

Before an Independent Hearings Panel  
appointed by Christchurch City Council

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*under:* the Resource Management Act 1991

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

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

Legal Submissions on behalf of Carter Group Limited

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Dated: 24 October 2023

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## **MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL**

### **INTRODUCTION AND SUMMARY**

- 1 These legal submissions are presented on behalf of Carter Group Limited (*Carter Group*) in relation to the Central City and Commercial Zones hearing for proposed Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan (*PC14*).
- 2 These submissions serve as an overview of Carter Group's position on PC14 and address Carter Group's specific interests in the Commercial and Central City Zones hearing topic.
- 3 In essence, Carter Group is concerned to ensure that PC14 properly implements the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Amendment Act*) so that the intended benefits of the legislation are actually achieved.
- 4 Carter Group considers that the statutory requirements have not been properly followed in the development of certain aspects of PC14, which has resulted in provisions that are unworkable and unnecessarily duplicative. The relief sought by Carter Group seeks to address these issues.

### **STRUCTURE OF SUBMISSIONS**

- 5 These submissions:
  - 5.1 Provide a brief overview of Carter Group and its position on PC14 generally;
  - 5.2 Outline Carter Group's interests in the Central City and Commercial Zones hearing topic; and
  - 5.3 Set out and analyse the relevant statutory framework.

### **OVERVIEW**

#### **About Carter Group**

- 6 Carter Group is a privately owned company based in Christchurch. It is run by the Carter family and is a significant investor and developer of property in the South Island.
- 7 Carter Group's interests include hotels, residential, commercial and industrial property across Christchurch City and Canterbury. Carter Group has long been committed to contributing to the vibrancy and prosperity of Christchurch City, particularly in the rebuild following the devastating Canterbury earthquakes.

- 8 In light of the Panel's directions at paragraph 64 of the Hearing Procedures, no further detail has been provided in these submissions or in evidence as to company background. Any specific details can be provided on request.

**Carter Group's position on PC14**

- 9 Carter Group made a detailed submission on PC14 and further submitted on a number of other submissions. Carter Group's interests span most aspects of PC14.
- 10 The crux of Carter Group's submission on PC14 is that:
- 10.1 To the extent intensification is enabled, this has been countered by amendments or additions to policies, rules, activity status and assessment matters, which will constrain development and add time, cost and uncertainty to projects; and
  - 10.2 To achieve the necessary statutory requirements, greater use should be made of permitted or controlled activity status, and caution should be exercised in the drafting of provisions to ensure they are clear, certain and, ultimately, enabling of intensification.
- 11 The evidence provided for Carter Group (outlined below) focuses on key areas of concern, including where there is disagreement between Carter Group's witnesses and the position of Christchurch City Council (*Council*) witnesses.
- 12 Carter Group acknowledges the task faced by Council in preparing PC14 and supporting it through the section 42A reports and evidence. Carter Group appreciates where Council staff and witnesses have engaged with its specific submission points and where changes or refinements have been made in response. It is expected that this approach will be able to continue through the hearings process, for the benefit of all parties involved as well as the Panel.
- 13 For the purposes of this hearing, **Mr Dave Compton-Moen** (landscape and urban design) and **Mr Jeremy Phillips** (planning) have prepared summary statements of their evidence in chief. Their summary statements outline where any agreement has been reached with Council through Council's rebuttal evidence, and the remaining areas in contention.

**Where will Carter Group’s submission points be heard?**

- 14 Carter Group will present its submission over four hearing appearances:
- 14.1 Central City and Commercial Zones (this hearing) – this appearance will generally cover Carter Group’s interests in the Central City and Commercial Zone provisions, including site-specific Central City heritage heights and interface matters and provisions relating to wind;
  - 14.2 Residential Zones (16 November 2023) – this appearance will generally cover Carter Group’s interests in the Residential Zone provisions, including the Residential Heritage Areas (*RHA*), *RHA* interface sites, tree canopy provisions, and all transport provisions (for efficiency);
  - 14.3 Other Zones (Specific Purpose Zones) (hearing session TBC) – this appearance will generally cover Carter Group’s interests in the Specific Purpose Zone provisions relevant to its 32 Armagh Street site (which was previously the Christchurch Girls’ High School site); and
  - 14.4 City-wide qualifying and other matters (hearing session TBC) – this appearance will focus on the heritage qualifying matter applying to the 32 Armagh Street site, other historic heritage provisions not covered earlier (with leave sought to update any heritage qualifying matter issues which have arisen earlier, including at the current Central City and Commercial Zones hearing), and the significant trees qualifying matter.
- 15 For ease for the Panel, when legal submissions are filed for each hearing topic, counsel propose to provide a copy of the statements of evidence relevant to the hearing topic, with the relevant sections highlighted. Highlighted copies of **Mr Compton-Moen’s** and **Mr Phillips’** evidence are provided as **Appendices 1 and 2** to these legal submissions.

**Evidence for Carter Group**

- 16 Evidence has been provided for Carter Group from:
- 16.1 **Mr Compton-Moen** – landscape and urban design;
  - 16.2 **Ms Lisa Williams** – transport;
  - 16.3 **Mr William Fulton** – heritage architecture;
  - 16.4 **Mr David Hill** - architecture;
  - 16.5 **Mr Kyle Brookland** – building condition assessment;

- 16.6 **Mr Tom Chatterton** – quantity surveying; and
- 16.7 **Mr Phillips** – planning.
- 17 As indicated above, **Mr Compton-Moen** and **Mr Phillips** are appearing at this hearing.
- 18 **Ms Williams** will appear, together with **Mr Compton-Moen** and **Mr Phillips** at the Residential Zones hearing.
- 19 **Mr Compton-Moen** and **Mr Phillips** will appear at the Other Zones (Specific Purpose Zone) hearing.
- 20 All of Carter Group’s witnesses, except **Ms Williams**, will appear at the City-wide qualifying and other matters hearing.

### **CENTRAL CITY AND COMMERCIAL ZONES HEARING**

- 21 Carter Group’s specific interests in this hearing topic include:
- 21.1 Site-specific – opposing:
- (a) The application of a 45m height limit to Carter Group’s site at 184 Oxford Terrace as part of the proposed Cathedral Square Height Precinct (compared to 90m for the majority of the Central City Zone) – *this remains in contention as between the planners;*
  - (b) The application of a 28m height limit on Carter Group’s site at 129-143 Armagh Street as part of the Central City Heritage Interface qualifying matter associated with New Regent Street (compared to 90m for the majority of the Central City Zone) – *this remains in contention as between the planners;* and
  - (c) The spatial extent of the New Regent Street heritage setting across the Armagh Street road reserve – *a reduction in extent is now agreed.*
- 21.2 General – seeking changes to:
- (a) Strategic Objective 3.3.8(a)(vi) – *this is now agreed as between Mr Phillips and Ms Oliver for Council;*
  - (b) Wind rules;
  - (c) Commercial policies;
  - (d) Central City Zone rules;

- (e) Central City Mixed Use Zone (South Frame) rules; and
- (f) Commercial matters of discretion.

22 **Mr Compton-Moen and Mr Phillips** have addressed these matters in detail from a technical perspective, including responding to the Council's section 32 and 42A reports and evidence, and that detail is left to them to present.

23 The remainder of these submissions set out and analyse the applicable statutory framework in light of the relief sought by Carter Group.

### **STATUTORY FRAMEWORK**

24 The legal submissions filed for the Council and Kāinga Ora – Homes and Communities at the Strategic Overview hearing set out the relevant statutory framework. Their positions are generally accepted.

25 There are four aspects of the statutory framework of particular relevance to the relief sought by Carter Group on this hearing topic:

25.1 The correct approach to the PC14 process;

25.2 The implementation of "existing" qualifying matters;

25.3 The permissible scope of an Intensification Planning Instrument (*IPI*); and

25.4 Efficiency and effectiveness.

26 A more detailed consideration of these issues illustrates certain key differences in the approach taken by Council and the approach considered appropriate by Carter Group. In our submission, Carter Group's approach is the correct from both a legal and evidential perspective, as explained below and in the Carter Group evidence.

#### **Correct approach to PC14 process**

27 PC14 must incorporate the Medium Density Residential Standards (*MDRS*) and give effect to Policies 3 and 4 of the National Policy Statement on Urban Development 2020 (*NPS-UD*).<sup>1</sup> This is necessarily the starting proposition for both the development of PC14 by the Council and its assessment by the Panel.

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<sup>1</sup> Resource Management Act 1991, sections 77G, 77I and 80E.

28 Policy 3 of the NPS-UD (for ease of reference) provides:

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

- (a) *in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise the benefits of intensification; and*
- (b) *in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- (c) *building heights of at least 6 storeys within at least a walkable catchment of the following:*
  - (i) *existing and planned rapid transit stops*
  - (ii) *the edge of city centre zones*
  - (iii) *the edge of metropolitan centre zones; and*
- (d) *within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*

29 Policy 4 of the NPS-UD allows the relevant building height or density requirements under Policy 3 to be modified only to the extent necessary to accommodate a qualifying matter.

30 Sections 77I (residential areas) and 77O (non-residential areas) of the RMA similarly enable the Council to make the MDRS and relevant building height or density requirements less enabling of development only to the extent necessary to accommodate a specified qualifying matter(s).

31 In our submission, these fundamental elements confirm that the correct approach is to:

31.1 Start by applying the MDRS and Policy 3 of the NPS-UD in a "blanket" manner, which in relation to the City Centre is to provide "heights and densities" realising as much development capacity as possible;

31.2 Identify and describe any relevant qualifying matter(s);

- 31.3 Pull back from the starting point to implement any relevant qualifying matter(s);
  - 31.4 But only do so to the extent necessary to accommodate any relevant qualifying matter(s); and
  - 31.5 Exercise caution as to how any qualifying matter(s) is accommodated, so as not to frustrate the policy intent of the Amendment Act and the NPS-UD.
- 32 Expanding on paragraph 31.5 above, neither the Amendment Act nor the NPS-UD expressly state how qualifying matters are actually required to be accommodated. That is, there is no prescription of whether they should result in, for example:
- 32.1 No change to the status quo;
  - 32.2 Partially giving effect to the MDRS and/or the relevant building height or density requirements under Policy 3 of the NPS-UD; and/or
  - 32.3 Giving effect to the MDRS and/or the relevant building height or density requirements under Policy 3 but with reduced policy support, more onerous activity status, or more assessment matters.
- 33 In our submission, the text of the relevant Amendment Act and NPS-UD provisions, when considered in light of their purpose and context, means that:
- 33.1 Intensification in accordance with the MDRS and Policy 3 of the NPS-UD is the starting point;
  - 33.2 Proper articulation and inclusion of qualifying matters should then follow, and should be a proportionate response based on evidence of what is necessary to accommodate such qualifying matters; and
  - 33.3 There is no discretion in the application of qualifying matters to go beyond what is necessary to accommodate them.
- 34 The evidence of **Mr Compton-Moen** and **Mr Phillips** for Carter Group outlines that for Carter Group's Central City and Commercial Zones interests, very limited intervention (and none in some cases) is required to accommodate qualifying matters where intensification should otherwise be enabled.



- 35 **Mr Compton-Moen's** and **Mr Phillips'** evidence illustrates that in certain cases the Council's approach has been to:
- 35.1 As the starting point for the development of provisions, taking a predetermined level of "appropriate intensification", or the accommodation of a qualifying matter; and
- 35.2 Seeing what is left over as being the outcome for MDRS and Policy 3.
- 36 With respect, that does not align with the statutory requirements, as outlined above. In our submission, Carter Group's approach reflects the correct interpretation and application of these requirements. The relief sought by Carter Group should accordingly be preferred.
- Implementation of "existing" qualifying matters**
- 37 A number of Carter Group's submission points on this hearing topic (and subsequent hearing topics) relate to limitations on intensification or development due to qualifying matters that already exist in the Christchurch District Plan (*District Plan*).
- 38 Sections 77K (residential zones) and 77Q (non-residential zones) prescribe an alternative evaluation process for qualifying matters that are operative in the relevant district plan when an IPI is notified. This reflects the fact that these matters have already gone through a RMA, Schedule 1 public process to be incorporated in the District Plan.
- 39 As part of this alternative process, once existing qualifying matters are identified and their impact on intensification described, sections 77K(1)(e) and 77Q(1)(e) simply require them to be notified in the IPI.
- 40 However, as **Mr Phillips'** evidence explains, in a number of cases, when ostensibly including existing qualifying matters in PC14, the Council has gone much further than simply carrying them through. Instead, the Council has, for example, reduced existing policy support for development, made activity status more onerous, or added additional (or unnecessarily duplicated) assessment matters.
- 41 In our submission, this approach does not align with the requirements of sections 77K and 77Q. Fundamentally, there was no need to reinvent the wheel when it came to existing qualifying matters for PC14.
- 42 It is noted that section 80E(1)(b) of the RMA enables an IPI to include "related provisions". However, the relevant PC14 provisions (outlined in **Mr Phillips'** evidence) have been put forward by Council as qualifying matters, rather than related provisions. In any case, any such related provisions must "support" or be

“consequential on” the MDRS and Policies 3 and 4 of the NPS-UD. In our submission, supporting or being consequential on does not mean extending or duplicating existing qualifying matters.

43 This approach also raises issues of scope, which we address below.

**Scope and the *Waikanae* case**

44 As the Panel will be aware from reading Carter Group’s submission and **Mr Phillips’** evidence, Carter Group considers that various of the PC14 provisions are not within the permissible scope of an IPI.

45 This argument has greater relevance for Carter Group’s later hearing appearances and will be addressed in greater detail at those upcoming stages. At this point, we note the arguments already put to the Panel as to whether *Waikanae* is correct, its relevance to PC14, and how the Panel should proceed in light of the decision.

46 We have some reservations as to the approach taken in *Waikanae* given it was a preliminary legal determination without the benefit of evidence and the full context. We also consider that the decision contains some fairly blunt propositions that need to be carefully applied in any particular context.

47 However, there are aspects of the decision that we consider, with the benefit of evidence, are relevant when applied to Carter Group’s specific submission points.

48 As an example in relation to this hearing topic, **Mr Phillips** has identified several Central City Zone and Central City Mixed Use Zone (South Frame) rules that are disenabling relative to the status quo. These rules lessen status quo development rights, i.e. those existing before the notification of PC14, are not necessary to accommodate qualifying matters (on an evidential basis), and will not achieve the policy intent of the Amendment Act and the NPS-UD.

**Efficiency and effectiveness**

49 Carter Group’s submission, together with **Mr Phillips’** evidence, also raises themes of the efficiency and effectiveness of the proposed PC14 provisions.

50 It goes without saying that the Amendment Act provisions are part of the overall assessment of PC14 required under the RMA. This relevantly includes section 32 and, specifically, an examination of whether the provisions in the proposal are the most appropriate way to achieve the objectives.<sup>2</sup> Section 32(3) clarifies that if a proposal amends an existing plan (as PC14 does), the section 32 evaluation

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<sup>2</sup> Resource Management Act 1991, section 32(1)(b).

should relate to both the provisions and objectives of the amending proposal and the existing plan.

- 51 **Mr Phillips'** evidence has identified a significant inconsistency between various PC14 provisions and existing strategic objectives 3.3.1 and 3.3.2. In our submission, this strongly supports the relief sought by Carter Group, as outlined in its submissions and in **Mr Phillips'** evidence.
- 52 Ultimately, it is well-established that plan provisions must be certain, clear and easy to implement. That is the intent of the changes sought to PC14 by Carter Group.

### **CONCLUSION**

- 53 These legal submissions, together with the evidence of **Mr Compton-Moen** and **Mr Phillips** for Carter Group, outline that in order to properly implement the statutory requirements, the Panel should accept the relief sought by Carter Group in relation to this hearing topic.
- 54 More specifically, in our submission, Council's evidence does not demonstrate that reduced heights and densities are justified in the Central City in order to accommodate the qualifying matters proposed. Furthermore, it is questionable whether some of those qualifying matters inappropriately extend or duplicate existing qualifying matters, or are within the scope of PC14.
- 55 The short point is that Council must implement the greatest building heights and densities in the Central City and Commercial Zones unless there is an evidentially valid reason not to. Carter Group's position is that the extent of qualifying matters as they relate to this hearing topic have gone too far.

Dated 24 October 2023




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