BEFORE THE CHRISTCHURCH REPLACEMENT DISTRICT PLAN INDEPENDENT HEARINGS PANEL


AND

IN THE MATTER of the Central City Proposal (Stage 3)

OPENING LEGAL SUBMISSIONS FOR CHRISTCHURCH CITY COUNCIL ON CENTRAL CITY PROPOSAL

10 FEBRUARY 2016

Simpson Grierson
Barristers & Solicitors
J G A Winchester / S J Scott / C J McCallum
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140
# TABLE OF CONTENTS

1. INTRODUCTION......................................................................................................................... 2
2. SCOPE OF THE HEARING........................................................................................................... 2
3. OVERVIEW OF THE COUNCIL’S GOALS FOR THE CENTRAL CITY .................. 3
4. SUMMARY OF THE LEGAL ISSUES......................................................................................... 7
5. SUMMARY OF OUTSTANDING ISSUES FOR THE PANEL’S CONSIDERATION 8
6. MEMORANDA RECORDING AGREEMENT.............................................................................. 12
7. COMMERCIAL AND MIXED USE............................................................................................ 12
8. TRANSPORT............................................................................................................................ 17
   New and Stopped Roads ............................................................................................................. 17
   Activity status of certain transport provisions ........................................................................ 19
9. SUBDIVISION AND EARTHWORKS...................................................................................... 21
10. RESIDENTIAL ....................................................................................................................... 22
11. SUMMARY OF OUTSTANDING ISSUES FOR SUB-TOPICS ........................................ 25
12. REZONINGS ......................................................................................................................... 25
13. OPERATIVE TEMPORARY EARTHQUAKE RECOVERY ACTIVITIES –
    DECISION 9 .......................................................................................................................... 26
14. WITNESSES ......................................................................................................................... 27
1. INTRODUCTION

1.1 These opening submissions are made on behalf of Christchurch City Council (Council) in respect of the Central City Proposal (Central City) of the proposed Replacement District Plan (pRDP).

2. SCOPE OF THE HEARING

2.1 The scope of this hearing consists of:

(a) the following sub-topics notified within the Central City (Stage 3) Proposal:
   (i) Commercial and Mixed Use zones;
   (ii) Residential zone;
   (iii) Hazardous Substances and Contaminated Land;
   (iv) Specific Purpose (Cemetery) Zone;
   (v) Specific Purpose (Hospital) Zone;
   (vi) Specific Purpose (School) Zone;
   (vii) Specific Purpose (Tertiary) Zone;
   (viii) Transport;
   (ix) Subdivision; and
   (x) Utilities and Energy.
(b) notified Strategic Objective 3.3.8(c) and (d) Revitalising the Central City (including Stage 3 submissions on Strategic Objective 3.3.8(a) and (b) and those seeking additional subclauses);
(c) definitions notified in 13.17; and
(d) all relevant planning maps.

2.2 The following topics, also notified in Stage 3 as part of the Central City Proposal, are being heard as part of other hearing streams, as indicated below:¹

(a) 13.6.2: Guest Accommodation Zone (General Rules and Procedures hearing);
(b) 13.7: Open Space Zones (Open Space Stage 2/3 hearing);

¹ Further complete details see Attachment D to the Further Application for Order updating Allocation of Notified Provisions from the Central City Proposal to the General Rules and Natural and Cultural Heritage Hearings dated 18 November 2015.
(c) General Rules and Procedures (General Rules and Procedures hearing);

(d) 13.15: Natural Hazards (Natural Hazards Stage 3 hearing); and

(e) Those provisions related to Natural and Cultural Heritage from the following sub-topics:
   (i) Subdivision and Development;
   (ii) Earthworks; and
   (iii) Utilities and Energy (all the Natural and Cultural Heritage Stage 3 hearing).

2.3 As set out in 2.1(a) above, the Central City Guest Accommodation Zone (CCGA) provisions (notified as 13.6.2) are to be heard in the General Rules and Procedures hearing. Carter Group Limited has sought a ‘minimum net area’ for the CCGA that would sit in the Subdivision Chapter, more specifically in 8.2.3.1 Table 1. While the issue of whether this additional minimum net area should be included in the subdivision chapter is within the scope of this hearing, it is respectfully submitted that the appropriateness of that relief is more efficiently considered in the General Rules and Procedures hearing when the Panel is making its decision on the CCGA as a whole.

2.4 In relation to clause (iv) of Objective 15.1.5, the Council also foreshadows that it considers that the most appropriate way forward would be for the Panel to not make a decision on that specific clause, until it has heard all evidence on the issue in the General Rules hearing set down for 11 March 2016. The Council has come to this position after considering the evidence that has been filed on Objective 15.1.5(iv), and the fact that methods to achieve Objective 15.1.5(iv) are located in Chapter 6.

3. OVERVIEW OF THE COUNCIL’S GOALS FOR THE CENTRAL CITY

Christchurch Central Recovery Plan

3.1 The Central City was severely affected by the Canterbury earthquakes of 2010 and 2011. As part of the response to the
earthquakes 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). The CCRP identifies a range of outcomes for the recovery of the Central City and introduced, or amended through statutory directions, a number of provisions in the current Operative City Plan as one means of achieving those outcomes.

3.2 The CCRP contains a vision for central Christchurch, defines the form of the Central City, sets out the locations of key anchor projects, and outlines block plans to show what the city could look like in the future.

3.3 Following the gazettal of the CCRP in July 2013, the following changes have been made to the operative plans, including through the listed variations to the CCRP:

(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.

3.4 Further on in these legal submissions, the CCRP is discussed in more detail. Specifically, our submissions address the Panel’s obligations to “not be inconsistent with” the CCRP.
Central City Proposal

3.5 The Central City Proposal includes many provisions that are unique to this area of Christchurch, which reflects the special significance and circumstances of the Central City. At the time that the Council sent draft proposals to the Ministers for their comment under clause 3(1) of Schedule 1 of the Order in Council for both stages 1 and 2 of the pRDP, there was still residual uncertainty as to the ultimate content of provisions following the Ministers’ on-going reviews of the CCRP. There was no comprehensive suite of provisions for the land within the five avenues. Hence the Central City provisions were not included in the earlier stages and it was necessary to prepare a specific Central City chapter covering all issues relevant to the Central City area.

3.6 While the Central City Proposal includes many provisions that are unique to that area of Christchurch, a significant number of provisions are the same, or the same in part, as those already publicly notified in earlier Stages 1 and 2 that apply outside the Central City. It is submitted that having a separate Central City chapter would result in considerable duplication of text within the Replacement District Plan (RDP). Hence, the intention is that the Central City provisions have been, through the submission and hearings process, integrated into the rest of the pRDP chapters.

Review of the Central City Proposal / not be inconsistent with the CCRP

3.7 As the Panel is aware the consequence of section 23 of the CER Act is that the Panel must not make a decision or recommendation on the pRDP that is inconsistent with the CCRP. In the Strategic Directions decision the Panel held that "not inconsistent with" is "a phrase that gives reasonable allowance for interpretation, and judgment as to how it should be applied in context".4

---

3 After this time the Council was limited in any changes it could make to the draft Proposal before notification, to changes in response to the Ministers' comments and to correct minor errors.

4 Decision 1, Strategic Directions and Strategic Outcomes dated 26 February 2015, at paragraph 61.
3.8 As stated in the Council's opening legal submissions for the Strategic Directions hearing (and adopted by the Panel in their decision), the questions to ask to ensure that Panel's decisions or recommendations are "not inconsistent with" the CCRP are:

(a) are the provisions of the pRDP 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?

3.9 Although each individual situation needs to be considered on its individual facts, asking these questions has assisted the Council in taking a view on whether provisions are inconsistent with the CCRP, and it is submitted it will also assist the Panel in coming to a decision on the very limited instances where disagreement remains.

3.10 In addition, it is submitted that the test for determining whether or not the provisions are "not inconsistent with" the CCRP operates on two levels. Firstly, it is submitted that there should be an analysis of the provision against the overall thrust or theme of the CCRP. Secondly, where there is a specific rule/control in the CCRP, a more focussed analysis is required to determine whether a pRDP provision is "not inconsistent with" the relevant parts of the CCRP. A key consideration in both instances is whether the pRDP would give rise to a risk of materially different outcomes than those anticipated by the CCRP.

---

5 Decision 1, Strategic Directions and Strategic Outcomes dated 26 February 2015, at paragraph 42.
6 Opening Representations / Legal Submissions for Christchurch City Council; Strategic Directions Priority Hearing dated 2 December 2014 at paragraph 6.26.
7 Re Canterbury Cricket Association [2013] NZEnvC 184, paragraphs [51]-[52]. This case considered recovery documents in the context of a resource consent application. The statement in the table sets out our interpretation of the general meaning of paragraphs [51] and [52].
8 Norwest Community Action Group Incorporated v Transpower New Zealand Ltd, Environment Court, A113/01, 29 October 2001, paragraphs [55]-[56]. We note that this decision was considering whether modifications to a proposal were inconsistent with the notice of requirement for a designation. We have interpreted this case as it would apply in the context of consideration of a District Plan and in the context of the higher order recovery documents.
4. SUMMARY OF THE LEGAL ISSUES

4.1 It is submitted that there are eight legal issues for the Panel to make a determination on in this hearing. The issues are:

(a) the scope to allow alternative relief in Commercial and Mixed Use Zones, specifically:
   (i) whether the Panel should accept amendments to Objective 3.3.8 to recognise the role of the Christ Church Cathedral and the Cathedral of the Blessed Sacrament in contributing to the distinctiveness of the Central City, when no submission was made seeking amendments to Objective 3.3.8;

(b) whether the Panel should accept the inclusion of exemptions from standards for the two cathedrals, which was not sought by submission;

(c) whether the Panel accept the application of a certification approach to urban design in the South Frame, consistent with that recommended for the CCB zone, despite no submissions on the urban design methods for the South Frame;

(d) the scope to make changes to Rule 8.8.2 P6 to ensure consistency with Rule 9.4.3.2.1 P2, as both rules contained the same standards when notified but Rule 9.4.3.2.1 has subsequently been amended in the Natural and Cultural Heritage Proposal 9 Hearing;

(e) the vires of the proposed rule applying to stopped roads and the Transport Zone rules applying to vesting of new roads, and the scope for the rule’s application across the wider Transport Zone in the rest of the district;

(f) whether it is not inconsistent with the Christchurch Central Recovery Plan (CCRP) to have different activities statuses for:
   (i) Rule 7.2.2.3 D1 – Carter Group Ltd seeks a restricted discretionary activity status; and
   (ii) Rule 7.2.2.4 NC1 – Carter Group Ltd seeks a restricted discretionary activity status; and
5. SUMMARY OF OUTSTANDING ISSUES FOR THE PANEL'S CONSIDERATION

5.1 The Council's understanding is that the outstanding issues for the Panel's consideration in this hearing are now reasonably limited. In summary, submitters (as referenced in footnotes) seek the following drafting changes:

<table>
<thead>
<tr>
<th>DRAFTING CHANGES SOUGHT</th>
<th>REFERENCES TO COUNCIL'S POSITION IN EVIDENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial / Mixed Use</strong></td>
<td></td>
</tr>
<tr>
<td>a. Amendment to Rule 15.9.2.1 to allow retail activity of up to 150m$^2$ on Colombo Street between Kilmore Street and Salisbury Street.$^9$</td>
<td>Mr Stevenson's evidence in chief, paragraphs 10.13 to 10.29</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Deletion of part of Policy 15.1.6.3(a)(ii).$^{10}$</td>
<td>Mr Stevenson's rebuttal evidence, paragraphs 6.5 to 6.6</td>
</tr>
<tr>
<td>c. Amendments to minimum unit size and outdoor space requirements in Rule 15.8.2.1 P13.$^{11}$</td>
<td>Mr Stevenson's evidence in chief, paragraph 14.17</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Amendment of Rule 15.8.2.1 to provide for a greater range of activities.$^{12}$</td>
<td>Mr Stevenson's evidence in chief, paragraphs 14.18 to 14.22</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Amendment to Rule 15.8.4.3 to add matter of discretion regarding accessibility to upper floors.$^{13}$</td>
<td>Mr Stevenson's rebuttal evidence, section 7</td>
</tr>
</tbody>
</table>

---

9 Peterborough Village Incorporated Society (#3233).
10 Carter Group Limited (#3602).
11 Carter Group Limited (#3602).
12 Carter Group Limited (#3602).
<table>
<thead>
<tr>
<th></th>
<th>Change Description</th>
<th>Relevant Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>f.</td>
<td>Addition of a Policy to recognise the significance of cathedrals.</td>
<td>Mr Stevenson's evidence in chief, section 13; Mr Stevenson's rebuttal evidence, section 10</td>
</tr>
<tr>
<td>g.</td>
<td>Deletion of urban design Rule 15.8.2.2.3 RD1 or amendment to introduce certification approach (the Council accepts the alternative relief of controlled activity certification approach, and notes the Crown has confirmed in evidence that it doesn't consider that approach to be inconsistent with the CCRP).</td>
<td>Mr Stevenson's evidence in chief, section 14; Mr Nicholson's evidence in chief, section 8; Mr Stevenson's rebuttal evidence, section 11; Mr Nicholson's rebuttal evidence, section 3</td>
</tr>
<tr>
<td>h.</td>
<td>Amendment to Rule 15.8.2.3 to clarify &quot;visible from a public place&quot;.</td>
<td>Mr Stevenson's rebuttal evidence, section 11; Mr Nicholson's evidence in chief, section 15; Mr Nicholson's rebuttal evidence, section 5</td>
</tr>
<tr>
<td>i.</td>
<td>Inclusion of reference to &quot;late-night sale of alcohol&quot; in Objective 15.1.5.</td>
<td>Mr Stevenson's evidence in chief, section 8; Mr Stevenson's rebuttal evidence, section 12</td>
</tr>
<tr>
<td>j.</td>
<td>Deletion or reduction of minimum ground floor heights in Rule 15.8.3.5.</td>
<td>Mr Stevenson's evidence in chief, paragraphs 14.15 to 14.16; Mr Nicholson's rebuttal evidence, section 10.</td>
</tr>
</tbody>
</table>

**Residential**

| k. | Deletion of Rule 14.16.3.119 - Minimum site density from development and redevelopment of residential units. | Mr Blair's Residential evidence in chief, section 8; Mr Blair's Residential rebuttal evidence, section 3. |

---

13 Canterbury District Health Board (#3696)
14 Church Property Trustees (#3610) and the Roman Catholic Bishop of the Diocese of Christchurch (#3692)
15 Carter Group Limited (#3602)
16 Carter Group Limited (#3602)
17 Pacific Park Investments Limited (#3459)
18 Carter Group Limited (#3602)
19 Victoria Neighbourhood Association (#FS5068)
<p>| l. | Amendment to Rule 13.6.1.2.3.1 to allow a maximum building height of 20 metres at 78 Park Terrace. | Mr Blair’s Residential evidence in chief, paragraphs 16.3 to 16.9. Mr Blair’s Residential rebuttal evidence, section 4. |
| m. | Amendment to Policy 14.1.1.2A(a)(i) to make reference to accommodation options (and ancillary services) for older people. | Mr Blair’s Residential evidence in chief, paragraphs 12.1 to 12.4. Mr Blair’s Residential rebuttal evidence, paragraphs 9.4 to 9.5. |
| n. | Amendment to Rule 7.2.2.4 NC1 to a restricted discretionary activity on-site car parking and manoeuvre areas that are greater than 50% of the GLFA of a building on a site. | Mr Falconer’s rebuttal evidence, section 8. |
| o. | Deletion of all objectives and policies at section 13.10 (now section 8.1) or substantially amend them to place a greater emphasis on development. | Mr Long’s evidence in chief, section 6. |
| p. | Amendment to Rule 13.11.2.2 (now 8.8.2 P1) Table 1 to increase the volume thresholds for earthworks. | Mr Long’s evidence in chief, paragraphs 8.1 to 8.2. |
| q. | Amendment to Table 1 in 8.2.3.1 to include a minimum allotment size for Guest Accommodation Zone of ‘no minimum net area’. | Mr Long’s evidence in chief, Attachment B, at page 2. |
| r. | 4-6 Dublin Street – (CCR) to Central City Business Zone (CCB). | Mr Stevenson’s evidence in chief, Attachment C, section 1, pages 2 to 3. Mr Blair’s Residential evidence in chief, paragraphs 20.1 to 20.3. |
| s. | 367-373 Durham Street and 56-57 | Mr Stevenson’s evidence in chief, |</p>
<table>
<thead>
<tr>
<th></th>
<th>Salisbury Street^{27} – CCR to CCB.</th>
<th>Attachment C, section 3, pages 6-8. Mr Blair's Residential evidence in chief, paragraphs 20.4-20.5.</th>
</tr>
</thead>
<tbody>
<tr>
<td>t.</td>
<td>390 Montreal Street^{28} – CCR to CCB.</td>
<td>Mr Stevenson's evidence in chief, Attachment C, section 4, pages 9 to 10. Mr Blair's Residential evidence in chief, paragraphs 20.6 to 20.7.</td>
</tr>
<tr>
<td>u.</td>
<td>332 Oxford Terrace^{29} – CCR to a &quot;Central City Commercial Zone&quot; or Central City Guest Accommodation Zone (CCGA).</td>
<td>Mr Stevenson's evidence in chief, Attachment C, section 10, pages 23 to 24.</td>
</tr>
<tr>
<td>v.</td>
<td>1 Papanui Road^{30} - Commercial Fringe to CCB, and the extension of the Hospitality and Entertainment Precinct over this site.</td>
<td>Mr Stevenson's evidence in chief, Attachment C, section 12, pages 27 to 29. Mr Stevenson's rebuttal evidence, section 13.</td>
</tr>
<tr>
<td>w.</td>
<td>401 Madras Street (part)^{31} – CCR to Central City Mixed Use (CCMU), the Council has accepted in part this relief, specifically the rezoning of the carpark but not the access way as it intrudes into the residential area.</td>
<td>Mr Stevenson's evidence in chief, Attachment C, section 8, pages 18 to 19. Mr Blair's Residential evidence in chief, paragraphs 20.14 to 20.16.</td>
</tr>
<tr>
<td>x.</td>
<td>303 &amp; 307 Madras Street, 205 &amp; 207 Kilmore Street, and 202 Peterborough Street^{32} - CCR to CCMU, the Council has accepted in part this relief, specifically the rezoning but for 202 Peterborough Street as it negatively impacts on the residential coherence.</td>
<td>Mr Stevenson's evidence in chief, Attachment C, section 9, pages 20 to 22. Mr Blair's Residential evidence in chief, paragraphs 20.17 to 20.20.</td>
</tr>
</tbody>
</table>

5.2 The more significant areas of disagreement are covered below in these submissions, with the understanding that if the Council can

---

27 Christchurch Casinos (#3291).
28 Tom Robinson Limited (#3621).
29 Carter Group Limited (#3602).
30 Papanui Road Limited (#3685).
31 Pegasus Health Limited (#3250).
32 New Zealand Institute of Management Southern Incorporated (#3678).
further assist the Panel by providing more detail on other matters, than can be provided in written closing submissions.

6. MEMORANDA RECORDING AGREEMENT

6.1 Memoranda have been filed by the following parties, recording that agreement has been reached between the submitters and the Council, and the submitter no longer wishes to file evidence:

(a) Joint Memorandum of Counsel between the Christchurch City Council and Pegasus Health (Charitable) Limited (#3250) regarding Proposal 13 – Central City dated 1 December 2015;
(b) Joint Memorandum on behalf of Christchurch City Council and Cancer Society of New Zealand Canterbury-West Coast Division Inc. (#3051) dated 4 December 2015; and
(c) Joint Memorandum of Counsel for the Canterbury District Health Board [3696] (CDHB), the Canterbury Earthquake Recovery Authority (for and on behalf of the Ministry of Health) [3721] (CERA) and the Council regarding the Central City Hospital provisions dated 10 February 2016; and
(d) Joint Memorandum of Counsel for RHOAD Limited (#3276) and the Council regarding the Central City Residential provisions dated 10 February 2016.

6.2 Ceres New Zealand Limited (Ceres) has also confirmed by memorandum,³³ that it is satisfied the proposal for Chapter 13 as attached to Mr Stevenson's rebuttal evidence addressed all Ceres' concerns.

7. COMMERCIAL AND MIXED USE

Provision for Offices and Commercial Services in CCMU

7.1 Peterborough Village Incorporated Society and Otautahi Education Development Trust seek the removal of an upper site limit on

³³ Memorandum of Counsel as to Hearing Participation – Ceres New Zealand Limited (#3334 & FS5001) dated 28 January 2016
offices/commercial services, or alternatively an increase of that to 1000m². Mr Stevenson recommended this relief be rejected in his evidence in chief. As Mr Stevenson's evidence is the only expert evidence before the Panel on this matter, it is submitted that this evidence should be accepted.

**Recognition / provision for existing activity in South Frame**

7.2 GJ Donnithorne and other submitters seek a more permissive approach for activities that are currently in the South Frame. For example, the submitters seek permitted activity status for retail associated with existing activities and for car parking and car sales yards.

7.3 Mr Stevenson's evidence is that the relief sought by the submitters would not be consistent with the proposed future use of land in the South Frame. In particular, it would be inconsistent with the South Frame Addendum to the CCRP and with the objectives for the South Frame, which seek to consolidate retail activity in the CCB, and to encourage active uses and sustainable modes of transport.

7.4 Again Mr Stevenson's evidence is the only expert evidence before the Panel on this matter and it is therefore submitted that it should be accepted.

**Late night sale of alcohol**

7.5 Pacific Park Ltd seek amendments to Objective 15.1.5 (iv) to the effect that the "late night sale of alcohol" is encouraged in the entertainment and hospitality precincts. As mentioned in paragraph 2.4 above, the Council's position is (and it understands the Crown to hold the same position) that any decision on this clause of the objective should ultimately be informed by evidence on the sale of alcohol provisions in Proposal 6, given the links with those provisions and the methods to achieve the objective are all addressed in Proposal 6.
7.6 In any event, although Mr Stevenson agreed at mediation that the words "late night sale of alcohol" should be included in the Objective, Mr Stevenson has further considered the matter and his evidence is that the objective should refer to the "sale of alcohol" but not to "late night", because the inclusion of the words "late night" could be used to support a consent application for the sale of alcohol beyond the limits set out in Proposal 6 as notified while also creating a disconnect between the policy framework.36

Policy Recognition of Cathedrals’ Significance

7.7 Church Property Trustees (CPT) and the Roman Catholic Bishop of the Diocese (Catholic Bishop) seek a new policy to recognise the significance of the sites at 100 Cathedral Square (Christchurch Cathedral) and the Cathedral of the Blessed Sacrament (Catholic Cathedral) respectively. CPT seeks a new policy to "provide for the future construction of a cathedral" with a controlled activity status sought for the construction of a cathedral. The Catholic Bishop also seeks that the policy "provides for the partial restoration or replacement (including demolition or destruction)".

7.8 The Council considers some acknowledgement is appropriate for the two cathedrals.37 However, it does not consider a specific policy on their significance is appropriate, instead a reference to the role the cathedrals play in contributing to the identity and distinctiveness of the Central City in clause (d) of Objective 3.3.8 is considered appropriate.

7.9 It is further submitted that if the Panel were to determine that policy recognition was required, this would be more appropriate to be inserted into Chapter 9.38

36 Rebuttal Evidence of Mr Mark Stevenson on behalf of the Council dated 26 January 2016, at section 12.
37 Rebuttal Evidence of Mr Mark Stevenson on behalf of the Council dated 26 January 2016, at paragraph 10.5.
38 Rebuttal of Mr Stevenson at paragraphs 10.6 and 10.7.
Urban Design Certification

7.10 Carter Group Limited has sought the deletion of the restricted discretionary status for urban design matters for new buildings in the CCB zone and the South Frame (Mixed Use) Zone. As an alternative, the submitter has sought controlled activity status for new buildings, where the design of the building has been certified by an urban designer. The latter has been included in the Council's Revised Proposal.

7.11 In his rebuttal evidence, Mr Stevenson weighs up the competing approaches from a planning perspective and has concluded that controlled activity status where a building is certified by an urban designer is the most appropriate means of ensuring a high quality built form in the Central City. Mr Stevenson considers that controlled activity status will provide greater certainty for applicants and will minimise reliance on consenting processes, consistent with Objective 3.3.2.

7.12 The Council has also provided evidence from urban designer Mr Nicholson, and his rebuttal evidence considers the matter from an urban design perspective. His view is that restricted discretionary status is appropriate for new buildings, with discretion limited to matters of urban design. Mr Nicholson's view is based on the importance of the Central City and its distinctiveness from other centres. Mr Nicholson is also concerned about the reliance on a single urban design practitioner.

7.13 Mr Stevenson and Mr Nicholson have both considered the matter of urban design certification from their respective positions as expert witnesses, and it is submitted that both witnesses' views are of assistance to the Panel. Mr Stevenson has however considered the matter from a broader planning perspective, and in particular has considered the Strategic Directions Objectives when forming his opinions.

---

39 Rebuttal Evidence of Mr Mark Stevenson on behalf of the Council dated 26 January 2016, at section 11.
40 Rebuttal Evidence of Mr Hugh Nicholson on behalf of the Council dated 26 January 2016, at section 3.
Scope of urban design assessment – "public space"

7.14 Carter Group Limited has sought to clarify that the reference to "public open space" in Rule 15.8.2.3 is limited to "publicly owned and accessible space", such that only the parts of buildings, alterations or uses that are visible from "publicly owned and accessible space" should be subject to urban design assessment.

7.15 The Council's position is that the rule should be limited to "publicly owned and accessible space". In his evidence, Mr Stevenson has reviewed the relevant provisions of the CCRP and has concluded that the urban design requirements of the CCRP are more narrowly focussed on only those areas that are visible from "publicly owned and accessible space". In addition, Mr Stevenson considers that an alternative position may add compliance costs and would be inconsistent with the Statement of Expectations and Strategic Directions Objective 3.3.2. Accordingly, Mr Stevenson has recommended an amendment to clarify this position in respect of matter of discretion 15.8.4.1(ii), but not in respect of the other matters of discretion in 15.8.4.1.

7.16 Mr Nicholson's evidence is that once the urban design rule is triggered, "the new building, alteration or use of the site should be assessed in an integrated manner against the matters of discretion where applicable, including any publicly accessible spaces (both publicly and privately owned) such as laneways and courtyards."  

7.17 While Mr Nicholson notes that there are practical issues with assessing only part of a publicly accessible space or building, Mr Nicholson's primary concern is with CPTED issues. Mr Stevenson's proposed amendments to matters of discretion 15.8.4.1 do not alter the position that an assessment of CPTED principles is not limited to "publicly owned and accessible space".

---

41 Rebuttal Evidence of Mr Hugh Nicholson on behalf of the Council dated 26 January 2016, at paragraph 5.4.
42 Rebuttal Evidence of Mr Hugh Nicholson on behalf of the Council dated 26 January 2016, at paragraphs 5.5-5.7.
To the extent that Mr Stevenson’s and Mr Nicholson’s evidence is inconsistent, it is noted that Mr Stevenson has considered the matter from a broader perspective than Mr Nicholson and, in particular, has considered the consistency of the proposed amendments with the Statement of Expectations and the Strategic Directions objectives. His view is that these factors are important in concluding that matter of discretion 15.8.4.1(ii) should be limited to “publicly owned and accessible space”.

Minimum unit size and outdoor space requirements

Carter Group Limited has sought the deletion of minimum unit sizes and outdoor space requirements for residential units in the CCB Zone and Central City (Mixed Use) Zone.

The Council opposes the deletion of these minimum requirements. Mr Nicholson considers that the minimum requirements are “necessary elements in providing an acceptable standard of residential amenity.” Mr Stevenson relies on Mr Nicholson’s evidence on this matter.

8. TRANSPORT

New and Stopped Roads

Decision 12, on the Stage 2 Transport Proposal established the Transport Zone for the rest of the district. Only the Transport Zone for the Central City is within the scope of this hearing. The Crown has proposed a rule which would apply when roads are stopped and when new roads are vesting. Mr Falconer for the Council, from a planning perspective has recommended the inclusion of this rule, subject to confirmation of the legality of the rule.

---

43 Evidence in chief of Mr Hugh Nicholson on behalf of the Council, 16 December 2015, paragraph 11.5.
44 Evidence in chief of Mr Mark Stevenson on behalf of the Council, 16 December 2015, paragraph 14.17.
45 Evidence in Chief of Mr Richard Shaw on behalf of the Carter Group Limited (#9502 & FS5082) dated 14 January 2016, at section 8.
46 Rebuttal Evidence of Mr David Falconer on behalf of the Christchurch City Council dated 26 January 2016, at paragraph 6.1.
8.2 In summary, if new roads are vested in the Council, rather than the rules for the zone shown on the RDP planning maps, the rules in the Transport Zone would be triggered. If a road is lawfully stopped, rather than the Transport Zone rules applying, the rules for the adjoining land would be triggered and would apply to the road from the date of stopping and removal of any relevant designation. If the adjoining land on either side of the road is different, then the zone boundary will be the centre line of the road. A plan change process would need to be worked through in order to change the zoning on the planning maps, but in the meantime alternative and appropriately targeted planning rules could be applied.

8.3 The Council accepts that the triggers for the above process are certain and can be objectively understood. Although the Council has underlying concerns that the rule could be regarded as a 'plan change by stealth', the proposed rules have essentially been drafted as if an alternative set of rules and standards would apply (similar to the approach used in some Specific Purpose zones).

8.4 However, the application of the Crown’s proposed rule outside the Central City is uncertain. The Crown did not seek that this rule apply throughout the rest of the district, only through the Central City hearing (where the scope is limited to the Central City Transport Zone). Although it would be desirable for coherence and consistency to have the rule apply across the entire Transport Zone, the Council is concerned that the change is not one of minor effect, as required under clause 13(6)(a) of the Order in Council. The concern in particular relates to when new roads are vested in the Council. In that instance, the Transport Zone rules would instead apply rather than the zones shown on the planning maps, and it is submitted to be doubtful that this would be a change of minor effect in every instance. It may be a change of minor effect (although it is very difficult to assist the Panel about this point in isolation) for roads that have been stopped, as the Transport Zone rules already provide for the activities in adjoining zones to be used.
Activity status of certain transport provisions

8.5 Carter Group Limited (#3602 & FS5062) (Carter Group) seeks restricted discretionary activity status for permanent car parking facilities (parking facilities), and on-site car parking and manoeuvring areas greater than 50% of the Gross Leaseable Floor Area (GLFA) of a building on a site (car parking). However, the CCRP prescribes discretionary activity status for parking facilities and non-complying activity status for car parking in the Central City Core. The Council has recommended acceptance of Carter Group’s relief regarding the parking facilities, but has recommended rejection of the change to non-complying activity status for car parking.

Parking Facilities

8.6 The CCRP provides for parking facilities as a discretionary activity. The difference between a restricted discretionary activity status and a fully discretionary activity status is discussed in Mr Falconer's rebuttal evidence. Broadly, the Council submits that if the matters of discretion stated in the pRDP cover all necessary matters for the assessment of a parking facility, then a restricted discretionary activity status would provide the same outcomes as a discretionary activity status.

8.7 Mr Falconer has provided an analysis of what the matters of discretion should be for the parking facilities rule to be a restricted discretionary activity in his evidence. The Council submits this is a robust list that would result in similar outcomes as a discretionary activity.

8.8 Applying the tests of whether a decision on this matter would be inconsistent with the CCRP, the Council submits that the suggested restricted discretionary activity status in the Revised Transport Proposal for parking facilities does not alter the essential nature or character of what the CCRP allows or provides for. It is also submitted that as the outcomes would effectively be the same under

---

47 Rebuttal Evidence of Mr Falconer, at paragraph 7.2.
48 Attached to Mr Falconer's Rebuttal Evidence at Attachment A.
either a restricted discretionary or discretionary activity status, the proposed rule would be compatible with the CCRP.

Car Parking

8.9 The CCRP provides for car parking as a non-complying activity in the Central City Core. Mr Falconer's evidence is that he considers a non-complying activity status to be more appropriate than restricted discretionary. One of his reasons is that a non-complying activity status has additional requirements that a restricted discretionary activity status does not have, namely that in order for consent to be granted, the threshold or gateway tests of section 104D would need to be considered.

8.10 This activity status is submitted to be the most appropriate because of the strong policy direction for the Core in the CCRP, for example Policy 7.9.8 (now 7.1.1.6 a. vi) seeks a people focused and slow vehicle core. An assessment with a non-complying activity status would mean that unless the environmental effects are minor, car parking must not be contrary to this policy. On the other hand, applying a restricted discretionary activity status could result in less careful consideration of car-parking proposals and a different outcome to a non-complying activity status. It is submitted that a non-complying activity status reflects the significance of the need to carefully manage parking supply in the Core and would better achieve this important goal than restricted discretionary status.

8.11 Applying the tests of whether a decision on this matter would be inconsistent with the CCRP, the Council submits that restricted discretionary activity status in the Transport Revised Proposal for car parking could result in the essential nature or character of what the CCRP allows or provides for not being realised. It is also submitted that as the outcomes could be different under a restricted discretionary activity status, it would be incompatible with the CCRP.

8.12 While it is acknowledged that the Statement of Expectations and Strategic Objective 3.3.2 seeks to minimise transaction costs and

49 Attached to Mr Falconer's Rebuttal Evidence at Attachment A.
reliance on resource consent processes, because of the strong policy goal regarding car parking for the Central City Core, it is submitted that in this instance the Statement of Expectations need not result in a less stringent activity status.

9. SUBDIVISION AND EARTHWORKS

Subdivision

9.1 There are three outstanding matters between the Council and submitters, Carter Group and Ryman on the subdivision component of the proposal. Although both Carter Group and Ryman filed evidence on the Central City proposal, the evidence did not address two of these matters. It is therefore assumed that neither submitter is pursuing these relief points.

9.2 Carter Group’s submission that there be an amendment to 8.2.3.1 Table 1 to provide for "no minimum net area" for the Guest Accommodation Zone in the Central City will be addressed by Mr Long in his highlights package. In short, the Council considers the minimum net site area should be the same as Central City Residential.

Earthworks and Trees

9.3 There is a scope issue regarding the integration of Rule 13.11.2.2 P3 (CC Rule) into Rule 8.8.2 P6 (Earthworks Rule). Both rules as notified contained the same standards as Rule 9.4.3.2.1 P2 (NCH Rule), as the rules are intended to protect the same group of public realm trees. The CC Rule and Earthworks Rule seek to protect these trees from inappropriate earthworks, while the NCH Rule relates to felling.

50 The Carter Group sought that:
1) All objectives and policies at Section 13.10 were deleted or substantially amended to place a greater emphasis on development, as they consider Objective 3.3.1 of the Strategic Directions chapter directs this. They also seek to renumber objective 13.10.1.2 to give it primacy and some specific amendments to objective 13.10.1.2; and
2) There should be "no minimum net area" for the Guest Accommodation Zone within the Central City. This requires an insertion to 8.2.3.1Table 1.

51 Ryman sought to increase the volume thresholds for earthworks, the specifics of which are set out in Mr Long’s evidence at paragraph 8.1(a).

52 The details of these issues are addressed in the Council’s evidence, specifically:
- Evidence of Mr Andrew Long (NCH) dated 2 December 2015, at paragraphs 11.1 to 11.9; and
- Evidence of Mr Long (Central City) dated 16 December 2015, at section 6 and paragraph 8.2.
9.4 The issue for this hearing is that the NCH Rule has been amended through submissions in the Natural and Cultural Heritage Proposal 9 hearing, but there is no corresponding submission in relation to the Earthworks Rule or CC Rule. If it was to continue, this would result in inconsistencies in the protection of public realm trees between Proposal 9 and the integrated Proposal 8.

9.5 In reliance upon clause 13(6)(a) of the Order in Council, it is submitted that the Panel can make the required changes to the CC Rule so that full integration can occur with the Earthworks Rule. It is submitted that this change would ensure coherence and consistency, but would be of "no more than minor effect". This is because the NCH Rule, which the Earthworks Rule was amended to replicate, already applies throughout the Central City and the rest of Christchurch.

10. RESIDENTIAL

10.1 There are three outstanding issues between the Council and submitters, Victoria Neighbourhood Association (#FS5068) (VNA), and Ryman Healthcare Ltd and the Retirement Villages Association of New Zealand (#3317) (Ryman).

10.2 It is noted that since the filing of the Council's rebuttal evidence agreement has been reached between the Council and Peter Dhyrberg and others (#3688) as to the boundary of the proposed Christchurch Central Character Area. The map showing this boundary will be presented by Mr Blair as an Exhibit when he appears at this hearing tomorrow. For avoidance of doubt it is also noted that the Crown is opposed to the establishment of this character area as it is not "necessary to achieve the quality urban design and residential living outcomes of the CCRP".\(^{53}\)

\[^{53}\] Rebuttal of Ms Rachael Eaton dated 26 January 2016, at paragraph 4.4.
Victoria Neighbourhood Association

10.3 The VNA seeks the deletion of Rule 14.16.3.11, which requires one residential unit per 200m$^2$ in the Central City, otherwise non-comply activity status is triggered. VNA raise the following issues with the rule:54

(a) purported ineffectiveness of the rule;
(b) unintended consequences of Rule 14.16.3.11; and
(c) what should be in the pRDP so that it is not inconsistent with the CCRP.

10.4 In his evidence, Mr Blair analyses the direction provided to the Council and the Panel by the CCRP and A Liveable City.55 There is also reference in the CCRP to:

(a) *the need for flexibility in the way that a range of housing types can be designed and built in the inner city…*56
(b) *variable development…*57 and
(c) *helping to make the central city attractive and accessible to a wide range of residents.*58

10.5 *A Liveable City* also specifically provides that the minimum residential density shall be “*not less than one residential unit for every 200m$^2$ of site area*”59

10.6 While the tone of the CCRP is more enabling than directive, the rule inserted into the operative City Plan by the CCRP specifically requires one residential unit per 200m$^2$, otherwise a non-complying activity consent is required. Therefore it is submitted that while Professor Kelly's views are informative, when viewed in light of the requirement to not be inconsistent with the CCRP60 the Council recommends that the rule be retained but non-compliance with the rule should be a

---

54 Evidence of Professor Dave Kelly on behalf of the Victoria Neighbourhood Association dated 14 January 2016, at paragraphs 27 to 45.
55 Rebuttal of Mr Scott Blair (Residential) on behalf of the Council dated 26 January 2016, at paragraphs 3.15 to 3.19.
56 Page 16 of A Liveable City, Statement by the Minister of Canterbury Earthquake Recovery.
57 Page 14 of A Liveable City.
58 Rule 4a.3.9 Minimum residential density in A Liveable City.
59 Rebuttal of Mr Scott Blair (Residential) dated 26 January 2016, at paragraph 3.20.
restricted discretionary activity. Given the strength of the policy direction in the CCRP to enable intensification, the change in activity status is submitted to not be inconsistent with the outcome sought.

**Ryman Healthcare and RVA**

**10.7** Ryman seeks to increase the maximum building height limit at 78 Park Terrace for retirement villages to 20 metres. Mr Blair responds to this submission in his evidence in chief and rebuttal evidence. In summary, the Council considers that the sort of retirement village that would be built on that site by Ryman should be subject to the urban design assessment matters in 14.16.4.11. It further considers that granting the relief sought would imply that a retirement village inherently satisfies the assessment matters. Therefore, it is submitted that such an assessment is more appropriately determined on a case by case basis.

**10.8** In addition Mr Blair has addressed Ryman's evidence that higher height limits are appropriate adjacent to large open space, specifically the "vast scale of Hagley Park, together with the considerable height of the trees growing around its periphery." While Mr Blair notes this urban design principle, it is submitted that accepting this principle would potentially warrant a change to all the height limits along Park Terrace to 20m, and there is no scope for the Council to make this recommendation. Therefore the relief relating to 78 Park Terrace sought by Ryman is recommended to be rejected.

**10.9** Ryman also seeks an amendment to Policy 14.1.1.2A to refer to accommodation options (and ancillary services) for older people. Ryman considers their wording better gives effect to the now included Policy 14.1.1.6 "Provision of housing for an aging population" (which was inserted as a result of the Residential (Stage 1) decision). It is submitted that this amendment is not necessary as the original...
wording\textsuperscript{68} is sufficiently wide enough to encompass all relevant housing types and individual housing needs.\textsuperscript{69}

11. SUMMARY OF OUTSTANDING ISSUES FOR SUB-TOPICS

11.1 No evidence was filed seeking changes or amendments to the following sub-topics, and therefore they are not addressed further in these legal submissions:

(a) Specific Purpose (School) Zone; and
(b) Specific Purpose (Tertiary Education) Zone.

11.2 Evidence or statements have been filed on the following sub-topics, and it is understood that the Council's rebuttal evidence has resolved all issues relating to:

(a) Hazardous Substances and Contaminated Land;
(b) Specific Purpose (Cemetery) Zone; and
(c) Utilities, Energy and Infrastructure.

11.3 All outstanding issues concerning the Specific Purpose (Hospital) Zone have been resolved as set out in the Joint Memorandum of Counsel for the Crown, the CDHB and the Council dated 10 February 2016.

11.4 There are still some residual matters of disagreement for the other sub-topics, which are addressed in the subsequent sections of these legal submissions.

12. REZONINGS

12.1 It is submitted that in determining whether to accept or reject rezoning submissions, involving commercial, mixed use or residential zones, it is important to note whether the rezoning achieves Objective 15.1.5 of the Revised Proposal (Objective 13.1.1 of Central City proposal as

\textsuperscript{68} As set out in Attachment A to the Evidence of Mr Blair (Residential).
\textsuperscript{69} Rebuttal of Mr Blair (Residential), at paragraph 9.5.
notified), which seeks the consolidation of commercial activities in the CCB zone.  

12.2 The Council has also taken into account the impact of rezonings away from residential on:

(a) the capacity for residential intensification; and
(b) the ability for 5,000 additional households to be provided for in the Central City as directed by Objective 3.3.8 (c) of the Strategic Directions chapter (as notified in stage 3).

12.3 There are fourteen re-zonings sought by submitters. Seven re-zoning requests have been recommended to be accepted, two recommended to be accepted in part, and five recommended to be rejected. The details of those re-zonings recommended to be accepted in part or rejected are outlined above at section 9 of these submissions, and if necessary will be covered in more detail in closing submissions.

13. OPERATIVE TEMPORARY EARTHQUAKE RECOVERY ACTIVITIES – DECISION 9

13.1 Through Decision 9, the Panel inserted Temporary Activity provisions into Chapter 13 of the RDP and these are currently operative. As the remaining provisions in (notified) Chapter 13 of the pRDP have been “integrated” into their parent chapters, this would leave only the operative Temporary Activity provisions in 13.X of the RDP. It follows that these operative provisions should also be integrated into Chapter 6, and through evidence filed on Thursday last week in the General Rules and Procedures hearing, that change has been recommended in the evidence dealing with the Central City General Rules and Procedures.  

70 See Attachment C to the Evidence in Chief of Mr Mark Stevenson on behalf of the Council dated 16 December 2015.

14. WITNESSES

14.1 The Council has filed the following evidence:

(a) **Mr Peter Eman** (Specific Purpose (Cemeteries) Zone – Planner);
(b) **Mr Mark Stevenson** (Commercial - Planner);
(c) **Mr Hugh Nicholson** (Commercial and Residential - Urban design);
(d) **Ms Bridget O’Brien** (Rezoning and Residential density - water supply / wastewater);
(e) **Mr Paul Dickson** (Rezoning and Residential density - stormwater);
(f) **Mr Andrew Milne** (Rezoning - transport);
(g) **Mr Philip Osborne** (Commercial - Economics);
(h) **Mr Scott Blair** (Residential, Specific Purpose (Hospital) Zone and Hazardous Substances - Planner);
(i) **Mr Tim Cheesebrough** (Residential density – transport network capacity);
(j) **Ms Josephine Schröder** (Christchurch Central Character Overlay – Urban design);
(k) **Mr Edward Jolly** (Specific Purpose (Hospital) Zone – Urban design);
(l) **Ms Glenda Dixon** (Specific Purpose (Schools) and (Tertiary) Zones – Planner);
(m) **Mr Mark Gregory** (Transport – transport engineer);
(n) **Mr David Falconer** (Transport – Planner);
(o) **Mr Andrew Long** (Subdivision – Planner); and
(p) **Ms Sarah Jenkin** (Utilities – Planner).

14.2 At the time of filing these submissions, the following witnesses have been excused from appearing at the hearing as no submitters have sought to cross examine them and the Panel has confirmed it has no questions:

(a) Ms Glenda Dixon;
(b) Mr Tim Cheeseborough;
(c) Ms Sarah Jenkin;
(d) Ms Bridget O'Brien;
(e) Mr Paul Dickson;
(f) Mr Andrew Milne;
(g) Mr David Falconer; and
(h) Mr Mark Gregory.

14.3 Mr Peter Eman, who will be the Council’s first witness, is also available to answer questions from the Panel about the Council’s wider approach taken to the Central City chapter, and the Council’s goals for the Central City.

DATED this 10th day of February 2016

[Signature]

J G A Winchester / S J Scott / C J McCallum
Counsel for Christchurch City Council