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: 11, 12, 15 and 18 February, 16 March and 25 May 2016

Date of decision: 20 September 2016

Hearing Panel: Sir John Hansen (Chair), Environment Judge Hassan (Deputy Chair), Ms Jane Huria, Ms Sarah Dawson, Dr Phil Mitchell

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DECISION 43

Central City — Stages 2 and 3
(and relevant definitions and associated planning maps)

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

COUNSEL APPEARANCES

Mr J Winchester, Ms S Scott and Ms C McCallum	Christchurch City Council
Mr C Carranceja and Mr T Ryan	Crown
Ms J Appleyard	Pacific Park Investments Limited
	The Roman Catholic Bishop of the Diocese of Christchurch
Mr J Johnson and Ms K Wyss	Church Property Trustees
Ms P Steven QC	P Dyhrberg & Others
Mr J Leckie	Canterbury District Health Board
Mr L Hinchey	Ryman Healthcare Limited and Retirement Villages Association of New Zealand
Ms L Semple	Carter Group Limited
Mr J Gardner-Hopkins	Papanui Road Limited

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INTRODUCTION

[1] This decision ('decision') continues the series of decisions made by the Independent Hearings Panel ('Hearings Panel'/'Panel') concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) ('Replacement Plan'/'Plan'). It concerns a hearing on Chapter 13, which was notified in Stages 2 and 3 of our hearings process.[1]

[2] In this decision, the phrase 'Notified Version' describes the version notified by the Christchurch City Council ('the Council'/'CCC') (submitter 3723) and to which, subsequent to consideration of submissions and conferencing, a number of changes were made. To ensure appropriate consistency with the drafting of related decisions, we required the Council to file an update of its final version of the Central City provisions.[2] The Council complied with this request, filing Word versions of the following provisions on 13 July 2016:[3]

(a) Chapter 7 Transport

(b) Chapter 8 Subdivision, Development and Earthworks

(c) Chapter 11 Utilities and Energy

(d) Chapter 12 Hazardous Substances and Contaminated Land

(e) Chapter 14 Residential

(f) Chapter 15 Commercial

(g) Chapter 21.2 Specific Purpose (Cemetery) Zone

(h) Chapter 21.5 Specific Purpose (Hospital) Zone

(i) Chapter 21.6 Specific Purpose (School) Zone

1 Members of the Hearings Panel who heard and determined this proposal are set out on the cover sheet.
2 Minute in relation to the Central City provisions, 6 July 2016.
3 Memorandum on behalf of the Council providing updated Central City proposals as directed by Panel, 13 July 2016.

(j) Chapter 21.7 Specific Purpose (Tertiary Education) Zone

[3] These provisions are referred to throughout our decision as the 'Revised Version'.

[4] Where we refer to 'Decision Version', it is our redrafting of the Revised Version, as set out in Schedule 1, which will become operative upon release of this decision and the expiry of the appeal period.

[5] 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) ('Strategic Directions decision').[4]

Effect of decision and rights of appeal

[6] Our procedure and the rights of appeal are set out in our earlier decisions.[5] We concur in those.

Identification of parts of existing district plans to be replaced

[7] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced by the Chapter ('Operative Plan'). In this respect, we replace all of the Planning Map zones in the existing Banks Peninsula District Plan and existing Christchurch City Plan that are impacted by our decision.

PRELIMINARY MATTERS

Conflicts of interest

[8] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.[6] In the course of the hearing, it was identified on various occasions that

4 Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.
5 Strategic Directions decision at [5]–[9].
6 The website address is www.chchplan.ihp.govt.nz.

submitters were known to members of the Panel either through previous business associations or through current or former personal associations. Those disclosures (and, on some matters, member recusals) were recorded in the transcript, which was again available daily on the Hearings Panel's website. No submitter raised any issue in relation to this.

REASONS

Statutory Provisions

[9] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.[7] Our Stage 1 Residential decision set out the relevant statutory framework which also applies to this decision.[8]

[10] No issue was taken with any of the Higher Order Documents we must take into account and give effect to.

Overview

[11] Clearly the Central City was severely affected by the Canterbury Earthquake Sequence. As a consequence, the Government passed the Canterbury Earthquake Recovery Act 2011 ('CER Act') which made provision for the Christchurch Central Recovery Plan Te Mahere 'Maraka Ōtautahi' ('CCRP'). This identified a range of outcomes for the recovery of the

7 OIC, cl 12(1).

8 At [9]–[10]. 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).

Central City and introduced, or amended through statutory directions, a number of provisions in the Operative Plan as one means of achieving the outcomes.

[12] This document contains a vision for Christchurch and defines the form of the Central City. It also sets out the location of key anchor projects and outline block plans to show how the Central City could look in the future. The statutory provisions require that any decision made by the Panel not be inconsistent with the CCRP. That is something we will turn to as it is highly relevant to some of the decisions that need to be made in the context of this hearing.

[13] Once the CCRP was gazetted in July 2013, a number of changes were made to the Operative Plan as follows:[9]

(a) July 2013 – with amendments and deletions to the Operative City Plan provisions that were contained in the original Appendix 1 of the CCRP;

(b) October 2013 – "An Accessible City", which outlines the plans for a transport system that will support the recovery of the Central City;

(c) December 2014 — two addendums: "Noise and Entertainment Provisions" (relates to noise provisions for the entertainment and hospitality industry) and "South Frame" (relates to enabling the development of the Health and Innovation Precincts); and

(d) January 2015 — "A Liveable City — He tāone e whai wāhi ai te whanau", which is the residential chapter that contains a vision and the objectives for Central City Living.

The Central City Notified Version

[14] CCC has adopted a sensible approach to this chapter. It notes that some provisions are unique to the Central City, but that a significant number are the same, or the same in part, as those already publicly notified in earlier stages. We accept CCC's submission that having a separate Central City chapter would result in an enormous amount of duplication of text within the CRDP. We also accept the approach adopted by the CCC that the provisions have, through the submission and hearing process, where appropriate, been integrated into the rest of the pCRDP chapters. These were usefully summarised by the Crown (3721) in their opening as follows:[10]

9 Opening submissions for the Council at 3.3(a)–(d).
10 Opening submissions for the Crown at 1.2.

Notified Central City provisions	Transferred to (in Revised Proposal)
13.17 Definitions	Proposal 2 — Definitions
13.9 Transport	Proposal 7 — Transport
13.10 Subdivision and Development 13.11 Earthworks	Proposal 8 — Subdivision, Earthworks and Development
13.13 Utilities	Proposal 11 — Utilities and Energy
13.16 Hazardous Substances and Contaminated Land	Proposal 12 — Hazardous Substances and Contaminated Land
13.6 Residential	Proposal 14 — Residential
13.1 General Commercial Objective 13.2 Business Zone 13.3 Mixed Use Zone 13.4 (South Frame) Mixed Use Zone 13.5 Commercial Local Zone	Proposal 15 — Commercial
13.8 Specific Purpose Zones (Hospitals, Schools, Tertiary and Cemeteries)	Proposal 21 — Specific Purpose Zones

[15] In our Decision Version we have followed the process adopted by CCC, but with some redrafting to reflect our decision, agreements reached and changes made to ensure greater consistency, integration and clarity across the entire Plan.

Agreements

Pre-hearing agreement

[16] A number of parties reached agreement on various issues before the hearing commenced. Memoranda covering these matters were filed with the Secretariat.[11]

[17] We find the agreements reached are well supported by the evidence and accord with the relevant statutory principles which we must apply. They have been included in the Revised Version and we endorse them in our Decision Version. These are set out in Schedule 2.

[11] Opening submissions for the Council at 6, referring to a memorandum filed by Ceres New Zealand Limited ('Ceres'), and joint memoranda the Council filed with Pegasus Health (Charitable) Limited (3250); Cancer Society of New Zealand Canterbury-West Coast Division Inc (3051); Canterbury District Health Board (3696) ('CDHB') and the Canterbury Earthquake Recovery Authority (for and on behalf of the Ministry of Health) (3721) ('CERA'); and RHOAD Limited (3276).

Agreements reached in the course of, or at the conclusion of, the hearing

[18] As with many other hearings, CCC and submitters reached agreed positions in the course of the hearings or subsequent to the adjournment of the hearing. Again we find those agreements are well supported by the evidence and accord with the relevant statutory principles and the Higher Order Documents. Without mentioning them specifically, we accept them and, subject to the drafting comments above, have included them in the Decision Version. We set them out also in Schedule 2.

Central City proposal/CCRP

[19] As noted above, any decision by the Panel must not be inconsistent with the CCRP. The term 'not inconsistent with' was considered by the Panel in the Strategic Directions Chapter. It is unnecessary to repeat what we said in that chapter, but we accept and endorse it.

[20] The matter was addressed in opening and closing by some submitters. We do not think it necessary to rehearse those submissions at length as we consider the matter adequately covered by our Strategic Directions decision. In general we accept and endorse the various authorities referred to in those openings and closings and have applied them where relevant to our considerations. However, we note that the requirement only arose in a detailed sense in relation to two submissions which we address separately later and where appropriate also expand on our Strategic Directions comments.

Issues for resolution

[21] We acknowledge the collaborative approach taken by CCC and many submitters that have led to the agreements referred to above, and thank them for that. Understandably, a number of issues remained for resolution by the Panel at the end of the hearing and we now turn to them.

Transport

Increased cycle parking facilities

[22] Generation Zero (3251) in their submission requested a significant increase in cycle parking requirements. Mr Muir made submissions on their behalf, and in answer to a question

from the Panel said the increases had been recommended by a transport planner. However, such transport planner did not participate in expert conferencing, did not provide evidence and was not available to be questioned.

[23] Both the Crown (3721) and Council opposed proposed increases in cycle parking requirements, and supported those specified in Table 7.5 of the updated proposal as agreed to by the traffic experts for the Crown, Council and Carter Group Limited (3602) ('CGL').

[24] Mr Cabell, for the Canterbury District Health Board ('CDHB') and Ministry of Health (3696), also gave evidence that increasing cycle parking requirements within 30 metres of pedestrian entrances would be problematic in practical terms for the hospital sites.[12]

[25] As well, Mr Muir acknowledged this point of behalf of Generation Zero.[13]

[26] We are quite satisfied, and find on the evidence before us, that adequate cycle parking facilities have been provided for in the Central City. We accept the Revised Version and include it in our Decision Version.

Deeming provisions for new and stopped roads

[27] The experts for the Crown and the Council support deeming provisions that would provide that:[14]

(a) New public roads automatically become subject to the provisions of the Transport zone; and

(b) Existing roads that are stopped (with any relevant designation uplifted) automatically become subject to the zoning provisions that cover the adjoining land.

[28] It was accepted that this would reflect the approach already taken in the Operative Plan. The experts also agreed the provisions are workable and certain in that the 'trigger' for this

12 Rebuttal evidence of Brad Cabell on behalf of the CDHB and Ministry of Health at 3.1–3.4.
13 Transcript, page 499, lines 36-42.
14 Evidence in chief of Richard Shaw on behalf of the Crown at section 8; and rebuttal evidence of Mr Falconer on behalf of the Council at para 6.1.

application of the Transport Zone is certain and can be objectively understood. This is reflected in the Revised Version.

[29] The position of these experts, however, was subject to there not being any legal impediments. In this regard the one issue raised was that of scope.

[30] In the course of the hearing the Council raised the question of scope, and in closing the Crown accepted that, while the benefits apply city-wide, there was no scope to apply the proposed deeming provisions throughout the rest of the district. The Council agreed with the Crown.[15]

[31] That means the rules will apply to only the Central City, but we concur in the request to notify the rule to apply across the whole city under cl 13(4) of the OIC. We have previously required such notification.[16]

GENERAL

Rezonings

[32] In closing, the Council reiterated that it had adopted and stood by its opening submission on these requests. It said the testing of the evidence did not suggest to CCC that changes should be made. It also noted that, apart from the closing statement of the Victoria Neighbourhood Association (3611) ('VNA'), which simply reiterated its opposition to all the zonings they had submitted on, no submitter filed closing legal submissions addressing the rezonings being pursued.

[33] The rezoning matters are scattered through the evidence of the Council planners. The zones referred to in this decision are:

Zone	**Abbreviation**
Commercial Local Zone	CLZ
Central City Business Zone	CCBZ
Central City Guest Accommodation Zone	CCGAZ

15 Updated closing submissions for the Council at 13.
16 Minute in relation to notification of deeming provisions for new and stopped roads, 13 July 2016.

Zone	Abbreviation
Central City Mixed Use Zone	CCMUZ
Central City Residential Zone	CCRZ
Central City School Zone	CCSZ
Central City (South Frame) Mixed Use Zone	CC(SF)MUZ

[34] Subject to the various changes of zoning we make, we find the various zones (including in their geographic extent) the most appropriate for achieving related objectives (including Strategic Objectives) and the RMA's purpose. Therefore, we confirm them (as so modified).

[35] We deal first with site-specific submissions requesting rezoning.

4–6 Dublin Street

[36] The submission of Commercial Freeholders Limited (3023) sought a change to the zone boundary between 4 Dublin Street (also known as 17 Dorset Street) and 6 Dublin Street to recognise encroachment of the existing building beyond the zone boundary and property boundary of 4 Dublin Street. Mr Stevenson, in his reasons for recommending rejection of the submission, noted that while the two properties were in the same ownership, there was no evidence of a legal instrument linking the properties. He considered a split zoning of 6 Dublin Street would be inappropriate. He recognised the unusual circumstances but considered there was potential for the site at 17 Dorset/4 Dublin Street to be redeveloped which could enable any future building to be located entirely within the boundaries of that property. Alternatively, he said a boundary adjustment could be undertaken to change the cadastral boundary to align with the building's location. He said if this was undertaken, his concern with the request would be addressed.

[37] VNA and Robert Manthei (FS5022) also partially opposed this submission.[17] They had suggested a partial resolution, that the zone boundary be allowed to follow the north wall of the current structure only, but if that structure were to be demolished and replaced by a new structure in the future, the boundary line would revert to the present cadastral boundary of the property. Following mediation, they appeared to accept the outcome proposed by the Council.

[17] Evidence in chief of Professor Robert Manthei on behalf of VNC and Prof Robert Manthei at 9.2.

[38] In the absence of any evidence to the contrary, we accept the evidence of Mr Stevenson and reject the submission.

367–373 Durham Street and 56–72 Salisbury Street

[39] The submitter, Christchurch Casinos Limited (3291), sought to rezone the site to Central City business and include it within the 17-metre height overlay shown on the Central City maximum building height planning map.

[40] Mr Bergin spoke to a submission on behalf of Christchurch Casinos. Ms Andrew gave planning evidence.

[41] Unfortunately, cross-examination and Panel questioning revealed that Ms Andrew had not properly considered the Higher Order Documents, she had looked at the land in isolation, she commented on transport effects without any expertise, and acknowledged that it was an application in part to rezone someone else's land.

[42] The rebuttal evidence of Mr Stevenson, which we accept on this matter, demonstrates that the zoning sought provided for a significant quantum of retailing commercial activity which would dilute the potential demand in the CCBZ.

[43] There was a further submission from Wendy Fergusson (FS5015) and VNA. The VNA submission points out that the loss of this land from residential will dilute the opportunity of intensification provided by the zoning of the Notified Version.

[44] We accept the evidence of Mr Stevenson in preference to that of Ms Andrews, which could be fairly characterised as speculative. We also uphold the further submission of VNA.

[45] Accordingly, we accept Mr Stevenson's recommendation and reject the rezoning applied for.

61 Peterborough Street and 357–361 Durham Street

[46] Christchurch Casinos seeks that we rezone this site to CCBZ. Currently the land is used for car parking and prior to the earthquakes it appears to have been used for the same purpose, reflecting resource consents dating from 1994 for the use of car parking at ground floor level.

The current CCBZ runs on the eastern boundary of 51 Peterborough Street, so the extension east to Durham Street is what is sought by Christchurch Casino. The Notified Version proposed that these properties be zoned CCMUZ.

[47] Mr Stevenson considered the relief sought had merit and the site was contiguous with the existing CCBZ to the west and south. He did not consider the relief sought would impact on Objective 3.3.8 enabling an additional 5000 households in the Central City. He accepted there was potentially inconsistency with the CCRP but concluded:[18]

> … the zoning pattern as a consequence of accepting the relief would provide clarity and in my opinion, would provide a definitive edge to the central business area of the City. This in my view outweighs the potential dilution of demand for space in the notified business zone.

[48] We accept that evidence of Mr Stevenson and allow the rezoning, which is reflected in our Decision Version.

390 Montreal Street

[49] This is a corner site, and Tom Robinson Limited (3621) seeks that it be rezoned to CCBZ. At present the site is occupied by an office building with car parking that fronts on to Montreal Street, which existed before the earthquakes.

[50] Mr Stevenson notes in his evidence that to the east, Montreal Street has historically been in primarily residential use. The subject site is an exception.

[51] While accepting that the site is contiguous with the proposed CCBZ to the south, Mr Stevenson said the rezoning would be isolated relative to other commercial activity in the same block, with residential units to the immediate south. While accepting the site adjoins land zoned CCBZ to the east, he said it bore little relationship to development on those sites which generally front Victoria Street.

[52] Mr Stevenson stated that the relief sought would increase the potential extent of business zoning and enable intensification of commercial activity. Accepting the site was presently used for offices, he stated that the rezoning sought would enable a much greater range of commercial

[18] Evidence in chief of Mark Stevenson on behalf of the Council, Attachment C, at 2.5.

activity and would reduce the opportunity for the site to be used for residential activity. He considered this would be inconsistent with the CCRP and the position reflected in the CCC's proposal which seeks to consolidate the area for commercial activity in the Central City.[19]

[53] We accept Mr Stevenson's evidence in that regard and reject the submission.

47–49 Salisbury Street

[54] This was an application to rezone the site to CCBZ. The submitters, Trophy Victoria Limited (3644) and Kilmore Investments Limited (3728), stated this reflected the consented and historic use of the site.

[55] Mr Stevenson noted the site was presently vacant but pre-earthquake was used for car parking associated with the commercial development on the adjoining property at 376 Montreal Street, and a small block of residential units, part of which was used as a medical centre.

[56] In July 2015, a resource consent was granted for land at 376 Montreal Street and 47–49 Salisbury Street to be used for commercial development. One of the proposed buildings would sit across the boundary between 376 Montreal Street and 47–49 Salisbury Street, and car parking would be across both sides to serve the development.

[57] Noting these matters, Mr Stevenson considered that rezoning would bring greater certainty to land owners and investors, given the relationship between the sites in terms of land use. As a consequence, he considered the rezoning would reduce the potential compliance costs as a consequence, in accordance with the OIC.

[58] Again, we accept Mr Stevenson's evidence and agree to the CCBZ rezoning.

25 Peterborough Street

[59] The submitter, Ceres New Zealand Limited (3334), sought site-specific zoning enabling 25 per cent of floor space to be subject to CCBZ rules and 75 per cent to be subject to the CCGAZ rules.

[19] Evidence in chief of Mark Stevenson, Attachment C, at 4.4.

[60] The site was, until the 1960s, the Christchurch Teachers' College. Agreement had been reached between the submitter and the CCC that the submission should be accepted.[20] We have read Mr Stevenson's evidence in chief.[21] We accept that evidence and note there are no further submissions. We allow the submission and rezone accordingly.

162 Kilmore Street (part)

[61] The Cancer Society of New Zealand (3051) sought to rezone the rear part of 162 Kilmore Street to CCMUZ. There were no further submissions.

[62] Again, agreement was reached between the submitter and CCC.[22] We have perused Mr Stevenson's evidence.[23] We accept it and grant the rezoning sought.

401 Madras Street (part)

[63] Pegasus Health (Charitable) Limited (3250) sought the rezoning of an area of land between Bealey Avenue and Madras Street, to CCMUZ.

[64] The land comprises an accessway between Madras Street and Bealey Avenue known as Dollans Lane, and car parking serving an adjoining office facility.

[65] The parties reached agreement and a joint memorandum was filed.[24] Mr Stevenson supported rezoning of the car parking area and part of the accessway on the basis that the development at 401 Madras Street is reliant on the subject land. He states that the relief sought recognises the relationship between the two activities and provides for ongoing certainty (in planning terms) of the expected use of the site. A split zoning could otherwise result in unnecessary consenting requirements where a change of use is sought. However, he submitted that although the risk of development of the accessway from Bealey Avenue was minor, to

20 Rebuttal evidence of Mark Stevenson at 8.1–8.2; Memorandum of counsel for Ceres as to Hearing Participation, 28 January 2016.
21 Evidence in chief of Mark Stevenson on behalf of the Council, Attachment C, at 6.
22 Joint memorandum on behalf of the Council and Cancer Society of New Zealand Canterbury-West Coast Division Incorporated, 4 December 2015.
23 Evidence in chief of Mark Stevenson, Attachment C, at 7.
24 Joint memorandum of counsel between the Council and Pegasus Health (Charitable) Limited regarding Proposal 13 – Central City, 1 December 2015.

rezone that area would create an intrusion into the CCRZ. He therefore opposed that portion of the rezoning request.[25]

[66] We accept Mr Stevenson's evidence, accept the agreed position as set out in the joint memorandum, and rezone accordingly.

303 and 307 Madras Street, 205 and 207 Kilmore Street and 202 Peterborough Street

[67] New Zealand Institute of Management Southern Incorporated (3678) sought the rezoning of the site to CCMUZ. The site is presently vacant following the demolition of buildings. Before the earthquake, administrative offices and training rooms for the submitter were located in a building on the northern half of the site. The converted dwelling on the southern part contained a kitchen for course catering, storage and also a staffroom.

[68] An existing use certificate (Certificate RMA92020864) dated October 2012 was held for the subject land, excluding 202 Peterborough Street, which enables its redevelopment for education and training on the same footprint as the previous activity. The use of the site by NZIM for education, training and offices dates back to 1971.

[69] There were no further submissions. In his evidence Mr Stevenson identifies the key matters for consideration and concludes the relief should be granted except for 202 Peterborough Street. His reason for that is that there would be loss of residential coherence along Peterborough Street with the rezoning of that land.

[70] We accept Mr Stevenson's evidence and rezone accordingly.

332 Oxford Terrace

[71] CGL sought the rezoning of the site to commercial or guest accommodation zoning.

[72] However, in the course of the hearings the submitter withdrew the application on the basis it would seek a guest accommodation overlay in the Chapter 6: General Rules hearing.[26]

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25 Evidence in chief of Mark Stevenson, Attachment C, at 8.

26 Evidence in chief of Jeremy Phillips on behalf of CGL at 8; evidence in chief of Andrew Willis on behalf of the Crown at 3.3–3.6.

[73] Accordingly we defer this matter to the decision on that hearing, which decision will be handed down in due course.

Land within Convention Centre precinct fronting Oxford Terrace

[74] The Crown sought rezoning of the full extent of the Convention Centre precinct to CCBZ.

[75] The notified zoning as Open Space appears to be an anomaly, as the subject land is not recreation reserve nor has it had a previous use as open space. Mr Stevenson supported the submission.

[76] It is clearly required on the basis of the information before the Panel and we so rezone it.

95 Tuam Street

[77] Church Property Trustees (3610) ('CPT'), the Roman Catholic Bishop of the Diocese of Christchurch and Alpine Presbytery (3670) sought the rezoning of the site from CCSZ to CCBZ.

[78] The relief sought was to rezone a commercial building fronting Tuam Street. It appears to be an anomaly to include the subject site in the specific purpose school zone, given its commercial use. To rezone to CCBZ, as Mr Stevenson noted, would achieve continuity with the business zone to the immediate west. No issues have been raised in relation to infrastructure and no further submissions were received.

[79] We accept Mr Stevenson's recommendation and rezone accordingly.

Objective 13.3.1: Victoria Street Entertainment Precinct/1 Papanui Road/Late night sale of alcohol

[80] We will deal first with questions relating to the precinct generally, and the amendments Pacific Park Investments Limited (3459/FS5045) ('Pacific Park') sought to proposed Objective 13.1.1.

[81] Pacific Park submitted for an amendment to Objective 13.1.1 so that it read as follows:

a. Retail and commercial activity is a primary function underpinning the vitality and viability of the Central City by:

…

iv. ~~providing for~~ **encouraging** entertainment and hospitality activity**, including late-night sale of alcohol,** in identified precincts and ~~managing~~ **limiting** the extent to which these activities can occur outside of the identified precincts.

[82] It also sought the insertion of a policy regarding the protection of existing investment in the Central City Entertainment Precinct ('CCEP').

[83] We note that it was the request of the Crown and CCC that the matters Pacific Park submitted on be held over to the Chapter 6: General Rules hearing. That hearing is concluded and as noted earlier, we have considered the evidence from both in our deliberations, and determined to include it in this decision, as we are satisfied it is more coherent to place it in the Central City decision. We deal with this aspect below.

[84] The CCRP created the entertainment precincts. Map 7 to Appendix 1 dealing with noise environments sets out Entertainment Hospitality Precincts Category 1 and Category 2.[27] Category 2 is in two areas, one being the Victoria Street precinct and the other being adjacent to Cashel and Hereford Streets, essentially following the river and environs behind it. Policy 12.2.3 of Appendix 1 in its original state read, where relevant:[28]

POLICY 12.2.3:

Promote a high standard of amenity and discourage activities from establishing where they will have an adverse effect on the amenity values of the Central City, by:

…

- identifying entertainment and hospitality precincts and associated noise controls for these areas.

[85] The policy, and Map 7, were amended (as part of the CCRP) in December 2014. The relevant policy we are concerned with now reads:[29]

POLICY 12.2.3:

27 Updated Appendix 1, 'Amendments to Christchurch City Council's District Plan', July 2013.
28 Updated Appendix 1, 'Amendments to Christchurch City Council's District Plan', July 2013, 'Central City Business Zone'.
29 Christchurch Central Recovery Plan Addendum, December 2014, Noise & Entertainment provisions.

> Promote a high standard of amenity and discourage activities from establishing where they will have an adverse effect on the amenity values of the Central City, by:
>
> …
>
> - identifying entertainment and hospitality precincts and associated noise provisions for these and adjacent areas, **and encouraging such activities to locate in these precincts**
>
> [our emphasis added]

[86] Table 2 to Appendix 1 set out noise standards, with Category 1 being identified as a Higher Noise Level Entertainment and Hospitality Precincts and Category 2 Lower Noise Level Entertainment and Hospitality Precincts. Ultimately, this was also amended in the December 2014 document so the table, as presented to us, now reads:

Table 2 – Central City Noise Standards

(a) Category 1: Higher Noise Level Entertainment and Hospitality Precincts
(i) Noise emitted by any activity within a Category 1 precinct shall not exceed the following levels when received at any other premises or site within a Category 1 precinct, except that this shall not include noise from people in outdoor areas of premises licensed for the sale, supply and/or consumption of alcohol that comply with the outdoor area setback (clause l).

Activities other than discrete outdoor entertainment events		0700-0300 hrs	0300-0700 hrs
	$LA_{eq\ (15\ min\ )}$	60 dB	60 dB
	LAF_{max}	85 dB	75 dB
Discrete outdoor entertainment events	$LAeq_{\ (15\ min)}$	65 dB (24 hour assessment period)	
	LAF_{max}	Daytime	Night-time
		85 dB	85 dB

(ii) Noise emitted by any activity in a Category 1 Entertainment and Hospitality Precinct shall not exceed:
(a) The limits specified for Category 2 areas when received at any premises or site within any Category 2 area; or
(b) The limits specified for Category 3 areas when received at any premises or site within any Category 3 area.

(b) Category 2: Lower Noise Level Entertainment and Hospitality Precincts
(i) Noise emitted by any activity in a Category 2 precinct shall not exceed the following levels when received at any other premises or site within a Category 2 precinct, except that this shall not include noise from people in outdoor areas of premises licensed for the sale, supply and/or consumption of alcohol that meet the specified outdoor area setback (clause l) between 0700 hours and 2300 hours for the Victoria Street area shown on Map 39H, and between 0700 hours and 0100 hours for the remainder of Category 2.

For areas excluding the Victoria Street area on Map 39H		0700-0100 hrs	0100 0700 hrs
	$LA_{eq\ (15\ min)}$	60 dB	50 dB
	LAF_{max}	85 dB	75 dB
For the Victoria Street area shown on Map 39H		0700-2300 hrs	2300-0700 hours
	$L_{Aeq\ (15\ min)}$	55 dB	50dB
	L_{AFmax}	85dB	75dB

(ii) Noise emitted by any activity in a Category 2 Entertainment and Hospitality Precinct shall not exceed:
(a) The limits specified for Category 1 areas when received at any premises or site within any Category 1 area; or
(b) The limits specified for Category 3 areas when received at any premises or site within any Category 3 area.
(c) Category 3 areas: All Central City areas other than Category 1 and 2 Entertainment and Hospitality Precincts
(i) Noise emitted by any activity in a Category 3 area of the Central City shall not exceed the following levels when received at any other premises or site within a Category 3 area, except that this shall not include noise from people in outdoor areas of premises licensed for the sale, supply and/or consumption of alcohol up to a maximum size of 50m², in the Mixed Use, Central City Business and Business 1 Zones between 0700 and 2300 hours.

Table 2 – Central City Noise Standards		
	0700-2300 hrs	2300-0700 hours
$LA_{eq\ (15\ min)}$	55 dB	45 dB
LAF_{max}	85 dB	75 dB
(ii) Noise emitted by any activity in a Category 3 Entertainment and Hospitality Precinct shall not exceed: (a) The limits specified for Category 1 areas when received at any premises or site within any Category 1 area; or (b) The limits specified for Category 2 areas when received at any premises or site within any Category 2 area.		

[87] This demonstrates that lower (i.e. more restrictive) noise standards apply to the Victoria Street Entertainment Precinct than the other entertainment and hospitality precincts.

[88] Entertainment and hospitality activities within a precinct that meet the requisite noise standards and built form and other necessary factors are generally permitted activities ('PA'). Restricted discretionary activity ('RDA') consent is required for the late night sale or supply of alcohol within 75m of a residential zone (with some exceptions). That is accepted by Pacific Park, which takes no issue with the General Rules provisions for noise, noting that anyone seeking more lenient noise standards for Victoria Street will not be a PA but rather an RDA.

[89] It is against this background that we consider Pacific Park's submission concerning Objective 13.1.1 of the Notified Version.

[90] Initially, as a result of mediation, CCC and Pacific Park agreed to the amendment they both sought to the objective (now numbered 15.1.5):[30]

> Pacific Park want an explicit policy recognition in Objective 15.1.5 that the late night sale of liquor is encouraged in the precincts. It was acknowledged that the rules around this would be addressed in Chapter 6, but the Policy recognition should be included now as a placeholder. The Victoria Neighbourhood Association noted that there is more to the precincts than late night drinking, and that they agreed with the CDHB submission that this would encourage late night drinking. Noise effects were not the only effect of concern.
>
> The parties agreed to the policy reference, noting that the rules would be addressed in Chapter 6, and that [the] matter may need to be revisited once Chapter 6 was completed.

[91] At that time Mr Willis, a planner for the Crown, took no part in that mediation. We note his evidence in chief did not deal with any of these relevant questions whatsoever.

30 Mediation Report: Central City (Stage 3), 7 December 2015 at page 2.

[92] The "explicit policy recognition" was set out at Objective 15.1.5 of the revised proposal attached to Mr Stevenson's evidence in chief for this hearing:[31]

> **15.1.5 Objective: Diversity and distribution of activities in the Central City**
>
> a. A range of commercial, community, cultural, residential and guest accommodation activities are supported in the Central City to enhance its viability, vitality and the efficiency of resources, while encouraging activities in specific areas by
>
> …
>
> iv. Encouraging entertainment and hospitality activity **(including late-night sale of alcohol) [Pacific Park #3459.1]** in defined precincts and managing the extent to which these activities occur outside the precincts.

[93] What then transpired was that Mr Willis had a telephone conversation with Mr Stevenson, the CCC planner. Apparently as a consequence, Mr Stevenson went back on his agreement at mediation and Mr Willis in his rebuttal evidence dealt at some considerable length with the questions we are concerned with now.

[94] Both Mr Stevenson and Mr Willis in their evidence, and under cross-examination from Ms Appleyard, sought to persuade us that these changes and additions to the evidence were coincidental to the telephone call (although Mr Willis did concede the issues around closing times were considered).

[95] To be blunt, we are sceptical of what we heard, but consider nothing turns on it. The major reason for that is the decision we have already reached which appeared to find favour with most parties. We will return to that after dealing with Mr Willis's rebuttal evidence.

[96] Essentially, the thrust of Mr Willis's rebuttal evidence was that the Victoria Street Precinct was designed more for restaurants and cafes and not late night entertainment. He sought to persuade us of this by referring at length to the draft CCRP and the provisions within it (Mr Stevenson also referred to this draft).[32] He was cross-examined extensively by Ms

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31 Evidence in chief of Mark Stevenson, Attachment A — Revised Proposal (shown here without 'tracked changes' formatting); see also 8.1–8.7.

32 Rebuttal evidence of Andrew Willis on behalf of the Crown. Evidence in chief of Mark Stevenson on behalf of the Council at 8.7.

Appleyard regarding the use of the draft, and conceded that we had to concern ourselves with the document that was brought into legal effect.

[97] We can deal with this shortly. The matters put forward by Mr Willis from the draft to support his view were clearly not accepted by the Minister. They were in fact rejected, as they did not find their way into the CCRP. There is nothing in the plain wording of the CCRP to suggest there should be different levels of entertainment and hospitality activities within the Category 1 and Category 2 zones.[33] The lower level noise simply reflects that Victoria Street is closer to residential areas than the others. It does not carry with it, in our view, the presumption that Mr Willis gave it that it must mean differing activity. Given that the draft Mr Willis was party to was rejected by the Minister, we are satisfied the precinct activities were not as Mr Willis claimed.[34]

[98] Mr Willis stated in his evidence that his reference to the draft was to give us context. Given the matters upon which he relied in the draft were rejected by the Minister and did not find their way into the CCRP, we do not accept they assist us with context whatsoever. Rather, we consider Mr Willis has used this draft to support a predetermined view of what the Victoria Street Precinct activities should consist of. The examples of late night consents provided to us included detailed conditions to manage noise effects. Also, the specific amendment referred to at [85], that entertainment and hospitality activities are to be encouraged in the precinct, runs counter to Mr Willis's position, but supports our view strongly. Given the CCRP is a Crown document, Mr Willis was effectively interpreting it contrary to our finding as to his client's own intentions.

[99] We also note the evidence of the economists, Mr Michael Copeland for Pacific Park and Mr Philip Osborne for the Council.

[100] In his conclusions, Mr Copeland stated:[35]

> 32 The relief sought by Pacific Park seeks to give more prominence to entertainment and hospitality activities within the Central City precincts, which were defined in the Christchurch Central Recovery Plan (CCRP) for such purposes; to allow late night sales of alcohol within these precincts; and to

[33] *Powell v Dunedin City Council* [2004] NZCA 114; [2004] 3 NZLR 721; *Powell v Dunedin City Council* HC Dunedin CIV-2003-412-000081, 22 July 2003.
[34] Rebuttal evidence of Andrew Willis on behalf of the Crown at 1.3.
[35] Evidence in chief of Michael Copeland on behalf of Pacific Park at 32–36.

manage the extent entertainment and hospitality activities, including the late night sale of alcohol, can occur outside the defined Central City precincts.

33 The relief sought by Pacific Park is expected to benefit the Christchurch City economy by:

33.1 Assisting with the rebuilding of the Christchurch visitor economy;

33.2 Enabling the continued use of the existing assets of Central City entertainment and hospitality businesses, preventing them from becoming "stranded" and facilitating investment in the redevelopment of existing Central City businesses and investment in new Central City businesses;

33.3 Increasing competition in the provision of entertainment and hospitality services to the benefit of visitors and local residents;

33.4 Increasing economies of scale and scope in the provision of street infrastructure, themed outdoor events, monitoring and policing and public and private transport services; and

33.5 Reducing reverse sensitivity effects.

34 The relief sought by Pacific Park will constrain free market determined entertainment and hospitality location decisions. However there exist economic externality benefits which outweigh such costs.

35 Any economic costs associated with the late night sale of alcohol within the Central City entertainment and hospitality precincts need to be considered in the context of the extent such costs will arise even without the relief sought by Pacific Park.

36 Overall, I believe that the relief sought by Pacific Park is consistent with enabling people and communities to provide for their economic well-being, the efficient use and development of resources and the recovery of Christchurch City.

[101] In his highlights package he stressed that, before the earthquakes, the Christchurch business economy was the second largest in New Zealand. After the earthquakes it slipped to fourth, behind Auckland, Wellington and Queenstown, although it has recently risen above Queenstown.

[102] It was his view that:[36]

> The proposed plan should encourage entertainment and hospitality activities including the late night sale of alcohol within the specified inner city entertainment and hospitality precincts and manage entertainment and hospitality activities outside of those precincts. This will benefit the Christchurch economy by; assisting with the rebuilding of the Christchurch visitor economy; enabling the continued use of the existing assets of

[36] Transcript, page 287, lines 12–21.

> central city entertainment and hospitality businesses, preventing their assets from becoming stranded, and facilitating investment in the redevelopment of existing central city business and investment …

[103] Mr Copeland said further it would increase competition in the hospitality and entertainment area, to the benefit of visitors and local residents. He said the use of precincts would also increase economies of scale and other matters.

[104] In cross-examination, in answer to questions from Mr Winchester for the Council, Mr Copeland considered there is justification for intervention if external costs can be eliminated. He continued:[37]

> In terms of retail and commercial, and as I have said in my summary statement and my statement, and I think that the external benefits associated with entertainment and hospitality activities – for example, in suburban areas – the desire to concentrate those within the central city is possibly greater than is the case with commercial and retail.

[105] He stated further:[38]

> Commercial and retail, you know, generally do not have the noise implications that entertaining and hospitality may have. My desire for a person visiting bars anything in hospitality venues, for them to have within walking distance comparisons to go from one bar to another and to me encourages competition, whereas I do not know that that is always the case with respect to say, offices. If you want to go and see a surveyor, you go and see a surveyor; you do not need to have five surveyors lined up next to each other so you have to decide which surveyor you want to go to.

[106] In cross-examination it was Mr Copeland's view that he was not taking a philosophically different approach, but was giving a different weight to the externalities.

[107] In answer to questions from the Panel, he accepted there was also a question of how much management by way of regulation there needed to be regarding sources of reverse sensitivity conflict, such as the residential area associated with Victoria Street.

[108] He did not accept that such matters should have a dollar value attached, but rather that they should be considered under the amenity effects under the RMA.

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37 Transcript, page 290, lines 1–5.
38 Transcript, page 290, lines 9–18.

[109] As an overall observation, Mr Osborne stated, "As such, any additional restrictions would need to be carefully considered in light of increasing costs to the efficient market operations".[39] Similar to Mr Copeland, he also stated:[40]

> 8.19 There are several considerations when assessing the appropriate level of these provisions. Firstly the market in which these activities operate is quite distinct from other commercial and retail operations sought in the Central City. There is a clear recognition of the locational advantages of being located within a precinct that offers a greater range of entertainment options and therefore this already ranks highly in locational decision making. Also these activities are, generally, sensitive to their markets providing a degree of convenience in local areas that cannot be replicated in a centralised area. The market itself is also a product of supply as the greater the range and convenience of these activities, generally the greater the level of discretionary spend they attract.
>
> 8.20 While it is appropriate that the Central City precincts are afforded a competitive advantage over other locations I believe that the current Council provisions achieve this with higher levels of tolerance for noise, extended hours and locational sensitivities inside of the precincts.
>
> 8.21 As with the regulation of commercial office activity there are costs associated with the muting of market indicators through regulation that must be weighed against the potential market inefficiencies that result in the absence of this regulation. It is my opinion that the level of intervention must be balanced against these potential costs. Further limitations on the development of entertainment and hospitality outside of the identified Central City precincts could result in lost opportunities to meet community needs outside of the precincts while producing no additional demand within them.
>
> 8.22 In terms of the Pacific Park submission it is my opinion that increasing the limitations (or relative attractiveness of the Central City) for these activities outside of the Central City precincts has the potential to increase these community costs beyond the potential benefits. However, without a detailed understanding of the scope of these limitations, it is difficult to assess the magnitude of these potential impacts. However at this stage it is my opinion that the Council's provisions for these activities within the entertainment precincts are appropriate.

[110] Mr Osborne also accepted as a general principle there was a need to have some regard for previous investment:[41]

> MS APPLEYARD: Yes, so there needs to be evidence, for example in relation to the entertainment precincts, about the degree of existing investment there is within entertainment precincts throughout the city?
>
> MR OSBORNE: I think if there is a concern that that investment is at risk then, yes.

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39 Evidence in chief of Philip Osborne on behalf of the Council at 3.12(c).
40 Evidence in chief of Philip Osborne on behalf of the Council at 8.19–8.21.
41 Transcript, page 193, lines 32–37.

[111] On the matter of entertainment and hospitality activities outside the Central City precincts, Mr Osborne considered that there was the potential to increase these community costs beyond the potential benefits. However, he qualified this by saying it is difficult to assess the magnitude of these potential impacts without having a detailed understanding of the scope of these limitations. His overall view was that that the Council's provisions for these activities within the entertainment precincts are appropriate.[42]

[112] Mr Copeland agreed with a considerable amount of Mr Osborne's evidence, but expressed surprise at Mr Osborne's conclusion at 8.22 where he questioned the extent to which out-of-centre entertainment and hospitality activities should be constrained. As Mr Copeland pointed out, this seemed at odds with arguments made elsewhere in his evidence.[43] We agree that is a legitimate criticism of Mr Osborne's evidence. Otherwise, however, it seems to us that Mr Osborne and Mr Copeland were largely in agreement.

[113] The evidence of Mr Copeland and, in material respects, the evidence of Mr Osborne support the interpretation we have made and confirms the view we have taken regarding entertainment and hospitality activities within the precincts. Mr Copeland is a very experienced economist with a broad range of experience. On their relatively confined differences, we prefer his evidence to that of Mr Osborne.

[114] As Mr Osborne confirmed, it would be a matter of concern if the existing investment in the entertainment precincts was at risk. As we note later, the views expressed by Mr Willis, Mr Stevenson and Ms McLaughlin rightly give rise to concerns as to the security of investment in the Victoria Entertainment and Hospitality Precinct in particular.

[115] On the basis of that evidence, we find that the balance of economic costs and benefits is strongly in support of the change that Pacific Park seeks to what is now Objective 15.3.5, and we have reflected that in the Decision Version. The evidence also overwhelmingly supports the inclusion of entertainment precincts in the CRDP, which we confirm by this decision (subject to the change we discuss shortly, concerning 1 Papanui Road).

[116] In our minute of 4 March 2016 we stated as follows:[44]

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42 Evidence in chief of Philip Osborne on behalf of the Council at 8.22
43 Evidence in chief of Michael Copeland at 28–30.
44 Minute re scheduling of General Rules Hearing, 4 March 2016.

> [6] We note a number of witnesses are to be called in relation to the Victoria Street Entertainment Precinct. There is to be cross-examination of all of these witnesses. The panel that heard the Central City evidence has convened and considered the evidence in relation to that Precinct. They have reached a decision on the evidence that may assist the parties in the General Rules hearing. The panel is satisfied on the evidence that one part of Pacific Park's submission should be upheld. This related to Objective 15.1.5(a)(iv) (notified as Objective 13.1.1). On the evidence we are satisfied the final position advanced by Pacific Park is correct. Accordingly, that objective will be reworded as follows:
>
> *Objective 15.1.5*
>
> *a) A range of commercial, community, cultural, residential and guest accommodation activities are supported in the Central City to enhance its viability, vitality and the efficiency of resources, while encouraging activities in specific areas by:*
>
> *...*
>
> *iv. Encouraging entertainment and hospitality activity (including late-night trading) in defined precincts and managing the extent to which these activities occur outside the precincts.*

So that is the objective.

[117] The Crown's closing submissions were dated 20 April 2016, and at paragraph 10.2 suggested a further amendment to that clause, notwithstanding a decision has been made. It does not in any way address the fact that the decision was made and whether it was seeking a correction.[45] Their submission at 10.2 that the objective "could be reworded as follows" is simply not correct when one compares it with the decision set out above.

[118] For finality, we note that in those closing submissions no effort was made by the Crown to address Mr Willis's use of a draft document in the way he did.[46] We can only take it from that that the Crown did not support such an interpretive approach as applied by Mr Willis.

[119] Throughout this we have been conscious of the submission of the VNA and the concerns they have expressed. They questioned the efficacy of the various steps put in place by owners and operators in the Victoria Street Precinct, and said an accord reached by various owners and operators has not been as successful as claimed.

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45 Memorandum of counsel responding to the Panel's note in respect of Objective 15.1.5.5, 6 May 2016.

46 There is only a somewhat ambiguous statement in the table on page 33 of their closing.

[120] We consider the CCRP to be clear on its face as identified above.[47] The closer proximity to residential areas is recognised in the lower, more protective, noise standards for the Victoria Street precinct, and the consent requirements for late-night sale of alcohol within 75 metres of a residential zone, and the objective as we have reworded it recognises the functions of the hospitality areas. This was in the CCRP and carried over into Chapter 6. We do not consider that the reference to late night trading in itself necessarily implies the late night consumption of alcohol (given related licensing requirements). Nor do we think it appropriate to define the term 'late night' or to try to set limits. For reasons we will give in Chapter 6, we are satisfied that the trading hours of licenced premises is very much a matter for the Sale and Supply of Alcohol Act 2012 subject to any provisions dealing with local amenity.[48] They have the ability to address a wider range of factors than we could in this hearing. But we are satisfied the precinct rules brought in by the CCRP amendments protect community amenity. It also needs to be recognised, however, that following the earthquake much of the Central City was in no position to respond to citizens' hospitality and entertainment needs. Victoria Street did, to the benefit of the City. They invested significant capital. Mr Osborne acknowledges that if that investment was at risk, that would be a matter of concern from an economist's perspective. CCC and submitters seem to set this to one side.

[121] In our minute of 4 March last we determined the wording of Objective 15.1.5. There we determined that on the evidence the appropriate wording was "late night trading", rather than what Pacific Park originally proposed. Other matters relating to Sale of Alcohol we have dealt with in the General Rules Chapter.

[122] Accordingly, we confirm, if confirmation is needed, Objective 15.1.5 as set out at [116] above. That confirmation is by reason that we find, overwhelmingly on the evidence, that the rewording is most appropriate for achieving the RMA's purpose. That is in the sense that it provides greater clarity of purpose in the objective on this important issue for the economic and other wellbeing of Christchurch.

[123] For completeness, we note Mr Bremner's evidence of the licensed premises in Victoria Street pre-earthquake.[49]

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47 Above, n 33.
48 Any appeal period on this matter will run from the delivery of the Chapter 6 decision.
49 Evidence in chief of Maxwell Bremner on behalf of Pacific Park at 7.

Policy 15.1.6.7 as to investment policy in entertainment precinct

[124] We now return to the matter of Pacific Park's request for a policy regarding the protection of existing investment in the CCEP, which is as follows:[50]

> **Policy 15.1.6.7 — Entertainment and Hospitality Precinct**
>
> Provide for an entertainment and hospitality precinct, including late night trading, in the Central City, by:
>
> (i) encouraging entertainment and hospitality activities to locate within the identified area;
>
> (ii) protecting the viability of existing entertainment and hospitality investment, particularly that investment which has occurred in the Central City since the Canterbury earthquakes;
>
> (iii) providing certainty to investors that residential amenity effects related to late night trading will be managed by rules relating to noise and off site effects.

[125] We heard evidence from Mr Bremner and other hospitality and entertainment operators of the investment that has been made in the Victoria Street precinct. That is self-evident from any viewing of the current Victoria Street precinct. That is certainly a change from the street as it was pre-earthquake, but such things are not uncommon consequences of large natural disasters and recovery from them.

[126] Mr Bremner said that he and others were in a position to invest further money in this precinct to meet the vibrant city aims that are so often spoken about.

[127] In closing for Pacific Park, Ms Appleyard submitted that given the combined evidence of Mr Stevenson and Mr Willis (and Ms McLaughlin in Chapter 6: General Rules and Procedures), the investors in the Victoria Street precinct remained concerned of the motives of CCC and the Crown, and for that reason asked the Panel to insert an investment protection policy which provides them with certainty that it is not the intention of the plan to undermine their sunk investment in late-night hospitality.

[128] Given our comments above about what occurred in the course of the giving of evidence, we can understand the concern of the investment community. The evidence we have shows

50 Closing submissions for Pacific Park at 35.

there is a very significant investment in the Victoria Street precinct which relied on the CCRP and its amendments. It is also clear that, despite the CCRP, at least those three witnesses managed to interpret it in a way that is contrary to the plain words. In those circumstances there is a real risk other planners could do the same.

[129] We note that CCC expressed concerns about singling out a specific industry. This Panel, in a number of other areas, has done this. We are also satisfied that the amendment to the CCRP supports the submission of Pacific Park and other investors. We see as significant the addition of the words "and encouraging such activities to locate in these precincts". As is the ability of allowing PA status for these activities that meet noise and other relevant standards. Elsewhere in the Central City a resource consent may need to be sought where more stringent noise standards apply. We read the additional words as a strong policy encouragement to the entertainment and hospitality industry to focus on establishing within the precincts. We see the policy suggested by Ms Appleyard gives proper additional policy support to the words we have just referred to above. We note that in the main the wording suggested uses the language of the Minister in the objectives and policies of the CCRP. It is also, as Ms Appleyard submitted, similar in structure to what Mr Stevenson put forward for the Central City Health Precinct and Innovation Precinct in Chapter 13.

[130] Clearly, given our comments above, such a policy does not impact or remove the need for policies and rules in Chapter 6: General Rules and Procedures, which deals with the city-wide matters. That is particularly so when the submitter reiterates its support for those rules — particularly the precinct noise rules and the requirement for a resource consent if the sale of liquor takes place within 75 metres of a residential zone; i.e. all of Victoria Street.

[131] On those findings on the evidence, we are satisfied that it is most appropriate that Chapter 15: Commercial include Pacific Park's requested policy to achieve the related Objective 15.3.5 also as included in the Decision Version. It is renumbered, accordingly, as Policy 15.2.6.7.

1 Papanui Road — whether to include within the Entertainment and Hospitality precinct overlay

[132] 1 Papanui Road is the site of the Carlton Bar and Eatery and is now zoned Commercial Core ('CC'). It is a long-standing hospitality establishment, having been at the location in one form or another for over 150 years.

[133] The notified version of Chapter 15 (Commercial) included a Fringe Commercial zone, and that applied to the site. However, the Panel's Decision 11 (including on Chapter 15) replaced that with CC zoning. Initially Papanui Road Limited (3685) ('PRL') sought to have the entire site rezoned to Central City Business. However, the evidence before us from PRL's planner and director withdrew the application for rezoning, which had properly been rejected by Mr Stevenson.[51]

[134] The remaining matter in issue concerning this site is that the submitter also seeks the extension of the Victoria Street Entertainment and Hospitality Precinct Category 2 ('EHP Overlay') to the site. This is opposed by VNA on the basis that the addition of another late-night premises will add to their current amenity difficulties, and that the establishment is a source of some of their concerns.

[135] The position of PRL was set out in the evidence of its planner, Mr Thorne, which was reflected in the opening submission of Mr Gardiner-Hopkins as follows:[52]

> 2.1 The justification for [Papanui Road Limited]'s relief is as follows:
>
> (a) The long history and use of the site as a hospitality venue.
>
> (b) The "bookend or gateway" function of the site to the Victoria Street Precinct.
>
> (c) The participation by The Carlton in the Victoria Street Accord. The boundaries of the Victoria Street Precinct for the purposes of the Accord, which closely resembles the Category 2 EHP [Entertainment and Hospitality Precinct] as notified, but with the inclusion of The Carlton site.
>
> (d) It is appropriate for the District Plan, as the frame within which resource consents are assessed, and an instrument under which people and communities can order their lives, to reflect this status and history.

51 Evidence in chief of Mark Stevenson, Attachment C at 12.
52 Opening submissions for Papanui Road Limited.

(e) In terms of the alternative relief of extending the EHP but not the Central City Business zoning, both Mr Thorne and Mr Stevenson consider that a precinct need not be solely defined by the zoning of an area.

(f) At a practical level, both Mr Murdoch and Mr Bremner have raised concerns that the exclusion of the Carlton from the EHP would detract from the effective functioning of the Accord and therefore from the safe and responsible hospitality environment that the Accord is seeking to foster.

[136] Mr Thorne made it clear that it was an activity link rather than a physical one to the Victoria Street precinct. The physical separation of the Bealey Avenue intersection (including multiple through and turning lanes) was accepted. Rather, the position of PRL, supported by the evidence of Mr Thorne and Messrs Murdoch and Bremner, was that the activity carried out on the site, one with the extremely long history referred to above, linked in with what occurred all down Victoria Street.

[137] Essentially, PRL's evidence was that the precinct was book-ended by the 24-hour operation of the casino at one end (subject, of course, to various regulatory controls) and the Carlton at the other end. Mr Murdoch gave evidence that patrons attended his premises and then went on to Victoria Street, and vice versa. Mr Bremner gave similar evidence.

[138] In his rebuttal evidence for the Council, Mr Stevenson recommended against this change. He agreed with Mr Thorne that a precinct need not be solely defined by the zoning of an area. However, he questioned the significance of Carlton's identification in the Precinct Accord to the issue, as something the operators of premises could choose whether or not to join. He acknowledged that the scale and nature of activity on the site, and its zoning, distinguish the Carlton, but disagreed with Mr Thorne on whether inclusion of the site in the EHP Overlay would achieve a more coherent and integrated framework for entertainment and hospitality activities. In particular, he noted that other such facilities exist beyond the EHP Overlay. Mr Stevenson recommended that, were we to accept PRL's relief, we extend the noise insulation requirements to residential units that would be within 75m of the site.[53]

53 Rebuttal evidence of Mark Stevenson for the Council, at 13.1–13.5.

[139] Notwithstanding the opposition of CCC through Mr Stevenson and VNA, we consider the site of the Carlton building should properly be within the entertainment precinct, Victoria Street, category 2.

[140] We note the long history and we note its strong activity link, as confirmed by the evidence of Messrs Murdoch and Bremner, to the Victoria Street precinct.

[141] Regarding the noise matter referred to by Mr Stevenson, the Panel asked questions concerning the distance to the nearest residential zoning. The submitter filed a map in response. It shows that there is a very small area of residential zoning within the 75 metre separation referred to earlier in this decision. Most of that area contains commercial activity or outdoor space. We agree with Mr Stevenson, however, that the restricted discretionary activity regime for late night sale or supply of alcohol within 75 m of a residential zone should apply as it does elsewhere within the EHP Overlay.

[142] Notwithstanding that small residential zoning interface, we consider it is appropriate to include this area within the EHP. We see it as the bookend, or "gateway" at the western end of the precinct. We also accept and adopt Mr Gardiner-Hopkins's justification as well supported and borne out by the evidence. We accept that extending the EHP Overlay to 1 Papanui Road is also supported by the evidence we accept from Messrs Thorne, Murdoch and Bremner. We do not accept what we heard in opposition from the witnesses for VNA and CCC.

[143] In view of those findings, we determine that extending the EHP Overlay (and the related restricted discretionary activity rule we have noted) to 1 Papanui Road is the most appropriate for achieving the related objectives, particularly 15.2.1, 3.3.1 and 3.3.5.

[144] Following the hearing, the Panel received memorandum of counsel from PRL to bring to our attention the position most recently expressed by the Council on the Local Alcohol Policy.[54] This was in a Council memorandum of counsel, dated 23 August 2016, to the Alcohol and Regulatory Licensing Authority ('ARLA'). PRL's memorandum attached a copy of the Council's memorandum to the ARLA, and it includes the following statement:

[54] Memorandum for PRL updating the Panel as to the Council's updated position in respect of its local alcohol plan, 24 August 2016.

> Exclusion of land occupied by the Carlton Bar and Eatery on the corner of Sealey [sic] Avenue and Papanui Road from Christchurch Central Area B pays insufficient regard to this land being functionally part of the Victoria Street Precinct, meaning it should be subject to the same maximum trading hours as other on-licensed premises on Victoria Street between Sealey Avenue and Salisbury Street.

[145] Although we have reached our determination on this matter in the absence of knowing about this most recent Council position on 1 Papanui Road, we observe it to be consistent with the position advanced by PRL's planning witness, Mr Thorne, as to the activity link that exists between the site and the entertainment and hospitality premises of Victoria Street.

Urban design accreditation and related rules

[146] The CCBZ and the CC(SF)MUZ in the Revised Version provide for urban design to be dealt with as a controlled activity subject to certification by an urban design expert. In the absence of certification, it is an RDA. As was acknowledged by the parties, this was consistent with this Panel's decision approving such an approach for suburban commercial centres in Stage 1.[55] It was the position taken by CCC throughout the hearing.

[147] The Crown has confirmed its support for this approach. Ms Eaton for the Crown considered that such an approach could apply and still ensure a high quality urban environment consistent with the CCRP outcomes.[56]

[148] Mr Nicholson for the Council considered that two safeguards should be built into the certification process. The first was to guard against "rogue" urban designers by the use of a pre-approved list of appropriately qualified urban designers who are authorised to certify. A second safeguard was for matters of discretion to be stated in the rule, specifying desired outcomes with a requirement that certification demonstrates how such outcomes will be met. He also accepted the benefits of the certification approach, including incentivising applicants to obtain input from a pre-approved urban designer early in the process, the speeding up of the process and certainty of outcomes, and the avoidance of double assessments.

[149] CGL also agreed with a certification process, but set out two concerns.[57] The first is that the provisions refer only to a person suitably qualified in urban design. It was the evidence of

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55 Decision 11: Commercial (Part) and Industrial (Part) — Stage 1.
56 Transcript, page 117, line 45 to page 118, line 3.
57 Submitter 3602, FS5062.

their expert witness, Mr Compton-Moen, that an architect or in some instances a landscape architect would also be appropriately qualified to undertake such certification assessments. We agree with the evidence of Mr Compton-Moen and consider limiting certification to only those qualified in urban design would be unduly restrictive, given there is no standard qualification or national professional body. Accordingly, we have provided for this in the Decision Version.

[150] The second concern expressed by CGL was how the list of experts is created and administered. It submitted there was a real risk that, if the list of suitably qualified experts is to be decided by the Council and the Council has sole discretion over who is added or removed from the list, this will place undue pressure on the experts undertaking certification assessments. CGL submitted further that, for the development sector and wider community to have confidence in the certification approach, the possibility of perception of bias needs to be eliminated. There was a request that the Panel should provide further direction on the method by which a Council-approved list is compiled. CGL did not supply any suggested solution or drafted amendments to the Revised Version to accompany this submission.

[151] The Council submitted that there was no evidence to support such a view, nor was it of concern to the Panel previously in its Decision 11.

[152] The Panel queried whether the existing Christchurch Central Joint Design Approvals Board ('JDA Board') would be automatically rolled over. In closing submissions the Crown referred to the CCRP, which states at page 106:

> As set out previously, decisions on urban design matters will be delegated to a decision-making body comprising one accredited representative with an appropriate understanding of urban design considerations from each of CERA, Christchurch City Council and Te Rūnanga o Ngāi Tahu. Decisions will be provided within 5 working days from the date a completed application is lodged.

[153] That direction was given effect by a Board being established pursuant to a joint management agreement between CCC, CERA and Te Rūnanga o Ngāi Tahu executed on 26 May 2015. This expired on 18 April 2016 when the CER Act expired. Accordingly, there is no 'roll over', for the function of that Board.

[154] We agree with the submission from the Council that there is no evidence to support the view put forward by CGL, and we consider the same provisions in this regard should apply in

the Central City as apply for the commercial areas, pursuant to our decision in Decision 11: Commercial (Part) and Industrial (Part) — Stage 1.

[155] Therefore, we have included related controlled activity Rule 15.10.1.2 and restricted discretionary activity Rule 15.10.1.3 in the CCBZ, and similarly Rule 15.12.1.2 and Rule 15.12.1.3 in the CC(SF)MUZ, being satisfied that these are the most appropriate for achieving related objectives, including 15.2.1 and 15.2.4. These differ in some respects from those of the Council's Revised Version. Specifically, in addition to the rules for the Cathedral site (addressed from [210]), we have re-expressed them as activity classes (the Revised Version having them expressed as built form standard rules). We have removed the words 'urban design' from 'qualified expert', as we find no clear distinction can be made between a person who is an 'urban design' expert and others well qualified to certify for the specified purposes.

Residual matters of disagreement with Carter Group Limited (CGL)

[156] In Mr Stevenson's evidence for the Council, he confirmed he now recommended that the term 'Cultural Elements' in the urban design assessment matters be amended to 'Natural, Heritage or Cultural Assets'.[58] This was consistent with our decision on the Commercial proposal and with Mr Phillips' evidence on behalf of CGL. This was included in the Revised Version and we confirm it in the Decision Version.

Active frontages in the CCBZ

[157] This was part of a small number of changes sought by CGL. They were promoted because of the need to encourage redevelopment of the Central City to foster investment certainty, as it was considered the provisions were restrictive in this regard.

[158] CGL sought deletion or amendment of the active frontage provisions because they considered that the permitted activities listed were not the only activities that would meet the policy of pedestrian-orientated activities fronting the street. The evidence of their planner, Mr Phillips, was to the effect that the CRDP already contains other provisions that ensure the outcomes desired by the CCRP for a pedestrian-orientated environment. An example of that was the urban design provisions which provide as a minimum for consideration of a building's

58 Transcript, page 20, lines 1–6 (Mr Stevenson).

engagement with the street environment. This is supplemented by performance standards such as building setback and continuity, verandah requirements, sunlight and outlook to the street, height and road wall height and the location of car parking which contribute to the achievement of the policy.

[159] CGL's urban design expert, Mr Compton-Moen, concurs stating that in his opinion it is not the activity within the building that is the key criteria to achieving a good design outcome, but rather the bulk and location of the building and the location of matters such as car parking.

[160] CGL submitted that in the circumstances where other objectives, policies and standards will ensure the engagement of the building with the street would be adequately considered, the deletion of standards will meet the requirements of the strategic objectives to reduce consenting requirements and to foster development certainty without compromising the outcomes sought by the CCRP.

[161] Dealing with this and the other submissions of CGL in this regard Mr Phillips stated:[59]

> Ultimately, I consider that this issue boils down to where the balance is struck between regulating for these particular amenity outcomes, and enabling businesses and building owners and developers with greater freedom and flexibility, with the aim of maximising development and activity in the central city.
>
> I have formed the view that on balance the deletion of these standards would be consistent with the CCRP and strategic outcomes promoting the latter, without diminishing the desired amenity and attractiveness for the central city as a while.

[162] Mr Carter, who was undoubtedly an extremely experienced developer in the Central City and further afield, also stated in evidence:[60]

> Every provision requires scrutiny to ensure that it does not tilt the playing field against development in the CBD, particularly given the sensible decisions the Panel has already made for areas outside the CBD.
>
> Some of the matters raised in our submission may seem like small matters at first glance. Do we have to describe the height of every ground floor, must every building have an active use at ground level when such tenancies are increasingly [scarce] and, most importantly, are we happy to allow the vagaries of the Council's urban design assessment to trump all else and frustrate, delay and sometimes prevent development? – My answer to these issues is a resounding "no" and I am very pleased to see that in many instances the Council now agrees.

59 Transcript, page 317, lines 6–15.
60 Transcript, page 340, lines 7–19.

[163] In opposing the deletion of the requirements sought in the CGL submission, the Crown relied on the evidence of Ms Eaton. Ms Eaton, in answering questions from the Panel, referred to research supporting her opinion that active frontages enhanced people's enjoyment of the city and encouraged them to come in to the city and experience it.[61]

[164] The Crown submitted on this basis that the active frontage requirement was a key method for delivering the objectives of the CCRP to support the Central City and provide an accessible, pleasant, safe and attractive pedestrian environment.

[165] The alternative relief sought by CGL was that the active frontages should be extended to include other activities beyond those provided for by the CCRP. Ms Eaton for the Crown considered that restricting the types of activities that can occur in the identified areas is required to ensure that activities provide the type of active frontages that contribute to creating a quality built environment with successful public spaces and streets consistent with the outcomes of the CCRP.

[166] In closing, the Crown pointed to the acceptance by Mr Compton-Moen that the restricted list of activities currently provided by the CCRP generally would, by their nature, promote active frontages, as it is in their commercial interest to do so.[62] Mr Compton-Moen also accepted that there were some parts of other activities not provided for, such as educational activities, that could contain elements that would not promote an active frontage.[63]

[167] There was no support from Mr Stevenson for a general exemption for education activities,[64] while Ms Eaton and Mr Nicholson agreed that education activities need to be assessed on a case-by-case basis as to whether an active frontage would be provided.[65]

[168] It was the Crown's submission that the deletion of the active frontage restrictions would be inconsistent with the clear intent of the CCRP. The Crown referred to the fact that the CCRP expressly refers to active frontages on the ground floor, being one of the matters that allow

61 Transcript, page 124, line 16 to page 125, line 5.
62 Transcript page 353, lines 30–42.
63 Transcript page 353, line 44 to page 354, line 18.
64 Evidence in chief of Mark Stevenson on behalf of the Council at 14.20-14.22.
65 Evidence in chief of Rachael Eaton on behalf of the Crown at 7.20; Evidence in chief of Hugh Nicholson on behalf of the Council at 12.6–12.7.

buildings to fulfil their design functions while at the same time ensuring a high level of amenity and urban design.[66]

[169] Mr Carranceja pointed out, in his closing submissions for the Crown, that the CCRP inserted into the Operative Plan a new Policy 7.9.2 that seeks to encourage walking and cycling in the Central City by encouraging developments to maintain active frontages within a primary area of the core and central business zone.[67] Secondly, it inserted a new Rule 2.2.5 which restricts activities within 10 metres of a road boundary along active frontage areas identified in Map 6 to a specified list of activities.[68] Thirdly, it inserted a new Map 6 showing the active frontage areas which are limited only to parts of the Central City core.[69] Fourthly, the updated proposal carries over from the CCRP active frontage provisions in proposed Rules 15.8.2.1(P1)–(P12) and 15.8.2.3(RD3). Finally, he said the deletion of the active frontage provisions in the circumstances would be inconsistent with the explicit provision for them in the CCRP.

[170] The CCC in their closing simply endorsed the Crown's closing submission, and added nothing of significance to it.

[171] While giving the greatest respect to the experience of Mr Carter and accepting Mr Phillips' view that it is a balance between regulating for amenity outcomes and enabling businesses and building owners with greater freedom, we accept the evidence of Ms Eaton, Mr Stevenson and Mr Gimblett (for the Crown) in this regard. We consider that applying our definition of 'not inconsistent with' referred to earlier, the deletion of these provisions, or their amendment as sought by CGL, would be inconsistent with the CCRP.

[172] We are satisfied that the promotion of active frontages within the relatively small core area is an important part of enhancing an accessible, pleasant, safe and attractive pedestrian environment in the Central City. Therefore, we determine that the approach that the Revised Version proposed for this matter is the most appropriate for achieving related objectives, and have carried it into the Decision Version.

66 CCRP, page 103.
67 CCRP Appendix 1, page 42.
68 CCRP Appendix 1, page 9.
69 CCRP Appendix 1, page 99.

Minimum ground floor height in CCBZ

[173] CGL sought the deletion of minimum ground floor heights. In earlier hearings Mr Phillips addressed this matter at some length, and he reiterated his position in this hearing. He notes our decision to delete such requirements within the commercial proposal.

[174] CGL also referred to the evidence of Mr Gimblett, who confirmed that in his role on the JDA Board:[70]

> … quite a number of applicants have sought to reduce this height and have satisfactorily demonstrated how that can still provide for the likely future needs of a range of uses anticipated in the Central City.

[175] Ms Semple, on behalf of CGL, pointed out that appeared inconsistent with the evidence of Mr Nicholson who asserted that "almost all" have complied with the 4 metre minimum.[71]

[176] Furthermore, Mr Gimblett concluded that "some reduction in the required minimum height … could still achieve the outcomes sought".[72] This was also consistent with the evidence of Mr Stevenson, acknowledging "a reduced floor to ceiling height could still achieve the outcomes of the [CCRP]".[73]

[177] CGL's view was there was insufficient justification to retain the minimum ground floor height, and to impose something on the Central City that does not apply in other commercial areas would compromise the Central City's ability to compete.

[178] Once more the CCC simply endorsed the submission of the Crown. This was to the effect that the deletion of a minimum ground floor height requirement must be opposed. There was agreement between CCC and the Crown that the rationale for such a requirement was based on providing sufficient height to allow a range of uses, including retail in the future, and providing a generous ground floor and attractive street scene that is consistent with other approved developments in the Central City.[74]

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70 Evidence in chief of Kenneth Gimblett on behalf of the Crown at 7.17.
71 Evidence in chief of Hugh Nicholson at 10.5.
72 Evidence in chief of Kenneth Gimblett at 7.18.
73 Rebuttal evidence of Mark Stevenson at 3.6.
74 Closing submissions for the Crown at 7.2.

[179] The Crown also submitted it would be inconsistent with the CCRP. In particular, it points to the new Policy 12.3.4 inserted by the CCRP that seeks to encourage a built form where the usability and adaptability of buildings are enhanced by setting minimum ground floor heights. There is further a new rule, Rule 2.2.9, requiring a minimum ground floor height of 4 metres in the CCBZ.

[180] The Crown did concede, given the evidence of its own witness Mr Gimblett, that an adjustment downwards to 3.5 metres for example could still be appropriate. The Crown considered such an adjustment would be "sufficiently comparable and not at odds in degree or purpose as to be impermissibly inconsistent" with the CCRP.[75]

[181] We removed this requirement from the Commercial zones in our earlier decision on that Chapter, and we continue to endorse our reasoning from that decision. However, we consider the explicit terms of Rule 2.2.9 inserted into the Operative Plan by the CCRP effectively ties our hands from deleting this requirement. Even allowing that 'not inconsistent with' is "a phrase that gives reasonable allowance for interpretation, and judgment as to how it should be applied in context",[76] it would be inconsistent with the CCRP to completely ignore the requirement for a minimum ground floor height.

[182] However, we note the concession of the Crown and are satisfied on the evidence that it is appropriate to reduce that to 3.5 metres.

[183] Subject to that change, we find that the approach of the Revised Version on this matter is the most appropriate for achieving related objectives, and have provided for this (as so modified) in the Decision Version.

Minimum residential net floor area and outdoor living space in the CCBZ

[184] CGL opposed minimum net floor areas as being contrary to the Strategic Directions chapter, in particular Objectives 3.3.1 and 3.3.2. It was submitted that they are not required to meet the vision for residential housing articulated in the CCRP, and in fact may compromise achievement of that vision.

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75 Closing submissions for the Crown at 7.5, citing *Bay of Plenty Regional Council v Western Bay of Plenty District Council* [2002] NZEnvC 47; (2002) 8 ELRNZ 97 at [75].

76 Decision 1: Strategic Directions and Strategic Outcomes, 26 February 2016 at [61].

[185] Ms Semple referred to the CCRP's statement "[a] diverse residential population is essential to support business growth and development, and create a high level of activity" in the Central City.[77]

[186] In his evidence on behalf of CGL, Mr Phillips referred to the Productivity Commission's work with respect to the impact of minimum apartment floor and balcony size requirements within the context of the Proposed Auckland Unitary Plan.[78] That assessment found the impact of such rules was "likely to have a material upwards effect on the costs of small apartments", with an anticipated price increase of 25 to 50 per cent. The same report reveals that an 8m² balcony can add between $30,000 and $40,000 to the cost of an apartment.[79]

[187] Ms Semple submitted that, in reaching a balance for providing for the flexibility that will enable a range of housing types and protecting residential amenity, the drafters of the previous provision did not have the benefit of the work undertaken by the Productivity Commission. Similarly, she submitted, in rolling over such provisions into the Central City proposal there is no evidence in the s 32 analysis that the costs of continuing to oppose the restrictions were revisited or assessed by the Council.

[188] She submitted that analysis is now available to the Panel and it was open to the Panel to reach an alternative decision on how best to achieve the appropriate balance desired by the CCRP.

[189] At 32 of her opening submissions, she stated:

> This does not, in my submission, necessarily mean finding in favour of flexibility or reduced cost at the expense of amenity. As set out in the evidence of Mr Compton-Moen people who move into the Central City "*often anticipate that they will live a different lifestyle than they may in the suburbs*" and "*where they do not have their own outdoor space they typically use public spaces to catch up with friends, socialise and exercise*", spaces which exist in the Central City and which would in his expert opinion benefit from greater use by nearby residents.

[190] She further submitted that the deletion of the minimum unit sizes and outdoor space requirements would not alter the essential nature of the CCRP nor undermine the outcomes.

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77 CCRP, page 81.

78 'Using land for housing', New Zealand Productivity Commission, September 2015 at 104, citing MRCagney. (2014) 'The economic impacts of minimum apartment and balcony rules' Auckland: Author.

79 At page 104.

Adopting Mr Compton-Moen's evidence, she said it would provide greater flexibility and choice and housing options, thus encouraging intensification and contributing positively to the aims of the CCRP and the recovery strategy.

[191] The alternative relief sought by CGL related to the reduction in the minimum floor area of a two bedroom unit from 70m² to 60m² to achieve consistency with the Panel's decision on the Residential proposal. Ms Semple pointed to Mr Carter's view that the Central City provisions must be rigorously scrutinised to ensure they are no more onerous than the equivalent provisions outside the Four Avenues.

[192] Mr Gimblett for the Crown supported that later reduction in size. Again, CCC essentially adopted the Crown's closing submissions.

[193] The Crown opposes the deletion of minimum unit sizes and outdoor space requirements. The Crown submits in closing that the minimum units size are part of ensuring that residential units are fit for purpose and provide adequate internal space for beds and other furniture. It also submits that the outdoor living and service spaces are necessary elements in providing an acceptable standard of residential amenity.[80]

[194] As Mr Carranceja pointed out, Mr Compton-Moen was asked in cross-examination whether he would not have any objection to having a minimum unit size specified for high quality living environments in the Central City. He answered "Yes, I would be comfortable with that."[81]

[195] Again, there is an issue around consistency with the CCRP because of the provisions of both policy and rules that were inserted into the Operative Plan.

[196] We accept the evidence of the Council and Crown that the minimum net floor area and outdoor living space are to ensure quality living. While we acknowledge the work of the Productivity Commission and their public report produced to us, the authors of that report were not available for questioning by the Panel and there is limited weight we can attach to it.

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80 Rebuttal evidence of Mark Stevenson at 6.8; evidence in chief of Hugh Nicholson at 11.1–11.5 and Transcript page 67, lines 43–46 (Nicholson); rebuttal evidence of Kenneth Gimblett at 5.10–5.17; rebuttal evidence of Rachael Eaton at 6.1–6.9.

81 Transcript, page 358, lines 1–5.

Accordingly, we are satisfied on the evidence that it is appropriate to continue to have a minimum residential net floor area and outdoor living space in the CCBZ to ensure a distinctive Central City characterised by "[h]igh quality inner city housing options that attract an increased residential population".[82]

[197] However, it was conceded by the Crown that, given the evidence of Messrs Phillips and Gimblett, the minimum area for a two bedroom apartment can be reduced from 70m² to 60m². To that extent we allow the submission, and this is recognised in the Decision Version. As so modified, we are satisfied that the provision in the Decision Version is the most appropriate for achieving related objectives.

Small scale retail on Colombo Street

[198] The Peterborough Village Incorporated Society ('PVIS') (3233, FS5039) requested that general retail activity be permitted on the ground floor up to 150m² gross leasable floor area per tenancy for sites within the CCMUZ fronting Colombo Street between Kilmore and Salisbury Street.

[199] The Society did not call evidence (planning or otherwise) in support of the submission.

[200] CCC recommended the relief be accepted in full because of:

(a) The historic environment pre-earthquake which had a finer-grain retail focus.

(b) The existing environment (emerging in parts) along the Colombo Street frontage between Kilmore and Salisbury Streets.

(c) An absence of difference between the sites north and south of Peterborough Street that would justify a different approach.

(d) The degree of change provided for by the relief is not significant having regard to the existing environment and provision was already made for some retailing in the notified rules (reflecting the CCRP) in respect of the latter, the relief broadens the

[82] CCRP, page 103.

range of retail activity up to 150m² threshold rather than introducing provision for retail activity for the first time.

(e) The relief is consistent with the approach being taken along Colombo Street in the South Frame.

[201] Responsibly, the Council in their closing submissions acknowledged that Mr Stevenson, their planning witness, accepted in cross-examination that, from a planning perspective, the greater the amount of retailing that is enabled outside the core the greater risk of inconsistency with Objective 15.1.5 of the Revised Proposal. This would also be inconsistent with the CCRP's intention for a compact core where commercial and retail development is to be concentrated. Against that, the Council submitted there was no retail evidence before the Panel which addresses the risk and sensitivity of the relief sought. It seems to us that this is evidence that perhaps CCC should have contemplated calling. However, CCC submitted that the limited scope of land where opportunity would be enabled, combined with the limit on GFA, intuitively leads to the conclusion the risk is low.

[202] The Crown in its submission noted that the relief sought would enable a broader range of general retail activity beyond that currently permitted by the CCRP, which is limited to accessory, food and beverage, and convenience grocery stores.

[203] The Crown notes that in his evidence-in-chief, Mr Stevenson said he would recommend the relief if the CCRP were not in place.[83] More precisely, from Mr Stevenson's rebuttal, we understand that he saw merit in PVIS's relief but recognised that it would potentially be inconsistent with the CCRP.

[204] In answer to Dr Mitchell's question of whether the relief would be inconsistent with the CCRP or be a bad idea, Mr Gimblett stated it would primarily not be a good idea. He went on to say that he considered departures from the CCRP would have risk in terms of planning creep or precedent risk.

[205] He did, however, consider that a lesser form of relief might be appropriate whereby the broader retail provision is limited to between Kilmore and Peterborough Streets. In terms of

83 Evidence in chief of Mark Stevenson at 10.27.

merits, he considered that there are sufficient comparative differences in the environment north and south of Peterborough Street such that the broader provisions should not apply between Peterborough and Salisbury Streets to the north. He considered the overall outcomes sought through the CCRP would not be threatened but that the PVIS requests a doubling of the size that he suggested. As he observed, the further you extend the opportunity the further you depart from what the CCRP originally intended.[84] This was also accepted by Mr Stevenson, where he stated that the greater amount of retailing enabled outside the core, including along the length of Colombo Street, the greater risk of inconsistency with CCRP.[85] In his evidence he also accepted that the position adopted by Mr Gimblett represented a lesser risk than the full relief sought by PVIS.

[206] The Crown's final submission was that the full relief sought by PVIS would be inconsistent with the CCRP as it would broaden the retailing offering enabled in CCMUZ beyond that contemplated by the CCRP. However, Mr Carranceja indicated the Crown is content to abide by the Panel's decision regarding the suggested lesser relief, given the evidence that such relief is unlikely to have a detrimental effect on the CCBZ or the CCMUZ.

[207] In this regard we accept the evidence of Mr Gimblett and Mr Stevenson in relation to inconsistency.

[208] However, we note the concession of Mr Gimblett and his suggested relief. We consider that this accords with the Council's position as to the pre-earthquake historic environment between Kilmore and Peterborough Streets. We do not consider this historic environment extends to Salisbury Street.

[209] Accordingly, based on the evidence, we are prepared to allow the PVIS submission in part. The Decision Version contains provision to allow this limited form of retailing on both sides of Colombo Street between Kilmore and Peterborough Streets. On the evidence, we are satisfied that this modification of the Revised Version achieves the most appropriate outcome in achieving the related objectives.

84 Transcript, page 153, lines 40–42.
85 Transcript, page 42, lines 16–19.

Policy 15.3.5.1 and Rules 15.8.2.2 and 15.8.2.3 as to ChristChurch Cathedral and 100 Cathedral Square

[210] CPT seeks the inclusion of a specific policy recognising the reinstatement of the existing ChristChurch Cathedral or the construction of a new cathedral at 100 Cathedral Square. A policy was included in the Council's Revised Version. Accepting the evidence of the Council and CPT, we find the inclusion of this policy most appropriate for achieving related Objective 15.3.5 and Objective 3.3.8, and we have therefore included it in the Decision Version (as Policy 15.3.5.1).

[211] CPT also seeks controlled activity ('CA') status to provide either for the reinstatement of the existing cathedral or the construction of a new cathedral at 100 Cathedral Square (with exclusion from the built form standards, which precludes full or limited notification). The response from the Council in the Revised Version proposes a restricted discretionary activity ('RDA') rule which does not preclude limited or full public notification.

[212] Before going further, we record that reinstatement of the existing cathedral is a matter that will be addressed in the Panel's determination of sub-chapter 9.3 on historic heritage (including as to the related submission of The Great Christchurch Buildings Trust).[86] At this stage, we determine the most appropriate rules regime for construction of a new cathedral.

[213] As accepted by Mr Stevenson, the ChristChurch Cathedral is located in the CCBZ, whose zone provisions do not readily accommodate, or even anticipate, the ChristChurch Cathedral either in its reinstated form or as a replacement cathedral.[87] Rather, the zone standards are tailored towards commercial and retail buildings. The concern of CPT is that, as notified, the Central City provisions would require compliance with a large number of provisions. For that reason, a specific CA rule for the cathedral site was sought with exemptions from the built form standards. In the Revised Version, this is recognised by a proposal for a specific RDA rule for building on the site which provides that the built form standards in 15.8.3 for CCBZ shall not apply, and that is supported by CPT. However, concerns remain for CPT with the appropriate activity status for the rule and notification matters.

86 Submitter 3558 in relation to Chapter 9: Natural and Cultural Heritage.
87 Transcript, page 22, lines 14–33.

[214] In his planning evidence for CPT, Mr Nixon likened the mis-fitting nature of the Central City commercial building rules to a cathedral as a saddle to a cow. He considered the proper role for CCC in consideration of a new cathedral was as to design and appearance on the site, and considered CA to be the most appropriate activity classification for those purposes.[88]

[215] Mr Johnson in his submissions set out the legal context and the application of recovery legislation, with which we do not take issue.

[216] As to activity status, CPT's submission is summarised as follows:[89]

> (a) restricted discretionary status will have the effect of undermining planning certainty which will undermine recovery — which the Cathedral is key to;
>
> (b) accordingly the activity status for the reinstatement of the existing building or a new cathedral should be a controlled activity;
>
> (c) there is no need for notification as:
>
> (i) public participation will delay the process and is inconsistent with the approach to other large projects; and
>
> (ii) the only relevant additional information that might come out of a public process is subjective views of design — it is doubtful public participation would add significant value; and
>
> (d) if the Panel is minded to allow for public participation it should only be in relation to a new cathedral building — there is no point in public participation in a reinstatement which will involve engagement in technical questions of engineering and cost.

[217] Mr Johnson in his submission noted that Mr Stevenson accepted that, rather than allowing for some exemptions, it would be better to allow for specific rules that focus on the desired outcomes. He submitted the relief sought by CPT would achieve this. Mr Stevenson had also accepted there would be scope for amendments as sought by CPT which allowed for appropriate Council control over matters that affect those outcomes (being issues of urban design).

[218] Despite these concessions, CCC remains of the view RDA is the appropriate activity status.

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88 Evidence in chief of Robert Nixon for CPT, at 3.14

89 Closing submissions for CPT at 29.

[219] Mr Johnson referred us to the decision in *Coromandel Watchdog of Hauraki Incorporated v Chief Executive of the Ministry of Economic Development*, where the Court of Appeal stated at [28]:[90]

> The important point for present purposes is that the exercise required by s 32, when applied to the allocation of activity statuses in terms of s 77B, requires a council to focus on what is "the most appropriate" status for achieving the objectives of the district plan, which, in turn, must be the most appropriate way of achieving the purpose of sustainable management.

[220] Mr Johnson submitted that the relief sought is the most appropriate way for achieving the objectives of the Replacement Plan and the purpose of sustainable management under Part 2 of the RMA. He submitted that it would also provide for planning certainty and meet the objectives of the Strategic Directions Chapter and the specific zone objectives in Chapter 15.

[221] After referring to Objective 3.3.1 of the Strategic Directions provisions, he referred to the evidence of Mr Ogg for the Crown, who stated uncertainty around the ChristChurch Cathedral is stymying activity.[91] Mr Ogg considered the delay in the making of a final decision is having a negative impact on the recovery of the CBD.

[222] Next he referred to Objective 3.3.8, relating to the revitalisation of the Central City. Mr Johnson referred to the evidence of both Mr Nicholson and Ms Eaton for the CCC and the Crown respectively, who stated the Cathedral is fundamental to the recovery of the Central City and uncertainty around its future is an impediment to achieving the wider urban design objectives for the city.[92]

[223] CPT then submitted that a CA framework more properly implements those two objectives and others in our Strategic Directions decision.

[224] The position taken by CCC is that RDA remains the most appropriate activity status. CCC notes that the closing submissions filed on behalf of CPT accept the critical importance of ChristChurch Cathedral to the recovery of the Central City and the city as a whole. CCC

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90 *Coromandel Watchdog of Hauraki Incorporated v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473; [2008] 1 NZLR 562.

91 Transcript, page 87, lines 10–25.

92 Transcript, page 77, lines 1–20 (Nicholson); page 122, lines 35–45 (Eaton).

submitted that this identifies the ChristChurch Cathedral, and its future, as an issue of significant public importance and influence for the city. This in turn underpins the need for future oversight by, effectively, CCC. It said this is especially so in the light of high profile legal challenges and protracted debates.

[225] CCC submits that, while the role and function of CPT must be respected, the decision on the future of such an important asset should not be left to it alone. CCC reiterates it does not wish to stand in the way of recovery and has inserted the site-specific RDA rule in specific response to CPT's concerns. But it goes on to submit that CA poses difficulty in terms of the Council's ability to address the widely-acknowledged issues of public importance. It submits that the risk is too great to confidently provide for management through CA.

[226] CCC also submitted that RDA is more consistent with other relevant rules in that any new building would require demolition of the existing Cathedral, and any alteration or addition which could be potentially significant in terms of effects would require RDA consent with notification.

[227] CCC proposed a controlled activity status for the Cathedral of the Blessed Sacrament at 136 Barbadoes Street. But it distinguishes this from ChristChurch Cathedral by saying that there is greater significance of the Cathedral Square as a setting, and the greater impact on the broader environment of the Central City of any new building on the Cathedral Square site.

[228] Finally, CCC submitted that there is no evidence from CPT to show that RDA will undermine recovery, nor that the existing Operative Plan rules have been the cause of the current state of ChristChurch Cathedral and/or the lack of action in progressing the physical repairs or rebuild. Rather, there are wider forces at work.

[229] Others who made submissions in Chapter 9, Issue 9.3, on the cathedral as a heritage item, did not make submissions or appear on the Central City chapter.

[230] We find that the most appropriate rules' regime is to allow for two activity classes:

(a) Where a new building located at 100 Cathedral Square is a cathedral or other spiritual facility, we find it most appropriate to provide a CA classification, subject to the urban design certification regime we have already described;

(b) Where a new building is of any other type, we find it most appropriate that it be given an RDA, rather than CA, specification subject to the specified matters of discretion.

[231] On the matter of the CA class, we find it sufficient that it specify 'spiritual facility' as the determination of whether it is to be the seat of the bishop is properly a matter for the Church community, not resource management regulation. While CPT asked for this class for a 'cathedral', we find our broader wording more in keeping with the OIC Statement of Expectations, in minimising unwarranted regulation.

[232] On this matter, therefore, we agree with the evidence and submissions for CPT, over the contrary evidence of the Council witnesses.

[233] We have fully considered the positions put by CCC on matters such as the critical public importance of ChristChurch Cathedral to the recovery of the Central City and the city as a whole. We have also carefully considered CCC's observations as to the high profile legal challenges and protracted debates. Where we differ, however, is in the most appropriate response to these matters. We consider, on the evidence, that RDA classification is not the most appropriate classification for the proper role to be served by CCC oversight. CCC characterised this as "the widely-acknowledged issues of public importance". On the evidence, that is far too broad a frame of reference for the relevant resource management issues involved in building a spiritual facility on this site long-associated with that class of activity.

[234] The relevant resource management purpose, on the evidence, is confined to those urban design and related considerations that Rules 15.10.1.2 C2 and 15.10.1.3 RD9 of the Decision Version address.

[235] We agree with the Council that there should be no associated rule precluding or limiting notification of applications, given the degree of public interest in the matter and related principles of the RMA concerning notification and its resource management purpose.

[236] For buildings other than spiritual facilities, we find that, with a proper list of discretions, RDA is more appropriate than CA, given it would involve a change from the long-established usage of this prominent Central City site.

[237] For those reasons, we find on the evidence that Rules 15.10.1.2 C2 and 15.10.1.3 RD9 are the most appropriate for achieving the related objectives. In particular, as rules that are consistent with and serve to implement Policy 15.2.5.1, they will most appropriately achieve Objective 15.2.5 and the Strategic Directions Objectives referred to. For completeness, we confirm that our finding that Objective 15.2.5 is the most appropriate for achieving the RMA's purpose is informed by our findings, noted here, as to the proper purpose of resource management regulation to be served on this matter of high public interest and relevance to the recovery of Christchurch.

[238] For completeness, we have also satisfied ourselves that our decision on these matters will be properly consistent with our decision, to be issued subsequently, on Chapter 9 (and, in particular Issue 9.3). That is in the sense that activities on a heritage item can be properly the subject of separate regulation that is properly aligned.

Provision for site redevelopment for future owner

[239] In the course of the hearings Judge Hassan raised an inquiry as to whether there was explicit provision for site redevelopment by way of site clearance for further development by another owner. CCC in its closing submitted there was no need to provide for demolition/clearance of site in the activity standards.

[240] CCC submitted that the definition of 'building' includes "any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure in, on, under or over the land (emphasis added)".[93] It was submitted that if a consistent approach is taken to our Stage 1 Commercial decision, then the activities listed in the activity tables include the land and buildings for that activity.[94] In the Stage 1 Commercial decision, the following statement appears in the "How to use the rules" sections:

93 Closing submissions for the Council at 7.2.
94 Decision 11: Commercial (Part) and Industrial (Part) — Stage 1.

> … Similarly, where the word/phrase defined includes the word 'activity' or 'activities', the definition includes the land and/or buildings for that activity unless expressly stated otherwise in the activity status tables.

[241] For consistency it was accepted by CCC that this statement should also be incorporated into the Central City provisions in 15.8.1.3, 15.9.1.3 and 15.10.1.3. It is submitted that if that is done the position is abundantly clear. The Council finally supported inclusion of the advice note as set out.

[242] We accept the submission from the Council. However, as a consequence of our drafting consistency changes, we address this in a single statement applying to all commercial zones.

Residential — Medium Site Density Rule

[243] In the Notified Version, Rule 14.13.3.11 imposed a 200m² minimum site density rule for the CCRZ. VNA sought the deletion of that minimum site density rule.

[244] VNA takes the position that the compulsory rule is not required because residential density is already close to the target of 50 households per hectare. It said that intensification had continued to increase with the introduction of steeper recession planes and other enabling rules in January 2015. It further submitted it was ineffective as it regulated household rather than residence, and it was VNA's belief that larger dwellings are more likely to attract families and longer-term residents. It submitted that larger developments are able to avoid the rules if they wish, by subdividing titles, so the provision was not equally enforceable. It was submitted it was not efficient in that it added levels of complexity at a resource consent stage to those wanting to build a family home in the CCRZ. Finally, it is not consistent with the CCRP's goal of encouraging a variety of housing types and a variety of people (including families) to live in the Central City.

[245] Both the Council and the Crown submitted that this was inconsistent with CCRP to remove the rule entirely.[95] It was the Crown position that deletion would be inconsistent with the explicit direction in the CCRP to insert a CCRZ minimum residential density Rule 4a.3.9

[95] Closing submissions for the Crown at 11.1, agreeing with the views expressed in the evidence in chief of Scott Blair on behalf of the Council at 8.12; and rebuttal evidence of Scott Blair at 3.20.

into the Operative Plan as a critical standard (contravening a critical standard is a non-complying activity). That states:[96]

> **4a.3.9 MINIMUM RESIDENTIAL DENSITY**
>
> The minimum residential site density to be achieved when a site is developed or redeveloped with a residential unit or units shall be not less than one residential unit for every 200m² of site area.

[246] It is perhaps appropriate to note at this stage in relation to the VNA concerns, that there is a large mix of activity within the Four Avenues. In many areas commercial and residential exist side by side, and there are a number of professional offices serving medicine, law and others. It is probably fair to say that there remain relatively small pockets of pure residential. But residential is still supported, although many would see it as quite different from suburban living.

[247] We accept the submission that the deletion of the rule would clearly be inconsistent with the CCRP.

[248] However, the Crown accepted that the views expressed by Professor Kelly (on behalf of VNA) and by the Chair meant that the rule and assessment matters as proposed at the time of the hearing could lead to unintended consequences.[97] As the Crown noted in its submission:[98]

> In particular, the CCRP policy framework favours both an increase in the number of residents in the Central City (including an overall increase in housing density), and flexibility and variety in available housing types within the Central City. Flexibility and variety is also important in encouraging an increased number of residents in the Central City, and in the retention of existing residents such as those represented by the VNA.

[249] We also note that submitter Mr Dyhrberg and others also supported a change to the rule on a zone-wide basis, but opposed its deletion.[99]

[250] We are satisfied the concerns expressed are picked up by the Council in the Revised Version. That provides that an RDA is appropriate for the rule and the amendments to the

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96 Christchurch Central Recovery Plan Residential chapter — January 2015 'A Liveable City', page 27.
97 Transcript, page 369, line 10 to page 370, line 17; page 438, lines 4–12.
98 Closing submissions for the Crown at 11.2.
99 Peter Dyhrberg, Alister and Sue James, Alistair and Carla Humphrey, Dr Anna Louisa De Laundey Crighton QSO, JP (3688).

matters of discretion assist in addressing the concerns raised by the VNA. Finding it the most appropriate for achieving related objectives, we have included that in our Decision Version.

Non-residential activities

[251] VNA is concerned that there is not enough protection given to discourage large-scale non-residential activity in the CCRZ. They seek the deletion of Rule 14.13.3.11 so that a variety of dwelling types can be built, which we have rejected above. They also seek to ensure residential land is used only for that purpose by declining individual applications to rezone CCRZ properties to business or mixed use zoning. They seek protection of residential amenity so the Central City is an attractive place to live long-term (we note that this includes ensuring late-night sale and supply of alcohol does not apply in close proximity to CCRZ neighbourhoods, which we have dealt with elsewhere). They also seek to strengthen the rules aimed at discouraging non-residential activities in the CCRZ. They consider that non-residential activity should be classified as non-complying because the CCRZ is close enough to Central City, business and mixed use zones that such activities seldom meet the needs of local residential community. We note their submissions contained at paragraph 12 of their closing summary.[100]

[252] Both the Crown and the CCC take the position that there is adequate protection in the rules. Professor Kelly had expressed his opposition on behalf of VNA on the basis that non-residential activities that seek to locate in CCRZ in order to benefit from the zone's high level amenity would, in fact, undermine that amenity.

[253] Mr Gimblett, on behalf of the Crown, accepted the wording in the latter part of the policy could be clarified to ensure that non-residential activity had some inherent requirement for the high amenity environment, without being inconsistent with the CCRP. Based on his evidence, the Crown suggested in closing that Policy 14.1.6.8(c) could be re-worded as follows:[101]

> To ensure non-residential activities meet the needs of the local residential community ~~or would benefit from~~or require the high level of amenity inherent in the Central City Residential Zone.

We agree that this is an appropriate change.

100 Closing summary for the VNA at 12.
101 Closing submissions for the Crown at 12.4.

[254] As to the rules, we accept Mr Gimblett's evidence that the detail and caveats they specify and the case-by-case assessment that would be provided for through resource consent application processes would be sufficient to avoid any proliferation of metropolitan-scale community facilities at the expense of residential opportunity or amenity.[102] For non-residential activities, the Decision Version specifies a 40m² area limit for permitted activities and a 40–200m² range for discretionary activities. Greater flexibility is provided for such activities on Fitzgerald Avenue and Bealey Avenue (between Durham Street North and Madras Street). We consider those limits appropriate, given the evidence of Mr Gimblett that we have accepted.

[255] We have made a number of drafting changes for greater clarity and consistency. Accordingly we reject the VNA submission, and have modified the Revised Version in the way we have described, being satisfied this is the most appropriate for achieving related objectives.

Ryman Healthcare, Park Terrace

[256] As noted in previous decisions, Dr Mitchell recused himself from considering matters concerning this submitter.[103]

[257] Although a large measure of agreement had been reached, some matters remained for determination.

[258] It was the submission of Ryman Healthcare Limited and the Retirement Villages Association of New Zealand Incorporated (3317) ('Ryman'), supported by the evidence of Mr John Kyle, that retirement villages in the Central City require a bespoke policy framework. This was said to be for:[104]

> 6.1 Providing appropriate accommodation and care for the elderly is a significant resource management issue. It requires different provision separate to the general issue of ensuring there is adequate housing for the wider population.
>
> 6.2 The Council has accepted the need for a bespoke rule framework for retirement villages, separate from the rules applying to residential activities. That rule framework should be supported by specific policies for retirement villages.

102 Rebuttal evidence of Mr Gimblett at 6.2–6.3.
103 For example, Decision 10: Residential — Stage 1 at [173].
104 Closing submissions for Ryman.

> 6.3 The built form of retirement villages differs from other typical residential development due to their operational and functional needs.
>
> 6.4 It would be consistent with the Panel's Stage 1 decision to provide specific policy provision for retirement villages.

[259] Mr Hinchey accepted that retirement villages are generally residential in nature as they involve the use of the land and/or buildings for the purposes of living accommodation in accordance with the term 'residential activity'. But he noted that retirement villages also include services and/or amenities for residents (including a range of care facilities). This was recognised by the CCC, but also by the Panel in Decision 10: Residential.[105] We are satisfied, not just for reasons of consistency, that retirement villages require their own set of bespoke provisions in the CCRZ. Consistency would require similar provisions in both Stage 1 Residential and the Central City for retirement villages.

[260] As the relevant Residential provisions meet the concerns of Ryman and apply to the Central City, we have found it unnecessary to include the specific Central City provisions sought by this submitter.

[261] In relation to internal amenity, Ryman submitted the position taken by the Panel at [331] of Decision 10 accepted Ryman and the RVA's position that there is a lack of need for regulatory intervention at this time relating to 'internal amenity'.[106] What the Panel actually said was:

> Considering costs, benefits and risks, we have decided against imposing internal amenity controls on retirement villages. On this matter, we accept the position of Ryman and the RVA that there is no evidence at this time that there is a problem requiring intervention. ... Also, we have noted that the Council did not seek to address this topic in its closing submissions and took from that some concurrence with the retirement village sector position as to the lack of any need for regulatory intervention at this time. However, we record that this is a matter where the Council, as plan administrator, has an ongoing plan monitoring responsibility.

[262] CCC continued to oppose this, as the provisions still included matters of assessment for internal layouts.

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105 Decision 10: Residential (Part) — Stage 1.
106 Closing submissions for Ryman at 7–10.

[263] In a Minor Correction Decision, the Panel has made a correction in that regard to ensure that the provisions accord with our finding at [331] of Decision 10.[107] We can see no reason why the same should not apply in the Central City, and the Decision Version reflects this.

[264] The Panel, through Ms Dawson, questioned Mr Kyle on the rule cascade that applied if a retirement village proposal does not comply with built form standards. He accepted RDA was an appropriate activity standard and he confirmed that any catch all rule for breaches of development control should equally apply to retirement villages. In a table contained at paragraph 12 of Ryman's closing submissions, it was submitted that no catch all rule applied. In the Decision Version, we have included an RDA to catch breaches of applicable built form standards.

[265] We note that in the course of the hearing Ryman and CCC reached agreement for a height limit of 20 metres for 78 Park Terrace, as sought by Ryman.[108] Both Mr Bird and Mr Kyle were questioned about this increase but we are satisfied on their evidence and the concession of CCC that it should be approved and we have included it in the Decision Version. It is a matter that the Crown submitted on in closing and Mr Gimblett suggested some wording.[109] We consider this wording appropriate and have used that in the Decision Version (with some minor drafting clarity changes).

[266] Finally, there is the question of whether or not it was appropriate to presume non-notification for applications for retirement buildings in the CCRZ where they comply with applicable built form standards.

[267] In closing, Ryman argued for non-notification subject to certain matters. Mr Hinchey submitted that the fact that no other parties submitted on the Ryman submission suggests that they are either supportive of or ambivalent about the proposal. Mr Hinchey further submitted that allowing notification for a future consent proposal that was in accordance with the development controls of the then Operative Plan would essentially reopen the question of what is before the Panel for determination.

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107 Residential (Part) Planning Maps and Minor Corrections to Decision 10, 1 July 2016 at [11]–[13].
108 Closing submissions for the Council at 11.1.
109 Closing submissions for the Crown at 13.1.

[268] The CCC in closing submitted that Mr Kyle supported non-notification where built form standards were met.[110] However, it then went on to say that Ryman's closing submissions state they supported a non-notified RDA for retirement village buildings "with no requirement to comply with built form standards."

[269] We did not find this in the closing and do not think it accurately reflects what was said in closing. In fact, it is contrary to the last sentence of paragraph 16 of that closing. Rather, it comes from a table at paragraph 12.[111]

[270] We consider it appropriate for non-notification where built form standards are met, but not otherwise. The Decision Version reflects that, in a manner that is consistent with our approach to similar notification rules for other activities. We are satisfied, therefore, that the Decision Version is the most appropriate for achieving related objectives.

Screening of outdoor storage and service areas

[271] The Crown sought that screening of outdoor storage and service areas in the CCBZ be partly transparent to allow passive surveillance. Ms Eaton, for the Crown, supported this as being consistent with Crime Prevention Through Environmental Design ('CPTED') principles.[112]

[272] While accepting the importance of CPTED principles, Mr Stevenson and Mr Nicholson, on behalf of the Council, noted that requiring some transparency may negate the intended purposes of the screening and adversely affect neighbouring amenity.[113]

[273] In its closing, the Crown stated that it did not have a strong view either way on this issue.[114] Having considered the evidence of Ms Eaton and Messrs Stevenson and Nicholson in relation to these two competing issues, we accept the evidence of Mr Stevenson that the risk of

110 Closing submissions for the Council at 11.4, referring to transcript, page 264, lines 14–37; Evidence in chief of John Kyle at 5.12.
111 Closing submissions for Ryman at 12, with a footnote reference to the evidence in chief of John Kyle at page 18.
112 Evidence in chief of Rachael Eaton at 7.21–7.25.
113 Transcript, page 40, line 34 to page 41, line 2 (Stevenson); page 75, lines 5–30 (Nicholson).
114 Closing submissions for the Crown at 5.3.

potential adverse effects for neighbouring properties needs to be managed. We have retained the screening rule in the Revised Version.

Character overlay

[274] By the time of closing, submitters Mr Dyhrberg and others sought changes to Rule 14.13.3.11 relating to minimum site density control applying across the whole CCRZ. We have already dealt with that. Secondly, and more importantly for present purposes, they sought introduction of a character area overlay to apply to a defined area of land where an additional regime of urban design principles would govern development according to the triggers identified in the rules agreed between Ms Schröder for the Council and Ms Lauenstein for the submitter (the Character Area package).

[275] This submission relates to an area of land in Chester Street East. Initially there was some debate as to the exact area of land concerned, and whether or not residents had agreed to it. It is clear that initially not all residents or owners had been approached, but this was matter ultimately clarified when the Panel set down an additional hearing. It is also clear that not all residents in the relevant block agree with it, particularly the Baptist church.

[276] The particular matter raises a significant legal issue. In the Operative Plan there were a number of special amenity areas (SAMs) which included the area where a 'Character Overlay' is sought. It is to be noted that at a very late stage another group of residents, the Inner City West Neighbourhood (ICON) made an application for their area to be treated similarly. We granted leave to file a late submission, and heard that submission from Ms Shand on 25 May 2016. They explained the reasons for the lateness, but it did cause considerable inconvenience. Because of the conclusion we have reached on the legal point, we do not need to deal with that separately.

[277] The original draft of the CCRP recognised the existing SAMs, but these were specifically removed by the Minister. Notwithstanding that, it was the position of these submitters and the CCC that what they sought was not inconsistent with the CCRP. The Crown said that the character area simply reintroduced the SAM and was not only inconsistent, but totally at odds, with the CCRP.

[278] The submitters called Mr William Fulton, who had experience in architecture and landscape architecture, with a special interest in historic heritage. In his evidence, he supported the character nature of the block bounded by Madras, Barbadoes, Armagh and Chester Streets that we are concerned with. The submitters argued that historic heritage is a component that contributes to the amenity values of an area, and they are matters to which the Panel must have particular regard under s 7(c) of the RMA. The submitters considered the identified areas warrant the same treatment as that applied to the Lyttelton and Akaroa Character Areas in Decision 17: Residential (Part) — Stage 2. They accepted that there could be circumstances where consents might need to be turned down, and where conditions may not be sufficient for avoiding or mitigating adverse effects on the environment. They submitted that RDA would be the most appropriate method to employ here for implementing the policies and objectives of the Plan and, more particularly, Part 2 of the RMA.

[279] The submitters, CCC and the Crown each addressed the meaning of "not inconsistent with". Section 23 of the CER Act requires that any decision we make is not inconsistent with the CCRP.[115] We were referred to our own definition of 'inconsistent', adopted from the Shorter English Dictionary in the Strategic Directions chapter, as "incompatible" and "not in keeping with".

[280] For the submitters, Ms Steven QC directed us to our finding, in consideration of *Canterbury Cricket Association Inc*,[116] at [60] of Decision 1: Strategic directions and strategic outcomes:

> That case treated the phrase as allowing for judgment to be exercised of the scale or degree of variance allowable in the particular circumstances. We agree that this is a helpful expression of the intention in s 23.

[281] Ms Steven referred to the fact that the 'not inconsistent with' test once appeared in s 75(2) of the RMA addressing the relationship between a District Plan and a Regional Policy Statement. She cited the Environment Court in *Suburban Estates Limited v Christchurch City Council* where it was stated:[117]

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115 OIC, cl 14(4) specifies that we must comply with s 23 of the CER Act as if we were making a decision under the RMA. The repeal of the CER Act by the GCRA does not alter our legal responsibilities on this matter.

116 *Re Canterbury Cricket Association Incorporated* [2013] NZEnvC 184.

117 Closing submissions for Peter Dyhrberg and Others at 65, referring to *Suburban Estates Limited v Christchurch City Council* [2001] NZEnvC 433; C217/2001 (6 December 2001) at [324]. We note that

> We consider section 75(2) implies a threshold over which any proposed provision must pass. However, the step is a low one — it does not require "consistency with", but uses the double negative "not inconsistent with", which is lower than consistency. In logical terms, the law of the excluded middle does not apply. Rather there is a spectrum from 'identity' to 'opposite' with:
>
> (1) both 'consistent' and "not inconsistent" coming between;
>
> (2) those terms placed some distance apart from each other; and
>
> (3) with "not inconsistent" being closer to "opposite".
>
> For example, to introduce some colour to the bleached world of logic: in the spectrum between violet and yellow, blue is "consistent" with violet, and green is "not inconsistent" with violet, even though green is closer to yellow on the spectrum.

[282] She further cited from the decision in *Clevedon Cares Inc v Manukau City Council*:[118]

> [50] Section 75(3) requires that the Plan Change *"must give effect to"* the operative Regional Policy Statement. We agree with Mr Allan, that with respect to Section 75(3) of the Act, the change in the test from *"not inconsistent with"* to *"must give effect to"* is significant. The former test allowed a degree of neutrality. A plan change that did not offend the superior planning instrument could be acceptable. The current test requires a positive implementation of the superior instrument. As Baragwanath J said in *Auckland Regional Council v Rodney District Council*:[119]
>
> > This does not seem to prevent the District Plan taking a somewhat different perspective, although insofar as it would be inconsistent, it would be ultra vires. (The 2005 Amendment to Section 75, requiring a District Plan to "give effect to" national policy statements, NZCPS and Regional Policy Statements, now allows less flexibility than its predecessor.)
>
> [51] The phrase *"give effect to"* is strong direction. This is understandably so for two reasons:
>
> [a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and
>
> [b] The Regional Policy Statement, having passed through the Resource Management Act process, is deemed to give effect to Part 2 matters.

[283] She endorsed the CCC's opening legal submission that suggested an appropriate approach for the Panel is to ask itself:[120]

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the submissions incorrectly titled the Environment Court decision "Canterbury Regional Council v Christchurch City Council".

118 Closing submissions for Peter Dyhrberg and Others at 66, referring to *Suburban Clevedon Cares Incorporated v Manukau City Council* [2010] NZEnvC 211 (22 June 2010).

119 *Auckland Regional Council v Rodney District Council* [2009] NZCA 99; (2009) 15 ELRNZ 100; [2009] NZRMA 453 (26 March 2009) at [12].

120 Closing submissions for Peter Dyhrberg and Others at 67, referring to *Canterbury Cricket*, footnote 34, and *Norwest Community Action Group Inc v Transpower New Zealand Limited* A113/01, 29 October 2001 at [55]–[56] respectively. See also opening submissions for the Council at 3.8.

(a) Are the provisions of the pCRDP compatible with the provisions of the Higher Order Documents?

(b) Do the provisions alter the essential nature or character of what the Higher Order/Recovery Documents allow or provide for?

[284] Ms Steven did not accept the Crown's position as to the heavy weight it placed on the removal of the SAMs from the CCRZ. She reviewed the Crown's submission and the CCRP directions for review. She submitted that, for the purposes of our inquiry, it would be appropriate for the Panel to ask:

(a) Whether the introduction of (only one) Character Area Package to the Identified Area within the one Living Zone located within the Central City area, re-introduces "unduly and unnecessary complex" provisions, being that which the Minister sought to remove; and

(b) Whether the introduction of the Character Area Package would introduce measures not considered to be effective in light of the circumstances prevailing in the Identified Area.

[285] She said the submitters say both questions are able to be answered in the negative. She said it was essential for the Panel to bear in mind the overarching CCRP for "creating a high quality inner city living environment". She said the submitters' position was that this would be met by allowing the requested relief.

[286] The CCC submitted that they adopted the Crown's approach to inconsistency, but notwithstanding that, supported the closing of the submitters and agreed that the inclusion of an RDA consent status is the most appropriate way of implementing the policies. The CCC said that this would not offend the CCRP in terms of being compatible with, or not altering, the essential nature or character of what the CCRP allows and provides for.

[287] The Crown referred us to the Higher Order Documents, including Objective 3.3.1, and noted that they and the Strategic Directions decision direct the Central City provisions must:[121]

121 Opening submissions for the Crown at 3.4.

(a) support a thriving Central City

(b) increase housing supply

(c) enable economic prosperity

(d) use infrastructure efficiently and effectively

(e) support social and cultural activities of the community

(f) encourage innovation, choice and flexibility

(g) reduce consenting and notification requirements and the number, extent and prescriptiveness of development controls and design standards; and

(h) be clear, concise and easy to use.

[288] It then turned to the consistency of what is sought in this submission with the provisions of the CCRP.

[289] The Crown adopted what we said at [60] and [61] of the Strategic Directions decision and then submitted helpful guidance could be obtained from case law. It referred initially to *Canterbury Regional Council v Waimakariri District Council*, and noted that the Environment Court considered the word "inconsistent" as meaning in terms of the decision "not in keeping: discordant; or incompatible".[122] The Court went on to cite with approval an early hearing commissioner's statement that:[123]

> … Not everything which fails to promote (etc) is 'inconsistent' with those provisions, even if 'consistent' is understood in the sense of 'conform'. The reason for this is that a District Plan will only fail to promote (etc) the things in question if it does nothing at all to bring them about. Whether or not it has promoted (etc) them enough is a 'submission' issue for debate on the merits, not something to be dealt with on a vires point.

122 Opening submissions for the Crown at 4.5, referring to *Canterbury Regional Council v Waimakariri District Council* [2002] NZEnvC 20; [2002] NZRMA 208 at [79].

123 Ibid, at [81].

[290] The Crown referred next to *Bay of Plenty Regional Council v Western Bay of Plenty District Council*,[124] a case dealing with a map in a district plan that was not precisely in line with a map in a regional plan, where the Court accepted the plan was "sufficiently comparable and not at odds in degree or purpose as to be impermissibly inconsistent".[125]

[291] The Crown accepted a strict line-by-line approach was not required, but rather attention should be given to the essential nature, character or thrust of the CCRP, noting amendments could be made to Replacement Plan provisions where they remain "sufficiently comparable and not at odds in degree or purpose as to be impermissibly inconsistent" with the CCRP.[126]

[292] We find the evidence and submissions informative in undertaking the necessary inquiry in applying the above statement of the legal position, which we accept.

[293] Ms Schröder and Mr Blair for the Council, and Ms Lauenstein for the submitters, all accepted that all SAMs within the central city were deliberately removed from the Operative Plan through the CCRP.[127] In cross-examination Mr Blair was asked:[128]

> MR RYAN: And what you are proposing with Chester Street East is to effectively reintroduce a character overlay for what was previously SAM 30?
>
> MR BLAIR: Yes, that is correct.

[294] Ms Schröder was questioned by Judge Hassan and the Chair, and at page 231:[129]

> JUDGE HASSAN: ... You are asking us to consider a set of provisions for a character area overlay.
>
> MS SCHRODER: Yes, that is right, yes.
>
> JUDGE HASSAN: The Crown's submission is that it is inconsistent and therefore we cannot consider it.
>
> MS SCHRODER: Yes, that is right.
>
> JUDGE HASSAN: Inconsistent with the Recovery Plan.
>
> MS SCHRODER: Yes.

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124 Ibid.
125 At [75].
126 Opening submissions for the Crown at 4.7.
127 Transcript, page 223, lines 21–29 (Ms Schröder); page 385, lines 25–30 (Mr Blair); page 422, lines 8–12 (Ms Lauenstein).
128 Transcript, page 383, lines 31–35.
129 Transcript, page 231, lines 10–46.

JUDGE HASSAN: I want to know whether or not, looking at what you propose in substance, is it substantially the same as the SAM that was before the Council and the Crown at the time the Central City Recovery Plan was made?

MS SCHRODER: Yes, I believe it is.

JUDGE HASSAN: Thank you.

SJH: And it is correct, as I understand it, you conceded to Mr Ryan that this is not consistent with the Central City Recovery Plan?

MS SCHRODER: Yes, that is right.

[295] Further, Ms Schröder was cross-examined in relation to the Statement of Expectations, and she accepted the reinstatement would not accord with the requirement in the Statement of Expectations to significantly reduce, compared to the operative plan, reliance on consent processes, and nor would it comply with Objective 3.3.2 of the Strategic Directions seeking to minimise transaction costs.[130]

[296] We note Mr Blair was more reluctant to concede any inconsistency between the CCRP and the reintroduction of a character area. He was asked by the Panel whether:[131]

SJH: … as a matter of plain logic on its face where the Minister has deliberately chosen to remove one, to reintroduce something this similar is inconsistent?

MR BLAIR: On its face, yes, sir.

SJH: And the route that you arrive at, and you went through those other documents, and I will come back to them in a moment with Ms Steven, it is a somewhat more tortured reasoning process, would that be a fair comment?

MR BLAIR: Yes, sir.

[297] While we recognise the concern of the submitters, what is sought by them in reintroducing this character area overlay is to effectively replace the SAM that was deliberately removed by the Minister. We cannot accept Ms Steven's submission that such a course is "not inconsistent" with the CCRP. With respect, it seems to us to directly contradict what was done in the CCRP by removing the SAM (as framed by Ms Steven at [283]).

[298] Looking at those two questions: first, are the provisions of the character overlay put forward compatible with the provisions of the Higher Order Documents? On the evidence, we

130 Transcript, page 226, lines 25–34.
131 Transcript, page 400, lines 32–43.

find the answer to that must be "no", as it is in direct contradiction to what the Minister did in removing SAMs. Do the provisions alter the essential nature or character of what the Higher Order/Recovery Documents allow or provide for? On the evidence, we find the answer must be "yes". The character overlay sought does alter the essential nature or character of what the CCRP allows or provides for. Therefore, we cannot answer the questions framed by Ms Steven at [283] as she has sought.

[299] We also accept the Crown's submission that it would be inconsistent with the CCRP to impose additional restrictions on a residential development by some other means, without necessarily utilising a character area overlay. At 14.7 of their closing submissions they give examples of possible ways of dealing with this that would be inconsistent. That is effectively what is done with the package agreed between Ms Schröder and Ms Lauenstein.

[300] We also note that the position we have reached of inconsistency is essentially that acknowledged by Ms Schröder, and eventually conceded to, albeit reluctantly, by Mr Blair.

[301] We do note that the Crown considered it was possible, and was prepared to give more express recognition of residential character within the existing assessment framework, which would not offend the "not inconsistent" test.

[302] The Crown supported the mediated amendment to the urban design assessment matter at 14.14.36(a)(iii)(B) in the updated proposal, to include explicit reference to "neighbourhood context" as follows:

> a. The extent to which the development, while bringing change to existing environments:
>
> …
>
> iii. has appropriate regard to:
>
> …
>
> B. <u>neighbourhood context</u>, existing design styles and established landscape features on the site or adjacent sites.

[303] We agree with the Crown that such an amendment would allow the consent authority to assess resource applications for new multi-unit developments which would have regard to the surrounding context, including the character of that area.

[304] At an earlier stage the submitter, through Ms Steven, sought notification pursuant to our OIC powers. We declined that, and said we would give reasons in this decision. Given we are satisfied that what is sought by the submitter fails the "not inconsistent" test, it would be pointless to notify anything further.

[305] Finally, our decision in relation to this submission also answers the submission of ICON. Accordingly, both these submissions are rejected. We find that the extent of change that is appropriate is the change to urban design assessment matter we have described at [302]. For those reasons, we are satisfied that the Decision Version duly responds to the Higher Order Documents and is the most appropriate for achieving the related objectives on this matter.

Other changes for coherence and consistency

[306] As we have noted, this decision is concerned with provisions to be included in several CRDP chapters. We have also determined that we should make related coherence and consistency changes to other provisions of some of those chapters. Those provisions were as determined by earlier Panel decisions. However, cl 13(5) of the OIC specifies that, while considering a proposal, we may reconsider any decision the Panel has already made on another proposal if we consider it is necessary or desirable to do so to ensure that the CRDP is coherent and consistent. For those purposes, we have made some minor drafting refinements to provisions in the following chapters:

(a) Chapter 7 Transport

(b) Chapter 12 Hazardous Substances and Contaminated Land

(c) Chapter 14 Residential

(d) Chapter 15 Commercial

(e) Chapter 21, in relation to the Specific Purpose Cemetery, Hospital, School and Tertiary Education zones.

[307] We record that, while we find these changes improve the overall coherence and consistency of these chapters as part of the CRDP, we consider there is further room for

improvement. As such, we also record that this decision does not necessarily preclude further cl 13(5) changes being made to those or other chapters by other Panel decisions.

Definitions

[308] The Panel has deferred its consideration of relevant definitions to the Chapter 2 Stage 2 and 3 decision, to be issued in due course. To the extent that any consequential changes may arise from the definitions, we will address those at that time.

Council's s 32 Report

[309] We find the Council's s 32 Report is suitably robust and sound in all relevant respects in relation to the Notified Version. That version has, of course, been superseded by changes in the Decision Version to which our above findings apply.

Section 32AA evaluation

[310] The findings we have set out on the evidence satisfy us that, as a whole and in its individual provisions, the Decision Version properly gives effect to the CRPS, is not inconsistent with the CCRP, properly responds to the Higher Order Documents, properly recognises RMA principles, and is the most appropriate in the terms specified in s 32, RMA. That is in particular in the fact that they are the most effective and efficient, in our consideration of benefits and costs. They also bring greater clarity and certainty, as is consistent with the OIC Statement of Expectations.

CONCLUSION

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

[312] 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.

For the Hearings Panel:

Hon Sir John Hansen
Chair

Environment Judge John Hassan
Deputy Chair

Dr Phil Mitchell
Panel Member

Ms Jane Huria
Panel Member

Ms Sarah Dawson
Panel Member

SCHEDULE 1

Changes our decision makes to the following chapters:

Chapter 7 — Transport

Chapter 8 — Subdivision, Development and Earthworks

Chapter 11 — Utilities and Energy

Chapter 12 — Hazardous Substances and Contaminated Land

Chapter 14 — Residential

Chapter 15 — Commercial

Chapter 21.2 — Specific Purpose (Cemetery) Zone

Chapter 21.5 — Specific Purpose (Hospital) Zone

Chapter 21.6 — Specific Purpose (School) Zone

Chapter 21.7 — Specific Purpose (Tertiary Education) Zone

SCHEDULE 2

Agreed position confirmed by memoranda prior to commencement of hearing

Submitters/Parties	Memorandum	Date
Christchurch City Council and Pegasus Health (Charitable) Limited (3250)	Joint Memorandum of Counsel between the Christchurch City Council and Pegasus Health (Charitable) Limited (3250) regarding Proposal 13 – Central City	1 December 2015
Christchurch City Council and Cancer Society of New Zealand Canterbury-West Coast Division Inc. (3051)	Joint Memorandum on behalf of Christchurch City Council and Cancer Society of New Zealand Canterbury-West Coast Division Inc.	4 December 2015
Christchurch City Council and Victoria Neighbourhood Association Inc (3611)	Joint Memorandum on behalf of the Christchurch City Council and Victoria Neighbourhood Association Inc recording agreement regarding amendments to Mediation Report	6 January 2016
Te Rūnanga o Ngāi Tahu and Ngā Rūnanga (3722)	Memorandum of Counsel on behalf of Te Rūnanga o Ngāi Tahu and Ngā Rūnanga regarding the Central City Proposal (Chapter 13) and Subdivision and Earthworks Proposal (Chapter 8)	18 January 2016
Ceres New Zealand Limited (3334)	Memorandum of Counsel as to Hearing Participation (Submitter 3334 and Further Submitter 5001)	18 January 2016
Arts Centre of Christchurch Trust Board (3275)	Memorandum of Counsel on behalf of the Arts Centre of Christchurch Trust Board seeking leave to be excused	26 January 2016
Christchurch City Council and Rhoad Limited (3276)	Joint Memorandum of Counsel for Rhoad Limited and the Christchurch City Council	10 February 2016
Christchurch City Council, Canterbury District Health Board (3696) and the Canterbury Earthquake Recovery Authority (for an on behalf of the Ministry of Health) (3721)	Memorandum of Counsel for the Canterbury District Health Board, the Canterbury Earthquake Recovery Authority (for an on behalf of the Ministry of Health) and the Christchurch City Council regarding Central City Hospital provisions in Proposal 13: Central City Hearing; and appearance of witnesses at the hearing	10 February 2016
Gracefield Avenue Residents (3208) and the Victoria Neighbourhood Association (3611)	Confirmation of Agreement of Marjorie Manthei, on behalf of Gracefield Avenue Residents (3208) and the Victoria Neighbourhood Association (part of 3611)with the Memorandum of Counsel for the Canterbury District Health Board (3696), the Canterbury Earthquake Recovery Authority (for and on behalf of the Ministry of Health (3721) and the Christchurch City Council re Central City Hospital provisions in Proposal 13: Central City Hearing, including appearance of scheduled submitter at the hearing	10 February 2016

Agreed position confirmed by memoranda after commencement of hearing

Submitters / Parties	Memorandum	Date
Carter Group Limited (3602), the Crown (3721) and Christchurch City Council	Joint Memorandum of Counsel for Carter Group Limited (submitter 3602/FS5062), Canterbury Earthquake Recovery Authority on behalf of the Crown (submitter 3721) and Christchurch City Council with respect to the transport provisions of the Central City proposal (Stage 3)	12 February 2016
Canterbury Regional Council (3629)	Memorandum of Counsel for the Canterbury Regional Council	19 April 2016

SCHEDULE 3

Table of submitters heard

This list has been prepared from the index of appearances recorded in the transcript, and from the evidence and submitter statements shown on the Independent Hearing Panel's website.

Submitter Name	No.	Person	Expertise or role if witness	Filed/Appeared
Christchurch City Council	3723	AS Blair	Planner	Filed/Appeared
		PN Eman	Planner	Filed/Appeared
		A Long	Planner	Filed/Appeared
		HA Nicholson	Urban designer	Filed/Appeared
		PM Osborne	Economist	Filed/Appeared
		J Schroder	Urban designer	Filed/Appeared
		MD Stevenson	Planner	Filed/Appeared
		T Cheesebrough	Transport planner	Filed
		P Dickson	Drainage engineer	Filed
		G Dixon	Planner	Filed
		D Falconer	Transport planner	Filed
		M Gregory	Traffic engineer	Filed
		S Jenkin	Planner	Filed
		E Jolly	Urban designer	Filed
		A Milne	Transport planner	Filed
		B O'Brien	Planning engineer	Filed
Crown	3721	RL Eaton	Urban designer	Filed/Appeared
		K Gimblett	Planner	Filed/Appeared
		MDD Ogg	Valuer	Filed/Appeared
		APH Willis	Planner	Filed/Appeared
		I Mitchell	Property	Filed/Appeared
		H Anderson	Planner	Filed
		A Bargh	Transport planner	Filed
		I Clark	Transport planner	Filed
		C Kelly	Planner	Filed
		D Miskell	Earthquake recovery	Filed
		R Shaw	Planner	Filed
		N Yozin	Planner	Filed

Submitter Name	No.	Person	Expertise or role if witness	Filed/Appeared
Canterbury District Health Board	3696	S Dodd	Alcohol harm advisor	Filed/Appeared
		A Willis	Planner	Filed
		B Cabell		Filed
Victoria Neighbourhood Association Inc; Avon Loop Planning Association	3611 3956	Professor D Kelly		Filed/Appeared
Victoria Neighbourhood Association Incorporated M Manthei on behalf of Gracefield Ave & Durham St Residents	3611 3208	Dr M Manthei		Filed/Appeared
Victoria Neighbourhood Association Inc and Robert Manthei	5020 / FS5022	Professor R Manthei		Filed/Appeared
Church Property Trustees	3610	RC Nixon	Planner	Filed/Appeared
Ryman Healthcare Ltd Retirement Villages Ass of NZ	3317	C Bird	Planner	Filed/Appeared
		J Kyle	Planner	Filed/Appeared
Pacific Park Investments Limited	3459	M Bonis	Planner	Filed/Appeared
		M Bremner		Filed/Appeared
		M Copeland	Economics	Filed/Appeared
Carter Group Limited	3602, FS5062	P Carter		Filed/Appeared
		D Compton-Moen	Urban designer	Filed/Appeared
		J Phillips	Planner	Filed/Appeared
		N Fuller	Transport engineer	Filed
P Dyhrberg, A & S James, QSO, JP Alistair & C Humphrey, Dr A Crighton	3688	N Lauenstein	Urban designer	Filed/Appeared
		W Fulton	Heritage architect	Filed/Appeared
		Dr A Crighton		Filed/Appeared
Papanui Road Limited	3685	J Murdoch		Filed/Appeared
		D Thorne	Planner	Filed/Appeared
Christchurch Casinos Ltd	3291	K Andrew	Planner	Filed/Appeared
		T Bergin		Filed/Appeared
Rowan Muir on behalf of Generation Zero	3251	R Muir		Filed/Appeared
The Girl Guide Association New Zealand Inc	5096	K Hilton		Appeared

Submitter Name	No.	Person	Expertise or role if witness	Filed/Appeared
Oxford Terrace Baptist Church	5085	C Chamberlain		Appeared
		R Robson		Appeared
ICON (Inner City West Neighbourhood Assoc. Inc.)	3607	D Shand		Appeared
Ceres New Zealand Ltd	3334	B de Vere		Filed
McDonald's Restaurants (NZ) Ltd	3699	M Norwell	Planner	Filed
Orion New Zealand Limited	3720	S Watson	Network asset engineer	Filed
		P Lemon	Planner	Filed
Rhoad Limited	3276	D Chrystal	Planner	Filed
		J Clease	Planner/urban designer	Filed
		SM Wakefield		Filed