

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 Casinos Limited**
Submitter 2077

NHL Properties Limited
Submitter 706

**Wigram Lodge (2001) Limited, Elizabeth Harris
and John Harris**
Submitter 817

Legal Submissions on behalf of Christchurch Casinos Limited,
NHL Properties Limited and Wigram Lodge (2001) Limited,
Elizabeth Harris and John Harris

Dated: 27 October 2023

Counsel: J M Appleyard (jo.appleyard@chapmantripp.com)
A R C Hawkins (annabel.hawkins@chapmantripp.com)
A M Lee (annabelle.lee@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 4 472 7111

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

INTRODUCTION AND SUMMARY

- 1 These legal submissions are presented on behalf of:
- 1.1 Christchurch Casinos Limited (*the Casino*);¹
 - 1.2 NHL Properties Limited (*NHL Properties*);² and
 - 1.3 Wigram Lodge (2001) Limited, Elizabeth Harris and John Harris (*Wigram Lodge*).³
- (together, *the Submitters*)
- 5 These submissions:
- 5.1 Outline the Submitters' interests in proposed Plan Change 14 (Housing and Business Choice) (*PC14*) to the Christchurch District Plan (*District Plan*);
 - 5.2 Address the legality of the Submitters' rezoning proposals; and
 - 5.3 Briefly address the merits of the Submitters' rezoning proposals.

THE SUBMITTERS' INTERESTS

The Casino

- 6 The Casino owns 6,170m² of land at 56-72 Salisbury Street and 373 Durham Street North (*Casino Site*), which is currently a car park. The Casino Site is zoned Residential Central City in the District Plan. Under PC14, the Casino Site has been rezoned High Density Residential Zone (*HRZ*). The Casino seeks a further rezoning to Central City Zone (*CCZ*).

NHL Properties and Wigram Lodge

- 7 NHL Properties and Wigram Lodge together have interests in:
- 7.1 132-136 Peterborough Street and 137-151 Kilmore Street, which is split zoned Residential Central City and Central City Mixed Use (*CCMU*) in the District Plan; and

¹ Submitter 2077.

² Submitter 706.

³ Submitter 817.

7.2 152-158 Peterborough Street and 237-333 Manchester Street, which is zoned Residential Central City in the District Plan.

(together, *the Forté Health Site*)

8 The Forte Health Site is approximately 12,770m² overall. Given the split zoning of the NHL Properties site, this includes 8,170m² of residentially zoned land. The same split is proposed in PC14, with HRZ and CCMU zoning as notified. NHL Properties and Wigram Lodge seek that the HRZ component be further rezoned CCMU, so that overall, the Forte Health Site is zoned CCMU.

Wigram Lodge

9 Wigram Lodge also owns 5,930m² of land at 850-862 Colombo Street and 139 Salisbury Street (*Wigram Lodge Site*), which is partly developed with 1930s unit type housing and partly undeveloped. The Wigram Lodge Site is zoned Residential Central City in the District Plan. Under PC14, the Wigram Lodge Site has been rezoned HRZ. Wigram Lodge seeks a further rezoning to CCMU.

Evidence

10 Evidence for the Submitters has been provided in separate briefs for each land area outlined above by:

10.1 **Mr David Compton-Moen** - Landscape and Urban Design; and

10.2 **Ms Anita Collie** - Planning.

11 **Mr Compton-Moen and Ms Collie** will provide summary statements at the hearing.

12 **Ms Collie** also initiated an informal discussion with Ms Holly Gardiner and Mr Mark Stevenson on 20 October 2023. Minutes from this discussion may be available for the hearing, and **Ms Collie** will be able to speak further to the areas of agreement reached and the remaining areas in contention.

LEGALITY OF THE REZONING PROPOSALS

13 The statutory framework has been well traversed for (and by) the Panel in previous hearing sessions to date. These submissions accordingly focus on the key legal issue raised by the Council in respect of the Submitters' rezoning requests – scope.

14 The Council's position (in Ms Gardiner's section 42A report and in legal submissions) is that the submissions are not "on" PC14 and

would be an appreciable change to the planning regime that could not reasonably have been foreseen by those potentially affected.

- 15 In our submission, the rezoning requests are clearly within scope:
- 15.1 As is well-established, PC14 is required to incorporate the Medium Density Residential Standards (*MDRS*) and give effect to Policy 3 of the National Policy Statement on Urban Development 2020 (*NPS-UD*).
 - 15.2 To meet these requirements introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Amendment Act*), the Council has rezoned the Submitters' sites from Residential Central City to HRZ.
 - 15.3 As **Ms Collie's** evidence outlines,⁴ under PC14, the development rights for the Submitters' sites are greater than what currently exists under the operative District Plan zoning.
 - 15.4 This confirms that the development framework for these sites has clearly changed as a result of PC14. In other words, there is not a "roll-over" of existing provisions with a different zone name. Intensification is proposed to be enabled on the Submitters' sites, in accordance with the statutory requirements.
 - 15.5 The Amendment Act also introduced a requirement to give effect to Policy 3 in relation to urban non-residential zones.⁵ This was logical, in that greater intensification of residential activity would necessarily require the support of commercial activity, infrastructure and other services.
 - 15.6 Relevantly, this includes an ability for the Council to "create new urban non-residential zones" to give effect to Policy 3.⁶
 - 15.7 Given the legislative framework enabled the creation of new urban non-residential zones, once the land use framework (including zoning) of the Submitters' sites was "in play" under PC14 as notified, it was entirely open to the Submitters to pursue rezonings as they have done through their submissions.

⁴ Evidence of Anita Collie for Christchurch Casinos Limited, paragraph 57.

⁵ Resource Management Act 1991, section 77N.

⁶ Resource Management Act 1991, section 77N(3)(a). We note there is an equivalent ability to create new residential zones in section 77G(4).

- 15.8 These submissions are therefore clearly “on” PC14 and the first limb of *Clearwater* and *Motor Machinists* is met.⁷ In *Clearwater* terms, the “management regime” for this land is altered by PC14 and this regime could involve rezoning to an urban non-residential zone.
- 15.9 We also reiterate that Policy 3 requires “*building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification*”. Policy 3 relates broadly to development capacity and enables either residential or commercial use. There is no expressed preference for residential use.
- 15.10 There is no economics evidence in this case to suggest that only residential land use is appropriate for these sites. In fact, that may be market driven and depend on factors such as site size, location and proximity to other activities, as is the case here with landowners proactively seeking to develop currently empty/under-developed sites (a matter of concern to Council’s urban design witness Mr Nicholson) in close proximity to their existing commercial activities (e.g. the Casino and Forté Health). This is the very outcome anticipated by the Amendment Act.
- 15.11 As to the second limb of *Clearwater* and *Motor Machinists*, in the context of the possible outcomes under the Amendment Act outlined above, affected parties (if any) would have been able to comment on these proposed rezonings by way of further submissions. There is no scope issue here.
- 16 With reference to the Council reliance on *Clearwater*, the above analysis outlines that the two *Clearwater* limbs have been met in respect of the Submitters’ submissions. We also add that:
- 16.1 The *Clearwater* line of cases generally concerned relatively discrete changes or variations to planning documents. In these cases, submissions that were considered out of scope were generally “me too” type submissions seeking, for example, a geographical extension to a change or variation. In the *Albany North Landowners* case, the High Court considered scope in the context of the Auckland Unitary Plan.⁸ The Court indicated that a full district plan review context would necessarily result in a broader lens when it came to scope. In particular, a section 32 report will not fix the final frame of the instrument as a whole, and is not therefore determinative of scope. While PC14 is not (and should not be

⁷ *Clearwater Resort Ltd v Christchurch CC* HC Christchurch AP34/02, 14 March 2003 and *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290.

⁸ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

considered) a full district plan review, in our submission it is considerably further along the continuum than the traditional *Clearwater*-type scenario, and particularly so in the case of the central city. It may assist the Panel to consider scope in that light.

- 16.2 Clause 99(2), Schedule 1 of the Resource Management Act 1991 enables the Panel to make recommendations that are not within the scope of submissions made on PC14. This clause refers to scope of decision-making , rather than scope of submissions. However, ultimately, it enables the Panel to make broad recommendations based on what it has heard at the hearings and indicates that the Panel should not apply a narrow lens to the issue of scope.
- 17 In our submission, the Submitters' rezoning requests are clearly within the scope of PC14.

MERITS OF THE REZONING PROPOSALS

- 18 The evidence of **Mr Compton-Moen** and **Ms Collie** addresses the technical merits of the rezoning proposals in detail. These submissions accordingly leave the merits of the rezoning proposals to these experts to discuss at the hearing.
- 19 However, it is worth noting that the rezoning requests seek to apply existing zones/provisions that have been proposed by Council in PC14. This ensures that matters of concern raised by the Council, such as existing residential amenity and interface management will be appropriately dealt with. This should all be considered in light of the more "progressive" provisions of the NPS-UD, such as Policy 6 regarding amenity values.

CONCLUSION

- 20 In our submission, the changes sought to PC14 by the Submitters are both within scope and would enable the most appropriate outcomes for the Submitters' sites. Their submissions should accordingly be accepted.

Dated 27 October 2023



J Appleyard / A Hawkins / A Lee
Counsel for the Submitters