

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

**LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL ON
PROPOSED PLAN CHANGE 14:**

CITY-WIDE QUALIFYING MATTERS

FINANCIAL CONTRIBUTIONS

Dated: 8 April 2024

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitors Acting: **Dave Randal / Cedric Carranceja**
Email: david.randal@buddlefindlay.com / cedric.carranceja@buddlefindlay.com

Tel 64 4 462 0450 / 64 3 371 3532
Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 These legal submissions on behalf of the Christchurch City Council (**Council**) are for weeks 9 and 10 of the hearing on Proposed Plan Change 14 (**PC14**). The submissions address the following city-wide qualifying matters (**QMs**):

(a) coastal hazards;

(b) trees;

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

(d) other infrastructure QMs, namely:

(i) city spine transport corridor;

(ii) wastewater constraint area;

(iii) electricity transmission corridors and infrastructure;

(iv) Lyttelton Port overlay; and

(v) NZ Rail network interface.

1.2 These submissions also address the financial contributions provisions proposed by the Council in PC14, which relate to tree canopy cover.

1.3 Below counsel provide an overview of the legal and planning framework and the Council's overall approach relating to city-wide QMs and financial contributions, and briefly address:

(a) the key issues arising from submissions and evidence; and

(b) the Council's position, updated as relevant, in respect of the QMs and the financial contributions relating to tree canopy cover.

2. WITNESSES FOR THE COUNCIL

2.1 The city-wide QMs and financial contributions addressed as part of this hearing topic are addressed in the section 42A reports prepared by:

(a) Sarah Oliver (airport noise, coastal hazards, city spine, wastewater constraint area, and other infrastructure QMs);

- (b) Brittany Ratka (trees QMs); and
 - (c) Anita Hansbury (financial contributions).
- 2.2 The following technical experts will also give evidence at this hearing (and are scheduled to appear in the following order):
- (a) Damian Debski (coastal inundation risk);
 - (b) Derek Todd (coastal erosion; on reflection, a more logical order would be for Mr Todd to appear before Mr Debski, which counsel will take up with the Panel's secretariat);
 - (c) Dr Emily Lane (tsunami risk);
 - (d) Rebecca Foy (social impacts – coastal hazards);
 - (e) Phil Osborne (economics – airport noise, coastal hazards, financial contributions, city spine);
 - (f) Michele McDonald (wastewater infrastructure);
 - (g) Chris Morahan (transport – city spine, airport noise);
 - (h) William Field (urban design – city spine);
 - (i) Hilary Riordan (landscape architecture – trees);
 - (j) Dr Andrew Benson (arboriculture);
 - (k) Dr Colin Meurk (tree canopy biodiversity);
 - (l) Toby Chapman (arboriculture); and
 - (m) Dr Justin Morgenroth (arboriculture and ecosystem services).
- 2.3 In addition, Marcus Langman is a consultant planner who has prepared evidence relevant to these topics on behalf of the Council as submitter.
- 3. QUALIFYING MATTERS: LEGAL AND PLANNING FRAMEWORK**
- 3.1 The statutory provisions relevant to consideration of an Intensification Planning Instrument (**IPI**), including PC14, are set out in the Council's Strategic Overview legal submissions dated 3 October 2023.¹

¹ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/00-Opening-Legal-Submissions-for-CCC.pdf>.

- 3.2 The Strategic Overview legal submissions and the s42A report of Sarah Oliver describe the use of QMs by the Council in PC14.²
- 3.3 To reiterate, sections 77J, 77K and 77L (in relation to residential zones) and sections 77P, 77Q and 77R (in relation to non-residential zones) set out the requirements for evaluation of QMs. These requirements differ for QMs that are:
- (a) existing QMs that are operative in the relevant district plan when the IPI is notified and relate to a prescribed matter, which must be assessed under sections 77K and 77Q;
 - (b) new QMs that are notified in the IPI and which relate to a prescribed matter, which must be assessed under sections 77J and 77P; or
 - (c) other QMs under sections 77I(j) or 77O(j) which do not relate to a prescribed matter and which must be subject to an additional site-specific evaluation required by sections 77L or 77R (as well as assessment under sections 77J and 77P).
- 3.4 The applicable evaluation requirements for each city-wide QM considered in these hearing weeks are set out in the sections below.

4. COASTAL HAZARDS

- 4.1 The QMs relating to coastal hazards proposed as part of PC14 are the:
- (a) Coastal Hazard High Risk Management Areas and Coastal Hazard Medium Risk Management Area (together, the **CHMA**), which relate to risks from coastal inundation and erosion; and
 - (b) Tsunami Management Area (**TMA**).
- 4.2 These QMs are not 'existing QMs' because they were not in the district plan at the time of notification of PC14, but they are prescribed QMs in terms of sections 77I(a), 77I(b), 77O(a), and 77O(b) because they:
- (a) relate to a matter of national importance that decision-makers are required to recognise and provide for under section 6 of the Resource

² Opening legal submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023, paragraph 3.33 to 3.39; Section 42A report of Sarah Oliver, paragraphs 6.16 to 6.23, and 8.11 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/01-Sarah-Oliver-Section-42A-report-final.PDF> and a corrected version at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/01-Sarah-Oliver-Section-42A-report-With-corrections-10-October-2023.pdf>.

Management Act 1991 (**RMA**), namely, the management of significant risks from natural hazards under section 6(h); and

- (b) give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**), particularly policy 25 which directs decision-makers, in areas potentially affected by coastal hazards over at least the next 100 years, to:

"a. avoid increasing the risk of social, environmental and economic harm from coastal hazards;

b. avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards; (...)

f. consider the potential effects of tsunamis and how to avoid or mitigate them;" and

- 4.3 These QMs also relate to other matters to which the district plan must give effect under section 75(3), including various provisions in the Canterbury Regional Policy Statement (**CRPS**) relating to flooding and coastal hazards.³
- 4.4 All relevant residential zones impacted by the CHMAs and TMA are proposed to retain Operative District Plan zoning (i.e. Residential Suburban Zone (**RS**), Residential Medium Density (**RMD**), or Residential Suburban Density Transition Zone (**RSDT**)).
- 4.5 PC14 as notified proposed new rules proposed within the CHMAs to manage intensification in these areas, including through controls on subdivision and new, replacement, and accessory buildings, as well as extensions/additions to existing buildings. For example, the addition of a new (non-replacement or accessory) building would be a discretionary activity if located within the medium-risk CHMA or non-complying if located within the high-risk CHMA.⁴
- 4.6 PC14 as notified also proposed a new rule within the TMA providing that residential intensification that does not meet permitted or controlled activity standards under the operative provisions would be a non-complying activity.

³ Objective 11.2.1, Policies 11.3.1 and 11.3.2 of the CRPS.

⁴ Proposed rules under sub-chapter 5.4A as notified.

- 4.7 However, having considered submissions, Ms Oliver has proposed changes to the notified version of PC14 so that:
- (a) the spatial extents of the CHMAs and TMA apply only to relevant residential zones and business zones; and
 - (b) amendments so that the scope of the rules only manage development that results in a density greater than that provided for under the Operative District Plan.⁵
- 4.8 Ms Oliver will address the Panel in more detail regarding the mechanics of these provisions, which draw on a new proposed definition of "*residential intensification*" to ensure that lawfully established activities or those permitted under the operative zoning are not captured by the new QM controls.
- 4.9 Separately, the Council has been working on a plan change to introduce coastal hazards provisions in the District Plan, known as Plan Change 12, which will be able to respond to the outcomes of PC14.
- 4.10 The key issue in dispute is the appropriate tsunami return event to be used as the basis for the TMA's spatial extent. Given the precautionary approach mandated by the NZCPS (among other matters), intensification should not be facilitated in areas that will be inundated over 30cm in the 1:500-year return event (with 1.06m sea-level rise), which has a 19.3% likelihood of occurring between now and 2130.⁶ Less appropriate would be modelling and planning for a 1:100-year event, which has a 65.9% chance of occurring in the same timeframe.

5. TREES

- 5.1 The Schedule of Significant Trees in Appendix 9.4.7.1 (**Schedule**) sets out those trees that are protected in accordance with the provisions of chapter 9.4 of the District Plan.
- 5.2 The trees in the Schedule can be split into three categories in terms of how they are treated in PC14:
- (a) **Heritage trees**, which are those trees identified as being at or over 100 years in age, such that they have heritage value warranting protection

⁵ Section 42A report of Sarah Oliver, 4th and 5th rows of table on page 38, paragraphs 13.11 and 13.12, paragraph 13.26 (pages 125 to 128), paragraphs 13.35 to 13.38, and paragraph 13.44 (pages 133 to 134).

⁶ Evidence of Dr Emily Lane, paragraph 11.

in accordance with section 6(f) of the RMA. The heritage trees have been evaluated as an existing QM in accordance with s77J and s77P.

- (b) **Other significant trees**, which are those trees that have non-heritage related values that justify QM status due to the social, cultural and ecological services that scheduled trees provide for Christchurch, which contribute to well-functioning urban environments. These trees have been evaluated as 'other QMs' in accordance with s77J, 77L, 77P, and 77R.
- (c) **Non-QM trees**, which are those trees that are proposed to remain on the Schedule but will not 'qualify' the MDRS and Policy 3 of the NPS-UD. For example, there are a number of trees in the schedule that are not QM trees because they did not meet the updated Christchurch Tree Evaluation Method (**CTEM**) assessment criteria, or trees that were not able to be re-assessed, or they are not within areas to be intensified, such as Banks Peninsula or rural zones.⁷ Works to, and within the tree protection zone radius of, a non-QM tree will be permitted where associated with residential development within medium and high density residential zones which comply with all the built form standards, and development within commercial centres which complies with building height (i.e. MDRS and Policy 3 enablement). Where the residential built form standards and commercial building heights are not complied with, the other rules in chapter 9.4 will then apply, including standards on pruning, felling, gardening and works within the tree protection zone radius.

5.3 The Schedule and the provisions of chapter 9.4 are proposed to be amended to reflect the different classifications above. No additions or removals from the Schedule are proposed through PC14.

5.4 The only other change to chapter 9.4 proposed through PC14 is to replace the phrase 'dripline' with 'tree protection zone radius'. This new definition would mean the protection area around a scheduled tree would be equivalent to 15 times the trunk diameter (measured at trunk height of 1.4m above ground level), up to a maximum of 15m. This is considered necessary as the current 'dripline' method often fails to capture a sufficient extent of a tree's root system to provide it with the necessary protection

⁷ See for example [rebuttal evidence of Brittany Ratka dated 9 October 2023](#), at paragraph 47.

during construction,⁸ and PC14 (as notified) proposes to introduce that methodology generally, as a 'related provision' consequential on the MDRS and policy 3, in terms of section 80E(1)(b)(iii).

5.5 In summary, in response to submissions and submitter evidence, Ms Ratka:

- (a) does not support the removal of certain trees from the schedule;⁹
- (b) proposes minor changes to the PC14 notified rules in chapter 9.4 to consolidate the non-QM tree permitted works for intensification under MDRS and Policy 3;
- (c) proposes some amendments to 'tree protection zone radius' wording, but prefers that the operative 'dripline' wording not be retained; and
- (d) proposes some amendments to the tree protection zone radius provisions as it applies to Riccarton Bush/Pūtarangamotu (such that a 10m setback for permitted residential development, and a 15m for development exceeding the permitted number of units or building height, apply and are measured from the predator proof fence).¹⁰

5.6 Ultimately, the identification of scheduled trees as a QM is only a limited restriction on enabling increased intensification and density because it will still allow for medium and high-density urban development to be undertaken outside of the protective radius of the trees. The benefits of protecting scheduled trees are that they promote well-functioning urban environments that are more resilient to the effects of climate change. It is an important method toward achieving 'density done well'.

6. AIRPORT NOISE QM

6.1 The Airport Noise QM provides for the management of noise-sensitive activities within the 50dBA Air Noise Contour for the Christchurch International Airport (**50dBA contour**). It is not understood to be in dispute that the Airport is nationally significant infrastructure, for the purposes of section 77I(e) and 77O(e).

6.2 There are two aspects to the Airport Noise QM:

- (a) The first aspect is to only provide for "*new development*" that does not affect the efficient operation, use, development, and appropriate

⁸ Evidence of Andrew Benson, dated 11 August 2023, at paragraph 36.

⁹ Rebuttal evidence of Brittany Ratka, dated 9 October, at paragraph 12.

¹⁰ Rebuttal evidence of Brittany Ratka, dated 9 October, at paragraphs 42 and 43.

upgrading of the Airport, as required by CRPS policy 6.3.5(4). That policy seeks to avoid noise sensitive activities within the 50dBA Air Noise Contour unless within an *"existing residentially zoned urban area"* or a residential greenfield priority area identified in Map A of the CRPS. The previous IHP for the Replacement Christchurch District Plan noted that the reference to *"existing"* in CRPS policy 6.3.5(4) means existing as at 6 December 2013, being the date when policy 6.3.5(4) became operative. Accordingly any *"new development"* beyond intensification enabled under existing residential zones as at 6 December 2013 must still be considered under CRPS policy 6.3.5(4).

(b) The second aspect is to manage people's exposure to aircraft noise and associated impacts on their health and well-being.

- 6.3 The technical reports and section 32 evaluation supporting the Airport Noise QM and its aspects noted above were commissioned by Christchurch International Airport Limited (**CIAL**), but the Council has adopted them as its section 32 assessment, which has also been supplemented through the evidence of Ms Oliver.
- 6.4 The notified Airport Noise QM was based on the 50dBA Ldn Annual Average noise contour (overall annual average runway usage), with areas beneath the contour retaining the operative plan zoning. Within the contour, residential activities not meeting the permitted or controlled activity density standards would require resource consent as a restricted discretionary activity.
- 6.5 The Council's Amended Proposal is for the Airport Noise QM to be based on the Updated (2023) 50dBA Ldn Outer Envelope noise contour (composite of four worst-case contours, with each representing the highest runway usage on each runway over a 3-month period).
- 6.6 However, as Ms Oliver explains in her rebuttal, there is uncertainty in the expert evidence regarding the appropriate airport noise contour for use as a QM.¹¹
- 6.7 For the purposes of PC14 and prior to resolution of that issue through the upcoming CPRS review, and as an alternative to the position put forward in her section 42A report, Ms Oliver proposes that the Updated (2023) 50dBA Ldn Outer Envelope noise contour be used as a basis for a Provisional

¹¹ Rebuttal evidence of Sarah Oliver dated 9 October 2023 at paragraph 16.

Airport Noise QM. This approach would retain the Operative District Plan zoning for the impacted area, until after the CRPS review process has been completed (notification expected in Dec 2024). A subsequent plan change will be required to give effect to any changes to the CRPS airport noise policy and any related provisions.¹²

- 6.8 The Airport Noise QM is a section 77I(e) existing matter in respect of the areas to which it currently applies. CIAL's position is that the new spatial extent can also be classified as an 'existing QM' because, in summary, the Operative Plan (as well as enabling the airport's activities through CIAL's designation) already has an operative framework for managing development within the 50dB Ldn Air Noise Contour, and the proposed new extent is an updated version of that. While the Council agrees with this position it is moot because, in any event, the entire QM (including the new spatial extent) has been assessed in accordance with section 77J.

7. Other **NATIONALLY SIGNIFICANT INFRASTRUCTURE QMS**

- 7.1 There are three other QMs relating to nationally significant infrastructure as referenced in sections 77I(e) and 77O(e). These are existing QMs which, respectively, are intended to ensure the safe and efficient operation of:

- (a) **The Lyttelton Port:** this QM proposes to carry over rules that are in the Operative District Plan for the Lyttelton Port Influence Area. This includes rules for managing reverse sensitivity effects from the port by controlling land use within the Lyttelton Port Influences Overlay. Similar controls are proposed in respect of the Inland Port at Woolston, which Ms Oliver supports (subject to a potential issue regarding an impingement on existing development rights).
- (b) **Railways:** this QM proposes to carry over rules from the Operative District Plan that place limitations on the location of buildings in proximity to the rail corridor. Any new building within the rail corridor setback is a non-complying activity; and
- (c) **Electricity transmission corridors:** this QM proposes to carry over rules from the operative district plan which place limitations on the location of buildings in proximity to electricity distribution and

¹² Rebuttal evidence of Sarah Oliver dated 9 October 2023 at paragraph 21.

transmission corridors.¹³ Any new building within the corridor setbacks is a non-complying activity. The NPS-UD identifies the National Grid transmission network as being 'nationally significant infrastructure', while the remaining lines (see footnote 13) are 'regionally significant infrastructure' in the CPRS.¹⁴ The sections of the Orion network covered by this QM are 'regionally' rather than 'nationally' significant, and are therefore an 'other' QM for the purposes of sections 771(j) and 770(j), rather than a prescribed QM under sections 771(e) and 770(e).

7.2 There are no submissions in opposition to these QMs.¹⁵ Ms Oliver does not support any submissions seeking amendments to the provisions as notified, including:

- (a) A request from KiwiRail that the rail boundary setback is increased from 4 metres to 5 metres. Ms Oliver does not consider that the marginal increase would provide any tangible benefit to justify the loss of development potential.¹⁶
- (b) A request from Kāinga Ora - Homes and Communities to reduce the extent of Orion's network covered by the QM and, separately, a request by Orion to increase the extent of its network covered by the QM. Ms Oliver does not support these submission points, as she considers the extent of the QM should reflect those aspects of the electricity distribution that are regionally significant in accordance with the CRPS.¹⁷

8. WASTEWATER CONSTRAINT AREAS QM

8.1 The wastewater constraint areas QM reflects major wastewater constraints within parts of Aranui, Shirley and the Prestons areas where vacuum sewer systems are at or near capacity. There are no immediately feasible alternative options to service greater intensification of these areas.

8.2 This is an 'other' QM for the purposes of 771(j) or 770(j).

¹³ PC14 includes setbacks from Electricity Transmission Corridors (220kV, 110kV and 66kV National Grid lines, and 66kV, 33kV electricity distribution lines, and the 11kV Heathcote to Lyttelton electricity distribution line, with these corridors identified as a QM.

¹⁴ Defined as 'strategic infrastructure' in the CRPS.

¹⁵ Council understands that Kāinga Ora no longer pursues its initial position opposing the railway corridor QM (as explained in the evidence of Mr Tim Joll at paragraphs 7.1 to 7.3).

¹⁶ Section 42A report of Sarah Oliver at paragraphs 12.84 to 12.85.

¹⁷ Which reflects the definition of 'strategic infrastructure' in the CRPS.

- 8.3 In terms of rules, the impact of the QM where the relevant overlay applies is to:
- (a) retain existing subdivision rules relating to wastewater (8.4.1.3 and 8.6.8); and
 - (b) add a new rule (8.9A.3) requirement that new development that discharges wastewater into the vacuum sewer would require resource consent as a restricted discretionary activity.
- 8.4 There were no submissions opposing the QM, and Ms Oliver does not support any submissions seeking amendments to the provisions as notified.

9. CITY SPINE QM

- 9.1 The City Spine QM provides for a building setback applying to parts of the main northern and western corridors where the road width is 24m or less. In particular, the relevant proposed rules require a 4m setback in residential zones.¹⁸
- 9.2 This is an 'other' QM for the purposes of 77I(j) or 77O(j).
- 9.3 The City Spine Transport Corridor has been identified under a number of planning and transport plans as a core public transport route connecting major centres from the north and west, including the Greater Christchurch Spatial Plan that has been adopted by all councils in Greater Christchurch.¹⁹ The corridor is planned as a city-shaping corridor to attract the greatest population densities, connecting the city to the neighbouring districts of Selwyn and Waimakariri.²⁰ The City Spine QM is multi-purpose, in that it seeks to provide for a level of amenity (particularly in requiring adequate space for tree planting along the road frontage), while also ensuring that new builds do not significantly compromise future transport options for the corridor.
- 9.4 In response to submissions, Ms Oliver recommends the deletion of two assessment matters (relating to road widening matters),²¹ but that that no change is made to the proposed rules.²² She disagrees with submitters who

¹⁸ Rule 14.5.2.18 in the Medium Density Residential Zone and rule 14.6.2.17 10.2 in the High Density Residential Zone.

¹⁹ <https://greaterchristchurch.org.nz/urbangrowthprogramme/greater-christchurch-spatial-plan/draft-greater-christchurch-spatial-plan>

²⁰ Section 42A report of Sarah Oliver at paragraph 12.109.

²¹ Assessment matters 14.15.j.ii and ii.

²² Section 42A report of Sarah Oliver at paragraphs 12.120 and 12.121.

consider a designation would be more appropriate, noting that advancing a designation process ahead of important corridor decisions being made would be inefficient.²³

10. FINANCIAL CONTRIBUTIONS: LEGAL AND PLANNING FRAMEWORK

10.1 Section 77E(1) of the RMA, introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, provides that local authorities may make rules requiring financial contributions for any class of activity other than a prohibited activity.²⁴ This confirms that financial contributions may be charged for a permitted activity, rather than being solely a matter for conditions under section 108.

10.2 The accompanying Section 77T provides that the Council:

"(...) may (...) include financial contributions provisions (...) in the district plan, and, if it does so, may notify them in the IPI required to be notified in accordance with section 80F."

10.3 That is reflected in section 80E(1)(b)(i), which confirms that an IPI may include *"provisions relating to financial contributions"*.

10.4 There are no limitations specified in sections 77E, 77T or 80E in terms of the purpose or scope of financial contribution provisions notified in an IPI.

10.5 Relying on these sections of the RMA, the Council notified a package of new financial contribution rules (and associated provisions) in its IPI. For completeness, these are not qualifying matter provisions (there is no 'tree canopy cover QM').

10.6 The provisions:

- (a) address the importance of retaining (and adding to) the city's tree canopy cover, particularly in residential areas; and
- (b) respond to the likely adverse effects of residential intensification on the environment, including on tree canopy cover and its benefits.

10.7 The scheme of the provisions is that, for new residential subdivision / development in residential zones:

²³ Section 42A report of Sarah Oliver at paragraphs 12.112 and 12.113.

²⁴ The section 108(9) definition of 'financial contribution' is specifically applied by section 77E(4) – put simply, it covers money, land or a combination of the two.

- (a) an appropriate level of tree canopy cover must be provided at the development site (and any new road corridors); or
 - (b) a financial contribution must be paid to the Council, to enable the Council to provide the equivalent tree canopy cover as close as practicable to the development site.
- 10.8 The Council's preference is for tree canopy cover to be provided by developers, on the land being developed. However, the provisions provide developers with the option of instead paying financial contributions, so that the Council can provide the equivalent tree canopy cover instead.²⁵
- 10.9 Together, and as required by section 77E(2), the package of financial contributions provisions (and in particular the proposed rules) specify:
- (a) the purpose for which the financial contribution is required;
 - (b) how the level of the financial contribution will be determined; and
 - (c) when the financial contribution will be required.

Overview of the financial contributions provisions

10.10 PC14 proposes a new clause (ii)(E) to strategic objective 3.3.10 (Natural and cultural environment), providing that tree canopy cover in areas of residential activity is an important natural resource with specifically recognised values to be appropriately managed.

10.11 The specific objective (or purpose) for the provisions is set out in the new sub-chapter 6.10A (Tree Canopy Cover and Financial Contributions):²⁶

"Tree canopy cover in areas of residential activities is enhanced through maintaining existing trees and/or planting new trees as part of new residential development to sequester carbon from emissions, reduce stormwater runoff, mitigate heat island effects, and improve the city's biodiversity and amenity."

10.12 The policy provisions implementing that objective are:²⁷

²⁵ Section 42A report of Anita Hansbury at 6.6.7; evidence of Toby Chapman at [68].

²⁶ Objective 6.10A.2.1 (this is the only objective in the new 6.10A).

²⁷ Policies 6.10A.2.1.1, 6.10A.2.1.2, 6.10A.2.1.3.

- (a) To ensure that subdivision / development in residential zones achieves tree canopy cover of 20% of the development site – via the provision of new tree canopy cover, or the retention of existing tree canopy cover.²⁸
- (b) To ensure the cost of providing the required tree canopy cover (including provision of land) is met by the developer. Where the necessary level of tree canopy cover is not provided at the development site, financial contributions are to be paid to enable equivalent off-site tree planting by the Council as close as practicable to the development site.
- (c) To ensure the planting of trees is carried out appropriately, to maximise healthy growth and minimise nuisance and other effects.
- (d) Where subdivision consents associated with the development of sites for new residential units are issued, to register consent notices against the relevant titles to ensure that the tree canopy cover requirements are achieved and maintained.

10.13 The associated rules apply to development resulting in one or more new residential units or allotments in the residential zones, and to brownfield sites subject to comprehensive residential development. The rules are contained in:

- (a) Sub-chapter 6.10A:
 - (i) The requirement to provide either the necessary tree canopy cover or the equivalent financial contribution is an activity standard to permitted activity residential development. The permitted activity standard incorporates references to more detailed provisions for calculating the tree canopy cover or financial contribution that is required, standards for planting, and the requirement for consent notices to be registered.²⁹
 - (ii) Where that permitted activity standard is not met, restricted discretionary activity status applies, with the matters of discretion

²⁸ For subdivision / development in residential greenfield areas and brownfield sites subject to comprehensive residential development, there is an additional policy (6.10A.2.1.1(a)(ii)) to achieve tree canopy cover over 15% of the associated future road reserve.

²⁹ See 6.10A.4.1.1 - rules P1 and P2, and associated activity specific standards.

relating to the non-compliance with the tree canopy cover / financial contribution requirement.³⁰

(iii) 6.10A also includes:

- (1) The required standards and calculations (including online calculator) for the provision of tree canopy cover;³¹ and
- (2) The required standards and calculations (including online calculator) for the payment of financial contributions (where that is the option selected by the developer);³²

(b) Chapter 8 (Subdivision):

- (i) Specifying the requirement for consent notices to secure the tree canopy cover requirements, including an ongoing obligation to maintain the tree canopy cover including by replacing trees as necessary.³³ Under section 221 of the RMA, consent notices are specifically intended to address situations where a condition of consent is to be complied with on a continuing basis, including by subsequent owners. Consent notices create an interest in the land and may be registered by the Council against the title.
- (ii) The provision of the necessary tree canopy cover or the equivalent financial contribution is a new matter of control / discretion applying to the relevant controlled activity and restricted discretionary rules for subdivision.³⁴

10.14 The built form standards in Chapter 14 (Residential Zone) refer plan users back to the tree canopy cover / financial contributions requirements in Chapter 6.10A. In particular, the 'landscaped area and tree canopy cover' standard applicable in the Medium Density Residential Zone (14.5.2.2) applies the MDRS standard requiring a minimum 20% landscaped area for each site. The advice note then refers back to the tree canopy cover requirements in 6.10A.

³⁰ See 6.10A.4.1.3 - rules RD1 and Rd2, and the associated matters of discretion "*Tree canopy cover and financial contributions – Rule 6.10A.5.1*".

³¹ 6.10A.4.2.1.

³² 6.10A.4.2.2. In terms of section 77E(2), this provision addresses both how the level of financial contribution will be determined, and (at 6.10A.4.2.2(b)) specifies that financial contributions must be paid before any survey plan approval certificate or Building Act code of compliance certificate is issued.

³³ 8.3.7. This requirement is also set out in 6.10A.4.2.3.

³⁴ As listed in the activity status tables at 8.5.1.2 (controlled activity subdivision) and 8.5.1.3 (restricted discretionary activity subdivision). The detail of the matter of control / discretion is at 8.7.11.

- 10.15 Importantly, the 20% tree canopy cover for the development site can be located:
- (a) on any part of the development site (and does not need to be associated with each individual residential unit); and
 - (b) in combination with / occupying the same area as the required landscaping area (also 20% of the site).
- 10.16 On that basis, the tree canopy cover requirement is not additional to the MDRS 'landscaped area' density standard in clause 18 of Schedule 3A of the RMA.

Submissions and the Council's response

- 10.17 Ms Hansbury addresses the submissions received in respect of the financial contributions / tree canopy cover provisions in detail in her section 42A report.³⁵ The provisions generated significant interest, with both a large number of submissions in support of the provisions and a large number in opposition to them.
- 10.18 Ms Hansbury notes that a number of submissions in fact seek more stringent requirements than the Council is proposing (for example, that the canopy cover required be increased to 25% or 30%, and that the provisions also be applied beyond the residential zones).³⁶
- 10.19 Key themes of the submissions in opposition to the provisions (and associated evidence) include:
- (a) the clarity and workability of the provisions, and whether they will be able to be enforced by the Council;
 - (b) that the tree canopy cover requirements are unduly onerous, and / or inconsistent with the spatial outcomes sought / site coverage requirements of the NPS-UD and MDRS; and
 - (c) that the quantum of financial contributions required (where tree canopy cover is not provided onsite) is too high.
- 10.20 Ms Hansbury has carefully considered the submissions and evidence, in respect of the overall basis / justification for the provisions, as well as their

³⁵ Section 42A report of Anita Hansbury, pp 51 – 101.

³⁶ Section 42A report of Anita Hansbury at 6.6.2 – 6.6.9.

workability and clarity. Her detailed responses on those matters are set out in her section 42A report and rebuttal evidence.

- 10.21 The Council acknowledges that the provisions will have financial and economic implications, which are addressed by Mr Osborne in his economics evidence for the Council. However, as Ms Hansbury reiterates:
- (a) the financial contributions have been set at a level which reflects the true cost of providing tree canopy cover in close proximity to development, including the cost of land;
 - (b) financial contributions will only be required where developers choose not to provide the necessary level of tree canopy cover onsite; and
 - (c) the 20% tree canopy cover area can be located in whole or in part within the 20% landscaping area already required under the MDRS. If developers take that approach, there will be no additional site area 'lost' and unavailable for residential units.
- 10.22 Mr Osborne also addresses these 'mitigating factors' in his rebuttal evidence, along with his overall view that the economic costs of the provisions *"should be appropriately considered in relation to the wider non-economic considerations of the tree canopy provision"*.³⁷
- 10.23 The section 32 reporting and expert evidence for the Council, drawn together by Ms Hansbury in her section 42A report and rebuttal evidence, establishes the significant benefits of urban tree canopy cover. These benefits go well beyond amenity values – key additional benefits include:³⁸
- (a) carbon sequestration and storage;
 - (b) improving urban air quality;
 - (c) attenuating storm-water flooding;
 - (d) mitigating the effects of urban heat islands; and
 - (e) providing habitat for urban wildlife.
- 10.24 Those benefits are directly correlated to the potential adverse effects of residential intensification.³⁹ The Council, and Ms Hansbury, consider that

³⁷ Rebuttal evidence of Phil Osborne at [9].

³⁸ See the evidence of Justin Morgenroth at [23]. Also see the evidence of Dr Colin Meurk, and of Anita Hansbury.

³⁹ Section 42A report of Anita Hansbury at 5.2.2.

the financial contribution and tree canopy cover provisions are appropriate and justified in light of those benefits.

10.25 Council has endeavoured to ensure that the provisions are clear and can readily be applied by plan users, including in particular in determining the level and details of tree canopy cover requirements for any particular site, or alternatively what quantum of financial contribution would be payable. Mr Chapman, the Christchurch City Urban Forest Manager, addresses a number of practical matters raised in submissions in his evidence.⁴⁰

10.26 In her rebuttal evidence, Ms Hansbury acknowledges that some minor wording changes or clarifications could be proposed through the hearing process. Ms Hansbury refers specifically to:

(a) the treatment of canopy areas that overhang site boundaries needs to be resolved; and⁴¹

(b) the application of the provision to retirement villages.⁴²

10.27 Ms Hansbury will update the Hearings Panel on these matters at the hearing.

10.28 The Council is aware that it will need to ensure compliance by developers with the financial contribution / tree canopy cover requirements (as it must do with all District Plan obligations). The long-term retention of tree canopy cover provided with development has also been a key consideration for the Council.

10.29 The requirements are a permitted activity standard in respect of the residential development itself, and so there will generally be no associated conditions of consent. Where subdivision consent is granted (and where tree canopy cover is provided in lieu of a financial contributions), an associated condition and consent notice (under s221 RMA) will be issued, and will be able to be registered against the relevant titles. That means that:

(a) initial and subsequent purchasers will be aware of the obligation to retain and maintain the tree canopy cover; and


⁴⁰ Evidence of Toby Chapman, from [65]. At the time he filed his evidence, Mr Chapman's title was 'City Arborist'.

⁴¹ Rebuttal evidence of Anita Hansbury at [4].

⁴² Rebuttal evidence of Anita Hansbury at [58] – [61].

- (b) there will be a further condition enforcement mechanism, if required, that is available to the Council (in addition to the general ability to enforce compliance with permitted activity standards).

Dated: 8 April 2024


—
**D G Randal / C O Carranceja /
T J Ryan / M L Mulholland**
Counsel for Christchurch City Council