

**Before Independent Hearing Commissioners appointed by Christchurch
City Council**

In the matter of the Resource Management Act 1991 (**RMA**)

And

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

Between

Lendlease New Zealand Limited

and

Christchurch City Council

Legal submissions on behalf of Lendlease New Zealand Limited
(submitter 855)

Housing and Business Choice

Dated 24th October 2023

Appearance 31st October 2023

MinterEllisonRuddWatts.

PO Box 105 249 Auckland City 1143

T +64 9 353 9700

Solicitor acting: Amy Colebourn | amy.colebourn@minterellison.co.nz

Partner responsible: Bianca Tree | bianca.tree@minterellison.co.nz

901883444:1

MAY IT PLEASE THE COMMISSIONERS

INTRODUCTION

1. Lendlease New Zealand Limited (**Lendlease**) has made a submission on Plan Change 14 (Housing and Business Choice) (**PC14**) to the Operative Christchurch District Plan (**Plan**) in relation to its ownership and operation of the Dress Smart shopping centre in Hornby (the **Site**). In this hearing, these legal submissions primarily relate to the Town Centre zone applied to Hornby, and address the relief sought for Hornby to be recognised as a Metropolitan Centre zone.
2. These submissions address:
 - (a) Legal context and scope of PC14;
 - (b) Hornby is a sub-regional centre and must be identified as a Metropolitan Centre in the Plan to give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**);
 - (c) Enabling greater building height and removal of the restriction on office activities in Hornby (and the other Metropolitan Centres) will give effect to the NPS-UD.
3. In addition to these submissions, Mark Arbuthnot has prepared a statement of planning evidence in support of the relief sought by Lendlease.
4. It is also noted that Kainga Ora – Homes and Communities and Scentre Group have provided submissions and expert evidence supporting similar relief.

LEGAL CONTEXT AND SCOPE OF PC14

5. The Council in its opening legal submissions for the Strategic Overview Hearing provided a through outline of the legal framework applicable to PC14. I will not repeat that here, however there are some matters that are necessary to address as part of the context to the relief sought by Lendlease and the scope of PC14. These submissions also focus on the NPS-UD, which provides the national direction relevant to the plan provisions for Hornby.

6. PC14 has been promulgated as an intensive planning instrument (**IPI**) to change the Plan to incorporate the medium density residential standards (**MDRS**) and to give effect to Policies 3 and 4 of the NPS-UD.
7. The Council's legal submissions for the Central City and Commercial zones topic state that the relief sought by Lendlease and other submitters to change the Town Centre zoning from Hornby, Riccarton and Papanui to Metropolitan Centre, are effectively rezoning requests, with the potential to be out of scope under the *Clearwater* test.¹ Related to this are associated changes sought to increase height and allow greater (or unlimited) office tenancy sizes. It is submitted by the Council that the change to office tenancy size is out of scope as it does not relate to height or density.²
8. I disagree that this relief is out of scope. These amendments give effect to Policy 3 of the NPS-UD, they seek to appropriately identify Metropolitan Centres in the Plan and enable greater building height in those centres. By enabling greater building height, it is also necessary and appropriate to consider the activities enabled, in accordance with s80E(1)(b)(iii) of the RMA. Removing a limit on office tenancy size supports or is consequential to increasing building height to give effect to Policy 3(b) or (d).
9. The scope of an IPI has been considered by other councils, and the Council's legal submissions³ refer to the Interim Guidance of the Auckland Independent Hearing Panel (**IHP**). The Auckland IHP found that "support" and "consequential" are well understood, they are broad terms and provide considerable range for the type of "related provisions" that may be included or amended.⁴ Other key findings of the Auckland IHP were:⁵

From our analysis of the purpose of PC78 and our study of the changes it proposes to the AUP, we consider that PC78 is not a narrow plan change. It encompasses most of the Auckland region and substantially alters the status quo for land use intensification in

¹ Legal Submissions for Council for the Central City and Commercial zones topic, at [4.9]

² Legal Submissions for Council for the Central City and Commercial zones topic, at [4.13], Mr Lightbody, s42A Report, at [8.5.7]

³ Legal submissions for Council for the Strategic Overview Hearing topic, at [2.52]

⁴ Interim Guidance of the Auckland Panel on Statutory Interpretation and Scope of Relief Issues, date 12 June 2023, at [65, 66].

⁵ Interim Guidance of the Auckland Panel on Statutory Interpretation and Scope of Relief Issues, date 12 June 2023, at [17, 18].

both residential and commercial areas. Furthermore, with regard to b (ii) above, while the RMA requires the IPI to give effect to Policies 3 and 4 NPS-UD, we note that section 75(3) of the RMA also applies, such that PC78 must also be assessed and implemented in a way that gives effect to the balance of the NPS-UD (subject to scope). This is an important finding that, for reasons that follow, means a wider rather than narrower interpretation of the IPI needs to be applied.

For the purposes of our preliminary views on scope and the first limb assessment to be undertaken, it also means that the ambit of PC78 is wide and that submissions that fairly and reasonably raise matters that go to its broad purpose (as set out in paragraph 14) have a strong likelihood of satisfying this threshold and being “on” the plan change.

10. In respect of whether Hornby, Riccarton and Papanui should be rezoned to Metropolitan Centre, this is clearly “on” PC14 for the following reasons:
 - (a) The Plan does not have commercial zones that accord with the National Planning Standards. Clause 1.4(4)(b) of the NPS-UD therefore applies, and the nearest equivalent zone to the Standards must be applied.
 - (b) The Council’s s32 analysis specifically considered what were the appropriate National Planning Standard centre zones for the existing commercial zones in the Plan. This was considered on the basis of a comparison between the Plan zone description and the National Planning Standard zone description, and each centre was also assessed ‘afresh’ to consider if it provided the range of activities in the National Planning Standard description and served a sub-regional catchment.⁶
 - (c) The appropriate identification of a centre as a Metropolitan Centre is a critical element to ensuring that the Plan gives effect to the NPS-UD.
11. In respect of the change to office activities, as above, this supports or is consequential to the Metropolitan Centre zoning, and/or increasing building height. Removing restrictions on office activity at Hornby directly relates to density of urban form in response to demand for business use. This is

⁶ Section 32: Commercial Appendix 2 – Approach to Alignment with National Planning Standards.

necessary and appropriate to give effect to Policy 3(b) if rezoned to Metropolitan Centre, or Policy 3(d) if retained as a Town Centre.

12. The amendments sought by Lendlease fairly and reasonably relate to Policy 3 of the NPS-UD. It is necessary and appropriate to test this relief to confirm what provisions, PC14 as notified, the amended provisions in the s42A report, or the relief sought, will give effect to the NPS-UD as a whole. It is important that, although the scope of the IPI is limited to Policies 3 and 4, in making a decision, the Panel must consider and give effect to the NPS-UD as a whole.⁷
13. In this respect, the NPS-UD provides clear and directive objectives and policies to ensure towns and cities are well-functioning urban environments and have at least sufficient development capacity to meet the changing needs of diverse communities. It removes barriers to development to allow growth 'up' and 'out' in locations that have access to existing goods and services, public transport networks and infrastructure. The NPS-UD reinforces the centres hierarchy in the National Planning Standards and sets express requirements for intensification to be enabled in and in proximity to centres.
14. The Supreme Court in *King Salmon* recognised that 'give effect to' in the context of a national policy statement simply means 'implement' and that on the face of it this is a strong directive, creating a firm obligation on those subject to it.⁸
15. In giving effect to the NPS-UD when making decisions on PC14, the Panel is required to:⁹
 - (a) Objective 1 - contribute to well-functioning urban environments, now and into the future.¹⁰ The reference to the future urban environment brings into focus that the decisions that we make now in terms of built form, have a long-lasting effect. Failing to provide for appropriate height and density in the right locations will not support the

⁷ s75(3)(a) RMA

⁸ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593, at [77].

⁹ National Policy Statement on Urban Development 2020 (**NPS-UD**), Policy 6(b) and (c).

¹⁰ NPS-UD, Objective 1 and Policy 1.

accessibility, efficiency and sustainability outcomes sought by the NPS-UD.

- (b) Objective 3 - enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which the area is in or near a centre zone; is well-serviced by existing or planned public transport; and / or there is a high demand for housing or business land in the area.¹¹ This supports the centres based hierarchy in the Plan, and the benefits of a centres based urban form.
- (c) Policy 1(d) - support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets.¹² It is important to recognise and provide for the primacy of the City Centre, however this should not be to the detriment of other centres and the well-functioning urban environment objective of the NPS-UD.
- (d) Policy 2 - provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.¹³ It is important that Policy 2 provides for “at least” sufficient development capacity, and that other objectives and policies do not provide maximums of height and density, and also recognise the need to provide intensification where there is high demand.
- (e) Policy 3(b) - in metropolitan centre zones, enable 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.¹⁴ Enabling additional height in Metropolitan Centre zones is important to enable the range of activities, including office and residential, that supports a mixed use environment.

¹¹ NPS-UD, Objective 3.

¹² NPS-UD, Policy 1(d).

¹³ NPS-UD, Policy 2.

¹⁴ NPS-UD, Policy 3(b).

- (f) Policy 3(c) - building heights of at least 6 storeys within at least a walkable catchment of existing and planned rapid transit stops and the edge of metropolitan centre zones.¹⁵
- (g) Policy 6 - have regard to the fact that the planned urban form in PC14 may involve significant changes to an area, and those changes may detract from amenity values appreciated by some people but improve amenity values appreciated by other people.¹⁶
16. The Council in its opening legal submissions for the Strategic Overview Hearing, stated that in Otautahi Christchurch there is simply no need for PC14 to provide a 'Full Intensification' response, and instead the Council is striving to achieve 'density done well' within the parameters of the Amendment Act and the NPS-UD.
17. This needs to be considered carefully, as the direction to give effect to the NPS-UD is a strong one – the Council or Panel cannot pick and choose the objectives and policies to give effect to. It also cannot distort the clear and direct meaning of the objectives and policies.
18. It appears that the Council's position on 'density done well' reflects its evidence that there is more than sufficient development capacity in the Plan.¹⁷ However, Policy 2 of the NPS-UD requires local authorities to provide *at least* sufficient development capacity to meet expected demand over the short, medium and long term. It does not place an upper limit on capacity. Policy 2 does also not override the specific requirement to enable intensification in the 'right' locations identified in Policy 3.
19. Policy 3 clearly directs the greatest intensification in the City Centre, Metropolitan Centres, within the walkable catchment of these centres and rapid transit stops, and other centres. These locations are identified as the key locations for growth to drive the outcomes sought in the NPS-UD as a whole, including enabling more people to live in proximity to employment, with access to goods and services, to support the use of public transport,

¹⁵ NPS-UD, Policy 3(c).

¹⁶ NPS-UD, Policy 6.

¹⁷ Legal Submissions for Council for the Central City and Commercial zones topic, at [1.17]

enable the efficient use of infrastructure, and to reduce greenhouse gas emissions.

20. If intensification is not sufficiently enabled in these key locations, the Plan will fail to give effect to the NPS-UD and achieve the ‘well-functioning urban environment’ outcome it seeks.

HORNBY IS A SUB-REGIONAL CENTRE AND MUST BE RECOGNISED AS A METROPOLITAN CENTRE IN THE PLAN TO GIVE EFFECT TO THE NPS-UD

21. The National Planning Standards provide the following zone descriptions:¹⁸

Metropolitan Centre zone – Areas used predominantly for a broad range of commercial, community, recreational and residential activities. The zone is a focal point for sub-regional urban catchments.

Town Centre zone – Areas used predominantly for:

- in smaller urban areas, a range of commercial, community, recreational and residential activities.
- in larger urban areas, a range of commercial, community, recreational and residential activities that service the needs of the immediate and neighbouring suburbs.

22. The key differences between a Metropolitan Centre and a Town Centre are that a Metropolitan Centre has a broader range of activities, and draws custom from a sub-regional catchment, serving an area greater than its immediate and neighbouring suburbs.

23. The Council’s s32 analysis records that there has been considerable assessment to determine if any District Centres meet the threshold for being a Metropolitan Centre.¹⁹ The analysis was undertaken by exploring the two limbs of the definition – if it is used predominantly for a broad range of commercial, community, recreational and residential activities; and if the centre is a focal point for a sub-regional catchment. These tests were then

¹⁸ National Planning Standards November 2019, 8 Zone Framework Standard,

¹⁹ Section 32: Commercial Appendix 2 – Approach to Alignment with National Planning Standards, at [4.3.3].

- broken down into further criteria. Hornby, Riccarton and Papanui had positive scores for at least one criterion in each limb. However, despite this, the s32 report considers that these centres are not consistent with the Metropolitan Centre zone description in the National Planning Standards.
24. Mr Lightbody in the s42A report disagrees with the centre assessment in the s32 analysis. He considers the assessment should compare the zone descriptions only, to find the nearest equivalent on a collective basis.²⁰ Mr Lightbody also considers that a sub-regional catchment is the spatial extent of Greater Christchurch, and therefore a centre would need to be a focal point for Greater Christchurch to qualify as a Metropolitan Centre.²¹
 25. I disagree with Mr Lightbody's definition of sub-regional. The meaning of "sub" is "subordinate, secondary, next lower than, or inferior to."²² A sub-regional centre serves a sub-set of a region, it does not need to serve the region as a whole. This is also consistent with the clear meaning and distinction between the National Plan Standard descriptions for a Town Centre, that serves the needs of the immediate and neighbouring suburbs, the Metropolitan Centre, that serves an area greater than this, and the City Centre, which is the main centre for the district or region.
 26. I submit that the s32 report took the correct approach by assessing whether each centre met the National Planning Standards description of a Metropolitan Centre. It is important that the role and function of each centre in Christchurch is appropriately assessed to ensure that the Plan gives effect to the NPS-UD.
 27. However, the s32 assessment failed to apply the "nearest equivalent" test, and did not consider whether Hornby, Riccarton and Papanui were better described as Metropolitan Centres or Town Centres. If this test had been undertaken, in accordance with clause 1.4(4)(b) of the NPS-UD, it is clear based on the attributes of Hornby, Riccarton and Papanui as set out in the s32 report, that they are Metropolitan Centres and not Town Centres.

²⁰ Mr Lightbody, section 42A report, at [6.2.3]

²¹ Mr Lightbody, section 42A report, at [6.2.7 – 6.2.8]

²² Merriam-Webster on-line dictionary.

28. Mr Arbuthnot also sets out in detail why Hornby meets the National Planning Standard description of a Metropolitan Centre, including:
- (a) Its scale, the broad range of activities it offers, provision of regional facilities, and the wide catchment it serves.²³
 - (b) In the Draft Greater Christchurch Spatial Plan, Hornby is recognised due to its strategic location and opportunity to transition into the second sub-regional service centre after the Central City.²⁴
 - (c) The Greater Christchurch Future Mass Rapid Transit Indicative Business Case provides a preferred route to connect Hornby to the City Centre and other major centres.²⁵
29. Hornby meets the description of a Metropolitan Centre in the National Planning Standards, and this role and function is further recognised and supported in the Draft Greater Christchurch Spatial Plan and the Greater Christchurch Future Mass Rapid Transit Indicative Business Case. Christchurch is the largest City in the South Island, and third largest City in New Zealand. It would be out of step with the implementation of the National Planning Standards if the Plan did not recognise the largest centres, outside of the City Centre, as Metropolitan Centres.
30. It appears that the Council does not want to recognise Hornby, Riccarton and Papanui as Metropolitan Centres because of a concern about undermining the primacy of the City Centre, and that there is already sufficient development capacity:²⁶

PC14 as recommended by Council's experts represents a substantial increase to the development opportunity and capacity in the central city and in its commercial centres, relative to the status quo, as mandated by the Amendment Act and the NPS-UD. These increases would enable, and accommodate, a level of commercial growth that is more than the commercial demand requirement in Christchurch well beyond the 30-year timeframe. However, in providing for such a substantial increase, Council's experts have been careful to do so in

²³ Mr Arbuthnot, SOE, at [2.4 – 2.7]

²⁴ Mr Arbuthnot, SOE, at [2.12 – 2.18].

²⁵ Mr Arbuthnot, SOE, at [2.10 – 2.11].

²⁶ Legal Submissions for Council for the Central City and Commercial zones topic, at [1.17 – 1.18]

a way that continues to maintain the centres-based approach, giving primacy to the recovery of the Central City, as an element of “density done well”.

Accordingly, the PC14 proposal is for the City Centre Zone to have the highest enabled height threshold, with a tapering down of heights outside of the City Centre based on a centre’s role and function in the market. Council’s evidence will explain that these heights have been set to ensure relative competitiveness between centres so intensive development has a higher propensity to occur in the most economically efficient locations, and significant economic benefits to the community can be realised.

31. I support the Council’s submissions that giving effect to the NPS-UD requires maintenance of a centres based approach, primacy should be given to the City Centre, there should be a tapering down of heights outside of the City Centre relative to a centre’s role and function, competitive land and development markets must be supported, and intensive development is enabled in the most efficient locations (but not just economic efficiency, but in terms of use of infrastructure and sustainability as well).
32. However, not recognising the role and function of Hornby, Riccarton and Papanui as Metropolitan Centres, will fail to support the appropriate growth and intensification within these centres. Key to giving effect to the NPS-UD is enabling efficient access to goods, services, employment, and housing choice. To achieve the outcomes sought in the NPS-UD it is necessary to provide for these activities in other major centres, not just in the City Centre.

ENABLING GREATER BUILDING HEIGHT AND REMOVAL OF THE RESTRICTION ON OFFICE ACTIVITIES IN HORNBY (AND THE OTHER METROPOLITAN CENTRES) WILL GIVE EFFECT TO THE NPS-UD

33. The centre zone at Hornby is a finite resource, and it is important that development within the centre is an efficient use of the land, while retaining capacity for intensive development over time.
34. Although the NPS-UD provides for long term development capacity assessments of 10-30 years, a new large scale commercial or residential building has a life span much greater than this. It is therefore critical that intensification is enabled now that is appropriate for the needs of the community over the next 50-100 years.

35. This is consistent with Objective 6 of the NPS-UD which requires that the Panel's decisions on the Plan (b) be strategic over the medium and long term and (c) must be responsive, particularly to proposals that would supply significant development capacity.
36. The Economic Joint Witness Statement²⁷ records that all participants agreed that the feasibility of high-density development is challenging in current market conditions. This highlights that although intensification may be enabled, it will not be realised unless a project is commercially feasible. Flexibility in terms of building height can support feasibility of a proposed development, as development costs (particularly fixed costs) are spread over a greater gross floor area.
37. Permitted building heights are also usually seen by developers as a maximum height, and there is a strong reluctance to seek height above the permitted level due to the time, cost and uncertainty of whether the proposal will obtain resource consent. A height limit in the Plan therefore needs to be carefully considered as it is a key constraint to enabling more efficient use of land, and achieving the intensification outcomes of the NPS-UD.
38. Enabling greater building height in major centres is also critical to achieving a well-functioning mixed-use environment. The role and function of our major centres is changing, and in addition to retail activities, to be vibrant centres they need to provide for office and high density residential as well as a range of retail, entertainment, food and beverage, health and wellbeing, community, and personal services offerings.
39. Additional building height enables office and residential activities to be provided. It is also necessary and appropriate to provide for office activity in locations outside the City Centre, giving market choice for location, live – work accessibility, and resilience (in the event of a natural disaster). Enabling residential activities within centres also provides more opportunity for housing choice, including the potential for build to rent supply.
40. The s42A report supports an increase in the building height in Hornby, Riccarton and Papanui to 32m (an increase from 22m in PC14 as notified).

²⁷ Joint Statement of Economics, Commercial Feasibility, Development Viability, Commercial Demand, Housing and Development Capacity and Housing Demand Experts, dated 21 and 22 September.

Lendlease seeks that the height for Hornby (and other Metropolitan Centre zones) be increased to 45m.

41. An increase in height to 45m provides for an appropriate tapering down in height from the City Centre (of 90m) and is below the 60m height where residential apartment development in the City Centre becomes feasible.²⁸
42. An increase in building height to 45m, and removing the office tenancy restriction, will support more people to work, live, and shop in this accessible location, support the efficient use of this scarce land resource, and achieve the outcomes sought in the objectives and policies of the NPS-UD.

CONCLUSION

43. In summary:
 - (a) Hornby, Riccarton and Papanui are Metropolitan Centres and they must be zoned as Metropolitan Centre to give effect to the NPS-UD; and
 - (b) the scale, form and type of development sought by Lendlease is consistent with the direction in, and is necessary to give effect to, the NPS-UD.
44. Lendlease seeks that its submissions and the relief sought (as further supported in the evidence of Mr Arbuthnot) is accepted by the Panel.

DATED at Auckland this 24th day of October 2023



Bianca Tree / Amy Colebourn

Counsel for Lendlease Management
Limited

²⁸ Mr Arbuthnot, SOE, at [4.11 – 4.15]