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:	**Christchurch Casino Limited, NHL Properties Limited, Wigram Lodge (2001) Limited, Elizabeth Harris and John Harris, LMM Investments 2012 Limited, Carter Group Limited, Daresbury Limited, Church Property Trustees, Catholic Diocese of Christchurch, Lyttelton Port Company Limited, Orion New Zealand Limited and Christchurch International Airport Limited**

Memorandum of counsel on behalf of various submitters regarding scope and other matters

Dated: 1 May 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

INTRODUCTION

1 This memorandum is filed on behalf of the following submitters on proposed Plan Change 14 (*PC14*) to the Christchurch District Plan (*District Plan*):

1.1 Christchurch Casinos Limited (submitter #2077) (*Christchurch Casinos*);

1.2 NHL Properties Limited (submitter #706) (*NHL Properties*);

1.3 Wigram Lodge (2001) Limited and Elizabeth Harris and John Harris (submitter #817) (*Wigram Lodge*);

1.4 LMM Investments 2012 Limited (submitter #826) (*LMM Investments*);

1.5 Carter Group Limited (submitter #814 and 824) (*Carter Group*);

1.6 Daresbury Limited (submitter #874) (*Daresbury)*;

1.7 Church Property Trustees (submitter #825) (*CPT*);

1.8 Catholic Diocese of Christchurch (submitter #823) (*Catholic Diocese*);

1.9 Lyttelton Port Company Limited (submitter #853) (*LPC*);

1.10 Orion New Zealand Limited (submitter #854) (*Orion*); and

1.11 Christchurch International Airport Limited (submitter #852) (*CIAL*).

(together, the *Submitters*)

2 This memorandum responds to the Independent Hearing Panel's (*IHP*) request in Minute 29 for further information and evaluation from submitter expert witnesses and legal counsel.

3 The focus of this memorandum is applying the legal position on scope/jurisdiction set out in our memorandum of 21 December 2023 (*Scope Memorandum*) to the relief sought by the Submitters.

4 This memorandum also addresses other matters listed in Appendix A of Minute 29 and any other matters that arose during Hearing Weeks 9 and 10.

5 In terms of the Minute 29 matters, we note that:

5.1 Appendix A, Page 7 – Carter Group and Catholic Diocese – Mr Jeremy Phillips provided the requested clarification and combined attachment as part of his summary statement for the Qualifying Matters hearing on 16 April 2024.

5.2 Appendix A, Page 8 – Christchurch Casinos, NHL Properties and Wigram Lodge – we filed supplementary evidence from Ms Anita Collie providing the requested information on 15 November 2023.

5.3 Appendix A, Page 12 – LMM Investments – as above, we provided our Scope Memorandum on 21 December 2023.

5.4 Appendix A, Page 12 – LMM Investments – this memorandum applies our legal position as set out in the Scope Memorandum for all Chapman Tripp clients (i.e. the Submitters) who have a scope/jurisdiction issue.

5.5 Appendix A, Page 12 – LMM Investments – this memorandum confirms the client's position on the relief sought.

5.6 Appendix A, Page 12 – LMM Investments – this memorandum provides a full National Policy Statement on Urban Development 2020 (*NPS-UD*) analysis.

6 We note that matters concerning Cashmere Land Developments Limited (submitter #257) which arose during Hearing Week 9 are to be addressed in a separate memorandum of counsel to be lodged this week.

7 The only other matter that is not addressed in this memorandum relates to the expert conferencing requested by the IHP (quantity surveyors and planners) in relation to the request to delist The Blue Cottage by Carter Group. That expert conferencing has not yet been completed but is expected to occur this week. As soon as the relevant joint witness statements are filed a separate memorandum of counsel will be filed addressing any new matters that arise out of that further evidence of the experts.

8 Finally, we refer throughout this memorandum to the relevant provisions of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the *Amendment Act*). While the proper reference to these provisions would simply be under the Resource Management Act 1991 (*RMA*), for ease of reference we have referred to them as specifically under the Amendment Act.

SCOPE/JURISDICTION

9 Our Scope Memorandum set out our legal position on scope and jurisdiction in significant detail. This memorandum should be read in conjunction with the Scope Memorandum.

10 Where matters of scope or jurisdiction arise in relation to the relief sought by the Submitters, we consider they raise three essential questions:

10.1 **Question 1**: is the submission "on" PC14? (*see paragraphs 48-66 of our Scope Memorandum*)

10.2 **Question 2**: does the IHP have jurisdiction to grant the relief sought in the submission? (*see paragraphs 42-47 of our Scope Memorandum*)

10.3 **Question 3**: was Christchurch City Council (*Council*) legally entitled to include the change to the District Plan within PC14? (*see paragraphs 22-41 of our Scope Memorandum*)

11 As is clear from our Scope Memorandum, these questions are very much inter-related. However, we considered it would be of most benefit for the IHP in this memorandum to address the questions individually.

12 This memorandum accordingly answers the questions for each of the Submitters in turn. Where relevant we have grouped the Submitters based on common issues.

CHRISTCHURCH CASINOS, NHL PROPERTIES AND WIGRAM LODGE

13 The submissions by Christchurch Casinos, NHL Properties and Wigram Lodge raise Questions 1 and 2.

14 Christchurch Casinos, NHL Properties and Wigram Lodge sought the rezoning of their property interests, respectively, from:

14.1 Christchurch Casinos – High Density Residential Zone to Central City Zone;

14.2 NHL Properties and Wigram Lodge – High Density Residential Zone to Central City Mixed Use Zone; and

14.3 Wigram Lodge – High Density Residential Zone to Central City Mixed Use Zone.

15 In terms of Question 1:

15.1 The Council's position at the hearing was that the submissions are not "on" PC14. This position was taken in reliance on the two limb test established by the *Clearwater* line of cases.[1]

15.2 As set out in our Scope Memorandum, the *Clearwater* case law deals with submissions in a typical Schedule 1 plan change process with an easily defined geographical or contextual extent.[2] PC14, being an Intensification Planning Instrument (*IPI*), is not a typical Schedule 1 process. It has a much wider ambit of incorporating the Medium Density Residential Standards (*MDRS*) and giving effect to Policy 3 of the NPS-UD in both residential and non-residential zones within the Greater Christchurch urban environment.[3]

[1] *Clearwater Resort Ltd and Canterbury Golf International Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, [2014] NZRMA 519.

[2] Scope Memorandum, paragraph 52.

[3] Scope Memorandum, paragraph 52.

Further, more recent case law has established that in the context of a full plan review, the scope for a submission being "on" the plan review is very wide.[4]

15.3 In this context, a narrow interpretation of whether a submission is "on" PC14 is not appropriate. In particular, the scope of submissions should not be restricted to supporting, or being less than, matters that were notified in PC14, as was suggested by the Council. Instead, the "overarching gateway" of section 80E of the Amendment Act should be the focus.[5]

15.4 The rezoning relief sought by Christchurch Casinos, NHL Properties and Wigram Lodge clearly meets the requirements of section 80E because it gives effect to Policy 3 of the NPS-UD. Policy 3 relates broadly to development capacity and contemplates both residential and commercial activity, the latter being necessary to support greater intensification of residential activity. Within the section 80E framework, the submissions are therefore clearly "on" PC14 and there is no scope issue.

15.5 For completeness, we also note, as set out in our legal submissions for Christchurch Casinos, NHL Properties and Wigram Lodge,[6] that the two limbs of *Clearwater* are in any case met:

(a) As to the first limb (the extent to which PC14 changes the pre-existing status quo), the "management regimes" for these properties were altered by PC14 as notified. This brought the zoning of the sites into play. Under section 77N(3)(a) of the Amendment Act, the sites could be rezoned to an urban non-residential zone. This is precisely what the submissions seek.

(b) As to the second limb (affording persons potentially affected a real opportunity for participation), in the context of all possible outcomes under the Amendment Act, affected parties (if any) would have been cognisant of the breadth of PC14 and would have been able to comment on the proposed rezonings by way of further submissions.

16 Notwithstanding our position set out above that PC14 is a very different process to those processes considered under the *Clearwater* cases, we address the *Clearwater* test for other Submitters below. This is for completeness and in response to the Council's repeated reliance on *Clearwater* in relation to scope.

17 In terms of Question 2:

17.1 As set out in our Scope Memorandum, the IHP has jurisdiction to make recommendations in accordance with the statutory purpose and context of the

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[4] *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [129]; see Scope Memorandum, paragraph 55.

[5] Scope Memorandum, paragraph 57.

[6] Legal submissions for Christchurch Casinos, NHL Properties and Wigram Lodge dated 27 October 2023, paragraph 15.

Amendment Act, namely enabling development. Further, clause 99(2)(b) of Schedule 1 of the Amendment Act expressly allows the IHP to make recommendations that are not limited to being within the scope of submissions. However, again, this is subject to the overarching gateway of section 80E.

17.2 As set out above, the rezoning relief sought by Christchurch Casinos, NHL Properties and Wigram Lodge meets the requirements of section 80E. The IHP accordingly has clear jurisdiction to grant the relief sought.

LMM INVESTMENTS

Confirmation of position

18 During the hearing presentation on 28 November 2023, we advised that we would confirm instructions as to the final relief sought by LMM Investments.

19 The context is that LMM Investments' submission sought the rezoning of the subject site (the *Whisper Creek Site*) from Specific Purpose (Golf Resort) Zone (*SP(GR)*) to Medium Density Residential Zone (*MRZ*). Mr Clease's planning evidence for LMM Investments presented a "refined relief" option which involved the application of appropriate MDRS provisions to certain areas within the Whisper Creek Site (without corresponding rezoning to MRZ) and the retention of the current cap of a maximum number of 350 residential units that applies under the operative SP(GR) zoning.

20 We confirm that LMM Investments' final relief sought is:

20.1 the rezoning of the Whisper Creek Site to MRZ, as per its original submission; and

20.2 a maximum 350 residential unit cap achieved by way of the application of site-specific qualifying matters.

21 The reason for the 350 residential unit cap is to account for possible servicing constraints, as outlined in Mr Andy Hall's infrastructure evidence. However, to align with the requirements of the Amendment Act (as discussed with Commissioner Munro at the hearing), the cap must necessarily be implemented by way of site-specific qualifying matters. To be clear, this is not a change of position by LMM Investments which requires new or amended evidence. The evidence for LMM Investments already establishes that the cap is necessary. We have simply now identified the proper mechanism under the Amendment Act for applying the cap, i.e. a qualifying matter under section 77I(j) of the Amendment Act.

22 We note that the final relief sought also aligns with the current residential unit cap under the operative SP(GR) zoning but allows for a more appropriate housing typology mix, as supported by Mr Fraser Colegrave's economics evidence, in the context of the purpose and outcomes sought by the Amendment Act and the framework of the NPS-UD. In other words, it better achieves the imperatives of the Amendment Act and NPS-UD.

23 While this is the preferred relief sought, we consider it would be open to the IHP to alternatively accept the "reduced" relief proposed by Mr Clease in his evidence, which effectively achieves the same outcome in terms of housing provision but does not involve rezoning of the Whisper Creek Site.

24 To this end, Mr Clease has prepared a summary document outlining the mechanics of the options and this is attached as **Appendix 1** to this memorandum. **Appendix 2** to this memorandum confirms (in table form) how the evidence for LMM Investments' addresses the relevant tests under section 77L of the Amendment Act for the application of the qualifying matter.

25 Regardless of which approach is preferred, we confirm our position taken at the hearing that either option is within scope. We address scope/jurisdiction below.

Scope/jurisdiction

26 LMM Investments' submission raises Questions 1, 2 and 3.

27 In terms of Questions 1:

27.1 The Council's position at the hearing was that the submission is not "on" PC14. This was on the basis that the Whisper Creek Site is located outside the urban environment, the relief sought is an "entirely new matter", and the relief was not able to have been foreseen by those potentially affected.

27.2 As set out in our Scope Memorandum and our legal submissions for LMM Investments,[7] the Council itself defined the spatial extent of the urban environment for the purposes of PC14 to be Greater Christchurch as shown on Map A of the Canterbury Regional Policy Statement.[8] The Whisper Creek Site is well within this area.

27.3 Further, in PC14 as notified, the Council proposed that the Tsunami Management Area qualifying matter would apply to the Whisper Creek Site. In terms of the first limb of *Clearwater*, this brought the management regime for the site into play through PC14. There is accordingly no scope issue in this respect.

27.4 As set out in our Scope Memorandum and our legal submissions for LMM Investments,[9] section 77G(4) of the Amendment Act enables the Council to create new residential zones or amend existing residential zones.

27.5 We note that the ability to create new residential zones or amend existing residential zones is in the context of the Council carrying out its functions under section 77G (as discussed with Commissioner Matheson at the hearing). Those functions include incorporating the MDRS into relevant

[7] Scope Memorandum, paragraph 26; legal submissions for LMM Investments dated 10 November 2023, paragraph 13.1.

[8] See Ms Sarah Oliver's Section 42A Report, paragraph 5.18.

[9] Scope Memorandum, paragraph 25.4; legal submissions dated 10 November 2023, paragraph 13.1.

residential zones, giving effect to Policy 3 of the NPS-UD in residential zones in the urban environment, progressing an IPI, and including in the IPI the objectives and policies contained in clause 6 of Schedule 3A.[10] While those functions appear to relate specifically to the MDRS and Policy 3 of the NPS-UD, when read together and in the context of the Amendment Act as a whole, as well as the NPS-UD, it is clear that a territorial authority has discretion as to how to carry out these functions in its district. If a strict reading of sections 77G(1) and (2) were to apply, and this was the extent of a council's functions, then Parliament would not have included the ability to create new residential zones or amend existing residential zones. A broader reading is necessary and appropriate.

27.6 Counsel has already referred the IHP to the situation which occurred in Selwyn at Lincoln where previously rural land that did not qualify as a relevant residential zone was rezoned as residential land under that Council's IPI (Variation 1) process.

27.7 It was therefore open to the Council, within the parameters of PC14 as an IPI, to propose the rezoning of the Whisper Creek Site to MRZ. It was also open to the Council to apply the MDRS to the Whisper Creek Site, given the SP(GR) zoning already contemplates a certain level of residential activity.

27.8 While the Council did not propose such changes in PC14 as notified, the fact that the Council was legally entitled to do so means that a submitter could subsequently request relief of that nature and their submission would be within scope. That is precisely what happened here – LMM Investments sought the relief that Council could have proposed in the first place. The first limb of *Clearwater* is therefore met.

27.9 As to the second limb of *Clearwater* (and in response to the Council's position that the relief sought could not have been foreseen by those potentially affected), under both relief options, the land use of the Whisper Creek Site is not fundamentally changing from what is currently enabled under the SP(GR) zoning, so there are unlikely to be any affected parties. Even if there were, given the possible rezoning under section 77G(4) outlined above, any affected parties would have been cognisant of that potential outcome and have been able to participate by way of further submissions.

28 In terms of Question 2, based on the position set out in our Scope Memorandum and in light of the discussion above, the IHP has jurisdiction to grant the relief sought.

[10] Refer to subsections (1), (2), (3) and (5) of section 77G.

29 In terms of Question 3:

29.1 As set out in our Scope Memorandum,[11] the *Waikanae* case[12] dealt with the issue of what a council is legally entitled to include in its IPI. We would urge caution in applying *Waikanae* on a blanket basis, although we consider some of its findings may appropriately apply in the context in which it was decided.

29.2 In our view, the Amendment Act only allows the Council to make the MDRS and the relevant building height or density requirements under Policy 3 of the NPS-UD less enabling of development to the extent necessary to accommodate qualifying matters.[13] It would not be in keeping with the "enabling" purpose and context of the Amendment Act for an IPI to be a mechanism to make anything beyond the MDRS and the relevant Policy 3 building height or density requirements less enabling (i.e. affect status quo development rights).[14]

29.3 LMM Investments' submission, and its supporting evidence, identified certain aspects of the PC14 provisions that affect status quo development rights. Specifically, this is in relation to the Tsunami Management Area qualifying matter and the proposed tree canopy cover and financial contributions provisions. Our legal position is that the Council was not legally entitled to include these changes to the District Plan by way of PC14. The IHP should accordingly accept the relief sought by LMM Investments that these provisions be deleted in their entirety.

NPS-UD analysis

30 During the hearing presentation on 28 November 2023, following discussion with Commissioner Matheson, we noted that our legal submissions for LMM Investments had focused on Policy 3(d) of the NPS-UD and that we had not considered the NPS-UD more broadly. That broader assessment is provided in this section.

31 As a starting point, we note that:

31.1 As per the Council's legal submissions for the Strategic Overview hearing, the standard RMA considerations apply to the PC14 IPI process, subject to certain modifications made through the Amendment Act.[15] This includes, under section 75 of the RMA, the requirement to give effect to any national policy statement, including the NPS-UD. Accordingly, while the Amendment Act specifies that an IPI must give effect to Policies 3 and 4 of the NPS-UD, PC14

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[11] Scope Memorandum, paragraph 29.

[12] *Waikanae Land Company Ltd v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056, (2023) 24 ELRNZ 710 (*Waikanae*).

[13] Amendment Act, sections 77I and 77O.

[14] Scope Memorandum, paragraph 32.

[15] Legal submissions for Council for Strategic Overview hearing, paragraph 2.1.

must still give effect to the rest of the NPS-UD.[16] In other words, Policies 3 and 4 cannot be considered in isolation.

31.2 We acknowledge that Policy 3(d) of the NPS-UD is unlikely to apply in this context given the Whisper Creek Site is not located within or adjacent to a neighbourhood centre zone, local centre zone, or town centre zone. However, that does not preclude consideration of the relief sought. As very clearly set out in the Council's own legal submissions (outline above), PC14 must still give effect to the rest of the NPS-UD.

31.3 The operative zoning of the site already contemplates a level of residential development in conjunction with other facilities and open space. LMM Investments is seeking the same level of residential enablement through PC14, albeit in a different mix of housing typologies to better align with the NPS-UD and Amendment Act, as outlined above. In our view, this signals that enabling the level and mix of development proposed for the site already aligns with the NPS-UD to some extent, but that the nature of development now proposed will better align with both the NPS-UD and Amendment Act. This is an important starting point for the NPS-UD assessment of LMM Investments' relief.

31.4 Mr Colegrave's evidence provided a full analysis under the NPS-UD, specifically addressing Objective 2 and Policy 1 and discussing market demand in the area.

32 Applying the NPS-UD as a whole to the relief sought by LMM Investments, it is clear that the relief sought will achieve:

32.1 Objective 1, a well-functioning urban environment.

32.2 Objective 2, supporting competitive land and development markets, as outlined by Mr Colegrave.

32.3 Objective 3(a), meeting market demand, as also outlined by Mr Colegrave.

32.4 Policy 1, providing a variety of housing options, as outlined by Mr Colegrave.

32.5 Policy 2, contributing to development capacity.

32.6 Policy 4, accommodating qualifying matters.

32.7 Policy 6(b)(i), improving amenity values, including by providing varied housing densities and types.

[16] Legal submissions for Council for Strategic Overview hearing, paragraph 2.32.

CARTER GROUP, DARESBURY AND CPT

33 The submissions by Carter Group, Daresbury and CPT raise Questions 1, 2 and 3.

34 In terms of Questions 1 and 2:

34.1 Carter Group, Daresbury and CPT are in agreement with the Council that their submissions seeking the removal of heritage items and setting from the Schedule of Significant Historic Heritage in Appendix 9.3.7.2 of the District Plan are "on" PC14 and the IHP has jurisdiction to grant the relief sought.

34.2 The reasons for this agreed position are clear from our Scope Memorandum and are also addressed in our legal submissions for Carter Group,[17] Daresbury[18] and CPT,[19] as well as the relevant legal submission for the Council.[20] We therefore do not address this matter further here.

35 In terms of Question 3:

35.1 We reiterate our position set out at paragraphs 29.1 and 29.2 above as to what the Council was legally entitled to include in its IPI.

35.2 The submissions by Carter Group, Daresbury and CPT, and their supporting evidence, identified certain aspects of the PC14 provisions that affect status quo development rights. Specifically, this is in relation to:

(a) Carter Group – heritage items and settings, other new or amended heritage-related provisions, significant and other trees, the proposed tree canopy cover and financial contributions provisions, natural hazards (including the Tsunami Management Area qualifying matter) and waterbody setbacks.

(b) Daresbury – heritage items and settings, other new or amended heritage-related provisions, significant and other trees, and the proposed tree canopy cover and financial contributions provisions.

(c) CPT – heritage items and settings and other new or amended heritage-related provisions.

35.3 Our legal position is that the Council was not legally entitled to include these changes to the District Plan by way of PC14. The IHP should accordingly accept the relief sought by Carter Group, Daresbury and CPT that the

[17] Legal submissions for Carter Group dated 8 April 2024, paragraphs 13 and 14.

[18] Legal submissions for Daresbury dated 12 April 2024, paragraph 12.

[19] Legal submissions for CPT dated 12 April 2024, paragraph 10.

[20] Legal submissions for Council dated 16 November 2023, paragraphs 6.2-6.4.

proposed new provisions be deleted in their entirety or the proposed changes be rejected and the provisions revert to their current operative form.

CATHOLIC DIOCESE

36 The Catholic Diocese's submission raises Questions 1, 2 and 3.

37 In terms of Questions 1 and 2:

37.1 The Catholic Diocese's submission sought that PC14 include appropriate provisions to enable the development of a new Catholic Cathedral on a future central city site. Specifically, a replacement Cathedral at the Barbadoes Street site would be a controlled activity, whereas a replacement Cathedral elsewhere in the central city would be a restricted discretionary activity, both with the same assessment matters applying.

37.2 The Council's position at the hearing was that the submission point is not "on" PC14. This position was taken on the basis that PC14 can only relate to residential and commercial development, and that the relief sought would disenable development rights relative to the status quo (i.e. a *Waikanae* argument).

37.3 As set out in our Scope Memorandum,[21] the overarching gateway of section 80E should be the focus for ascertaining the lawful scope of submissions. Section 80E provides that PC14 must give effect to Policy 3 of the NPS-UD, including Policy 3(a) which requires the enablement of "*in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification*".

37.4 As set out in our legal submissions for the Catholic Diocese on the Central City and Commercial Zones hearing topic,[22] it is clear that the relief sought by the Catholic Diocese is consistent with "realising as much development capacity as possible" and the overall policy intent of the NPS-UD, including in particular Objective 1 (cultural well-being) and Policy 1 (well-functioning urban environments and good accessibility to community services). The enablement of residential intensification cannot occur in isolation from the necessary support by community services and other components that contribute to well-functioning urban environments. If that was Parliament's intention, the Amendment Act would simply have required the implementation of the MDRS, without the other, equally important, aspects of section 80E and the broader imperatives of the Amendment Act and NPS-UD.

[21] Scope Memorandum, paragraph 57.

[22] Legal submissions for the Catholic Diocese dated 24 October 2023, paragraph 25.

37.5 There is accordingly no scope issue with the relief sought by the Catholic Cathedral because an IPI can clearly enable the development of necessary community facilities, as well as residential and commercial development.

37.6 Further, the relief sought by the Catholic Diocese would not disenable existing development rights relative to the status quo, in a *Waikanae* sense. As set out in our legal submissions for the Catholic Diocese on the Central City and Commercial Zones hearing topic,[23] the relief sought is simply an alternative to (rather than a replacement of) residential or commercial development on a central city site, which is a matter for the market or landowners to decide.

37.7 It is clear that this submission point is "on" PC14 and that the IHP has jurisdiction to grant the relief sought.

37.8 The Catholic Diocese's submission also sought the rezoning of land adjoining the Our Lady of the Assumption school site in Sparks Road, Hoon Hay from MRZ to Specific Purpose (School) Zone (*SP(S)Z*).

37.9 The Council's position (as set out in Ms Claire Piper's Section 42A Report) is that the submission point is not "on" PC14 because it goes beyond the requirements for the implementation of the MDRS, Policy 3 of the NPS-UD and consequential changes to give effect to this.

37.10 As set out in our Scope Memorandum,[24] section 77N(s) of the Amendment Act enables the Council, in carrying out its functions under section 77N, to create new urban non-residential zones. It was therefore open to the Council, within the parameters of PC14 as an IPI, to propose the rezoning of the subject land to SP(S)Z.

37.11 While the Council did not propose such rezoning in PC14 as notified, the fact that the Council was legally entitled to do so means that a submitter could subsequently request relief of that nature and their submission would be within scope. That is precisely what happened here – the Catholic Diocese sought the relief that Council could have proposed in the first place.

37.12 Further, the relief sought by the Catholic Diocese gives effect to Policy 3(d) of the NPS-UD. This is because the proposed building heights and densities of urban form (under the SP(S)Z) are commensurate with the level of commercial activity and community services in the location, being adjacent to a Neighbourhood Centre Zone. This means they meet the requirements of the overarching section 80E gateway. There is accordingly no scope issue with the submission in this respect.

[23] Legal submissions for the Catholic Diocese dated 24 October 2023, paragraph 25.4.

[24] Scope Memorandum, paragraph 25.4.

37.13 Again, it is clear that this submission point is "on" PC14 and that the IHP has jurisdiction to grant the relief sought.

37.14 We note that from a merits perspective, in his planning evidence for the Catholic Diocese, Mr Phillips suggested a reduction of the extent of rezoning sought. The Catholic Diocese has accepted and adopted this position.

38 In terms of Question 3:

38.1 We reiterate our position set out at paragraphs 29.1 and 29.2 above as to what the Council was legally entitled to include in its IPI.

38.2 The Catholic Diocese's submission and supporting evidence identified certain aspects of the PC14 provisions that affect status quo development rights. Specifically, this is in relation to heritage items and settings, other new or amended heritage-related provisions, and the proposed tree canopy cover and financial contributions provisions.

38.3 Our legal position is that the Council was not legally entitled to include these changes to the District Plan by way of PC14. The IHP should accordingly accept the relief sought by the Catholic Diocese that the proposed new provisions be deleted in their entirety.

LPC

39 LPC's submission raises Question 2.

40 LPC's relevant submission point concerns its Inland Port facility at Woolston. LPC's submission sought the inclusion of an Inland Port Influences Overlay qualifying matter. Within the qualifying matter area, a proposed rule would apply which required new habitable spaces or extensions to habitable spaces to meet an internal sound design level of 30dB LAeq. Following expert conferencing, LPC's and the Council's noise experts agreed that LPC's proposed rule for the Inland Port Influences Overlay area was necessary and appropriate.

41 However, there remained a "scope" issue in that, as identified by the IHP, LPC's proposed rule was purportedly a "qualifying matter", but it did not make the MDRS or relevant building height or density requirements less enabling of development. As such, it could not be a "qualifying matter" as per section 77I of the Amendment Act.

42 Instead, the relief more appropriately sits in the category of "related provisions" under section 80E(1)(b)(iii) of the Amendment Act. Specifically, the relief is "consequential" on the MDRS – if the MDRS are to apply in the vicinity of the Inland Port, the rule is a necessary and appropriate means of ensuring that LPC's operations at the Inland Port are sufficiently protected from reverse sensitivity effects.

43 The IHP accordingly clearly has jurisdiction to grant this relief sought by LPC.

ORION

44 Orion's submission does not give rise to any scope or jurisdiction-related matters.

45 During Orion's hearing presentation on 18 April 2024, the inclusion in the District Plan of requirements contained in the New Zealand Electrical Code of Practice for Electrical Safe Distances (*NZECP 34:2001*) was discussed.

46 As outlined at the hearing, Orion's position is that specifically incorporating the requirements of NZECP 34:2001 will improve safety, remove cost associated with remediation works and promote good electricity network outcomes. Orion pointed to existing rules in the operative District Plan which refer to the NZECP 34:2001. These provisions were inserted by the Independent Hearings Panel on the Proposed Christchurch Replacement District Plan despite opposition from others saying that the issue could be addressed by an advice note cross referring to the NZECP 34:2001 or advice on a LIM.

47 In relation to this, we offered to provide:

47.1 A copy of the relevant decision of the Independent Hearings Panel on the proposed Christchurch Replacement District Plan addressing why the NZECP 34:2001 should be incorporated in the District Plan. This is attached as **Appendix 3** to this memorandum. The relevant paragraphs are:

> *[41] The benefit of making explicit reference to NZECP34 in the earthworks rules (even if this meant some duplication of NZECP34) was supported by both Mr Long and Ms Buttimore.*
>
> *…*
>
> *[45] While we have listened carefully to the position of Federated Farmers, as put to us by Ms Mackenzie, this was not based on an expert technical understanding of the implementation of NZECP34, nor on an expert analysis of the relevant Higher Order Documents. Mr Watson, Ms Buttimore and Mr Long were the relevant experts on these matters and we accept their evidence. On that basis, we are satisfied that the Revised Version (with minor amendments we have made for clarity and consistency) gives effect to the relevant objectives and policies of the CRPS and is the most appropriate for achieving related CRDP objectives. Therefore, we decline the relief sought by Federated Farmers.*

47.2 A copy of the operative District Plan provisions that incorporate the NZECP 34:2001. These are set out in **Appendix 4** to this memorandum.

CIAL

48 CIAL's submission raises Questions 1, 2 and 3. In this section we also address a matter relating to sections 77I(j) and 77L that arose at the hearing.

Scope/jurisdiction

49 In terms of Questions 1 and 2:

49.1 As we explained in our legal submissions for CIAL for the Airport Noise qualifying matter hearing:

(a) At the time of notification of PC14, the air noise contours for Christchurch Airport were going through the process of being remodelled, as prescribed by the Canterbury Regional Policy Statement (*CRPS*).

(b) When PC14 was notified, the draft remodelled contours were available. The Council accordingly based the spatial extent of the Airport Noise qualifying matter on the 2021 draft remodelled annual average 50 dB Ldn air noise contour.

(c) When submissions were due, the remodelling process had been completed. In its submission, CIAL accordingly sought that the spatial extent of the Airport Noise qualifying matter be based on the 2023 remodelled outer envelope 50 dB Ldn air noise contour.

49.2 The Council has not suggested that CIAL's submission was not "on" PC14. However, the legal submissions for Kāinga Ora – Homes and Communities (*Kāinga Ora*) at the Airport Noise qualifying matter hearing suggested that there is a natural justice issue. The suggestion was that CIAL has provided further information (presumably to Council) other than through this process, and that a number of submitters will not have been able to anticipate the extent of the contour now being proposed.

49.3 It is unclear what is meant by CIAL providing further information other than through this process because CIAL's position, i.e. seeking the 2023 remodelled outer envelope 50 dB Ldn air noise contour, was clearly set out in its submission. It has not changed since. The only "further information" provided has been CIAL's supporting evidence, which was filed as part of the formal exchange of evidence, and the participation of its experts in expert conferencing. The suggestion of a "rather opaque process" by counsel for Kāinga Ora is unfounded.

49.4 In terms of whether CIAL's submission seeking the 2023 remodelled outer envelope 50 dB Ldn air noise contour was "on" PC14, we have set out above the broad permissible scope for submissions in the PC14 process. When the Council based the Airport Noise qualifying matter on the 2021 draft remodelled annual average 50 dB Ldn air noise contour, this signalled a change to the current operative spatial extent. It was therefore open to CIAL

in its submission to seek a different spatial extent. There is no scope issue in terms of the first limb of *Clearwater*.

49.5 As to the second limb of *Clearwater*, having seen the Council's position in the notified version of PC14, any parties potentially affected would have been cognisant that the location of the contour was proposed to change. They then would have been able to comment on CIAL's proposed contour location, which was clearly defined in CIAL's submission, by way of further submission. There is equally no scope issue in terms of the second limb of *Clearwater.*

49.6 The relief sought by CIAL clearly comes within the overarching gateway of section 80E of the Amendment Act and, as such, the IHP has jurisdiction to grant the relief sought.

50 In terms of Question 3:

50.1 As outlined in our Scope Memorandum and noted above, it would not be in keeping with the "enabling" purpose and context of the Amendment Act for an IPI to be a mechanism to make anything beyond the MDRS and the relevant Policy 3 building height or density requirements *less enabling* (i.e. affect status quo development rights).[25]

50.2 This raises the question of whether the application of the Airport Noise qualifying matter in the area between the operative 50 dB Ldn air noise contour and the 2023 remodelled outer envelope 50 dB Ldn air noise contour (as sought by CIAL and supported by Council) will affect status quo development rights. Our legal position is that it will *not* affect status quo development rights and can therefore lawfully be included in PC14.

50.3 It is important to understand what is the effect of the application of the Airport Noise qualifying matter in this area. The primary impact is that the MDRS will not apply. However, in all respects development rights will remain the same as under the operative District Plan. That is, there will be no change in the discretionary activity status for residential development proposals, and no other activities (for example, earthworks etc) will be constrained.

50.4 The only change to the existing regime is the introduction of a notification requirement to CIAL for proposals for new or expanded sensitive activities within the Airport Noise qualifying matter area. In our view, a notification requirement is not "disenabling" of existing development rights. Instead, it is in the nature of an additional matter of discretion or information requirement. It will enable a development proposal to proceed, but with an additional layer of information provision to assist the Council in processing the application.

50.5 We have considered the *Waikanae* reasoning in the context of CIAL's relief. In contrast to the CIAL scenario, in *Waikanae*, the relevant site became

[25] Scope Memorandum, paragraph 32.

subject to a qualifying matter based on a new wāhi tapu listing. This had the effect of changing the status of activities previously permitted on the site and requiring additional policies to be considered for any consent application.

50.6 The Environment Court in *Waikanae* focused on the fact that, due to the application of the new qualifying matter, activities other than the activities subject to MDRS or Policy 3 (i.e. not just residential activities) were constrained when they previously had not been (e.g. earthworks, fencing, cultivation and planting). This went beyond making the MDRS less enabling of development, and was therefore ultra vires.

50.7 Here, the application of the Airport Noise qualifying matter simply makes the MDRS less enabling of development and imposes a notification requirement which is not "disenabling" of status quo development rights in and of itself. We therefore consider *Waikanae* can be distinguished and, moreover, that there is no legality or jurisdictional issue with the relief sought by CIAL. We also reiterate our previous position that caution should be exercised in applying *Waikanae* in an entirely different context such as this.

Statutory basis for qualifying matter

51 Our legal submissions for CIAL for the Airport Noise qualifying matter hearing identified both sections 77I(e) and (j) of the Amendment Act as the basis for the Airport Noise qualifying matter. There is obviously the reverse sensitivity aspect, in that the qualifying matter is necessary to ensure the safe and efficient operation of Christchurch Airport. The operation of Christchurch Airport could be constrained in the event of reverse sensitivity effects as a result of residential intensification within the qualifying matter area.

52 But an equally important basis for the application of the qualifying matter is the protection of community health and well-being and managing adverse amenity effects. In our view, the basis for these aspects is both sections 77I(e) (the safe operation of Christchurch Airport)given the interrelated link between adverse effects on health and amenity and potential reverse sensitivity effects and (j) (any other matter that makes higher density inappropriate).

53 Section 77I(j) requires section 77L to be satisfied. Based on the IHP's questions about section 77L, we have identified where in CIAL's submission and evidence that section 77L has been addressed. This is set out in a table attached as **Appendix 5** to this memorandum.

CONCLUSION

54 We have applied the analysis in our Scope Memorandum to various aspects of the relief sought by the Submitters. This exercise has established that:

54.1 In all respects, the submissions are "on" PC14 and the IHP has jurisdiction to grant the relief sought by the Submitters.

54.2 In certain respects, the Council's proposed provisions are not within the lawful scope of an IPI and the proposed new provisions should be deleted in their entirety or the proposed changes should be rejected and the provisions revert to their current operative form.

Dated: 1 May 2024

J Appleyard / A Hawkins / L Forrester
Counsel for the Submitters

APPENDIX 1

LMM INVESTMENTS – MECHANICS OF RELIEF OPTIONS PREPARED BY MR CLEASE

PC14 relief options - Whisper Creek

Option 1 – The site is rezoned to MDRZ

This option sees the area identified as a precinct to reflect site-specific QMs relating to wastewater capacity (which results in a housing cap), road access, and ponding area constraints.

This option sees the Whisper Creek provisions deleted in their entirety from the SP (Golf Resort) Zone. Any caps or QMs would then need to be added to the MRZ provisions.

If it goes to MRZ, then the policy and rule directions relating to golf activities are no longer appropriate. It would be simpler for the low-lying green area to simply be an Open Space Community Parks Zone which would prevent urban development in this area, (and noting that Open Space Water and Margins Zoning already applies adjacent to the Styx River).

Key matters to transfer are:

1) A cap on overall units, based on wastewater constraints as a QM. Mr Andy Hall's evidence is that the existing SP zone elements of 150 houses + 160 bed student accommodation + 380 bed hotel or serviced apartments = 350 residential unit equivalents in terms of wastewater demand;
2) Boundary interface planting and setbacks;
3) Road access limits; and
4) Alignment with the ODP, at least insofar as the land outside the floodplain is concerned i.e. what is suitable for residential development and what needs to remain open space.

Option 2 – The site remains SP (Golf Resort) Zone

This option simply sees the number of dwellings increased from 150 to 250 units, with a commensurate halving in hotel/serviced apartment bedrooms to 190 and student accommodation to 80 bedrooms.

I separately recommended aligning the height to boundary and height rules with MDRS.

This was the option put forward in evidence, with the discrete set of text changes included as Attachment 2 to my EiC.

Option 3 – the balance of the site remains SP (Golf Resort) Zone, but the residential areas shown on the ODP get rezoned to MDRZ

This option sees in effect pockets of MRZ surrounded by SP zone, with the MRZ boundaries reflecting the residential development areas on the ODP.

The challenge with this option is having to split out the QMs/ site-specific rules into both the MRZ and SP chapters. And without increasing the housing cap it achieves little over option 2 and adds considerable complexity. As such this option has not been progressed to exploring District Plan text changes.

Option 1 text changes

Delete all reference to the Whisper Creek Golf Resort from the SP (Golf Resort) Zone:

13.9.2.1 Objective - Golf resort development

a. For the Clearwater Golf Resort ~~and Whisper Creek Golf Resort~~, to provide golfing and associated facilities (including resort facilities) of international standard, bringing economic and social benefits to the City and region, and to provide other recreational opportunities, and limited residential development, within extensive open space and lake or riparian settings, with no significant adverse effects on the natural or adjoining rural environments.

13.9.2.1.1 Policy - Benefits to the community

a. Recognise the economic and social benefits that the Clearwater Golf Resort provides ~~and Whisper Creek Golf Resort can provide~~ to the City and region, and assist in enabling the potential benefits of these resorts for ecological restoration, public access to streams and rivers, and recreation for the wider community, including local community, to be realised.

13.9.2.1.3 Policy - Visual integration and mitigation of effects

a. Ensure that built development is well integrated visually into the open rural environments within which ~~each~~ <u>the</u> golf resort sits, and that there is adequate separation distance from activities in adjacent zones so as to mitigate potentially adverse effects of the resorts such as noise and traffic.

13.9.2.1.4 Policy - Careful siting

a. Ensure that earthworks and buildings in the ~~two~~ golf resort~~s~~ are carefully designed, located and constructed, ~~for the Whisper Creek Golf Resort so as to be resilient to potential liquefaction and to maintain flood storage capacity in the Lower Styx Ponding Area, and for both resorts,~~ to reduce potential flood damage to buildings in a major flood event.

*Delete rule section **13.9.5 Rules – Whisper Creek Golf Resort** in its entirety.*

Introduce new residential policies to capture key existing policy outcomes for the area:

14.2.x Objective – Whisper Creek Precinct

a. For the Whisper Creek Precinct, to provide for residential development, within extensive open space and riparian settings, with no significant adverse effects on the natural or adjoining rural environments.

14.2.x.1 Policy - Benefits to the community

a. Recognise the economic and social benefits that the Precinct provides the City, and assist in enabling the potential benefits of these resorts for ecological restoration, public access to streams and rivers, and recreation for the wider community, including local community, to be realised.

14.2.x.2 Policy - Visual integration and mitigation of effects

a. Ensure that built development is well integrated visually into the open rural environments within which the precinct sits, and that there is adequate separation distance from activities in adjacent zones so as to mitigate potentially adverse effects of the precinct such as noise and traffic.

14.2.x.3 Policy – Careful siting

a. Ensure that earthworks and buildings in the Precinct are carefully designed, located and constructed, so as to be resilient to potential liquefaction and to maintain flood storage capacity in the Lower Styx Ponding Area, to reduce potential flood damage to buildings in a major flood event.

Introduce new residential rules to capture key regulatory outcomes for the area – text is largely renumbering of existing SP(Golf) provisions with reference to golf facilities removed, and transferring them to the residential chapter.

14.5 MDRZ Rules

14.5.1.1 – Permitted Activities

<table>
<tr><td colspan="2">Activity</td><td>Activity specific standards</td></tr>
<tr><td>PX</td><td>Residential activity located within the Whisper Creek Precinct</td><td>a. Up to 350 residential units.
b. No residential units shall be erected before boundary planting along all zone boundaries (other than boundaries with Open Space zones) is completed in accordance with the Management Plan required in Rule 14.5.1.3 RDX for the Whisper Creek Precinct.
c. Residential units and road connections shall be in general accordance with the layout shown in Appendix 14.x</td></tr>
</table>

14.5.1.3 – Restricted Discretionary Activities

<table>
<tr><td colspan="2">Activity</td><td>Activity specific standards</td></tr>
<tr><td>RDX</td><td>Establishment of boundary planting within the Whisper Creek Precinct.

Any application arising form this rule shall not be limited or publicly notified.</td><td>a. A Management Plan shall be provided to Council prior to any construction of planting, dealing with matters in 14.15.x.x</td></tr>
<tr><td>RDX</td><td>Any activity within the Whisper Creek Precinct that does not meet with one or more of the built form standards in Rule 14.x

[Built form rules on road boundary and internal boundary setbacks]</td><td>a. Amenity of immediate neighbours – Rule 14.xxx</td></tr>
<tr><td>RDX</td><td>Any subdivision or development in the Whisper Creek Precinct</td><td>a. Concept Plan for Whisper Creek Precinct only – Rule 14.xxx a.i-vii</td></tr>
</table>

		A concept plan is not required when a subdivision consent is being sought or has already been granted for that development.

14.5.1.5 – Non-complying Activities

Activity	
NCX	Vehicle access to the Whisper Creek Precinct shall be limited to the following: i. A single road from each of Lower Styx Road and Spencerville Road; and ii. A single road from Teapes Road.
NCX	Residential activity that does not meet activity specific standard Px.a *[more than 350 units]*

14.5.2 – Built form standards

14.15.2.X Whisper Creek Precinct road boundary setback

a. The minimum building setback from Turners Road, Spencerville Road and from Teapes Road adjoining 138 Turners Road (Lot 1 DP23116) shall be 100m.

14.15.2.x Whisper Creek Precinct zone and Ponding Area setbacks

a. The minimum building setback shall be:

i. 20m from a zone boundary which is not also a road boundary;

ii. 15 metres from the Lower Styx Ponding Area boundary.

14.15.x – Matters of control and discretion

15.15.x.x Construction of residential units – Whisper Creek Precinct only

a. The provisions of a management plan to address the following:

i. The biodiversity and enhancement of waterways and wetland areas, as well as measures to mitigate any adverse effects on biodiversity.
ii. Details of design, construction and operation of the golf course drainage system and wetlands, including proposed excavation and filling, and potential effects on sediment discharges and water quality.
iii. Storage capacity in the Lower Styx Ponding Area and effective management of stormwater and flood discharges in the Zone, with consideration of tidal influences and the effects of sea level rise.
iv. Amenity planting around the Zone boundary and its ability to screen and soften built development.
v. Appropriate management of any archaeological sites.

15.15.x.x Amenity of immediate neighbours - Whisper Creek Precinct only

a. Any visual dominance over adjacent properties;
b. Any effects on amenity of adjacent properties, including daylight and sunlight admission;
c. Any loss of privacy for adjacent properties through overlooking; and
d. Any opportunities for landscaping and tree planting, as well as screening of buildings.

15.15.x.x Concept Plan for Whisper Creek Precinct only

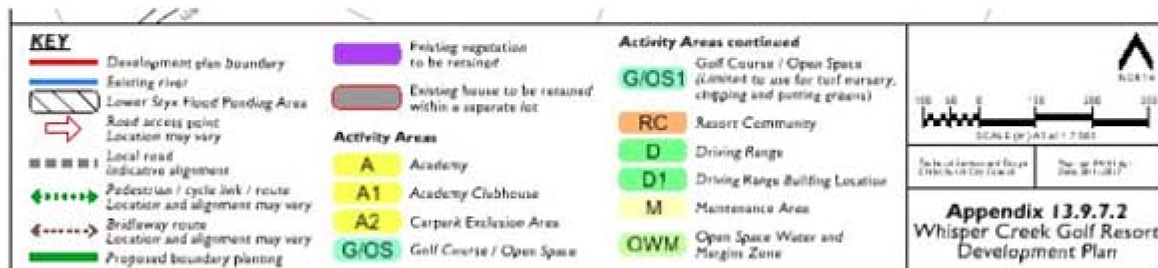
a. The provisions of a concept plan and supporting documentation that shall include the following:

i. The indicative subdivision layout including indicative densities and distribution and indicative road layout;
ii. The location of sites for built development in relation to golf course and open space areas within the Zone and to the open space and rural character of the wider locality;
iii. Any area specific measures for mitigating risks from natural hazards, including flooding, seismicity and liquefaction;
iv. Connectivity with other parts of the Zone and with adjacent open space and other zones, in terms of car parking locations, walkways and cycle ways;
v. Provisions for stormwater management;
vi. The application of the principles of Crime Prevention Through Environmental Design;
vii. The ability to create and preserve view shafts to areas across and beyond the site; and
viii. An assessment of effects, either positive or negative, on tangata whenua values.

Subdivision rules
8.5.1.4 - Discretionary Activity

Activity	
D2	Any subdivision in the ~~Specific Purpose (Golf Resort) Zone – Whisper Creek Golf Resort~~ Whisper Creek Precinct that does not comply with a concept plan approved by the Council for that activity in accordance with ~~Rule 13.9.5.1.3 RD6~~ Rule 14.15.1.3 RDX Concept Plans.

Appendix 14.x – Whisper Creek Precinct



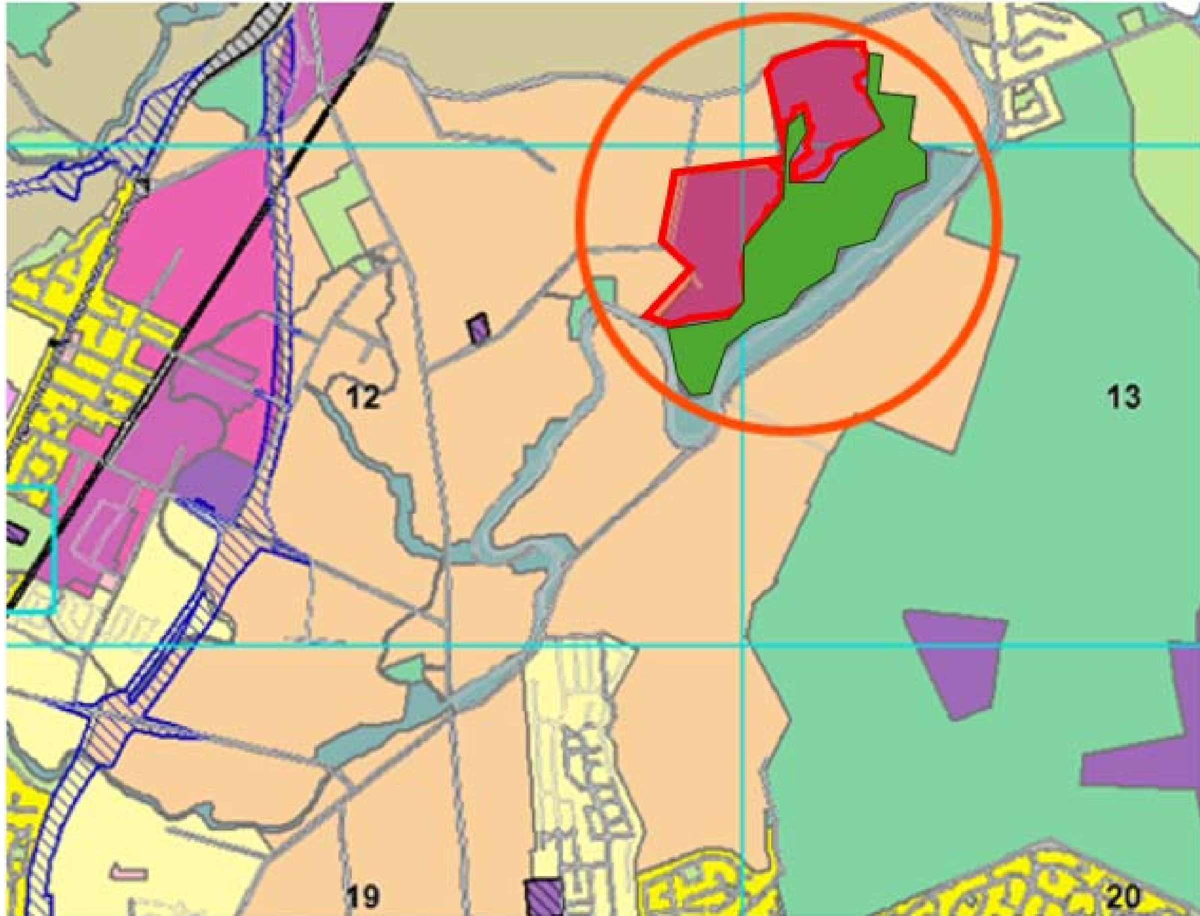
Red = MDRZ zone.

Blue line = building setback from boundaries

Option 1 change in Zone

Red = MDRZ

Green = Open Space Community Parks Zone



Option 2 text changes (as per EiC)

Rule 13.9.5.1.1

P10	Residential activity	a. Up to ~~1~~250 units in total within the Whisper Creek Golf Resort, with no more than one unit per site. b. No building shall be erected in the Resort Community Areas before boundary planting along all zone boundaries (other than along the boundary between the Golf Resort Zone and the Open Space - Water and Margins Zone) is completed in accordance with the Management Plan required in Rule 13.9.5.1.3 RD5 for the golf course. c. The activity shall be located within the relevant Activity Areas shown on the development plan for this resort at Appendix 13.9.7.2

Rule 13.9.5.1.5

~~**NC3**~~	~~**Any activity in the Academy Activity Area that does not meet the area specific standards in Rule 13.9.5.3.1. b**~~

Rule 13.9.5.3.1 Access and roading improvements – Whisper Creek Golf Resort

a. Vehicle access to Whisper Creek Golf resort shall be limited to the following:

   i. A single road form each of Lower Styx Road and Spencerville Road; and

   ii. A single road from Teapes Road, which shall be limited to use by service vehicles only.

~~**b. No activity shall be permitted in the Academy Activity Areas, except approved earthworks, landscaping and planting, and the construction and use of access roads, until the Lower Styx/ Marshlands Road intersection has been signalised.**~~

Rule 13.9.5.2.2 – Recession planes

Delete rule and replace with Panel decision on MRZ Height in Relation to Boundary rule.

Rule 13.9.5.2.5 – Building height

Delete rule and replace with Panel decision on MRZ Height rule.

APPENDIX 2

LMM INVESTMENTS – SECTION 77L ASSESSMENT

77L(a) - Identify the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area	Infrastructure servicing constraints – see the evidence of Mr Hall. Other constraints – as already incorporated in the operative District Plan and proposed to be "carried over", as outline in Mr Clease's relief options.
77L(b) - Justify why that characteristic makes that level of development inappropriate in light of the significance of urban development and the objectives of the NPS-UD	See the evidence of Mr Colegrave – the reduced housing provision will still achieve the provisions of the NPS-UD and meet market demand in the area.
77L(c) – Site-specific analysis	See the evidence of Mr Hall, together with the "carry over" of existing operative District Plan matters as outlined by Mr Clease in his relief options.

APPENDIX 3

ORION – PROPOSED CHRISTCHURCH REPLACEMENT PLAN DECISION 28 (SUBDIVISION, DEVELOPMENT AND EARTHWORKS (PART), STAGE 2)

Independent Hearings Panel
Christchurch Replacement District Plan
Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

IN THE MATTER OF	section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014
AND	
IN THE MATTER OF	proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 2 and 3 November 2015

Date of decision: 15 July 2016

Hearing Panel: Environment Judge John Hassan (Chair), Ms Sarah Dawson, Mr Alec Neill, Mr Gerard Willis

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DECISION 28

Chapter 8: Subdivision, Development and Earthworks (part) — Stage 2

Outcomes: **Proposal changed as per Schedule 1**

COUNSEL APPEARANCES

Mr D Laing and Ms M Jagusch	Christchurch City Council
Mr P Radich QC and Ms E Moore	Crown
Mr D van Mierlo	Te Rūnanga o Ngāi Tahu and ngā rūnanga
Ms J Appleyard	Christchurch International Airport Limited Orion New Zealand Limited
Mr E Chapman	University of Canterbury Canterbury Polytechnic Institute of Technology

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INTRODUCTION

[1] This decision ('decision')[1] is one of a series by the Independent Hearings Panel ('Hearings Panel'/'Panel')[2] concerning the formulation of the Christchurch Replacement District Plan ('CRDP').

[2] Primarily, it concerns the Stage 2 proposal for Chapter 8, Subdivision, Development and Earthworks (part) and, in particular, provisions concerning earthworks. It builds from Decision 13: Subdivision, Development and Earthworks Stage 1 (Part)[3] on that chapter and also includes provisions relating to zones not covered by that decision (Rural, Open Space, Specific Purpose, Residential (part), Commercial and Industrial (part)) and various overlays.[4]

[3] This decision also concerns a matter that arose from submissions on the Residential New Neighbourhood zone proposals ('Decision 29'), as to the management of earthworks (including compaction, vibration and noise) and notification, particularly at Highfield and Prestons.[5]

[4] The Council's originally notified Stage 2 proposal ('Notified Version') was effectively superseded by subsequent versions developed by the Council in the lead up to and through the course of the hearing. That was in response to pre-hearing discussions and mediation with submitters, and Panel questioning. The various replacement iterations proposed by the Council were as follows:

(a) A tracked change version of the Notified Version was proposed in the evidence in chief of the Council's lead planning expert, Andrew Long ('First Revision'),[6] and the Council's opening submissions recorded this to be largely agreed with other parties.[7]

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1 This decision follows our hearing of submissions and evidence. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('the OIC'/'the Order') is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions, 26 February 2015 ('Strategic Directions decision').

2 Members of the Hearings Panel who heard and determined this proposal are set out on the cover sheet.

3 Decision 13 was released on 12 January 2016.

4 Port Influences Overlay Area; Retirement Village Overlay; Residential Hills Mixed Density Overlay (new); Akaroa Hillslopes Density Overlay; Residential Large Lot Density Overlay; Residential Small Settlement Kainga Overlay Area 1 and 2; Residential Banks Peninsula Zone — Diamond Harbour Density Overlay; Residential Suburban Stormwater Capacity Constraint Overlay.

5 In particular, as raised by Luke Pickering (2510) and Ross Major (2499).

6 Evidence in chief of Andrew Long on behalf of the Council, Attachment A.

7 Opening submissions for the Council at 1.2.

(b) Mr Long, proposed an update of the First Revision in his rebuttal evidence, in response to some matters raised in the evidence of some parties ('Second Revision').[8]

(c) On 9 November 2015, as directed following the hearing,[9] the Council proposed a further revision in advance of closing submissions ('Third Revision'). This included changes in response to evidence, submissions heard, and questions/discussions during the course of the hearing (and also in response to discussions with Orion New Zealand Limited (2340, FS2797) ('Orion') and Transpower New Zealand Limited (2218, FS2780) ('Transpower')).

(d) In its closing submissions, the Council proposed some confined further refinements ('Fourth Revision') including in response to concerns raised by some submitters.

(e) On 22 June 2016, as directed by the Panel,[10] the Council updated its Fourth Revision to ensure proper alignment of its drafting style with Decision 13: Subdivision, Development and Earthworks Stage 1 (Part) ('Revised Version'). This also included drafting for the related Residential New Neighbourhood provisions ('RNN provisions').

[5] Consistent with the observations in the Council's opening submissions, no party sought to cross-examine the Council's experts. Differences had further narrowed by the time of the Council's closing submissions (including the Fourth Revision). Except where we state otherwise, we accept the Council's evidence as soundly supporting the Fourth Revision. The changes we make to the Revised Version, essentially to improve drafting clarity and consistency, are set out in Schedule 1 ('Decision Version').[11]

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8 Rebuttal evidence of Mr Long on behalf of the Council, Attachment A.

9 Minute — Timetabling directions regarding Council provision of updated Stage 2 Subdivision and Earthworks Proposal (Part) and closing submissions and timing of release of decision, 4 November 2015.

10 Minute — Directions to prepare a complete Subdivision, Development and Earthworks chapter, 9 June 2016. The Council sought an extension to file (by memorandum dated 14 June 2016), which was granted by the Panel (by minute dated 16 June 2016).

11 Also included in Schedule 1 are provisions included in Chapters 8 and 14 by the Panel's Stage 2 decision on that proposal (released in conjunction with this decision). Colour coding is used to distinguish the Decision Version provisions from those of the Stage 2 decision (and shading to show related provisions arising from the Panel's Stage 1 decisions).

[6] As set out in our earlier decisions,[12] the Decision Version will become operative as part of the CRDP, as soon as reasonably practicable, upon release of this decision and the expiry of the appeal period.

Rights of appeal

[7] Under the OIC,[13] the following persons may appeal our decision to the High Court (within the 20 working day time limit specified in the Order), but only on questions of law (and, for a submitter, only in relation to matters raised in the submission):

(a) any person who made a submission (and/or further submission) on the Notified Version (and/or on the Highfield earthworks provisions);

(b) the Council; and

(c) the Ministers.[14]

Provisions deferred

[8] This decision defers determination of the following:

(a) The minimum lot size standards for the Papakāinga zone until the related the Chapter 4 proposal is determined;[15]

(b) Proposed Objective 8.1.1 and proposed Policies 8.1.1.1–8.1.1.4 and noted aspects of Rule 8.4.7, until the related Chapter 9 proposal is determined;

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12 Strategic Directions decision at [5]–[9].

13 Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('OIC'), cl 19.

14 The Minister for Canterbury Earthquake Recovery and the Minister for the Environment, acting jointly.

15 As jointly requested by the Council, the Crown (2387, FS2810) and Te Rūnanga o Ngāi Tahu (2485, FS2821) ('Ngāi Tahu'). Pertaining to this topic, the Panel issued various Minutes, including making findings on some jurisdictional matters raised by a Memorandum of Counsel on behalf of Wainui Bay Limited. Wainui Bay Limited was not a submitter on the Notified Version, but made a further submission (FS2829) on the Crown's submission (2387) on the notified Papakāinga Zone proposal (Chapter 4). However, it filed legal submissions in response to a Joint Memorandum, dated 8 June 2016, on behalf of the Council, the Crown and Te Rūnanga o Ngāi Tahu (2458) and Ngā Rūnanga (2821), concerning the minimum lot size for the Papakāinga Zone, which was a matter regarding the Notified Version. The Panel's Minute, dated 24 June 2016, was as to this matter and made determinations concerning the preliminary questions as to jurisdiction to grant the relief sought by the joint memorandum. A further memorandum of counsel on behalf of Wainui Bay Limited was filed on 30 June 2016. It also pertains to the determination of the Chapter 4 proposal, which has not yet been determined by the Panel.

(c) Appendix 8.6.6, until a further decision is made as a consequence of a direction in Decision 17 Residential (Part) — Stage 2 (which pertains to the map in this Appendix); and

(d) Appendix 8.6.14 Hunters Road, Diamond Harbour until the related Chapter 18 Open Space proposal is determined (given a related submission is before the Panel for that proposal).

Identification of parts of Existing Plan to be replaced

[9] The OIC requires that our decision also identifies the parts of the existing Banks Peninsula District Plan and existing Christchurch City Plan (together 'Existing Plan') that are to be replaced by the Decision Version.[16] As was the case with Decision 13: Subdivision, Development and Earthworks Stage 1 (Part), given the extent and nature of various matters deferred, none of the provisions of the Existing Plan are replaced by this decision. A further decision will issue in due course to effect the replacement of relevant Existing Plan provisions.

Conflicts of interest

[10] Disclosures as to potential conflicts of interest were posted on the Independent Hearings Panel website.[17] As the transcript and website record, on various occasions during the hearing, Panel members disclosed that submitters were known to them either through current or previous business and/or personal associations. In view of such associations Judge Hassan informed the parties that, on matters concerning the dispute between Federated Farmers of New Zealand (2288, FS2788) ('Federated Farmers') and Orion and Transpower, he would recuse himself because he acted for Transpower before his appointment to the bench.[18] Similarly, Mr Neill recused himself from dealing with matters in relation to the submission of Ngāi Tahu and Ms Dawson recused herself from dealing with the submissions by Pauline and Ray McGuigan (2535, FS2844), Bob Webster (2205), and Rod Donald Banks Peninsula Trust (2311) (given her understanding that Bob Webster is a member of that trust).[19] No submitter raised any issue in relation to these matters.

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16 OIC, cl 13(3).
17 The website address is www.chchplan.ihp.govt.nz.
18 Transcript, page 1, lines 19–36.
19 On reflection, Ms Dawson considers that her recusal may have been overly-cautious and disclosure would have sufficed but she has maintained her recusal in this instance.

REASONS

STATUTORY FRAMEWORK AND HIGHER ORDER DOCUMENTS

[11] The OIC directs that we hold a hearing on submissions on a proposal, and make a decision on that proposal.[20]

[12] It sets out what we must and may consider in making that decision.[21] It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.[22] It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').[23] The OIC also specifies additional matters for our consideration.

[13] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply it as we address various issues in this decision.[24] On the requirements of ss 32 and 32AA RMA, we endorse and adopt [48]–[54] of our Natural Hazards decision.[25]

[14] The Proposal intends to include in Chapter 8 provisions that would supplement those confirmed by Decision 13: Subdivision, Development and Earthworks Stage 1 (Part). Decision 13: Subdivision, Development and Earthworks Stage 1 (Part) was not appealed and we adopt its findings at [13]–[15] concerning the framework and Higher Order Documents (in addition

20 OIC, cl 12(1).
21 OIC, cl 14(1).
22 OIC, cl 5.
23 Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website. The CER Act was repealed and replaced by the Greater Christchurch Regeneration Act 2016 ('GCRA'), which came into force on 19 April 2016. However, s 148 of the GCRA provides that the OIC continues to apply and the GCRA does not effect any material change to the applicable statutory framework for our decision or to related Higher Order Documents. That is because s 147 of the GCRA provides that the OIC continues in force. Further, Schedule 1 of the GCRA (setting out transitional, savings and related provisions) specifies, in cl 10, that nothing in that Part affects or limits the application of the Interpretation Act 1999 which, in turn, provides that the OIC continues in force under the now-repealed CER Act (s 20) and preserves our related duties (s 17).
24 At [25]–[28] and [40]–[62].
25 Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pages 20-21.

to its evidential findings on certain matters, as we address later in this decision). Given that Objectives 8.1.2 (as to 'design and amenity') and 8.1.3 (as to 'infrastructure and transport') were confirmed by that decision and are beyond contention, we determine the appropriateness (for the purposes of s 32AA RMA) of related provisions by reference to them (and relevant Strategic Objectives).

Submissions and relevant issues

[15] There were relatively few submissions and further submissions on the Notified Version and we have considered all of them in reaching our decision. Schedule 2 lists witnesses who gave evidence for various parties, and submitter representatives.

[16] Closing submissions revealed that issues between several parties were further narrowed or resolved by refinements which the Council included in its Third and subsequent Versions. The concerns of the Crown[26] and Christchurch International Airport Limited (2348, FS2817)[27] ('CIAL') were fully resolved. Deferral of issues concerning minimum allotment size standards for the Papakāinga zone meant Ngāi Tahu did not have any further issues.[28] Canterbury Aggregate Producers Group ('CAPG') did not file closing submissions as it was not a submitter on Chapter 8, but the Council's closing reports that the Fourth Revision makes a minor drafting correction raised by CAPG's counsel.[29] Where no other party raised issues with provisions on which parties reached agreement with the Council, we have accepted the Council's evidence as supporting the appropriateness of the relevant provisions.

[17] The issues raised by Transpower and Orion were fully resolved insofar as the Council was concerned. However, Federated Farmers called evidence opposing aspects of what those parties agreed, but did not file closing submissions. The issues that Federated Farmers and other submitters raised are addressed in the context of the s 32AA evaluation below.

[18] The Council accepted the change from 100m³ to 150m³ earthworks as submitted by Christchurch Polytechnic Institute of Technology (2269) and University of Canterbury (2464).

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26 Closing submissions for the Crown at 1.1

27 Closing submission for CIAL and Orion at para 4.

28 Closing submissions for Ngāi Tahu at para 1.

29 Closing submissions for the Council at para 21.

The other concerns of those submitters, in relation to drafting for notification and exemptions for earthworks in waterbody setbacks, are addressed in the Decision Version.

COUNCIL'S S 32 REPORT

[19] As required, we have had regard to the Council's s 32 report ('s 32 Report'/'Report'). We are satisfied that the Report generally presents a clear analysis of alternatives, and the basis for the choices made in the Notified Version.

SECTION 32AA EVALUATION

Objectives 8.7.1 and 8.7.2 and related non-contentious policies and other provisions

[20] On the Council's evidence, in relation to the following non-contentious provisions, we are satisfied that (subject to the drafting refinements we have made):

(a) proposed Objective 8.7.1 (as to earthworks) and 8.7.2 (as to health and safety) are the most appropriate for achieving the RMA's purpose; and

(b) the associated policies and all other non-contentious rules and other provisions are the most appropriate for achieving those objectives, Objectives 8.1.2 and 8.1.3 and related Strategic Objectives.

[21] Therefore, we have confirmed these provisions in the Decision Version.

Earthworks rules relating to transmission and distribution lines

[22] As noted, Judge Hassan recused himself from determining matters under this heading.

[23] This matter concerns the appropriate management requirements for earthworks in the vicinity of electricity transmission and distribution lines. The Notified Version included a 12 metre setback standard for permitted earthworks in proximity to National Grid transmission lines.[30] It did not manage earthworks in relation to electricity distribution lines.[31] The setback

[30] A list of exempted earthworks was proposed in notified Rule 8.8.5.
[31] Evidence in chief of Andrew Long at 7.30.

distance from transmission lines was also inconsistent with the distances determined in the Panel's recent decisions.[32]

[24] The submission from Transpower supported the setback standard in part. It sought amendments to provide for limited earthworks in the vicinity of the National Grid and a change in activity status to non-complying for earthworks not complying with some of those standards. This included reference to compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001). Transpower's submission was supported by Federated Farmers and Orion.

[25] Orion's submission supported the intent of the notified standard, but sought that it be extended to also refer to high voltage electricity distribution lines. Transpower and Federated Farmers opposed this submission on the basis that this would impose unnecessary restrictions that are greater than the degree of restriction sought to protect the National Grid and give effect to the National Policy Statement on Electricity Transmission 2008 ('NPSET'). Federated Farmers' submission also stated that the NZECP 34:2001 ('NZECP34') provides adequate setback distances for distribution assets.

[26] Prior to our hearing, these submissions were the subject of discussion at targeted mediation for submitters calling expert planning evidence.[33] This was attended by planners on behalf of Transpower, Orion, the Oil Companies and the Council.[34] The planners reached agreement to accept the relief sought by Transpower, with minor amendments, and to extend the provisions to apply to electricity distribution lines. Transpower continued to oppose inclusion of provisions relating to Orion's distribution lines. The provisions agreed between the expert planners were supported in Mr Long's planning evidence-in-chief and included in the Council's First Revision.

[27] Following the expert planners' mediation, wider facilitated mediation enabled further discussion of this matter between the Council and other parties. This was attended by Federated

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32 Including Decisions 10 and 17 (respectively the Stage1 and Stage 2 Residential (Part) decisions), and Decisions 11 and 23 (respectively the Stage 1 and Stage 2 Commercial (Part) and Industrial (Part) decisions).

33 The Notice of this targeted mediation clearly stated that submitters who were not calling expert planning witnesses would be able to attend mediation sessions with the Council at a later date.

34 Ms Ainsley McLeod (Transpower), Ms Laura Buttimore (Orion), Ms Georgina McPherson (Oil Companies) and Mr Andrew Long and Mr Ben Baird (Council). The "Oil Companies" submitters comprise Z Energy Limited, BP Oil Limited and Mobil Oil NZ Limited (under the joint submissions 2185, FS2787).

Farmers and the Council.[35] Transpower, Horticulture New Zealand and Federated Farmers had, by this stage, come to an agreed approach in relation to electricity transmission lines. This was acknowledged in the evidence of Transpower's planning expert, Ms Ainsley McLeod, who supported the provisions in the First Revision subject to some limited suggested amendments.[36]

[28] No agreement was reached at mediation regarding management of earthworks in relation to Orion's distribution line infrastructure.[37] We will return to our discussion of this matter.

[29] Through the course of the hearing, amendments to the provisions were put to, or discussed with, us, including those referred to above from Ms McLeod and from Mr Scheele, one of Orion's expert planners.[38] The Panel also asked questions of the experts[39] regarding the potential for conflict between the consenting process required through the CRDP provisions and the written approval process contained in NZECP34. As directed following the hearing, the Council proposed its Third Revision. This included amendments to delete RD10 and D11 to overcome the conflict with NZECP34. The Council's covering memorandum stated that these changes resulted from further discussion following the hearing, between the Council, Orion and Transpower.[40] With one consequential amendment agreed by the Council in its closing submissions,[41] the above amendments were reflected in the Council's Revised Version.

[30] The outstanding matter for us to address is the opposition by Federated Farmers to earthworks rules applying to high voltage electricity distribution lines.

[31] Federated Farmers was represented at the hearing by Ms Fiona Mackenzie, a Senior Policy Advisor employed by Federated Farmers in Christchurch. Ms Mackenzie is not an expert planner and, although she holds a legal qualification, she confirmed in cross-examination that she was not giving evidence, or submissions, as either a lawyer or a planner, but rather was appearing as a lay witness in her capacity as a policy advisor for Federated Farmers.[42]

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35 Ms Mackenzie (Federated Farmers) and Mr Long (Council).
36 Evidence in chief of Ainsley McLeod on behalf of Transpower at para 10 and Attachment C.
37 Mediation Report: Subdivision, 8 October 2015.
38 Evidence in chief of Mason John Scheele on behalf of Orion, University of Canterbury (2464, FS2822) and Christchurch Polytechnic Institute of Technology (2269, FS2769) at paras 14–15 and Appendix One.
39 Transcript, pages 36–38 (Mr Long); pages 72–73 (Ms Buttimore); page 81, lines 4–33 (Mr Watson).
40 Memorandum of Counsel providing revised further proposal for Subdivision, Development and Earthworks Stage 2 (Part) Proposal, 9 November 2015 at 4.11.
41 Closing submissions for the Council at 5.2.
42 Transcript, pages 94, lines 5–25 (Ms Mackenzie).

[32] As an initial matter, Ms Mackenzie gave evidence of her concern that Federated Farmers was not permitted to attend the expert planners' mediation, as they were not calling evidence from a planner. She expressed concern that, by the time of the wider facilitated mediation, provisions relating to Orion's lines "appeared to have been cemented in and Mr Long was unwilling to consider other views".[43] Ms Mackenzie's concerns regarding the mediation process appear to stem from the potential for landowners (including a large number of farmers throughout Banks Peninsula) to be directly affected by the outcome of the submissions from Transpower and Orion, yet the farmers' representative (Federated Farmers) was excluded from the initial targeted mediation between the Council and those two parties.[44]

[33] We note that Federated Farmers made further submissions on the submissions of Transpower and Orion. It was open to Federated Farmers to call expert planning evidence on this matter. Having chosen not to do so, Federated Farmers was not invited to attend the initial, expert planners' mediation, but was provided the opportunity to attend the second, wider facilitated mediation (as it were to other submitters in the same situation). Judge Hassan addressed this procedural matter during the hearing, reassuring Ms Mackenzie that "it is in this process where we as a Panel will receive and hear evidence and contested views, so the fact that you didn't take part in that first mediation … certainly doesn't take away from what you might tell us in terms of your evidence and effectively it is for us to make assessment of all these matters as a Panel".[45] The Panel is satisfied that Ms Mackenzie's concerns regarding the mediation process were misdirected. Federated Farmers was provided with the same opportunity as other submitters to be involved in the hearings' processes, and has taken the opportunity to present the evidence directly to this Panel from Ms Mackenzie.

[34] We understand a key aspect of Federated Farmers' submission, as expressed to us in Ms Mackenzie's evidence, to be that (unlike the National Grid) Orion's electricity distribution lines are not covered by the NPSET.[46] Neither are they specified in the definition of "strategic infrastructure" in the CRPS.[47] Accordingly, she does not consider there is any requirement for the CRDP to manage reverse sensitivity effects between distribution lines and other land uses.[48]

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[43] Evidence in chief of Fiona Mackenzie on behalf of Federated Farmers at para 5.
[44] Evidence in chief of Fiona Mackenzie on behalf of Federated Farmers at paras 3–5.
[45] Transcript, page 92, lines 23–31. As noted at [10], Judge Hassan recused himself from determining matters under this heading.
[46] Evidence in chief of Fiona Mackenzie at paras 11 and 36(d)–(e).
[47] Evidence in chief of Fiona Mackenzie at paras 13 and 36(b).
[48] Evidence in chief of Fiona Mackenzie at paras 15 and 36(d).

[35] In cross-examination by Ms Appleyard, Ms Mackenzie demonstrated the limited degree to which she had analysed the provisions of the CRPS (in relation to strategic and regionally significant infrastructure) in coming to her opinions regarding setback provisions from Orion's lines.[49]

[36] Ms Laura Buttimore provided expert planning evidence on behalf of Orion, in response to the evidence of Ms Mackenzie.[50] Her supplementary evidence attached a copy of her evidence for the Stage 1 Commercial and Industrial hearing, on which she relied. She provided an analysis of the relevant provisions of the NPSET and the CRPS in relation to the management of effects on Orion's high voltage distribution lines. She also addressed consistency with the decided Strategic Objectives 3.3.1, 3.3.2 and 3.3.12. Ms Buttimore was not cross-examined by Federated Farmers and her analysis of these Higher Order Documents was not challenged by any party.

[37] Ms Buttimore acknowledged that the NPSET is not applicable to any of Orion's electricity lines. However, she did not consider this has any relevance to whether or not corridor protection is appropriate within the CRDP for Orion's identified electricity network.[51]

[38] Ms Buttimore concluded that Orion's identified strategic lines fit within the definitions of "regionally significant infrastructure" and "strategic infrastructure" under the CRPS and "strategic infrastructure" under Chapter 3 of the CRDP.[52] In her opinion, the scale and number of customers serviced by these identified lines means that they are of greater than local importance and therefore warrant protection under the relevant objectives and policies of the CRPS and Chapter 3.[53]

[39] Ms Mackenzie was of the opinion that NZECP34 provides adequate protection for distribution (and transmission) lines from earthworks activities — in relation to both safety concerns and ease of carrying out maintenance on the lines.[54]

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49 Transcript, pages 95–100 (Ms Mackenzie).

50 Ms Buttimore is a qualified planner with over six years' experience working as a planner in local authority and private consultancy. She is a Full Member of the New Zealand Planning Institute.

51 Evidence in chief of Laura Buttimore on behalf of Orion to the Stage 1 Commercial and Industrial hearing, 24 April 2015 at paras 30-31.

52 Supplementary evidence of Laura Buttimore on behalf of Orion at para 11.

53 Supplementary evidence of Laura Buttimore at para 19; and evidence in chief of Laura Buttimore to the Stage 1 Commercial and Industrial hearing, 24 April 2015, at para 40.

54 Evidence in chief of Fiona Mackenzie at paras 13, 21–35 and 36(a).

[40] Mr Shane Watson gave evidence about the reasons Orion sought protection for its strategic distribution lines through the control of earthworks in the CRDP.[55] He evidence attached a copy of his evidence for the Stage 1 Residential and Commercial and Industrial hearings.[56] Mr Watson was not cross-examined by Federated Farmers. In answer to questions from Ms Appleyard and members of the Panel, he gave examples of difficulties Orion has experienced with breaches of NZECP34, the level of landowner awareness of NZECP34, and the process for its enforcement. In answer to a question from Ms Appleyard regarding the sufficiency of NZECP34, Mr Watson stated:[57]

> The awareness of the code is not high. Because it is not in the legislation … it doesn't get referred to in terms of the normal planning of a job somehow … it is not included in the Building Act, it is not included in any of the processes you go for normal design process.

[41] The benefit of making explicit reference to NZECP34 in the earthworks rules (even if this meant some duplication of NZECP34) was supported by both Mr Long and Ms Buttimore.[58]

[42] Ms Mackenzie also stated that Federated Farmers believes that the additional setback standards from Orion's lines will result in loss of productive land and unwarranted compliance requirements.[59]

[43] Ms Buttimore concluded that the permitted activity rules for earthworks (agreed with Mr Long) will ensure that earthworks within certain distances of lines and support structures will occur in a safe and efficient manner whilst ensuring no unnecessary regulation is imposed on landowners. In her opinion, these provide the most appropriate way of managing potential reverse sensitivity effects on Orion's identified strategic infrastructure.[60]

[44] In his rebuttal evidence Mr Long maintained his position that Orion's high voltage distribution network requires similar provisions to those managing the Transpower

55 Mr Watson is the Network Asset Manager for Orion. He has over 30 years' engineering and asset management experience in New Zealand's electricity distribution and transmission sectors, and over 15 years' experience with Orion in managing its electrical assets.
56 Supplementary evidence of Shane Watson on behalf of Orion at Attachment A.
57 Transcript, page 79, lines 8–14 (Mr Watson).
58 Transcript, page 35, lines 12–16; page 37, lines 5–11 (Mr Long); pages 72 – 73 (Ms Buttimore).
59 Evidence in chief of Fiona Mackenzie at para 18.
60 Supplementary evidence of Laura Buttimore at paras 24–25.

transmission network, and that the earthworks provisions in the Second Revision were not substantially or unnecessarily limiting.[61]

[45] While we have listened carefully to the position of Federated Farmers, as put to us by Ms Mackenzie, this was not based on an expert technical understanding of the implementation of NZECP34, nor on an expert analysis of the relevant Higher Order Documents. Mr Watson, Ms Buttimore and Mr Long were the relevant experts on these matters and we accept their evidence. On that basis, we are satisfied that the Revised Version (with minor amendments we have made for clarity and consistency) gives effect to the relevant objectives and policies of the CRPS and is the most appropriate for achieving related CRDP objectives. Therefore, we decline the relief sought by Federated Farmers.

Minimum rural lot sizes Banks Peninsula

[46] In response to various submissions raising concerns about the Notified Version's proposed approach to minimum lot sizes, the Council proposed a change to this regime in its opening submissions. Specifically, it proposed to delete proposed Rule 8.2.2.3 D6 to the effect that a 1ha/4ha subdivision would default to non-complying activity in the Rural Banks Peninsula zone.[62]

[47] Akaroa Civic Trust (2285), Jan Cook and David Brailsford (2241) and Brent Martin and Suky Thompson (2418) ('Submitter Group'/'Group')[63] opposed the Notified Version on the matter of minimum lot size in the Rural Banks Peninsula zone (and other matters). Ms Cook gave evidence on behalf of the Group.

[48] Her written evidence gave a helpful summary of the background to the more restrictive regime of the Existing Plan. In addition to its regime for minimum lot sizes, it included a requirement that new buildings on sites created by subdivision since 1997 be located on an identified building platform. She described how this regime developed in the context of appeals, mediations, the 2007 Boffa Miskell Banks Peninsula Landscape Study ('Study') and hearings before the Environment Court in 2007[64] and 2008. She reasoned that this extensive

61 Rebuttal evidence of Andrew Long on behalf of the Council at para 4.1(f).
62 Opening submissions for the Council at 9.6, and Transcript, 2 November 2015, page 14, lines 14 to 44.
63 Rod Donald Banks Peninsula Trust made a similar submission on these matters.
64 *Briggs v Christchurch City Council* [2008] NZEnvC 113.

public engagement and judicial process gave significant weight to the Existing Plan's approach which she considered to be working well.[65]

[49] However, when giving evidence, Ms Cook explained that most of the Submitter Group's concerns were answered by the changes the Council proposed in its evidence. She saw the Notified Version as a vast improvement, particularly in how it add minimum lot size.[66] She said the Council's updated proposal also largely met the Group's concerns in regard to the identified building area. She requested that the matter of the location of all buildings be made explicitly a matter for discretion in proposed Rule 8.2.4.1.6.[67]

[50] Lyttelton/Mt Herbert Community Board (2354) (the 'Board'), represented at the hearing by Ms Paula Smith, also welcomed the Council's proposed changes to make 4ha subdivision harder to get.[68] However, unlike the Submitter Group, the Board sought that the 40ha minimum lot size for controlled activities in the Rural Banks Peninsula zone be increased to 50ha. This was with a view to slowing down the rate of land use change so as to protect natural character and maintain rural character.[69]

[51] Ms Smith gave as an example of a subdivision consented at Purau which allowed for seven building platforms. She observed that the dwellings it allowed for would be highly visible, including from Summit Road and the gondola. She considered that its development would adversely impact the largely natural landscape character of the flanks of the Mount Evans range.[70] She considered that the Study was not a sound basis for the proposed 40ha density. From a conversation she had with one of its authors, she understood its recommendation for a 40ha limit was chosen simply in order "to be consistent with" the Selwyn District Plan.[71] As such, she argued it was "a bit arbitrary".

[52] The Diamond Harbour Community Association (2339) ('DHCA'), represented by Mr Richard Suggate, expressed similar concerns. He explained that DHCA does not want further rural lifestyle developments around the existing urban area, because of what it considers the

65 Evidence in chief of Janice Cook on behalf of Akaroa Civic Trust, Jan Cook & David Brailsford, Brent Martin and Suky Thompson, 14 October 2015, at 1–13.
66 Transcript, page 119, lines 23–39 (Ms Cook).
67 Transcript, pages 119-120 (Ms Cook).
68 Transcript, page 170, lines 35–37 (Ms Smith).
69 Transcript, page 172, lines 27–30; page 174, lines 33–35 (Ms Smith).
70 Transcript, page 171, lines 12–31 (Ms Smith).
71 Transcript, page 172, lines 18–25 (Ms Smith).

high landscape values of rural Banks Peninsula. DHCA's preference was for hard urban boundaries, within which Mr Suggate said there is plenty of land already zoned for residential development at Diamond Harbour. Given DHCA's position that subdivision consents affect the wider community, he argued that applications should be publicly notified.[72] Like Ms Smith, Mr Suggate supported his presentation with slides showing the development of individual houses, and clusters of housing, through new subdivision in or close to various landscapes around Diamond Harbour and Purau (and in the wider Lyttelton Harbour environs).[73]

[53] Whilst we understand the concerns expressed by Ms Smith and Mr Suggate about how subdivision could impact on landscape values, landscape perception is inherently subjective. We were not told that the Purau subdivision consent was the subject of legal challenge, which is some demonstration of this point. The inherent subjectivity of landscape perception is also demonstrated by the different views expressed by Ms Smith, Mr Suggate, and Ms Cook. That inherent subjectivity highlights the importance of expert opinion and the direction given by Higher Order Documents, especially given the inevitable trade-off between landscape protection and development.

[54] Neither the Board nor DHCA supported their views on landscape effects with any opinion from a qualified landscape expert. Nor did they offer any evidence as to the relative costs and benefits of their preferred alternative approaches.

[55] We accept Ms Hogan's evidence that, in terms of the siting of buildings, smaller peri-urban lifestyle blocks are different from larger rural properties. With smaller ones, there are greater reasons to ensure proper separation from adjacent residences and rural production activities. With larger properties, there is less need for that and greater need for flexibility to allow for rural production activities. We observe that proposed Rule 8.3.2.1 C6 requires a building area to be identified for all residential units, irrespective of allotment size. That provides a further degree of management of amenity value matters. We consider the Revised Version achieves an appropriate balance on this matter. Specifically, we agree with Ms Hogan that the Revised Version will sufficiently maintain the rural character and amenity values of rural Banks Peninsula.[74]

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72 Transcript, page 149, lines 15-22 (Mr Suggate).
73 Transcript, pages 145 -149 (Mr Suggate).
74 Rebuttal evidence of Deborah Hogan on behalf of the Council at 3.17; Transcript, page 12 (Ms Hogan).

[56] We find that the regime of the Revised Version is well supported by the s 32 evaluations and evidence underpinning it (including the above-noted Study). Contrary to Ms Smith's view, the rationale for the Study's recommendation for a 40ha minimum lot size was not arbitrary. As was pointed out in the Council's closing submissions, it was based on the judgment and experience of the Study team, including appropriately qualified and experienced landscape experts.[75] In addition, the fact that the Study was relied on by the Environment Court in the *Briggs* decision gives further weight to it as part of the s 32 evaluation underpinning and supporting the approach of the Revised Version.

[57] We acknowledge the efforts of Ms Cook and Ms Hogan in narrowing points of difference. Those efforts led to improvements in the Revised Version, now expressed in the Decision Version.

[58] On the basis of the Council's evidence, we are satisfied that the Revised Version does not offend against any of the principles in Part 2 of the RMA. That includes the directions in s 6(a) and (b), and s 7(c) of the RMA concerning natural character, outstanding natural features and landscapes, and amenity values. On the evidence, nothing in the CRPS (or other Higher Order Documents) runs counter to the Revised Version (nor favours the approaches espoused by Ms Smith and Mr Suggate over that of the Revised Version).

[59] For those reasons, subject to some minor technical drafting refinements, we find that the approach of the Revised Version is the most appropriate for achieving related CRDP objectives.

Submissions seeking flood protection works and related relief

[60] Penny Hargreaves (2526), Barry Robertson (2591), Kathryn and Darryl Snook (2533, FS2834), Marina and Trudo Wylaars (2534), and Pauline and Ray McGuigan (2535, FS2844) were represented at the hearing by Ms Hargreaves and Mr Robertson on particular issues they raised in common.

[61] This group of submitters sought that we require the Council to undertake various physical works generally in regard to the Styx River. Such works included the dredging and widening

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75 Closing submissions for the Council at 18.3–18.4.

of the Styx River and removal of trees and foliage obstructing river flow. Some of these submitters also sought that we impose rules to require that developers pay financial contributions for such works, and/or rules to provide for property owners to be compensated for increases in stormwater flow associated with developments.[76] Mr Robertson asked that we impose a development fee or levy for such works.[77]

[62] In addition, the Snooks and the Wylaars asked that we preclude or otherwise restrict subdivision upstream of their properties pending effective flood protection management measures being put in place.

[63] Ms Snook attended the hearing and explained that they live at 900A Lower Styx Road Brooklands. She said she also spoke for their neighbours, Kerrie and Antonio Rodriguez (2070, FS2835) of 5 Earlham Street. She explained how the earthquakes had exacerbated the flooding risk with land levels dropping and ground water levels rising. She said they had observed the Styx River breaking its banks causing water to flow onto residential properties. She showed us photographs illustrating her experience of these things.[78] Marina Wylaars explained that she and Trudo Wylaars live at 561 Marshland Road, which is on the Kaputone/Styx River confluence, near the Styx Bridge. She said there is a lot more water in both the Kaputone and the Styx River than there used to be, and attributed this in part to new subdivisions feeding stormwater to the catchment.[79]

[64] Ms Snook and Ms Wylaars each expressed concern that a further proliferation of subdivisions in the Styx catchment would increase this flooding risk. Apart from seeking that we require the Council to undertake physical works and impose development levies, they sought that we put a stop to further subdivision until such time as this was addressed.[80]

[65] The Council's opening submissions were that we did not have jurisdiction to require physical flood protection works and impose development levies.[81] The Chair raised this matter with Ms Hargreaves and Mr Robertson when they made representations on behalf of this group.[82] Neither were able to offer any sound legal basis for the relief they sought. Ms

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76 These matters are more fully summarised at Appendix A to the closing submissions for the Council.
77 Transcript, page 138, lines 18–46 (Mr Robertson).
78 Transcript, pages 160–162 (Ms Snook).
79 Transcript, pages 182–186 (Ms Wylaars).
80 Transcript, page 186, lines 16–20 (Ms Wylaars).
81 Opening submissions for the Council at 7.4.
82 Transcript, page 153, lines 21–25.

Hargreaves referred to legal advice she had received to the effect that the current position is not "sustainable management".[83] However, assuming that is a reference to the sustainable management purpose expressed in s 5 of the RMA, it does not confer jurisdiction to grant this requested relief.

[66] The Council reiterated our lack of jurisdiction in its closing submissions. It also pointed out that, in the absence of any Council financial contribution policy under s 102 of the Local Government Act 2002, we have no jurisdiction or resource management justification for associated financial contribution rules.[84] We agree with the Council on these matters.

[67] We also record that none of the submitters provided evidence on this requested relief as would enable us to evaluate its costs and benefits under s 32AA. On the Council's evidence, which we accept, we find that granting the relief would be inappropriate.

[68] We also agree with the Council that it would not be appropriate for us to stop further subdivision until flood protection works or other suitable measures for addressing flooding risk concerns were in place. While we appreciate that Ms Snook and Ms Wylaars spoke from their personal experience of flooding, properly understanding the causes and effective means of managing flooding risk requires expertise. For instance, the findings in Decision 8 (on Natural Hazards) were based on a range of expert opinions on these matters. None of the submitters presented expert evidence. The Prestons and Highfield new neighbourhood zones to which they referred are both identified by the CRPS as Greenfield Priority Areas — Residential. Their zoning is a matter determined by the Panel's Decision 29 on the RNN provisions. The RNN zone provisions, together with the provisions of this Decision Version, provide for the control of earthworks and subdivision, including in relation to stormwater. On the Council's evidence, we are satisfied that nothing further is warranted and that the Revised Version (as refined by this decision) is the most appropriate for achieving related CRDP objectives. Therefore, we decline the requested relief.

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83 Transcript, page 214, lines 39–40 (Ms Hargreaves).

84 Opening submissions for the Council at 7.4; closing submissions for the Council at 13.1–13.10.

Earthworks management and notification including in regard to Highfield and Prestons

[69] In this part of the decision we address related matters concerning earthworks management and protection of the interests of adjoining neighbours. These matters were raised, in particular, by Raymond and Pauline McGuigan. They were also raised by Luke Pickering (2510) and Ross Major (2499) in the Residential New Neighbourhood ('RNN') hearing.

[70] The McGuigans are residents of 26 Lower Styx Road, Marshlands. They have lived and worked on their rural block for the past 20 years, supplementing their income with horticultural, cropping and grazing activities. Pauline McGuigan attended the hearing and was assisted in her presentation by her neighbour, Sue McLaughlin (2459). The McGuigans filed closing submissions reiterating their concerns and commenting on the Council's proposed provisions.

[71] The McGuigans' concerns were against the background of their experience in regard to development of the Prestons subdivision which shares a 390m boundary with their property.

[72] The McGuigans understood that, prior to the Prestons development, their property was protected from the Styx River for up to a 1/200 year rain event. They referred a change to Prestons earthworks consent that was granted in 2013, on a non-notified basis. It resulted in the construction of a one-metre-plus high embankment along their common boundary. Ms McGuigan showed us photographs of it. In view of their concerns about flooding risks resulting from the Prestons development, the McGuigans (at their own cost) engaged a drainage engineer (Mr Rob Potts) to provide calculations.[85] In view of Mr Potts' work, they understood that their property is now at greater risk of being inundated in certain storm events by water escaping from the development. They feel strongly that they have been exposed to greater flooding risk as a result of the earthworks undertaken and authorised by a process in which they were denied any opportunity to make a submission.

[73] While we have recorded these matters for context, it is not our role to make any determinations concerning the allegations made as to defects in previous consenting processes and/or liabilities arising from those. Rather, our focus is on what are the most appropriate CRDP provisions.

85 Transcript, page 194, lines 24–39 (Ms McGuigan).

[74] The McGuigans referred to the wording of Rule 8.8.7(1)(c) as proposed in the Third Revision:[86]

> The extent to which any ~~Any~~ potential changes to the patterns of surface drainage or subsoil drains from the earthworks which will cause~~, and whether~~ the site or adjoining land ~~will~~ to be at higher risk of drainage problems, inundation run-off, flooding, or having a raised water table can be avoided or mitigated.

[75] They argued it was inappropriate for the Council to seek to rely on this rule to ensure private properties are protected, noting that the establishment of storm water retention ponds required major earthworks and the creation of permanent utilities with associated adverse effects. They asked that we provide for a new "and robust" earthworks rule addressing the establishment of storm water retention ponds, both temporary and permanent. They sought that this regime allow for the limited notification of consent applications, taking into account the surrounding environment and any new risks created for adjoining properties.[87]

[76] Luke Pickering and Ross Major raised similar concerns about the Highfield ODP (as included in the RNN proposal). Their concerns included that protections of the Existing Plan regime (through Plan Change 67 ('PC67')) were not carried forward. One such protection was as to limited notification of earthworks consent applications to adjacent landowners whose land was within 25m of earthworks. Prompted by those submissions, and Mr Pickering's comments during the hearing, we issued a Minute seeking clarification of the Council's position.[88] In light of the Council's 25 February 2016 memorandum in response,[89] Decision 29 on the RNN provisions records, at [149]:

> However, at this stage, we record the assurances given by the Council's Memorandum of Counsel of 25 February 2016. Those are to the effect that the Council intends limited notification of earthworks consent applications to be potentially required in specified circumstances (including where the application would be for land within 25m of the boundary of land not owned by the applicant). The Council also acknowledged that its drafting was flawed on this matter (to the extent that it said the opposite of what was intended). The Memorandum also points out that the Stage 2 Chapter 8 rules for earthworks now include standards as to compaction and noise management.

[77] As that passage notes, we now determine the matters raised by Messrs Pickering and Major, and the McGuigans.

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86 The McGuigans' closing submissions were not entirely accurate in their paraphrasing of this revised provision.

87 Closing submissions for the McGuigans at pages 1–2.

88 Minute — Residential New Neighbourhood Zone — further matters arising from hearing concerning Highfield, dated 16 February 2016.

89 Memorandum of counsel on behalf of the Christchurch City Council in response to the Panel's Minutes regarding Highfield matters and additional matters raised at the drafting hearing, 25 February 2016.

[78] The Council's closing position was that the various changes it proposed in its Fourth Revision were sufficient and the most appropriate for addressing these submitters' concerns on this topic. For that submission, the Council referred to proposed its revised proposed Rules 8.8.5(6)(a), 8.8.6(1)(c) and 8.8.1(3)(c).

[79] In regard to the McGuigans' request for a robust earthworks rule, the Council submitted that this was sufficiently provided for by its revised Rules 8.8.5(6)(a) and 8.8.7(1)(c).[90]

[80] Part of that submission was that its revised Rule 8.8.5(6)(a) narrows the exception it confers to works by a public body, such that it no longer applies to the works of a private individual. This revised rule relevantly reads:

> The following earthworks are exempt from the conditions set out in rule 8.8.2 P1 and P2:
>
> …
>
> 6) Any earthworks involving:
>
> a) the establishment, repair or replacement of any utility permitted in Chapter 11 of this Plan <u>(apart from the establishment of stormwater management utilities at 11.3.5.1 P3);</u>

[81] We accept the soundness of the theory of the Council's submission on this matter. However, when we examine the Council's related Chapter 11 (Utilities, Energy and Infrastructure) provisions, we find the combined effect is not as the Council's submission has assumed. Its proposed permitted activity for stormwater treatment devices (Rule 11.3.5.1 P3) does not include any restriction to the effect that would limit it in the manner described. Therefore, consistent with the intention of the Council's closing submissions on this matter (which we accept) we have revised the proposed rule to read:

> 6) Any earthworks involving:
>
> a) the establishment, repair or replacement of any utility permitted in Chapter 11 of this Plan (apart from the establishment of stormwater management utilities which are permitted by Chapter 11 Utilities and Energy and not undertaken by the Council or a network utility operator); or

[82] The Council's related submission was that its revised Rule 8.8.7(1)(c) (as quoted at [74]) ensured sufficiently comprehensive coverage of all surface water drainage (including runoff

[90] Closing submissions for the Council at 19.5–19.14.

and flooding), in combination with other earthworks rules. In effect, stormwater ponds of any magnitude would default to a restricted discretionary activity status. The Council also pointed out that regional resource consents would be part of the context, in dealing with any diversion and discharge of water. We accept those parts of the Council's submission.

[83] The Council's closing did not specifically address the concerns expressed by the McGuigans (and Messrs Pickering and Major) as to limited notification of related consent applications. However, we understand the Council's position to be that its revised proposed Rule 8.8.1(3) is sufficient for these purposes. The position the Council expressed on this topic in its 25 February 2016 memorandum (as described at [76]) is consistent with the Council's revised Rule 8.8.1(3), which relevantly reads:

> ~~Applications for consent as a restricted discretionary activity shall not be notified or require written approval of affected parties.~~ Any application arising from non-compliance with standards at 8.8.2 may require written approval from the affected adjoining landowner(s) and may be limited notified, but shall not be publicly notified. … ~~Applications for consent as a discretionary activity shall be notified and require written approval of affected parties.~~

[84] We recognise that this wording does not go as far as Messrs Pickering and Major and the McGuigans seek. Specifically, it allows for public and limited notification but reserves discretion for the Council to dispense with that if it adjudges effects minor (even if written approvals are not obtained). Messrs Pickering and Major asked that we revert to the position on notification that applies under the Existing Plan by virtue of Plan Change 67. However, PC67 also allowed for residual judgement by the Council about whether to dispense with notification.

[85] The McGuigans' description of the non-notification of the Prestons earthworks consent change would suggest significant misjudgement may have occurred on the part of the Council at that time. However, the adage that bad cases do not make good law applies here. We do not consider a misjudgement on one occasion, if full scrutiny of those facts confirms that, makes for an inevitable conclusion that the Council must have its statutory discretion so curtailed. Also, as noted, it is not proper for us to (and we do not) make findings in this context on whether or not that example of non-notification was a misjudgement.

[86] In all of the circumstances, we find on the evidence that there is not a sufficient case for any exception to apply in regard to Prestons and Highfield on this topic. We accept Ms Oliver's

evidence as providing sound support for the Council's position. We find revised Rule 8.8.1(3) sound in terms of the RMA. Therefore, we find it most appropriate for achieving related CRDP objectives and giving effect to the CRPS and decline the requests of these submitters for an alternative approach.

[87] Therefore, subject to the revisions we have made to these provisions, we are satisfied on the Council's evidence that they are the most appropriate for addressing the various issues raised by submissions, responding to the Higher Order Documents and achieving related CRDP objectives.

Hyndhope Road Subdivision — Woodford

[88] Dr Keith Woodford (2314) attended the hearing and explained why he sought that the minimum lot size for the Hyndhope Road (Kennedys Bush) subdivision should be retained at 3000m², rather than being allowed to be reduced to the 1500m² proposed for the Residential Large Lot ('RLL') zone.

[89] By reference to photographs, he showed how Hyndhope Road curves up to a basalt outcrop. An area there has been subdivided into three blocks, each of approximately 3000m². He was concerned that, if we were to allow an ability to reduce lots to a minimum of 1500m², accommodating up to six lots could be problematic because of how the subdivision was laid out and the shape of the basalt outcrop. He was concerned that the reduced minimum lot size proposed could result in long narrow lots that would adversely impact on the character of this residential area.[91]

[90] In closing, the Council submitted that Dr Woodford was being speculative on these things. It argued that a number of factors (e.g. topography and the need for an adequate building site) would dictate the configuration of new allotments, in addition to the location of existing houses on those allotments. It maintained its support for the minimum lot size of 1500m², in reliance on Ms Oliver's evidence.[92]

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91 Transcript, pages 202–205 (Dr Woodford).

92 Closing submissions for the Council at 20.1–20.2; Second statement of evidence of Sarah Oliver on behalf of the Council, 18 August 2015, at 6.15–6.17; and Accept/Reject table for Chapter 14 (Stage 2) (page 35).

[91] We agree with the Council's closing submissions that Dr Woodford's concerns were somewhat speculative in that several matters could influence the configuration of lots, in the event that an owner or owners decide to pursue further subdivision. We consider that we can rely, to some extent, on enlightened self-interest in that individual owners concerned about property value can be expected to guard against outcomes that give rise to the detractions to related amenity values. In any case, having had particular regard to Dr Woodford's concerns as to the potential for loss of amenity values, we do not consider this to be sufficient to justify departing from what the Council has proposed. The risk of every landowner subdividing their land into two narrow lots is highly improbable. While some may do so, we find the 1500m² minimum lot size sufficiently supported by Ms Oliver's evidence (which we accept) and the benefits of this to outweigh any perceived benefit in maintaining the status quo. On the basis of that evidence and the Council's related submissions, we find that lot size the most appropriate for achieving related CRDP objectives. Therefore, we have provided for that in the Decision Version.

Drafting refinement matters[93]

[92] As we have noted, the Revised Version is part of a consolidation of provisions covering Chapters 8 and 14 (together 'Revised Versions'). In this section, we give our reasons for making various drafting refinements. As most of these are in Chapter 8, we deal with everything in this decision (including for the purposes of our companion Decision 29. As will be self-evident, the phrase 'Revised Version' below sometimes refers to Residential New Neighbourhood provisions.

[93] Some of our drafting refinements are to Decisions 10 (on Stage 1 Residential) and 13 (on Stage 1 Subdivision, Development and Earthworks). We make those changes under cls 13(5) and (6) of the OIC to ensure better coherence and consistency in these Chapters and the CRDP as a whole. They will assist the CRDP to better respond to the OIC Statement of Expectations and better achieve Strategic Directions Objective 3.3.2. We are satisfied that none of them would adversely impact on the interests of submitters or anyone else. As minor remedial refinements, they do not require re-notification.

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[93] Our decision version includes our response to the Joint memorandum of counsel for the Council and the Crown requesting corrections to Decision 13, 12 February 2016.

Notification rules for various activity classes

[94] Across the Revised Versions (and indeed other CRDP chapters) there is an unhelpful inconsistency in how notification rules are expressed. This is a matter at the core of resource management processes, impacting directly on the costs and certainty of process. Hence, clarity and consistency is important, bearing in mind the OIC Statement of Expectations. We have made some modifications to a number of notification rules in the Revised Versions (and also in related decisions), for those reasons.

8.0 Introduction

[95] There is a degree of inconsistency in the CRDP in the fact that some proposals have introductions, and others do not. We consider introductions have an important role for the lay reader seeking to navigate the CRDP. Therefore, we intend to provide for them across all chapters, but subject to the inclusion of the following statement:

> This Introduction is to assist the lay reader to understand how this Chapter works and what it applies to. It is not an aid to interpretation in a legal sense.

[96] The Panel considers it important that the chapter Introductions remind the reader of the pre-eminence of the Strategic Directions, for the reasons stated at [148] of Decision 1. Therefore, we have included in the Introduction the following:

> The provisions in this chapter give effect to the Chapter 3 Strategic Directions Objectives.

[97] As can be observed from the Decision Version, the drafting of the Chapter 8 provisions stands somewhat apart from other CRDP chapters, particularly in the level of detail and prescription of its rules. As we observed at [1] of Decision 13:

> Subdivision, like algebra, is best not to be studied on a hot nor' wester afternoon after a heavy meal. It requires careful attention to topics such as minimum lot sizes, road widths and footpath numbers, and wastewater and other infrastructure servicing.

[98] Subdivision consenting has an important interrelationship with Council infrastructure programming and funding, and associated legal processes for the bringing down of new titles (including s 224 RMA certification). Given these drivers of a different drafting approach may be not immediately evident to the lay reader, we have included the following sentence in the Introduction:

> The lay reader will observe that, by comparison with other parts of this Plan, provisions of this chapter (particularly its rules) are significantly more detailed and prescriptive. That is a necessary aspect of ensuring subdivision consent processes properly integrate with Council infrastructure programming and funding and legal processes for securing title to subdivided land.

Policy 8.1.2.9(d)

[99] We have refined Policy 8.1.2.9(d) by changing the words "interim subdivision, use and development" to "interim activity".

Policy 8.1.4.5 — Protection of wāhi tapu and wāhi taonga

[100] We have tightened the reference to "ensure consultation" so that it is clearly specific to relevant resource consent applications for earthworks.

Policies 8.1.5.2 and 8.1.5.3 as to nuisance and vehicle movement

[101] We have clarified the relationship of these policies to Policy 8.1.4.3 (making each subject to that policy) and revised their expression for greater clarity.

8.2.1 How to use the rules

[102] We have added this narrative for consistency with other chapters.

Controlled activity Rule 8.3.2.1 C5 — standards referring to Rule 8.3.3.11(a)

[103] There was a relatively narrow point of difference between the Council and the Crown as to the expression of activity standards for controlled activity C5 (which is for "subdivision in any area subject to an outline development plan, except as otherwise specified in Rules 8.3.2.1, 8.3.2.2, 8.3.2.3 or 8.3.2.4"). In the final analysis, we find the Crown's drafting approach preferable in clarity terms.

Expression of net site area in Rules 8.3.2.1 C7 and 8.3.2.2 RD7

[104] We have changed the phrase "minimum area of 1ha" in these rules to "minimum net site area between 1ha and 4ha", to clarify the activity classes are triggered within this range.

Rule 8.4.7 and various cross-references to it in controlled and restricted discretionary rules

[105] The Crown sought that we include a Rule 8.4.7, and related cross-references.[94] In summary, the rule would specify various matters of control pertaining to the coastal environment. Those include coastal hazards, drainage, stormwater and sediment, vegetation and topsoil removal, ecosystems, natural character, landscape and visual effects and public access. The Crown submitted that, if we did not include the rule now, that could remove the ability to appropriately consider the effects of subdivision activities on the coastal environment.

[106] The Revised Version inadvertently included some matters that the Crown and the Council agree should be deferred pending determination of the related Chapter 9 (Natural and Cultural Heritage), i.e. reference in paragraph (f) to "or sites of historical significance", and paragraphs (k) and (l) (on the effects of development on natural character and coastal environment heritage).[95] We agree with the parties on that matter, and have deleted these aspects in the rule we include in the Decision Version.

[107] Even with those changes, the Council considered that we should not include the rule because it was not included in the Notified Version and submissions had not sought its inclusion.

[108] The remainder of the rule would assist ensure controlled and restricted activity decision-making under Chapter 8 can properly respond to the matters of national importance in s 6(a), (b) and (d) of the RMA, pending determination of Chapter 9. While it may be possible to achieve similar decision-making outcomes by simply maintaining Existing Plan subdivision controls in force, we consider such an approach untidy and unwarranted. We find it unwarranted because we are satisfied that, given the substance of the rule, its inclusion now would not materially prejudice the position of any submitter or person who has not made a submission.

[109] That leads us also to be satisfied that there is no jurisdictional impediment to the inclusion of the rule, in its modified form, at this time. Clause 13(2) of the OIC allows us to make any changes to the Notified Version that we consider appropriate, not limited to changes within the scope of any submission on the Notified Version. Under cl 13(4), notification of a new

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94 Memorandum of counsel for the Crown, 27 June 2016.
95 Memorandum of counsel on behalf of the Council responding to the Crown, 5 July 2016.

proposal would be required only if the changes are to deal with matters that are, in a material way, outside the scope of the Notified Version. For the reasons we have given, we are satisfied that this change is not material in that regard.

[110] Therefore, we have included this truncated version of the rule in the Decision Version (together with cross-referencing), on the basis that the final form of the rule can be revisited in light of determination of Chapter 9.

Rule 8.3.2.5 prohibited activities

[111] We have deleted proposed Rule 8.3.2.5 which specified as a prohibited activity any subdivision that did not comply with standards in Table 1 related to the Residential Bach zone. Table 1 of the Revised Version does not include any such standards. From Mr Long's evidence, we understand the Council envisaged that this rule would be the subject of consideration in the Coastal Environment proposal hearing. However, the record for that hearing does not reveal any supporting evidence. Nor did we receive any evidence as to benefits, costs and risks that, for the purposes of s 32AA, would satisfy us as to the appropriateness of such an onerous activity classification. Therefore, rather than defer this rule, we reject it as inappropriate for achieving related Strategic Directions and other objectives.

Rule 8.3.3.1 — clarification note pertaining to Table 1

[112] Proposed Rule 8.3.3.1 is part of a set of activity standards, and pertains to minimum net site areas and dimensions. Table 1 sets out minimum net site areas for particular zones, and associated standards. The Revised Version proposed the following wording (not in the Notified Version) as a preface to Table 1:

> Clarification: where an allotment is proposed which covers more than one zone, the minimum net site area shall apply.

[113] The Crown opposed the note.[96] Part of its concern (i.e. that the note did not originate from the Notified Version) was fairly answered by the Council (i.e. that it originated in what is now Rule 8.3.2.1 C5 and C8 and could be relocated there, if not deleted).[97]

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96 Memorandum of counsel for the Crown, 27 June 2016.
97 Memorandum of counsel on behalf of the Council responding to the Crown, 5 July 2016.

[114] However, we agree with the Crown's related concern that the note is expressed in the nature of the rule. If the Council considers clarification of this matter sufficiently important, we consider the better approach would be to address it through a later plan change. For those reasons, we have not included the note in the Decision Version.

Residential net density standard 8.3.3.11(b) — Residential New Neighbourhood zones

[115] CRPS Policy 6.3.7 generally specifies that Residential Greenfield Priority Area development is to achieve a residential net density (averaged over the ODP area) of 15hh/ha. CRPS Policy 6.3.3 requires that, to the extent relevant, ODPs must show the distribution of different residential densities. Those policies make it particularly important that rules on this topic are sound and clear.

[116] Proposed Rule 8.3.3.11(b) was the subject of several revisions, as a rule intended to give effect to the CRPS and to allow for an important dimension of flexibility without jeopardising the overall requirement that the CRDP gives effect to the CRPS. Despite it being the focus of significant attention during expert witness conferencing, we found some dimensions of the proposed rule, as expressed in the Revised Version, unsatisfactory in a drafting sense. Primarily, our concern centres on the drafting of 8.3.3.11(b)(iv) and (v). Inherently, paragraph (iv) has complexity in that it functions to define an intended exception to density standards that relies on the securing of a side arrangement (backed by a legal instrument) with other landowners whose land would be used to make up a density shortfall. Paragraph (v) then functions to define an obligation to deliver upon density arrangements made between contributing landowners at the time they come to subdivide and develop their land. We have found there is further room for clarity in those clauses. In addition, we have found it possible to further clarify and merge related clauses (i) and (ii).

[117] With those clarifications, we find the rule would better implement related Policy 8.1.2.8(b), achieve related objectives and give effect to the CRPS.

Placement of 8.4 matters of control and 8.5 matters of discretion

[118] We consider the drafting would be more legible and logical for the reader if sections 8.4 and 8.5 were to become part of 8.3, on rules (i.e. as new 8.3.4, 8.3.5). However, given the large number of consequential numbering and cross-referencing issues, we have not made this

change at this time. If it cannot be achieved by the conclusion of our inquiry, it is something the Council could consider doing at some stage by plan change. In the meantime, we have amended the headings ('Rules as to matters of control — subdivision'/'Rules as to matters of discretion — subdivision') to clarify these are also rules.

Rule 8.4.4.1 — subdivision design

[119] This proposed rule specifies general matters of control in regard to subdivision design, most of which we are satisfied with as being appropriately drafted.

[120] We have clarified the wording of 8.4.4.1(g).

[121] The Crown asked that we delete proposed 8.4.4.1(i) of the Revised Version, as it was unclear and redundant. It reads:

> The extent to which a subdivision in a New Neighbourhood Zone gives effect to the development requirements specified in the relevant outline development plan.

[122] The Crown pointed out that a subdivision must comply with the ODP in order to qualify as a controlled activity. It submitted that to allow for conditions to be imposed that exceeded the development requirements of the ODP would be inappropriate given the uncertainty it would give rise to.

[123] The Council sought that we retain proposed 8.4.4.1(i) as drafted. While acknowledging the correctness of the Crown's point that a subdivision must comply with the ODP to qualify as a controlled activity, it submitted that there remained a role for conditions to be imposed in relation to those ODP requirements.

[124] We agree with the Council that there is potential for argument and uncertainty if reliance is placed solely on the controlled activity status for ensuring adherence to related ODP requirements. Whilst, in theory, an applicant for a controlled activity subdivision may be bound to adhere to the ODP, we consider it practically helpful to allow some scope for the setting of related consent conditions. For example, it assists the administration of s 224(c) of the RMA. That provision requires, as a prerequisite to the deposit of a survey plan (and, hence issuance of titles following subdivision), Council certification that subdivision consent conditions have been complied with (or are the subject of a completion certificate).

[125] For greater clarity, we have modified the wording of the Revised Version's proposed rule, as follows:

> The extent to which conditions are appropriate on a subdivision consent in a Residential New Neighbourhood Zone in order to give effect to the development requirements specified in the relevant outline development plan.

Repositioning of earthworks objectives, policies and rules

[126] For greater clarity of structure, we have repositioned the earthworks objectives and policies to section 8.1 and the earthworks rules immediately following the subdivision rules.

8.5A.1 Notification (earthworks)

[127] We have shifted text from this provision to the new 'How to use the rules' section. The remainder is a rule as to notification, which we have renamed and clarified.

Rule 8.5A.2.1 P1 earthworks and direction for Chapter 5 Natural Hazards earthworks rules

[128] This proposed rule (previously numbered 8.8.2 P1) is confined to earthworks outside Flood Management Areas and Flood Ponding Areas. It is designed on the premise that earthworks within those areas would be governed by the Chapter 5 Natural Hazard provisions. However, the relevant earthworks rules in Chapter 5 do not appear to specify all of the activity standards specified in this proposed rule. For instance, there is no reference to standards 4 (soil compaction vibration), 5 (lighting), 6 (noise) or 7 (clean fill) which, on the face of it, would seem equally applicable to those overlay areas.

[129] The Panel's decision has not yet been issued on Stage 2 Natural Hazards. Our preliminary view is that we should, in that decision, correct this apparent oversight as a minor and consequential change. Doing so would seem consistent with the directions made by the Panel on this matter, on 3 November 2015.[98] Therefore, we have directed the Council to file a memorandum of counsel as to the Council's position on these matters.

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98 Minute relating to an application by Christchurch City Council for an Order confirming the allocation of notified provisions to Stage 3 and combined Stage 2 and 3 hearings, 3 November 2015, at page 8.

Rule 8.5A.2.1 P2

[130] This rule concerns earthworks for the repair of residential land damaged by the earthquakes. The rule has been carried forward as a transitional earthquake recovery provision. It expires on 31 December 2018. Although its drafting is unduly complex, we did not receive any evidence that it was causing difficulties in application. Given its temporary purpose, we have not attempted any significant revision to it.

Rule 8.5A.4(1)(a)–(c) — Matters of discretion: nuisance

[131] We have refined the structure and clarity of these matters of discretion.

Rule 8.5.14 P3–P5 — earthworks in the vicinity of transmission and distribution lines

[132] The drafting of these rules in the Revised Version is deficient in the fact that it would allow avoidance of activity standards self-evidently relevant to all earthworks. That is because the standards are specified in P1 and P2 but not in P3–P5. We considered the approach of developing standards for these permitted activities, but that proved structurally complex. Instead, we have dealt with the drafting deficiency by specifying an exception to P3–P5 (i.e. "except as otherwise specified in Rule 8.5A.2.2 or 8.5A.2.3") and adding a requirement that P1 and P2 also meet the activity standards in P3–P5.

Appendix 8.6

[133] For the time being, we have reorganised the order of Appendix 8.6, according to the recommendations in the Council's 14 June 2016 memorandum.[99] This assists to address some disorder in the fact that this appendix interleaves the various proposed ODPs with other matters. However, we consider that further re-ordering of appendices, including this one, could be appropriate once the entire CRDP is closer to finalisation.

Outline development plans: reference to vegetation clearance around electricity lines

[134] We have made a minor change to this aspect of various ODPs so that it is expressed in appropriately mandatory terms.

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[99] Memorandum of Counsel on behalf of Christchurch City Council regarding intended response to Panel's Minute dated 9 June 2016 and seeking an extension of time also relevant to the Residential New Neighbourhood Proposal, 14 June 2016.

Rule 14.9.2.2 C4–C6 and Rule 14.9.2.3 RD1, RD10 and RD11

[135] We have reclassified as non-notified controlled activities (subject to specified matters of control), three proposed restricted discretionary activities under the Revised Version:

(a) Residential units (including sleepouts) containing more than six bedrooms;

(b) Activities and buildings not complying with specified standards as to landscaping, fencing in the road boundary setback and ground floor habitable space and overlooking of street; and

(c) Activities and buildings that do not comply with standards on service, storage and waste management space.

[136] This reclassification ensures appropriate consistency on these matters between the RNN zone and other Residential zones. We did not receive any evidence to satisfy us that there was anything peculiar to the RNN zone, and its related environments, as would justify this inconsistency. Rather, it would appear that the Revised Version has simply carried forward restricted discretionary classification from the Notified Version as an oversight. We find this change most appropriate for achieving related objectives (including Strategic Objectives 3.3.1 and 3.3.4, Objective 14.1.1 and Policy 14.1.1.1) and responding to the Higher Order Documents.

Rule 14.9.2.3 RD2 — creation of stormwater drainage ponds and bird strike

[137] As noted, the decision on this matter is deferred until General Rules.

Rule 14.9.2.3 new RD27 — activities and buildings that do not comply with ODPs

[138] We have inserted this new restricted discretionary activity class for non-compliance with Rule 14.9.3.16 to cover a gap in the Revised Version. It did not provide a specified activity class for this matter, meaning that the activity would be rendered discretionary. We find discretionary inappropriate, firstly because proposed Rule 14.13.26 (which we have confirmed with some modification) is intended to express related matters of discretion more appropriately related to a restricted discretionary activity. In any event, we find restricted discretionary activity classification most appropriate for achieving related objectives (including Strategic

Objectives 3.3.1 and 3.3.4, Objective 14.1.1 and Policy 14.1.1.1) and responding to the Higher Order Documents.

Rule 14.9.2.5 NC2(a)(iii) — Orion's 11 kV Heathcote to Lyttelton line

[139] We have accepted Orion's closing submission[100] (supported by the Council)[101] that the Revised Version inadvertently overlooked making provision for Orion's 11 kV Heathcote to Lyttelton line, as was agreed between relevant parties[102] and supported by the Council's planning evidence.[103] Therefore, we have made provision for this in the Decision Version (with some minor drafting refinement).

Provision 14.9.2.6 on 'no prohibited activities' deleted

[140] This was an empty placeholder in the Revised Version, in that there are no prohibited activities intended. The Panel considers a more compact and clear drafting style across the CRDP is to delete such placeholders.

Rule 14.9.3.4(c) on notification for breach of daylight recession planes

[141] Consistent with our findings noted earlier concerning notification rules, and following a request from the Council,[104] we have modified the expression of this rule.[105]

Rule 14.9.3.6(b) on minimum internal boundary setbacks for comprehensive residential development

[142] This rule of the Revised Version specifies minimum setback distances from an internal boundary for living area windows. The Revised Version specified the following exception (as (b)):

> This rule does not apply to a retirement village or a comprehensive residential development.

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100 For the RNN proposal.
101 Closing submissions for the Council at para 5.6.
102 Joint Memorandum of Counsel for Orion New Zealand Limited, Transpower New Zealand Limited and Christchurch City Council, 18 December 2015, at para 6.
103 Closing submissions for Orion (RNN Hearing) at para 19.
104 Joint memorandum of counsel for the Council and the Crown requesting corrections to Decision 10 (Residential Stage 1 (Part)), 29 January 2016.
105 Decision 10: Residential (Part) Planning Maps and minor corrections, 1 July 2016 at [15]–[17].

[143] That drafting is inconsistent with that of Rules 14.9.3.4(d), 14.9.3.5(c), i.e.:[106]

> For a retirement village or a comprehensive residential development, this rule applies only to the internal boundaries on the perimeter of the entire development.

[144] The Council did not offer any rationale for this inconsistency and we find the most appropriate way of rectifying it is to bring the drafting of 14.9.3.6(b) in line with the related rules.

Rule 14.9.3.13 on service, storage and waste management spaces

[145] We have simplified the drafting of this rule and aligned it to the drafting applied by Decision 10: Residential Stage 1 (and which the Council has requested we extend to the RMD and Residential Banks Peninsula zones). We are mindful that this reduces the prescription that applies to these matters within the RNN zone. However, the Council's evidence did not justify that this additional prescription was warranted.

Rule 14.13.26 — ODPs

[146] We have made minor drafting clarification to this rule (formerly numbered 14.13.24)

Rule 14.13.27(i) — concerning comprehensive residential development in RNN zone

[147] In an earlier Council version of this rule, it was numbered 14.13.25. As now, the rule specifies, for resource consent processes, matters of discretion for comprehensive residential development in the RNN zone. The Crown raised some drafting issues on some of the matters. Its most significant concern was in relation to matter (i). In the version available to the Crown at the time of closing, it read:

> Where the built form standards in 14.9.3 are not specified as applying to comprehensive residential developments, whether good design outcomes are achieved using the standards as a flexible guideline.

[148] The Crown sought deletion of this matter, on the basis of Ms McIntyre's evidence. Specifically, the Crown was concerned that the matter's reference to standards would impede innovation (an important opportunity that comprehensive development offered), was

[106] It is also inconsistent with 14.13.10(a)(iv).

misdirected (in that standards are not necessarily a measure of good design) and unnecessary (given other specified matters of discretion).[107]

[149] In closing, the Council noted the concessions that Ms McIntyre made under cross-examination to the effect that built form standards are a useful starting point. It argued that it was appropriate to reference built form standards on that basis, provided this explicitly allowed for flexibility.[108] Therefore, it proposed the following revision:

> In relation to the built form standards that do not apply to comprehensive residential developments, consideration of these standards as a flexible guideline to achieve good design and residential amenity.

[150] On balance, we agree with the Council's closing position. While built form standards are not the measure of good design, they are a potential reference point for achieving that. We consider the Crown's concerns about constraint on innovation are answered by the flexibility expressed in the Council's revised wording.

[151] Also in relation to Rule 14.13.25, the Crown sought (as a "relatively minor point of detail"),[109] a different drafting approach to that of the Revised Version, concerning specified matters (b), (c) and (d). It invited us to prefer the alternative approach of using cross-referencing, recommended by its planning expert, Ms McIntyre.[110] It also sought a minor clarification to how matter g. was drafted. In the final analysis, we are satisfied that the drafting approach in the Decision Version to these matters, largely following the Revised Version, is the most appropriate.

CONCLUSION

[152] This decision therefore amends the Notified and Revised Version in the manner set out in Schedule 1.

[153] Any party who considers we need to make any minor corrections under cl 16 of the OIC, must file a memorandum specifying the relevant matters, **within 14 working days of the date of this decision**.

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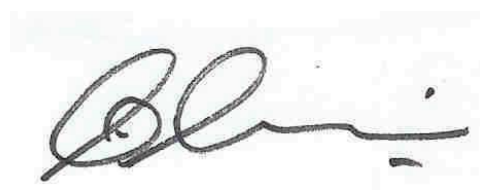
107 Closing submissions for the Crown at 3.4–3.7.
108 Closing submissions for the Council at 3.9.
109 Closing submissions for the Crown at 3.3.
110 Evidence in chief of Sandra McIntyre on behalf of the Crown at 8.6.

For the Hearings Panel:

Environment Judge John Hassan
Deputy Chair

Ms Sarah Dawson
Panel Member



Mr Alec Neill
Panel Member

Mr Gerard Willis
Panel Member

APPENDIX 4

ORION – OPERATIVE DISTRICT PLAN DECISIONS – NZECP 34:2001

The requirements in NZECP are embedded in provisions in the operative Christchurch District Plan. For example:

7.4.2.5 Non-complying activities for Transport (all zones outside the Specific Purpose (Lyttelton Port) Zone)	*NC2* *a. Any building or structure in the Transport Zone (except transport infrastructure and utilities that comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001)) that exceeds 2.5 metres in height within:* *i. 12 metres of the centre line of a 110kV or a 220kV National Grid transmission line; and/or* *ii. 10 metres of the centre line of a 66kV National Grid transmission line.*
8.9.2.1 Permitted activities for earthworks P4 and P5 - Earthworks in the vicinity of a 66kV or 33kV electricity distribution lines or the 11kV (Heathcote to Lyttelton) electricity distribution line, except as otherwise specified in: i. Rule 8.9.2.2 C1; and ii. Rule 8.9.2.3 RD1, RD3, RD4 and RD5	*Permitted activity* *Where:* *a. Earthworks within 10 metres of the centre line of a 66kV electricity distribution line shall:* *i. meet the requirements of Clause 2.2.1 and/or 2.2.3 (as applicable) of the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34: 2001); or* *ii. meet the following requirements:* *A. be no deeper than 300mm within 6 metres of a foundation of a 66kV electricity distribution line support structure; and* *B. be no deeper than 3m between 6 and 10 metres from the foundation of a 66kV electricity distribution line support structure; and* *C. not destabilise an electricity distribution line support structure; and* *D. not result in a reduction in the ground to conductor clearing distances below what is required by Table 4 in the NZECP 34:2001.* *b. Activity standard a.ii.A. (above) shall not apply to:* *i. Earthworks for a network utility, as part of an electricity distribution activity;*

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ii. *Earthworks undertaken as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, drive or farm track.*

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14.4.1.5 Non-complying activities in the Residential Suburban Zone and Residential Suburban Density Transition Zone

NC7

(this is replicated in the relevant zone chapters)

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a. *Sensitive activities and buildings (excluding accessory buildings associated with an existing activity):*
   i. *within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or*
   ii. *within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure; or*
   iii. *within 5 metres of the centre line of the 11kV Heathcote to Lyttelton electricity distribution line (except that this shall not apply to any underground section) or within 5 metres of a foundation of an associated support structure.*
b. *Fences within 5 metres of a 66kV or 33kV electricity distribution line support structure foundation.*
c. *Fences within 5 metres of an 11kV Heathcote to Lyttelton electricity distribution line support structure foundation.*
d. *Any application arising from this rule shall not be publicly notified and shall be limited notified only to Orion New Zealand Limited or other electricity distribution network operator (absent written approval).*

Advice note:

1. *The electricity distribution lines are shown on the planning maps.*
2. *Vegetation to be planted around electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.*
3. *The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to electricity distribution lines. Buildings and activity in the vicinity of electricity distribution lines must comply with NZECP 34:2001.*

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The operative Christchurch District Plan also references NZECP 34:2001 in matters of control. For example:

8.7.4.1 Matters of control for subdivision design	*…* *q. Outside the Central City, the extent to which the subdivision design and construction allows for earthworks, buildings and structures to comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).*

APPENDIX 5

CIAL – SECTION 77L ASSESSMENT

77L(a) - Identify the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area	Paragraphs 45 to 84 of the legal submissions on behalf of CIAL for the Airport Noise qualifying matter hearing. The effect of noise from aircraft operations on community health and amenity makes the level of development provided by the MDRS inappropriate in areas that will be subject to 50dB Ldn or greater. Intensification of residential activity (such as that enabled by the MDRS) ought to be avoided in these areas on the basis of the existing planning framework, case law and evidence.
77L(b) - Justify why that characteristic makes that level of development inappropriate in light of the significance of urban development and the objectives of the NPS-UD	Paragraphs 19 to 21 of the legal submissions on behalf of CIAL for the Airport Noise qualifying matter hearing. Accommodating the Airport Noise QM as sought in CIAL's submission is entirely consistent with Objective 1 of the NPS UD which is focused on well-functioning urban environments. The provisions relating to the Airport Noise QM enable people and communities subject to 50dB Ldn or greater of aircraft noise to provide for their wellbeing and for their health and safety into the future. CIAL's relief is also consistent with Objective 6 as it ensures integration of urban development with infrastructure planning.
77L(c) – Site-specific analysis	Appendix A(i) to CIAL's submission contains a map of the Airport Noise QM area proposed by CIAL. Appendix I (additional information relating to the Airport Noise QM) to Ms Sarah Oliver's Section 42A report evaluates the Airport Noise QM on a site-specific basis. Mr Kyle's Section 32AA evaluation dated 23 April 2024 contains an alternatives assessment.