

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT CHRISTCHURCH**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI ŌTAUTAHI**

UNDER the Resource Management Act 1991

IN THE MATTER of submissions and further submissions on Proposed Plan Change 14 to the Christchurch District Plan (PC14)

SUBMITTER **Danne Mora Limited/ MILNS PARK LTD**
Submitters #903/ 916

**LEGAL SUBMISSIONS ON BEHALF OF DANNE MORA LIMITED/ MILNS
PARK LIMITED**
15 November 2023

Christchurch
Solicitor acting: Gerard Cleary
Level 9, Anthony Harper Tower
62 Worcester Boulevard
PO Box 2646, Christchurch 8140
Tel +64 3 379 0920 | Fax +64 3 366 9277
gerard.cleary@ah.co.nz



INTRODUCTION

- 1.1 Danne Mora Limited has spent the best part of a decade developing land within the North Halswell ODP area (NHODP). The land in question is owned by Spreydon Lodge Limited, an associated company.
- 1.2 From the outset, the development of this land has been the subject of a comprehensive master planning exercise, one that incorporated an express intention or desire to deliver higher density residential development within the Meadowlands Exemplar portion of NHODP.
- 1.3 Danne Mora lodged a submission in opposition to the extent of the High-Density Residential Zone (HRZ) proposed in PC14 as notified.
- 1.4 This submission was not accepted, with the recommendation in the Council's s 42A Report instead being that the HRZ be extended further into the NHODP.
- 1.5 For the Panel's ease of reference, **attached** to these submissions are three maps, detailing:
 - (a) The extent of HRZ within the North Halswell ODP as notified in PC14 (**Map 1**);
 - (b) The extent of HRZ as sought in the submission on behalf of Danne Mora (**Map 2**); and
 - (c) The extent of HRZ as recommended by the s 42A Reporting Officer (Mr. Kleynbos) (**Map 3**).
- 1.6 From a reading of the S 42A Reporting Officer's summary of evidence dated 01 November 2023¹, it is apparent that the now recommended extent of the HRZ is justified solely on the basis that it falls within a 600m walkable catchment of the Town Centre Zone portion of the NHODP. No further justification for the extent of the HRZ can be gleaned either from any other evidence, or the legal submissions presented to date on behalf of the Council.
- 1.7 The case for Danne Mora is essentially that when other relevant considerations are taken into account, including the absence of infrastructure necessary to support HRZ, its extent should more appropriately be limited to that which is sought in the Danne Mora submission. For the avoidance of doubt, Danne Mora accepts that all other residential land within the NHODP can be rezoned MRZ so as to fully enable development in

¹ Summary of Evidence of Ike Kleynbos dated 01 November 2023. It is noted here that the Rebuttal Evidence of Mr. Baylis dated 08 October 2023 generally recommends [Para 2 (e)] that: *"Land where development and consenting has progressed such that the FUZ provisions are no longer of critical importance should generally be rezoned through PC14 as MRZ, but I defer to Ike Kleynbos in relation to the appropriate extent of the HRZ around the proposed town centre.*

accordance with the MDRS incorporated in Schedule 3 to the Resource Management Act 1991.

- 1.8 Milns Park Ltd supported the zoning of its land at 22-51 Milns Road as FUZ in PC 14 as notified, the s 42A Recommendation being that a mixture of HRZ & FUZ. Milns Park Ltd is supportive of the position adopted by Danne Mora in evidence and as set out in these submissions.

CHALLENGES TO DEVELOPING HRZ – MARKET RESPONSE AND FEASIBILITY

- 2.1 As Mr. Thompson has outlined in his evidence, higher density development simply has not succeeded in the NHODP despite a range of developer subsidies to try and make it work. Mr. Thompson's experience resonates with the agreement of the economic experts that the feasibility of high-density development i.e above 3 stories is challenging in current market conditions.²

- 2.2 Mr Mactier's evidence also highlights the Council's own s 32 Assessment as to the likelihood and feasibility of high density residential:

1.14 The s32 assessment concludes that it is unlikely that high density residential development of 4 storeys and above will be feasible without a significant shift in the market, or significant government intervention, and that the given the required price points for apartments to become feasible, it is difficult to foresee the private development market delivering substantially more affordable housing options. It appears these reservations along with the clear direction intended by NPS-UD Policy 3(d) in respect of town centre zones have simply been overlooked in preference to an all-encompassing approach of applying a walkable catchment to all centres to inform the introduction and extent of HRZ.

- 2.3 Put into the context of the National Policy Statement on Urban Development (NPSUD), a question arises therefore as to whether or not a rezoning to HRZ is in fact providing development capacity³ which is: *Feasible and reasonably expected to be realised*- Clause 3.2 (2)(c) of Subpart 1-*Providing Development Capacity*.

- 2.4 Clause 3.26 of the NPSUD elaborates that the method of estimating the amount of development capacity that is *feasible and reasonably expected to be realised* is a matter for the local authority using any appropriate method. Essentially, there is no clear evidence in the present case to conclude that HRZ within the NHODP is either feasible or

² Joint Witness Statement of Economic Experts

³ In the NPS UD, Development Capacity is defined as:

Development Capacity means the capacity of land to be developed for housing or for business use, based on:

- (a) The zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and
- (b) The provision of adequate development infrastructure to support the development of land for housing or business use.

reasonably expected to be realised in either the short, medium or long-term timeframes set out in the NPS-UD. Indeed, all economists would appear to hold the contrary view.

INFRASTRUCTURE CONSTRAINTS TO HRZ

- 3.1 Mr. Verstappen outlines the infrastructure consequences associated with the extent of HRZ proposed in the s 42A Report. Mr. Verstappen notes that the infrastructure within the NHODP has been designed and installed to accommodate residential development at the 15 hh/ha density anticipated by the RNNZ in the Operative District Plan, as well as the scale of development in the, as yet undeveloped, Town Centre Zone.
- 3.2 Mr. Verstappen highlights a particular requirement of HRZ will be to increase the stormwater treatment facility on land owned by Spreydon Lodge Limited, of which Danne Mora is an associated company. This will involve a significant additional area of 52,220m³, representing a 19% increase in the size of the existing stormwater management facility.
- 3.3 Mr Verstappen has also relied on Council's expert advice to the effect that it will be neither cost effective nor economically feasible to upgrade infrastructure in Greenfield Residential New Neighbourhood areas that is less than 10 years old.⁴ This advice was provided in the context of "upzoning " RNNZ to MRZ and not the significantly greater density of development anticipated or enabled by HRZ.
- 3.4 Mr Verstappen engaged in expert conferencing with, amongst others, Mr. Norton and Ms McDonald. Their agreed conclusions are set out in the Infrastructure Joint Witness Statement of 27 September 2023 as follows:⁵

Issue	Agreed Position
<i>Danne Mora and Milns Park re North Halswell ODP High Density Residential Zoning as part of Plan Change 14 (up to 50 households per hectare)</i>	<i>Existing infrastructure is sized for RNN density and only recently established. This new infrastructure does not support high density re-zoning in North Halswell ODP area. Much of the land which is proposed to be upzoned has already been developed or consented for development. Increased stormwater storage will be required if upzoning occurs before development is complete and built out and it may not be feasible/cost effective to create additional storage to cater for the upzoning of areas within the North Halswell ODP to high density.</i>

⁴ Evidence of Jamie Verstappen at para 5.4

⁵ Joint Statement of Infrastructure Experts, Annexure A at page 2

- 3.5 Despite the agreed position that the recently established infrastructure in the NHODP does not support HRZ, Mr Kleynbos has stated in his rebuttal evidence of 15 October 2023:

81. While both Ms McDonald and Mr Norton agree with the conclusions reached regarding the limits of three waters sufficiency and their likely inability to provide for HRZ development today, both also believe that this situation is not unique to North Halswell. I have further discussed this matter with Ms McDonald, who has reaffirmed this position, noting that the state of insufficiency does not, for example, compare to the likes of the area covered by the proposed Wastewater Constraints Overlay QM (vacuum sewers).

82. To this end, I support the recommended HRZ response to North Halswell (without the need of an additional QM) and note the future infrastructure delivery that CCC will need to respond to, subject to localised uptake of intensification.

- 3.6 This response essentially asks the Panel to rely on a conversation between Mr. Kleynbos and Ms McDonald post expert conferencing. This, it is submitted, is not evidence of any probative value, noting of course that Ms McDonald does not provide any rebuttal to Mr. Verstappen's evidence.

- 3.7 The simple fact is that, in terms of the NPSUD, the Panel is required to apply a site-specific analysis to determine whether development capacity purported to be enabled by HRZ within the NHODP is "*infrastructure ready*", a term defined in Clause 3.4 (3):

*(3) Development capacity is **infrastructure-ready** if:*

(d) In relation to the short term⁶, there is adequate existing development infrastructure to support the development of the land;

(e) In relation to the medium term⁷, either paragraph (a) applies, or funding for adequate development infrastructure to support development of the land is identified in a long-term plan;

(f) in relation to the long term⁸, either paragraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).

- 3.8 From the evidence available, a rezoning to HRZ is not "*infrastructure ready*" for the purposes of (d) to (f) above, and therefore cannot be considered as providing development capacity for the purposes of the NPS-UD.

⁶ **Short term** means within the next three years. (NPSUD Definitions)

⁷ **Medium term** means between 3 and 10 years. (NPSUD Definitions)

⁸ **Long term** means between 10 and 30 years. (NPSUD Definitions)

- 3.9 Rather, the proposed HRZ would represent purely theoretical capacity only. To facilitate development in accordance with the HRZ would rely on a commitment on behalf of the Council and/or a developer and/or both at some future date to fund all necessary infrastructure upgrades. This would necessarily include acquisition of the submitter's land to provide a significant increase in stormwater management capacity. This is an outcome that realistically could only be achieved by preventing the submitter from developing this land in the interim in accordance with the MRZ provisions. It would also require a renegotiation of the existing private developer agreement between the submitter and the Council.
- 3.10 Cumulatively, it is submitted that there is total uncertainty as to whether any of these critical steps will occur, thereby questioning the planning merit of rezoning land as HRZ within the NHODP.

RELEVANCE OF POLICY 3(d) OF NPSUD 2020

- 4.1 Policy 3 (d) provides:

Policy 3: *In relation to tier 1 urban environments, regional policy statements and district plans enable:*

(d) Within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.

- 4.2 The relevance of Policy 3 (d) is addressed in Mr. Mactier's evidence, which due to his unavailability for the hearing, will be adopted by Mr. Brown.
- 4.3 Fundamentally, what Policy 3 d) envisages is that any level of development greater than what is permitted in the MDRS will be at territorial authorities' discretion, however this is a discretion that must be exercised in a principled manner, having regard to all relevant facts.
- 4.4 In the present case, Mr. Mactier has provided information on the 25,000m² cap on commercial activity within the Town Centre Zoned portion of the NHODP. Essentially, Mr. Mactier concludes that this cap provides ample scope and room to enable high density residential development within the TCZ.
- 4.5 Mr Mactier's analysis is supported by Mr. Lightbody's s 42A Report as to residential development capacity within the North Halswell TCZ, where he estimates a theoretical capacity of 7968 household units with the TCZ. ⁹
- 4.6 The cap on commercial activity within the North Halswell TCZ also prompts the question as to why Mr. Kleynbos has recommended that the walkable catchment for the NHODP

⁹ Planning Officer's Report of Kirk Joseph Lightbody, 11 August 2023 at page 198.

area be increased from 400m as notified to 600m, the direct consequence being a significant expansion of the HRZ. Put another way, is the expansion of the HRZ commensurate with the level of commercial activity anticipated for the TCZ?

- 4.7 A useful reference point is Appendix 5 to Mr. Lightbody's s 42A Report of 11 August 2023 which details, amongst other matters, the Commercial Floorspace and extent of zoned commercial land within the Large Town Centres, Town Centres, Large Local Centres and Local Centres¹⁰. A copy of Appendix 5 is **attached** for ease of reference.
- 4.8 What Appendix 5 illustrates is that the commercial floorspace for the North Halswell TCZ is significantly smaller than all other Town Centres (Linwood, Shirley & Belfast) and is instead more closely aligned with the scale of Large Local Centres such as Merivale, Sydenham, Church Corner, Ferrymead and New Brighton.
- 4.9 If we then cross-reference Appendix 5 with the table in para 6.1.100 of Mr. Kleynbos' s 42A Report (reproduced below)¹¹, it seems apparent that the recommendation to extend the HRZ at North Halswell is based not on the level of commercial activity within the TCZ, but simply on the zoning itself.

		Notified Catchment		Recommended	
Centre / Type	Residential Centre Type	Walking Catchment	Building Height	Walking Catchment	Building Height
<i>Riccarton***</i>	<i>Large Town Centre</i>	<i>600</i>	<i>20</i>	<u>800</u>	<u>22</u>
<i>Papanui</i>	<i>Large Town Centre</i>	<i>600</i>	<i>20</i>	<u>800</u>	<u>22</u>
<i>Hornby</i>	<i>Large Town Centre</i>	<i>600</i>	<i>20</i>	<u>800</u>	<u>22</u>
<i>Shirley</i>	<i>Town Centre</i>	<i>400</i>	<i>20</i>	<u>600</u>	<u>22</u>
<i>Linwood</i>	<i>Town Centre</i>	<i>400</i>	<i>20</i>	<u>600</u>	<u>22</u>
<i>North Halswell</i>	<i>Town Centre</i>	<i>400</i>	<i>20</i>	<u>600</u>	<u>22</u>
<i>Church Corner</i>	<i>Large Local Centre</i>	<i>400</i>	<i>20</i>	<i>400</i>	<u>22</u>
<i>Ferrymead</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>
<i>Merivale</i>	<i>Large Local Centre</i>	<i>400</i>	<i>20</i>	<i>400</i>	<u>22</u>
<i>Sydenham</i>	<i>Large Local Centre</i>	<i>400</i>	<i>20</i>	<i>400</i>	<u>22</u>
<i>North New Brighton</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

- 4.10 In other words, it can readily be concluded that the recommendation to extend the HRZ has failed to take into account of, and is not commensurate with, the level of commercial of activity provided for within the North Halswell TCZ.

¹⁰ *Ibid* at page 158.

¹¹ Planning Officer's Report of Ike Kleynbos, 11 August 2023, at page 55

CONCLUSION

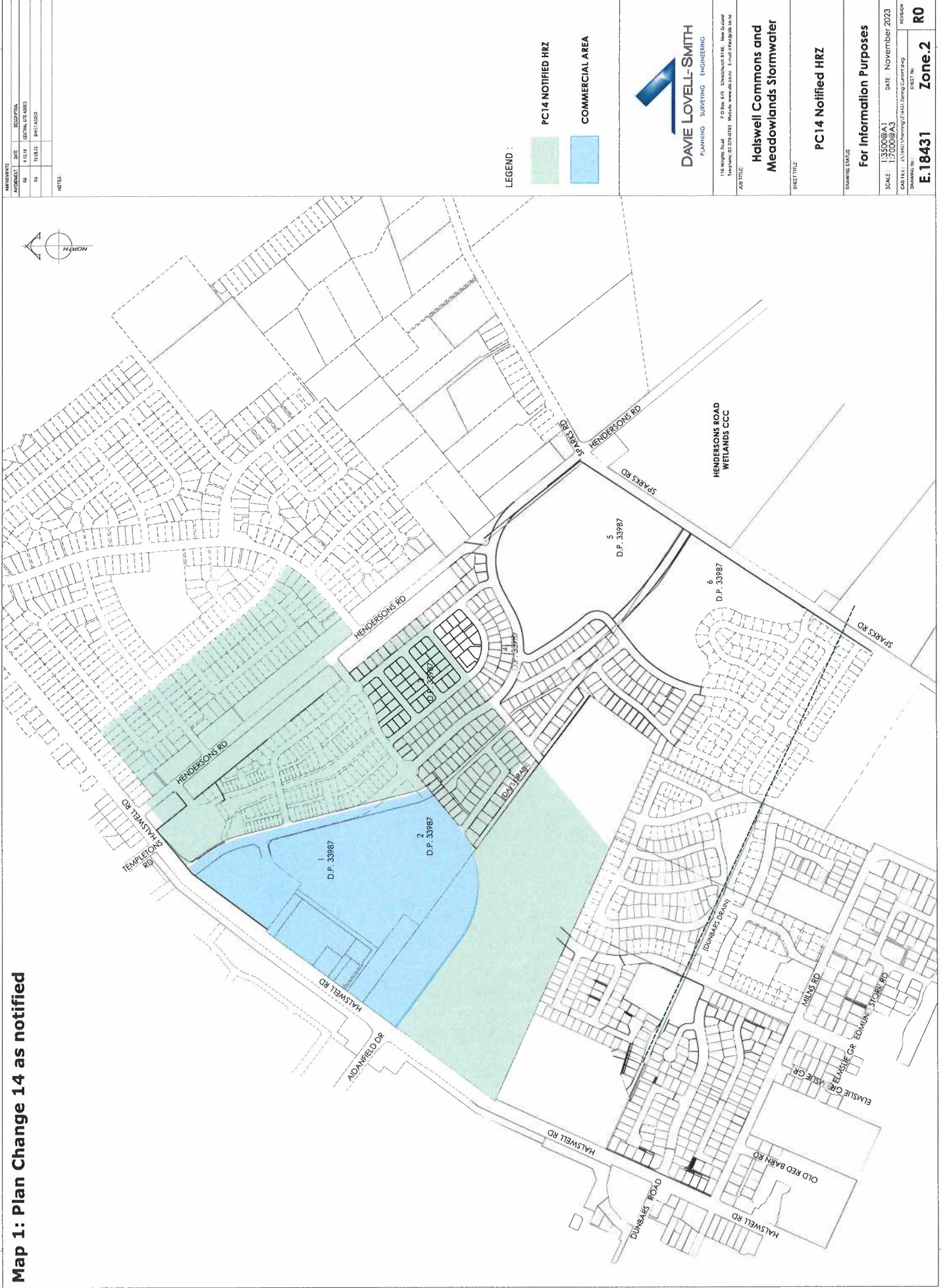
- 5.1 In order to give effect to both the Resource Management (Enabling Housing Supply & Other Matters) Amendment Act 2021 and the NPSUD, the Christchurch City Council is required to enable "development capacity", as that term is defined in the NPSUD.
- 5.2 To be enabled, development capacity must, amongst others, be feasible and reasonably expected to be realised and infrastructure ready. The evidence available to the Panel is that the extent of HRZ recommended for the NHODP does not meet these requirements. Accordingly, the proposed rezoning of HRZ provides illusory development capacity only.
- 5.3 The alternative available to the Panel is a zoning of MRZ for land beyond the boundary illustrated in the submission on behalf of Danne Mora (Map B attached). An MRZ zoning provides a significant degree of flexibility for the landowners to develop their land to meet market demand. Relatively speaking it is more infrastructure ready as it will not require significant upgrades to existing infrastructure within the NHODP. Further, it is unlikely to meet the same challenges from the market in terms of meeting a variety of demand.
- 5.4 Accordingly, it is submitted that the combination of HRZ as sought in the Danne Mora submission and MRZ zoning for the balance land within the NHODP is the most appropriate to give effect to the NPSUD.



G J Cleary

15 November 2023

Map 1: Plan Change 14 as notified



REVISION	DATE	DESCRIPTION
1	11/23/23	ISSUE FOR TENDERS
2	11/23/23	REVISED

NOTES

LEGEND :



DAVE LOVELL-SMITH
PLANNING SURVEYING ENGINEERING
118 Waiwaka Road
P.O. Box 8175, Epsom, Auckland 1142, New Zealand
Telephone: 021 778 0793 Website: www.dls.co.nz Email: dls@dlse.co.nz

Haiswell Commons and Meadowlands Stormwater

SHEET TITLE

PC14 Notified HRZ

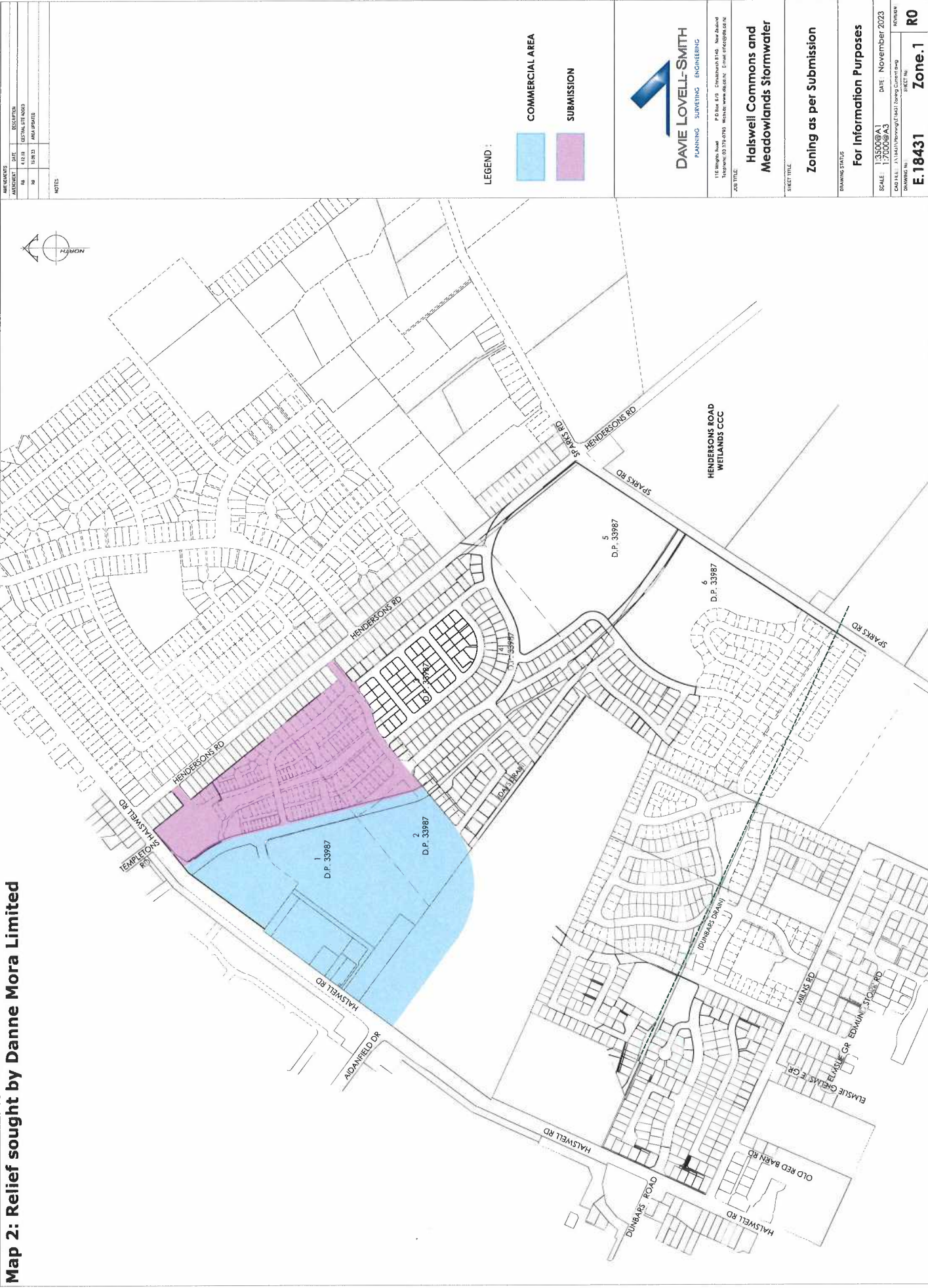
DRAWING STATUS

For Information Purposes

SCALE: 1:5000 @ A1
DATE: November 2023
DRAWING NO.: E.18431

Zone.2 R0

Map 2: Relief sought by Danne Mora Limited



NO.	DATE	DESCRIPTION
1	15/11/23	INITIAL STAGES
2	15/11/23	PRELIMINARY

NOTES

LEGEND :



111 Wagon Road P O Box 813 Christchurch 8145 New Zealand
Telephone: 03 379 0793 Website: www.dls.co.nz E-mail: info@dls.co.nz

Halswell Commons and Meadowlands Stormwater

SHEET TITLE

Zoning as per Submission

DRAWING STATUS

For Information Purposes

SCALE: 1:3500 @ A1 DATE: November 2023
JOB NO.: 2308/23
DRAWING NO.: 11/23/23/Stormwater/11/23/23/Stormwater/01

NOOKA
PROJECT NO.
E.18431 Zone.1
RO

Map 3: Section 42A Recommendation

AMENDMENT	DATE	DESCRIPTION
AMENDMENT	12/18	LOCALITY L11 0000
10	12/18	SH1 AMB10
15	12/18	

NOTES

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT

NO.

DATE

BY

FOR

PROJECT



LEGEND :



PC14 NOTIFIED HRZ



S42A RECOMMENDED HRZ



COMMERCIAL AREA



DAVIE LOVELL-SMITH
PLANNING SURVEYING ENGINEERING

18 Wicks Road, 8 Pitt St, Christchurch 8015, New Zealand
Telephone: 03 378 0703 Website: www.dls.co.nz Email: dls@dlsc.co.nz

JOB TITLE:

**Halswell Commons and
Meadowlands Stormwater**

SHEET TITLE

S42A Recommended HRZ

DRAWING STATUS

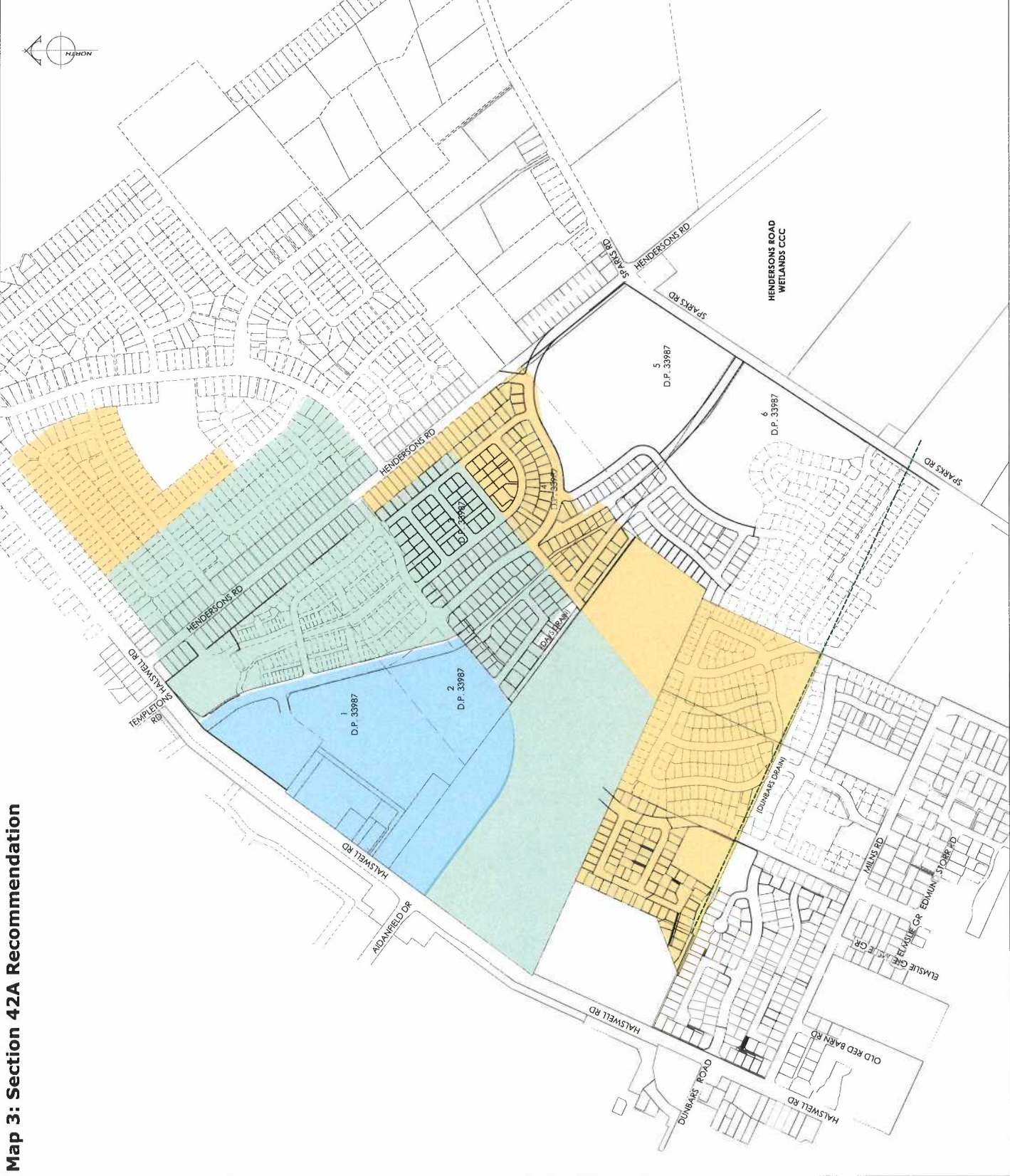
For Information Purposes

SCALE: 1:3500@A1 DATE: November 2023

DRAWING NO: E.18431 SHEET NO: RO

PROJECT NO: 17000@A3

REVISION



Attachment A – Appendix 5 to Section 42A Report on Submissions

APPENDIX 5 – PC14 – COMMERCIAL CENTRES – FLOORSPACE AND CLASSIFICATION

Classification/Zone	Centre	Operative District Plan	PC 14 Height	Kāinga Ora requested Height	Commercial Floorspace	Zoned Commercial Land	Community Facility	Recommended Height
Large Town Centres	Riccarton	20	22	53	203,000sqm	15.5ha	Yes	32
	Papanui	20	22	53	125,000sqm (Pre Northlink)	32.6ha	Yes	32
Town Centres	Hornby	20	22	53	79,000sqm	20.5ha	Yes	32
	Linwood	20	20	22	60,000sqm	9.2ha	Yes	22
	Shirley	20	20	22	47,000sqm	9.6ha	Yes	22
	Belfast	20	20	22	47,000sqm	18ha	Yes	22
	North Halswell	20	20	22	25,000sqm retail max (180,000sqm total centre size)	16.6ha		22
Classification	Centre	Operative District Plan	PC 14 Height	Kāinga Ora requested Height	Commercial Floorspace	Community Facility	Recommended Height	
Large Local Centres	Merivale	12	20	22	27,000sqm	6.1ha	Supermarket	22
	Sydenham	12	20	22	31,000sqm	6.5ha	No	22
	Church Corner	12	20	22	41,000sqm	8.5ha	Library + Supermarket	22
Local Centres	Ferrymead	12	20	20	30,000sqm	9.2ha	Supermarket	14
	New Brighton	12	14	14	24,000sqm	5ha	Library + Supermarket	14
	Barrington	12	14	20	14,000sqm	4.3ha	Supermarket	14
	Prestons	12	14	20	7,000sqm (12k max)	10.7ha	Supermarket	14
	Bishopdale	12	14	20	12,000sqm	6.3ha	Library + Supermarket	14
	Lyttelton	12	12	14	15,000sqm	3.6ha	Supermarket	12
	Wigram	12	12	11,560sqm	4.9ha	Supermarket	14	

APPENDIX 8

Woolston	12	12	12	14	12,000sqm	3.2ha	Supermarket	14
Avonhead	12	12	14	14	5,000sqm	1.2ha	Supermarket	14
Addington	12	12	14	14	9,000sqm	2.6ha		14
Sydenham South	12	12	14	14	11,500sqm	3.6ha		14
Cranford	12	12	14	14	9,500sqm	1.6ha		14
Edgeware	12	12	14	14	8,500sqm	1.9ha		14
Halswell	12	12	14	14	6,000sqm	3.2ha	Supermarket, Library	14
Aranui	12	12	14	14	585sqm	1.1ha		14
Beckenham	12	12	14	14	5,856sqm	1.6ha		14
Colombo/Beaumont	12	12	14	14	5,088sqm	1.6ha	Supermarket	14
Cranford	12	12	14	14	9,484sqm	1.6ha		14
Edgeware	12	12	14	14	8,131sqm	1.9ha	Supermarket	14
Fendalton	12	12	14	14	4,268sqm	1.3ha	Supermarket	14
Ilam/Clyde	12	12	14	14	5,335sqm	1.6ha		14
North West Belfast	12	12	14	14	Emerging	3.2ha	Supermarket	14
Parklands	12	12	14	14	864sqm	1.3ha	Supermarket, Library	14
Redcliffs	12	12	14	14	3,195sqm	0.8ha		14
Richmond	12	12	14	14	2,912sqm	2.2ha	Supermarket	14
St Martins	12	12	14	14	5,783sqm	1.7ha	Supermarket	14
Linwood Village	12	12	14	14	3,636sqm	1.4ha		14
Sumner	12	12	14	14	4,381sqm	2ha	Supermarket	14
Wairakei - Greers	12	12	14	14	2,876sqm	1.2ha		14
Hilmorton	12	12	14	14	5,050sqm	1.2ha		14
Yaldhurst	12	12	12	12	Emerging			14
Neighbourhood Centre	8	12	14	14		XX		14