and visual interest; (iii) takes account of nearby buildings in respect of the exterior design, materials, architectural form, scale and detailing of the building'*

activities breaching the specific height limits in the vicinity of New Regent Street and Cathedral Square. For the reasons expressed earlier in my evidence on site specific submissions by CGL, I do not support either of these rules insofar that they apply to 184 Oxford Terrace or 129-143 Armagh Street. In the event that such rules were retained, I consider they are most appropriately provided for as restricted discretionary activities given the specific purpose and focus of the rules is sufficiently covered by the matters of assessment listed in RD11.

168 The submitter opposes Rule 15.11.2.12, on the basis that retaining a maximum road wall height rule is at odds with the purpose of PC14 and accordingly this rule should be deleted. I share the submitter's concerns given my experience of the road wall height rule either: acting as a proxy for overall building height given the inefficiencies and challenges of setting upper levels of buildings back from the road wall; or, entailing a significant consenting risk and obstacle given the minimal tolerance for non-compliant road wall heights. Acknowledging that without the rule high road wall heights could eventuate, I favour the management of this issue through the resource consent process by way of the urban design assessment matters described above and other policy provisions.

15.13 CCMUZSF Rules

169 CGL sought that the total allowance (per site or land area) for offices and commercial services in rule 15.13.1.1 P3 be deleted, such that only the maximum tenancy size (of 450m^2 GLFA) applies. The submission acknowledged the desirability of directing large floor plate offices and larger tenants to the CCZ, whilst providing greater scope to accommodate smaller tenants within the CCMUZSF.

170 The revised provisions increase the maximum tenancy size limit (from 450m^2) to 500m^2 per site or per 500m^2 of land area. Whilst this modest change is not explicitly addressed in the s42a reports, Mr Heath's s42a report[45] does describe the critical importance of tenancies above 500m^2 to the CCZ and the potential for significant adverse effects if larger tenancies than this were permitted outside the CCZ. Ms Gardiner's s42a report also echoes Mr Heath's concerns about large scale office tenants leaking from the core area of the CBD[46].

171 However, the requested relief does not seek to enable larger tenancies, it seeks to enable a greater number of smaller tenancies. On the basis that neither Mr Heath nor Ms Gardiner raise any concerns with smaller tenancies, I consider this amendment to be appropriate. I consider there to be limited risk of acting in response to this submission, given that: the requested relief would only apply to a relatively small area of the CCMUZSF that is between the

[45] See paras 9-10 of 27-Tim-Heath-Statement-of-evidence-final.PDF (ihp.govt.nz)

[46] See 8.2.9 of 03-Holly-Gardiner-Section-42A-Report-final.PDF (ihp.govt.nz)

Innovation and Health precincts (where no limits apply to offices or commercial services); there are limited number of undeveloped sites in this location; and the constrained building height and density standards that apply to the zone would limit the extent to which smaller commercial tenancies could establish.

172 The new or amended residential activity standards in rule 15.13.1.1 P13 are opposed for the same reasons described above for the CCZ. Namely, they are disenabling relative to the status quo and are therefore beyond scope per *Waikanae* and they are otherwise inappropriate with reference to objective 3.3.2. As such, these amendments should be deleted.

173 Similarly, the prescriptive requirement in rule 15.13.2.8 for a minimum of 2 floors is a new requirement that is disenabling relative to the status quo and beyond scope. Further, such a requirement is impractical for a mixed use zone that permits a wide range of activities, many of which could not sensibly operate from two level buildings[47].

174 Rule 15.13.2.12 is also a new, disenabling and prescriptive rule requiring minimum glazing that is inappropriate and should be deleted on the basis that it is beyond scope per *Waikanae* and is otherwise contrary to objective 3.3.2.

175 Consistent with my evidence above, I also consider that rules 15.13.2.10 – tower setbacks and 15.13.2.11- tower site coverage should be deleted on the basis that such matters are able to be addressed through the resource consent process by urban design rule 15.13.1.3 RD1 and policies.

<u>15.14 Commercial Matters of discretion</u>

176 Rule 15.14.2.6 sets out the urban design assessment matters for the CCZ and CCMUZs. Matters (a)(i)-(vii) are essentially unchanged from the relatively succinct operative provisions and are supported. However, new matters proposed in the Council's revised provisions include (viii) concerning wind and (ix) concerning various matters for buildings over 28m height.

177 For the reasons stated earlier in regards to wind rules, and the policies in the commercial chapter concerning wind I generally support the assessment of wind effects where that is warranted, and as an alternative to imposing a blanket rule that is onerous or difficult to apply. However, consistent with that earlier evidence I consider the wording of this assessment matter requires amendment, so as to direct its attention towards buildings that are particularly tall (relative to that anticipated) and to not expressly require technical expertise in the form of wind modelling and

[47] For example: 15.14.1.1 P5 recreation facilities, P6 gymnasium, P10 Preschool, P12 spiritual facilities, P15 tertiary education and research facilities.

analysis which is likely to be costly and difficult to procure. Non statutory guidance documents that sit outside the District Plan regarding wind impacts and mitigation could complement this assessment matter and enable wind effects to be assessed and managed, where relevant, without relying on technical input to evaluate the assessment matter and its advice note.

178 Matter (ix) requires that proposal 'demonstrate' achievement of clauses (a)-(e) which follow. Whilst I acknowledge and support the intent of these provisions insofar that they seek to further guide the assessment of taller buildings, I consider they are unnecessarily prescriptive and subjective and concern matters that may be difficult to confirm or assess at the early stage that a resource consent application is made (e.g. signage, lighting, rooftop plant, cumulative effects with other developing buildings nearby). On my reading, the provisions imply that buildings above 28m height will necessarily have adverse effects that need to be managed through exemplary design, which is to be encouraged, but in my view undermines the desire to enable intensification in the NPS-UD and the acknowledgement in Policy 6 that this may have some consequential (but accepted) impacts on amenity. I otherwise consider these provisions are contrary to objective 3.3.2. On this basis, I consider clause (ix) should be deleted or considerably simplified, to simply prompt consideration of how the effects of tall built form have been addressed and managed.

179 Noting the above, I do not support clauses (viii) or (ix) or the related advice note as proposed. I consider that the two clauses could be simplified and amalgamated to simply require the assessment of parts of buildings above 28m height to demonstrate how its potential urban design effects are appropriately managed. That approach could include prompts for specific matters including wind effects, building form and massing, and architectural quality.

180 Assessment matter 15.14.3.1 applies to breaches of maximum building height. I support the operative and proposed matters in clause (a), but consider the proposed new matters in clause (b) have the same issues as I have outlined above for proposed urban design matter (ix). That is, the matters: are unnecessarily prescriptive; technical (e.g. requiring assessments of wind or reflected heat); and may be difficult to fully satisfy despite being a necessary consequence of enabling the greater height and density sought by NPS-UD Policy 3 and its effects as recognised by Policy 6. If the rules permitted generous heights as a starting point, these matters may be appropriate for exceptionally tall buildings. However, on the basis that the permitted height limits are not exceptional, I consider these assessment matters require simplification, or amendment so that they are directed in many cases to buildings that are demonstrably higher than the planned built form.

181 Consistent with my evidence on the corresponding rules, I consider assessment matters for: 15.14.3.35 upper floor setbacks, tower dimension and site coverage; 15.14.3.37 glazing; and 15.14.3.38 outlook spaces are unnecessarily prescriptive and the urban design rule and assessment matters that will otherwise apply provide sufficient discretion to address these matters.

CONCLUSION

182 In conclusion, I consider a number of further amendments to PC14 are necessary and appropriate, in response to the submissions filed by CGL and for the reasons expressed above.

Jeremy Phillips

20 September 2023

Before an Independent Hearings Panel
Appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: proposed Plan Change 14 to the Christchurch District Plan

and: **Carter Group Limited**
(Submitter 824)

Statement of evidence of Dave Compton-Moen (landscape and urban design) on behalf of Carter Group Limited

Dated: 20 September 2023

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STATEMENT OF EVIDENCE OF DAVE COMPTON-MOEN ON BEHALF OF CARTER GROUP LIMITED

INTRODUCTION

1 My full name is David John Compton-Moen.

2 I am a Director at DCM Urban Design Limited, which is a private independent consultancy that provides Landscape and Urban Design services related advice to local authorities and private clients, established in 2016.

3 I hold the qualifications of a Master of Urban Design (Hons) from the University of Auckland, a Bachelor of Landscape Architecture (Hons) and a Bachelor of Resource Studies (Planning and Economics), both obtained from Lincoln University. I am a Registered Landscape Architect of the New Zealand Institute of Landscape Architects (NZILA), since 2001, a Full member of the New Zealand Planning Institute, since 2007, and a member of the Urban Design Forum since 2012.

4 I have worked in the landscape assessment and design, urban design, and planning fields for approximately 25 years, here in New Zealand and in Hong Kong. During this time, I have worked for both local authorities and private consultancies, providing expert evidence for urban design, landscape and visual impact assessments on a wide range of major infrastructure and development proposals, including the following relevant projects:

4.1 2021 – Working for Waimakariri District Council, I prepared Urban Design evidence to assist with Private Plan Change 30 – Ravenswood Key Activity Centre which sought to rezone parts of an existing Outline Development Plan to increase the amount of Business 1 land and remove a portion of Residential 6A land;

4.2 2020-21 – Working for Mike Greer Homes, I worked on the master planning, urban design and landscape design for the following Medium Density Residential and Mixed-Use Developments;

(a) Madras Square – a mixed use development on the previously known 'Breathe' site (90+ homes);

(b) 476 Madras Street – a 98-unit residential development on the old Orion Site;

(c) 258 Armagh Street – a 33-unit residential development in the inner city; and

(d) 33 Harewood Road – a 31-unit development adjacent to St James Park in Papanui.

4.3 2020-21 – Working with Waimakariri District Council, I have assisted with the development of four structure plans for future urban growth in Rangiora and Kaiapoi;

4.4 2020-21 – Working for several different consortiums, I have provided urban design and landscape advice for the following recent private plan changes in the Selwyn District:

(a) Wilfield, West Melton (PC59 and PC67);

(b) Lincoln South, Lincoln (PC69);

(c) Trents Road, Prebbleton (PC68);

(d) Birchs Village, Prebbleton (PC79);

(e) Extension to Falcons Landing, Rolleston (PC75); and

(f) Rolleston Southeast (PC78).

4.5 Acland Park Subdivision, Rolleston – master planning and landscape design for a 1,000-lot development in Rolleston (2017-current). I am currently working with the owner to establish a new neighbourhood centre in the development. The HAASHA development was originally 888 households before we redesigned the development to increase its density to ~14.5hh/ha;

4.6 Graphic material for the Selwyn Area Maps (2016);

4.7 Stage 3 Proposed District Plan Design Guides – Residential (High, Medium and Lower Density and Business Mixed Use Zones) for Queenstown Lakes District Council (2018-2020); and

4.8 Hutt City Council – providing urban design evidence for Plan Change 43. The Plan Change proposed two new zones including a Suburban Mixed-use and Medium Density Residential as well as providing the ability for Comprehensive Residential Developments on lots larger than 2,000m2 (2017-2019). The Medium Density Design Guide was a New Zealand Planning Institute Award winner in 2020.

CODE OF CONDUCT

5 Although this is not an Environment Court hearing, in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state that I am relying on the opinion or evidence of other witnesses. I have not omitted to consider material

facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

6 My evidence will address:

6.1 Site specific heritage matters;

6.2 Cathedral Square height limit; and

6.3 Residential and Commercial Zone chapter provisions.

7 In preparing my evidence, I have reviewed:

7.1 The submissions filed by Carter Group Limited;

7.2 The relevant Section 42A Reports prepared by:

(a) 02 - Andrew Willis;

(b) 03 – Holly Gardiner;

(c) 25 – David Hattam;

(d) 48. Alistair Ray; and

(e) 58. Nicola Williams.

7.3 Section 32A Report - Part 2 - Qualifying Matters (District Plan Chapters 6, 8, 9, 13, 14, 18) (Part 3):

(a) Appendix 29 - Lower Height Limits – Victoria Street, and Cathedral Square - Christchurch City Council; and

(b) Appendix 32 - Arts Centre and New Regent Street Modelling and Sun Studies - Christchurch City Council.

SITE SPECIFIC HERITAGE MATTERS

8 The following sites are affected by Site Specific Heritage Matters which I consider adversely affect the ability for the sites to achieve Objectives 3.3.7 (Well-functioning Urban Environments) and 3.3.8 (Urban Growth, Form and Design). All of the sites play a significant role in the continued development of the central city as the pre-eminent centre for commercial, civic and residential development.

32 Armagh Street

9 I have reviewed the proposed provisions which have an effect on the development of this site for High-density residential development, including:

9.1 Reduced height control;

9.2 Heritage items and settings; and

9.3 Protected trees.

10 The height control limit for this site is 11m. This has reduced from 14m under the current District Plan. At the same time, PC14 has recommended that the height control limit for the majority of Cramner Square be 32m. I consider that this site is part of the Cramner Square 'catchment' and should have an increased height consistent with the rest of the Cranmer Square block. The built form of the block bounded by Gloucester, Montreal, Armagh and Rolleston Ave is similar to the block bounded by Armagh, Cramner Square, Kilmore, and Park Ave with one, two and three storey residential dwellings. Both blocks contain educational buildings (Christs College and Cathedral Grammar respectively) and there are considerable similarities between the blocks except that a 32m height limit is proposed for one block and an 11m height limit proposed for the other. I support the application of a 32m height limit for both blocks to create a strong built edge to Cranmer Square and allow a greater number of residents to enjoy the amenity provided by the urban open space.

11 A 32m height control limit has also been applied to the block at the northern end of Cranmer Square where Cranmer Terraces is currently being completed. It is unlikely this height increase will be realised.

12 The block bounded by Worcester, Montreal, Gloucester, and Park Ave also has a 11m height control overlay but also houses Gloucester Tower, a 35m high 10 storey residential building. The building is larger than the rest of the houses on the block but does not look out of character. Apartment buildings are relatively common through this part of the central city, albeit at a lower level of 4 or 5 storeys, but still taller than the proposed height control limits. I consider this part of the city is ideal for residential intensification as it is close to amenities (parks, museums, shops, hospital) and do not consider that the lowered height control limits reflect either the existing built environment or what should be anticipated in this location. I also consider that taller buildings and intensive developments can successfully coexist with heritage buildings on the same site or within the same block/area. There is no need to adversely hinder the intensification of a site when the heritage values of a building will be unaffected.

13 The photo in **Figure 1** below shows the current view of the cottage and Otari House on the southern side of Gloucester Street. While the Otari villa has a high level of amenity, its boundary fence and boundary planting prevent the villa having a positive relationship with the street environment. Gloucester St is a 20m street corridor which provides a significant break between the heritage houses

fronting the western side of Montreal and 32 Armagh Street. When analysing on the built form of the Gloucester-Montreal intersection there is no consistent form, setback or character. Building height, setback, age, use and design all vary greatly in this block with no coherence or underlying characteristics which would tie the block together. As outlined above, and highlighted by Gloucester Tower it is possible for taller buildings to be built in this area without creating adverse effects.

Figure 1 - Montreal-Gloucester St Intersection

14 On the site itself, the blue cottage building is in severe disrepair and does not add any value to either the built form or amenity of the immediate area. It does however prevent a sizeable part of the lot being developed to its full potential. In 2021, our office prepared a master plan for the site (**Figure 2** below) which would deliver a mix of 2 and 3-bedroom townhouses with a total yield of 54 townhouses. The heritage overlay area reduced this yield by 8 dwellings and when combined with the area removed for the two protected trees, the yield reduced by a further 6 houses.

Figure 2 - Bulk and location plan prepared for 32 Armagh Street

New Regent Heritage Area Interface (129-143 Armagh Street)

15 I understand the city block north of New Regent Street (bounded by Armagh, Manchester and Colombo Streets and Oxford Terrace) has a 90m overlay across entire block with the exception of a 'band' of the block directly opposite New Regent Street which has a 28m height control limit. I understand this is due to concerns of potential shading effects and visual dominance effects on New Regent Street. I have reviewed the Council's shade diagrams[1] prepared for this site and the effect a 90m tower would have on New Regent Street. The diagrams do not take into account the following aspects:

15.1 90m high built structures on either side of the proposed 28m section on the block defined by Colombo, Armagh, Oxford Terrace and Manchester Street;

15.2 Shading caused by the 28m height control on the remainder of the block defined by Gloucester, Colombo, Armagh and Manchester Streets; and

15.3 Shading effects currently experienced from the existing buildings and verandas on New Regent Street.

16 I do not consider that a proposed 90m height control limit on the sites at 129-143 Armagh Street will result in an inappropriate contrast of scale or impact on the architectural and contextual heritage values, nor do I consider that visual dominance is an issue in a central city environment.

[1] PC-13-s32-Appendix-16-Qualifying-Matter-Central-City-Heritage-Interface-Arts-Centre-and-New-Regent-Street.pdf (ccc.govt.nz)

17 Contrast of scale is common in urban areas where cities protect heritage buildings and/or gardens while also allowing cities to develop and grow. Inner cities are typically characterised by a mix of architectural styles and scales. Whether a building is 28m or 90m, there will be a contrast of scales between it and the two-storey, 8m high buildings in New Regent Street. This is not considered a negative aspect though. Pacific Tower is an existing example where there is contrast between the taller building and New Regent Street. If anything, having taller buildings around the street will help define it as a space rather than the current situation where there is little sense of enclosure.

18 For 129-143 Armagh Street, the road corridor provides a suitable buffer between the heritage buildings on New Regent Street and any future development on the site, also noting that the two end units on New Regent Street are new builds and relatively modern. The two modern units at the northern end of New Regent Street do have a role to play in relating to the heritage buildings and not impacting on their architectural integrity as they physically touch. 129-143 Armagh Street, however, is physically separate from New Regent Street, negating potential visual dominance effects.

CATHEDRAL SQUARE HEIGHT LIMIT

19 With reference to paragraphs 124-128 of Mr Willis' evidence, I largely agree that a 45m height limit should surround Cathedral Square with the exception of 170-184 Oxford Terrace. This site is located on Oxford Terrace and is 54m from Cathedral Square – I do not consider it part of the Cathedral Square precinct.

20 I have reviewed the proposed 45m height control for the site at 170-184 Oxford Terrace and prepared a series of images and shade diagrams to show how the building would relate to the adjoining buildings and the extent of shading created by a 90m tower (**Appendix 1**).

21 A series of different viewpoints were visited and a 90m building modelled. Of key interest was to determine whether a 45m or 90m building would relate better to the adjoining Te Pae and Midland building, both of which have a 90m height control overlay. I consider there is no benefit in limiting any future on this site to 45m. The site, immediately adjacent to the Ōtākaro-Avon River corridor, and any development would enjoy expansive views of the open space and Victoria Square. Whether the building is 45m or 90m, neither building will achieve a consistent form to that of Te Pae or the Midland building.

22 The 90m building provides legibility benefits for the city centre as well as provide more development potential without creating adverse effects.

23 The Rydges Hotel building is 60m in height. Any proposed buildings around the north-western corner of Cathedral Square could be 45m in height. These buildings, along with the Rydges Hotel, have been modelled and incorporated into the shade diagrams.

24 The diagrams show that a 90m tower creates a Very Low magnitude of change of additional shading issues over Cathedral square when the buildings on the north-western corner are built to 45m.

24.1 In winter, a 45m building on the site and on the north-western corners of the square create shade across Cathedral Square from 2-4pm in the afternoon. There is no additional shading on the Square caused by a 90m building on the 170-184 Oxford Terrace site.

24.2 In spring/autumn equinoxes, shade from the 90m tower falls onto the parking building on the northern side of Worcester Boulevard from 12pm and moves round to fall on a new 45m building on the old Grant Thornton site. A small section of the square, highlighted green on page 14 of Appendix one, is shaded from 3pm through to 5pm.

24.3 In summer, Cathedral Square is not affected by a 90m high building.

25 I consider that 170-184 Oxford Terrace should have a 90m height control overlay as per the Midland Building and Te Pae sites. This is also confirmed by the diagrams and discussion in PC14 – Section 32: Lower Heights Limits: Victoria St and Cathedral Square Qualifying Matter - Appendix 3: Cathedral Square Sunlight Study which recommends Scenario 3 45m Adjacent, 90m key sites. This scenario is recommended by the author, noting that 170 Oxford Terrace shades Cathedral Square less than 732 Colombo Street which is proposed to have a 90m height control.

RESIDENTIAL AND COMMERCIAL ZONE

26 With respect to specific rules in the Residential and Commercial Zone chapters, I have read and agree with the evidence of Mr Phillips who details the changes sought. Many of the rules are considered overly prescriptive, have a high potential to lead to poor design outcomes, do not provide for the diversity of lot shapes within the central city, and are not necessary when there are urban design controls/certification already in place which promote a more holistic design approach.

Dave Compton-Moen

20 September 2023