

**BEFORE INDEPENDENT COMMISSIONERS
ON BEHALF OF THE CHRISTCHURCH CITY COUNCIL**

In the matter of the Resource Management Act 1991

And

In the matter of Applications RMA/2020/673 and RMA/2020/679 by Ryman Healthcare Ltd to establish and operate a comprehensive care retirement village and associated activities at 100-104 Park Terrace and 20 Dorset Street and 78 Park Terrace, Christchurch

INTERIM DECISION OF THE INDEPENDENT COMMISSIONERS

Dated 3 June 2021

Application Reference: RMA/2020/673

Applicant: Ryman Healthcare Limited

Site address: 100-104 Park Terrace, 20 Dorset Street (the Bishops Park site)

Legal Descriptions: Lot 2 DP 13073, Lot 1 DP46369, Lot 1 DP 46569, Pt Town Res 23 Town of Christchurch and Pt Town Res 25 City of Christchurch

Zoning: Residential Central City

Activity status: Restricted Discretionary

Application Reference: RMA/2020/679

Applicant: Ryman Healthcare Limited

Site address: 74 Park Terrace (the Peterborough St site)

Legal Descriptions: Lot 1 DP 77997 Christchurch and Pt Town Res 25 City of Christchurch

Proposal: Construction, operation and maintenance of a comprehensive care retirement village

Zoning: Residential Central City

Activity status: Restricted Discretionary

Introduction

1. These are applications to construct, operate and maintain a comprehensive care retirement village across two sites in central Christchurch. The sites have multiple street frontages to Park Terrace, Dorset Street, Salisbury St and Peterborough St and are separated by Salisbury St and a row of residential dwellings. In this decision we will refer to the site at 100 – 104 Park Terrace as the Bishops Park site because it was formerly occupied by a smaller retirement village of that name, and prior to that was for many years the residence of the Anglican bishops of Christchurch. We will refer to the other site as the Peterborough St site.
2. The applications have been processed on a publicly notified basis following a request to do so from the applicant, after an informal meeting at the Council offices between the applicant's representatives, Council officers and various interested neighbours and members of the public.
3. We have been appointed by the Christchurch City Council and given delegated authority to hear and decide the applications.

The sites

Bishops Park Site

4. The site is approximately 12,267m² in area and the topography is flat. The former buildings on site have recently been demolished other than the former Bishop's Chapel which is located to the rear of the site. The Bishop's Chapel and its setting are scheduled as a Highly Significant heritage item and heritage setting in the District Plan. A number of mature trees were also removed from the site.

Peterborough Site

5. The site is approximately 5,082m², the topography is flat and the site is relatively regular in shape. The site is currently vacant and has been for a number of years since the former apartment buildings were removed as a result of damage sustained in the Canterbury earthquake sequence. The surrounding area is generally residential with a mix of standalone residential dwellings, apartment buildings and multi-unit residential buildings. There is a large grass berm with scattered small trees on the Park Terrace frontage, which have been referred to as a "pocket park" by the

applicant and the Council. Hagley Park is directly west of the site on the opposite side of Park Terrace.

6. The Peterborough site was previously occupied by the 'Terrace on the Park' Apartments which consisted of five residential buildings and a building containing an indoor swimming pool and changing rooms. The tallest of these buildings was approximately 31m high.

Existing environment

7. The sites are close to the central business district of Christchurch. To the west is Park Terrace, which lies parallel to the Avon/Otakaro River corridor and beyond that is Hagley Park. Together the park and the river corridor provide a highly attractive landscaped open space that is also highly valued for many forms of recreation, particularly walking, running, cycling and many active sports. To the north and south of both sites are residential areas that contain a mixture of single dwellings, a hotel and low to medium rise apartment buildings. To the east lies the Commercial Central City Zone which in this part contains mostly medium rise commercial buildings in a strip along Victoria St, with a band of residential development between this strip and the Peterborough St site. The Central City Residential zone generally provides for a range of residential activities including redevelopment in a higher density multi storey form of development, subject to a set of restricted discretionary controls. The immediate area also contains a number of low rise developments and single dwellings that are highly prized by their owners and may not be redeveloped in the short or medium term. Developments to the extent envisaged by the zone inevitably cause tension with some of the existing residents who value the amenity of the area as it currently exists.

Summary of Proposed Development

8. The main features of the proposed development were described in the application as follows:
 - The proposal is to establish a comprehensive care retirement village across the Bishops Park site and the Peterborough St Site (78 Park Terrace). While it spans two sites, the intention is to operate as a single retirement village. The key aspects are:

Bishops Park Site – 100 Park Terrace

- 4 new buildings (B01-B04)
- 70 care rooms (including dementia care, hospital care and rest home care) - all of which will be located in Building B01.
- 54 assisted living suites – all of which will be in Building B01.
- 85 apartments, comprising 10 one bedroom apartments, 60 two bedroom apartments; and 15 three bedroom apartments.
- 144 car parks consisting of 6 at grade car parks and 138 basement car parks.
- Retention, repair and restoration of the former Bishop's Chapel which is scheduled as a Highly Significant Heritage Item in the District Plan.
- Vehicular access to and from the village will be provided via a two way access fronting onto Park Terrace. A secondary service access will be provided via Dorset Street. Pedestrian access is provided via Park Terrace, Westwood Terrace and Dorset Street. Basement car parking is accessed via the access ramp at the south eastern end of Building B02 via the internal 6m wide main access road between Park Terrace, the basement parking area and a port cochere.
- Westwood Terrace is an existing private lane leading from Salisbury St and provides vehicle and pedestrian access for the application site and several of the surrounding properties.
- A pedestrian facility is proposed across Salisbury Street. This is not part of the current applications and would require Community Board approval which is a separate process that the applicant will need to follow.
- Earthworks of approximately 55,000m³ are required to construct the foundations and basements of the various buildings, establish the internal road network and install infrastructure services.

- Buildings B01 and B03 would be 4 storeys in height above ground level, Building B02 would be 5 storeys and Building B04 would be mostly 1 storey with a small 2 storey portion.

Peterborough Site – 78 Park Terrace

- 80 apartments across two buildings (Buildings B07 and B08), comprising 4 one bedroom apartments, 53 two bedroom apartments and 23 three bedroom apartments.
- 83 car parks consisting of 6 at grade car parks and 77 basement car parks.
- A separate entrance and exit for vehicles will be provided. Vehicles will enter the site off Park Terrace and exit via Salisbury Street, via the basement area. The internal access road and ramps operate a one way circulation. Pedestrian access is provided via Park Terrace, Salisbury Street and Peterborough Street.
- Earthworks of approximately 32,000m³ are required to construct the foundations and basements of the various buildings, establish the internal road network and install infrastructure services.
- Building 7 would be a maximum of 7 storeys in height reducing in part to 4 storeys.
- Building 8 would be 4 storeys in height.

Both sites

- Extensive landscaping throughout both sites is proposed.
- The construction period is expected to be approximately 36-40 months and is likely to be undertaken in stages.

The submissions

9. A large number of submissions were lodged, both for and against the applications. Submitters' details were summarised by the Council in Appendix A to its report under section 42A of the Resource Management Act 1991 (the RMA) which we adopt. Submissions came from residents and property owners in the immediately surrounding neighbourhood and throughout the Christchurch urban area.

The hearing

10. We conducted a hearing at the Council offices on 25-29 January 2021. The following people appeared at the hearing:

Applicant

Luke Hinchey and Nicola De Wit	Legal Counsel for Ryman Healthcare Ltd
Jeremy Moore	Chief Development Officer, Ryman Healthcare
Matthew Brown	Development Manager, Ryman Healthcare
Phil Mitchell	Consultant Planner
Tim Holmes	Architect, Warren and Mahoney Ltd
Richard McGowan	Architect, Warren and Mahoney Ltd
Sean Dixon	Consultant Landscape architect
Andrew Burns	Urban Design Consultant
Rebecca Skidmore	Landscape/Urban Design Consultant
Pierre Malan	Geotechnical Engineer, Tonkin and Taylor Ltd
Dave Pearson	Heritage Architect
Alan Parker	Arborist
Siri Wilkening	Acoustic Consultant (by video link)
Leo Hills	Transport Consultant

Submitters

Gerard Cleary, legal counsel for

- Centro Roydvale Ltd
- Judith and John Roper – Lindsay, Dorset St Flat owners
- Craig Garlick, Dorset St Flats owner
- David Turner, Dorset St Flats owner
- Gordon and Christina Bennet, 15 Salisbury St
- Robert Beggs, 17 Salisbury St,
- Don and Lisa Worthington, 76 Park Terrace
- Georgina Waddy and William Davidson, 18 Salisbury St
- Annie and Don Mclean, 18 Salisbury St
- Kieran and Penny Moffat, 18 Salisbury St
- Tom Davies, 18 Salisbury St
- Joanna and Andrew Craw, 18 Salisbury St

Mary Clay	Planning Consultant for Centro Hotel Ltd
Ethan Archer	Planning Consultant for Don & Lisa Worthington and Georgina Waddy,
Antoni Facey,	Transport Engineer for Centro Roydvale Ltd
John Aramowicz,	Geotechnical Engineer for Christina and Gordon Bennet
Wendy Perry	In support
Lee Trustrum	18 Peterborough St
David Turner	Dorset St Flats owner, residential neighbour
Dora Roimata-Langsbury	In support
Ross Gray	In support
Max Bremner	In support
Dennis and Margaret Cottle	13 Salisbury St, residential neighbours
Judith Roper-Lindsay	Owner in the Dorset St flats, for herself and the group of owners
Diana Shand	Chair of ICON Neighbours Association
Christina and Gordon Bennett	Owners, 15 Salisbury St
Craig Garlick	Dorset St Flats owner, residential neighbour
Tom Davies	5/18 Salisbury St, residential neighbour
Georgina Waddy	18 Salisbury St, residential neighbour
Judith and John Roper – Lindsay,	Dorset St Flat owners, residential neighbours
Don Worthington	76 Park Tce, residential neighbour
Robert Beggs,	17 Salisbury St, residential neighbour
Glen Stapley	Centro Hotel Developer
Glenda Pickering	In support

Christchurch City Council

Louisa Armstrong	Senior Planner, Section 42A Reporting Officer
Josie Schroder	Urban designer
Mike Calvert	Transport planner

Suzanne Richmond	Heritage Planner
John Thornton	Arborist
Isobel Stout	Environmental Health Officer

11. We adjourned the hearing on 29 January 2021 to enable the applicant, the Council and the submitters to consider and comment on draft conditions of approval, and for the applicant to provide answers to a number of questions we posed.
12. The hearing reconvened on 30 March 2021 for the presentation of the applicant's right of reply. We closed the hearing on 21 April 2021 and extended the time for the issue of this decision under section 37 of the RMA until 3 June 2021

Rules

13. There are a number of infringements of various rules. These are set out in a table in Ms Armstrong's section 42A report, which we adopt. We reproduce that table in Appendix 1. In summary
 - Any new building for a retirement village that does not meet standards for building height, daylight recession planes, road boundary building setback and minimum building setbacks from internal boundaries, is a restricted discretionary activity under Rule 14.6.1.3 RD5. The proposals exceed these standards.
 - Free standing signs –The proposals exceed maximum dimensions and are a restricted discretionary activity under Rule 6.8.4.2.6 RD1.
 - The Park Tce accessway on the Peterborough St site is under width and is a restricted discretionary activity under Rule 6.8.4.1.3 RD1.
 - Proposed earthworks exceed maximum quantities and depth by a considerable margin and are a restricted discretionary activity under Rule 8.9.2.3 RD1.
 - Heritage upgrade works to the Bishop's Chapel, which is listed as a Category 1 heritage item are a controlled activity under Rule 9.3.4.1.2 C1.
 - New buildings in a heritage setting are a restricted discretionary activity under Rule 9.3.4.1.3 RD2.
 - Pruning of a significant tree (Common Lime Tree) and works within its dripline on the Peterborough St site is a restricted discretionary activity under Rule 9.4.4.1.3 RD1 and RD5.
14. In addition Dr Mitchell for the applicant identified a further matter, which is construction noise which fails to meet the standard set out in Rule 6.1.1.1.1 P2 and therefore also requires consent as a restricted discretionary activity under Rule 6.1.6.1.3 RD2.
15. Overall the proposal must be considered as a restricted discretionary activity under the District Plan.
16. The proposals are also affected by the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS). This standard seeks to ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed and if necessary the land is remediated or contaminants contained to make the land safe for human use. The NESCS controls soil disturbance on land where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out, has been carried out, or is more likely than not to have been carried out. The application sites are identified as HAIL land and therefore the provisions of the NESCS apply. Pursuant to Regulation 10(2) the proposal is a restricted discretionary activity under the NESCS as:
 - A Detailed Site Investigation (DSI) of the piece of land exists; and
 - The report on the DSI states that the soil contamination exceeds the applicable standard in Regulation 7, and the report has been provided to the Council.

The Submissions

17. Ms Armstrong summarised the reasons for the submissions in her report. We adopt her summary and repeat it here for convenience.
18. The reasons for the submissions in support are summarised as follows:
 - Design and bulk of the building are in keeping with the surrounding area.
 - Higher density living will encourage less urban sprawl.
 - Increased activity in the area will benefit nearby businesses.
 - Investment in the economy.
 - Local amenities in close proximity to the site.
 - Increase in population of the central city.
 - Future residents' contribution to the surrounding community and central city.
 - Provision of adequate on site car parking.
 - Minimal negative impacts on the area.
 - The use of the site will not create excessive noise or disruption.
 - Former building on site (78 Park Terrace) was much higher than proposed and therefore greater visual impacts.
 - Increased availability of housing supply.
 - Ideal location for retirement village with access to Hagley Park and central city.
 - Views from the retirement village.
 - An asset to the community.
 - Reputable operator.
 - Very little additional traffic created on roading network.
 - No other retirement villages in surrounding area.
 - Ideal location for retirement village.
 - Comprehensive care available.
 - Reduced pressure on public health system.
 - Revitalisation of area.
 - High quality building design and on site amenities.
 - Landscaping of high quality.
 - Replacement of earthquake damaged buildings.
 - Village will contribute to the social and economic wellbeing of Christchurch through the construction phase and ongoing employment.
 - Lower noise and traffic generator than traditional residential development.
 - Height of buildings in keeping with other tall buildings in close proximity.
 - Increase in housing supply.
 - Enable elderly residents to remain in central city.
 - Treatment, retention and use of Bishops Park Chapel.
 - Former residents wish to return to live on the site.
 - Frees up housing in the suburbs.
19. The reasons for the submissions in opposition are summarised as follows:
 - Loss of sunlight and daylight for neighbouring properties.
 - Height of buildings not in keeping with the residential environment.
 - Reduction in privacy for neighbouring properties.
 - Bulk, scale and density out of keeping with surrounding residential properties.
 - Overlooking of surrounding area due to height.
 - Negative impacts on Hagley Park and Avon River vista.
 - Proposal breaches a number of District Plan rules.
 - Use of Westward Terrace for construction traffic.
 - General construction effects including dust, settlement from dewatering, construction traffic and vibration.
 - Traffic and pedestrian safety at proposed pedestrian crossing on Salisbury Street.

- Length of construction period.
- Land is TC3, not suitable for proposed buildings and prone to liquefaction.
- Shared arrangement of Westward Terrace for pedestrians and traffic.
- Removal of large trees on the site.
- Landscaping proposed will not survive as insufficient space.
- Over-intensification of site.
- Amount of earthworks and proximity to neighbouring properties.
- Potential damage to neighbouring properties.
- Increase in traffic on surrounding network.
- Safety concerns for pedestrians on crossing.
- No construction management plan submitted with proposal.
- Regional Council consent should be considered concurrently.
- Commercial domination of surrounding area.
- Contamination has not been dealt with adequately.
- Sensitive heritage location.
- Erosion of residential area.
- Loss of light for residential apartments at 15 Peterborough Street, particularly those that face west (18 of 24) due to height and recession plane intrusions.
- Reduction in health of residents due to loss of light.
- Reduction in property values.
- Impact on heritage listed Dorset Street flats.
- Lack of consultation with surrounding properties.
- Cumulative effects of proposed and surrounding construction activities.
- Basements will restrict viability of landscaping.
- Scale and depth of earthworks and dewatering.
- Restrict views from Salisbury Street and Victoria Street into Hagley Park.
- Lack of environmental efficiencies in build.
- Existing footpaths in area not wide enough to accommodate large numbers of older people.
- Reduction in ambience of area.
- Lack of amenities in surrounding area for future residents.
- Living areas will not receive adequate sunlight.
- Insufficient landscaping throughout the site.
- Loss of on street car parking on Salisbury Street due to pedestrian crossing.
- Proposal will not provide for families and young professionals.
- Proposal does not provide detailed context analysis of the area.
- Inconsistencies in the application for setback of basement from boundaries.
- Cumulative effects of construction and operation on neighbours and community.
- Adverse effects of the two end walls of buildings B01 on neighbouring properties.
- Proposal fails to meet matters of discretion.
- Loss of native trees.
- Vibration and stability issues on the adjacent properties.
- Buildings need to be reduced in height.
- Buildings will upset the long established spatial and amenity equilibrium of the neighbourhood.
- Buildings should be set back further from Bishops Park Chapel.
- Demographic in the area will change.
- Materials of buildings not in keeping with surrounding buildings.
- Buildings not residential in scale.
- Concern over beech tree relocation.
- Landscaping not in keeping with the landscaping of the area.
- Possibility of future change of use.
- Shading diagrams not accurate.
- Early morning service trucks/deliveries.
- On site amenities not available for use by neighbours.

- Entrance ways dangerous.
 - Lack of green open space.
 - Effects on commercial properties on Victoria Street.
 - Ramp gradients, availability of mobility spaces, tracking curves show no clearance to obstacles, tight parking layouts with no clearance to some columns and tracking, lack of tactile and audio devices on accesses.
 - Concerns over service access onto Dorset Street.
 - Possible future change of use of the site.
 - Potential damage to neighbouring properties
20. To the extent these matters are relevant (and most of them are), we will discuss them in the commentary which follows. We note here that there were several matters raised in the submissions which are not regarded as relevant for consideration under the RMA.
21. Of the matters summarised above Ms Armstrong considered that some are not relevant resource management matters including effects on property values, unlawful car parking, future change of use of the site, changing demographic of the site, public use of the facilities, reduced pressure on public health system and reputation of the applicant. There are also matters raised in the submissions that fall outside of the applicable matters of discretion including that increased activity in the area will benefit nearby businesses, investment in the economy, the use of the site as a retirement village will not create excessive noise or disruption and the creation of jobs.
22. We agree and adopt her reasoning. There are probably other matters in the list that not relevant.
23. She noted that several submitters have also requested that the resource consents currently being processed by Environment Canterbury (ECan) are processed concurrently this application. Section 91 of the RMA allows a consent authority to determine not to proceed with the notification or hearing of an application for a resource consent if it considers on reasonable grounds that where other resource consents are required in respect of a proposal, it is appropriate for the purpose of better understanding the nature of the proposal that applications be made before proceeding further. Ryman have applied for the following consents from ECan:
- A land use consent for earthworks;
 - A discharge permit for the discharge of contaminants to air from the operation and maintenance of an emergency diesel generator on the site;
 - A water permit for the take, diversion and discharge of groundwater for the purpose of dewatering during construction of the proposed retirement village; and
 - A land use consent for the installation, use and maintenance of a bore on the site.
24. She considered that the applications need not be determined together due to the discrete nature of the consents required from each authority. We agree and note also that section 91 is not a mandatory requirement and that it would have been highly inefficient to expect Environment Canterbury to sit through the entire hearing we have conducted, due to the much smaller and differing range of issues that it has to deal with. In any case as the two Councils have chosen, as they are entitled, to process the applications separately, it is too late to revert to a joint hearing and we do not have delegated authority, especially from Ecan, to make such a decision.

The issues/ Effects on the environment

25. Ms Armstrong summarised these matters into the following issues for consideration.
- Positive effects on the site and surrounding area, including social and economic effects.
 - Residential character and amenity.
 - Effects on protected trees.
 - Effects on heritage values.
 - Traffic effects.
 - Earthworks and Construction effects.

- Effects under the National Environmental Standard – Soil Contamination and effects on human health.
26. We accept that these were the major environmental issues raised by the application. We assess each of them in turn.
 27. With regard to positive effects the applicant has identified in the Assessment of Environmental Effects (AEE) a range of positive effects from the proposal. Ms Armstrong noted that the applicable matters of discretion do not cover the range of positive effects expressed by the applicant. She accepted that in terms of the discretion available, the proposal will provide for ongoing use of the heritage item, for its repair and restoration and represents an efficient, practical use of the sites, which are positive effects. We accept and adopt that analysis.

Assessment of Effects

28. An assessment of effects cannot be undertaken in a vacuum.¹ An issue arises here in relation to identifying the “context” for our decision-making.
29. Before undertaking the exercise of assessing those contextual matters, we note that the activity associated with a retirement village is a permitted activity in the Residential Central City Zone². This excludes any new buildings for a retirement village which are a restricted discretionary activity³.
30. Ms Armstrong wrote, and the applicants accepted, that residential activity is permitted in this zone subject to various built form standards including requiring no less than one residential unit for every 200m². Residential activity consisting of three or more units requires consent as a restricted discretionary activity. Non-residential and community activities may be permitted but only up to an area of 40m² (with other activity specific standards applying). Given the size of the sites, it is reasonable to consider that most, if not all, proposed activities would require a resource consent, and nothing of the scale of the applications would be a permitted activity. Therefore, it is reasonable to conclude that there is no relevant permitted baseline for these sites.
31. None of the planners considered there was an applicable permitted baseline. That was not disputed. We agree with that assessment noting that while the retirement village activity itself is permitted, the buildings are not.
32. In recent times there has been a trend towards a similar but not identical concept which has become known as the anticipated development model. Under that approach, the effects of a proposed activity are compared to the effects that might be anticipated from buildings that would comply with a district plan’s built form standards for activities, such as height limits, recession planes, boundary setbacks and site coverage rules, irrespective of whether or not the activity itself is a permitted activity. In this case the proposed buildings do contravene some of the built form standards, particularly height limits, recession planes and boundary setbacks. Most of those breaches are comparatively small, and consequently some of the witnesses compared the effects of these breaches with proposals which would comply with these standards and concluded that effects such as shading, and visual domination would be little different from the effects that would be created by compliant buildings.

Anticipated Development Approach

33. A matter of some controversy during the hearing relates, in essence, whether such a tool has been used, and if so, whether that is appropriate. That is, how much of what the Plan anticipates, particularly in this case the relevance of built standards, is relevant to our assessment of effects, and ultimately, for our determination of the appropriateness or otherwise of the proposal assessed within its context.
34. Put somewhat simply, the issue is whether the Applicant and its experts adopted what may loosely be described as a quasi-permitted baseline approach by relying on a plan anticipated environment

¹ *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673, paras 77-82,85

² under Rule 14.6.1.1 (P12).

³ Under 14.6.1.3 RD5

and then assessing only the effects over and above that; or discounted any effects which a building complying with the built form standards would generate.

35. Given the importance this issue assumed during the hearing, we consider it appropriate to summarise the comprehensive legal submissions provided by Mr Hinchey/Ms de Wit for the Applicant, and Mr Cleary for several submitters.
36. We were also provided with a memorandum from Mr Pizzey, Council's Senior Legal Counsel. This was attached as Appendix L to Ms Armstrong's s42A report. That memorandum was prepared in the context of a notification recommendation, but its contents are equally relevant to the substantive issues.
37. The comprehensive nature of the submissions and Mr Pizzey's memorandum have been of considerable assistance to us, as has the evidence of the various planning witnesses involved.

District Plan

38. Mr Hinchey addressed the relevance of the built form standards and referenced Mr Pizzey's legal memorandum with which he agreed. He recorded that as there is no relevant permitted baseline, it goes without saying that the existing environment is the relevant reference point for the effects assessment.⁴
39. He noted, however, that the matters of discretion relevant to the application added some complexity, identifying that in relation to built form standards exceedances, the matters of discretion specifically limit our consideration to the exceedances. He noted that in relation to the new proposed village buildings as a whole, the matters of discretion were broader.⁵
40. Mr Hinchey submitted that the assessment of the effects relevant to matters of discretion cannot be made in a vacuum, and the assessment must also be informed by the District Plan context. He submitted it would be an error to focus too closely on the effects of the proposal on the existing environment without considering the directions set out in the District Plan.
41. Overall, Mr Hinchey submitted that both aspects – what activities are there now, and what the District Plan is seeking to enable – are relevant to the question of what is appropriate to the proposal's context. He submitted it then became a matter of weight as to how well the proposed village fits within those contexts, and it is open to us to place more weight on one over the other.⁶
42. Mr Hinchey then identified a number of policies, objectives and rules that, in his submission, we could place particular emphasis on. He submitted that in light of that planning context, the built form standards are a highly relevant assessment tool, particularly in relation to the key issue of amenity effects on neighbours. It was his submission that the level of effects resulting from compliance with the built form standards can be assumed to be *generally* (original italics) appropriate in this location but in some particular circumstances the standards do not achieve that outcome. Overall he submitted that the assessment of effects may therefore use the built form standards as a tool to guide assessment, while ensuring any and all other relevant contextual factors are considered.⁷
43. Mr Cleary identified the necessity for us to make a finding on what constitutes the environment. He identified Rule 14.15.9 as a matter of discretion referring to development “bringing change to existing environments” (original emphasis). He submitted that existing must necessarily be contrasted with a predicted or future environment thereby limiting an evaluation in the present circumstances to the present state of the receiving, as opposed to the on-site, environment.⁸
44. Mr Cleary spent some time addressing Hawthorn. As a “preliminary submission”, he submitted the approach taken by the Applicant's evaluative experts ran contrary to the rationale of Hawthorn. In essence, he submitted that the experts have sought to develop a plan “anticipated environment”

4 Opening Legal Submissions on behalf of Ryman Healthcare Limited, 25 January 2021 at [36]

5 At [37]

6 At [38]

7 At [41]

8 At [4.2]

for the sites as a benchmark against which the effects of the proposal should be evaluated. He submitted such an environment is entirely speculative for the “simple reason that the development envisaged in their “future environment” would inevitably require a range of consents both from the City Council and the Regional Council”. He submitted this was an artificial extension of the concept of the permitted baseline, contrary to long accepted judicial wisdom.⁹

45. Mr Cleary submitted that an anticipated built form development approach had been taken by a number of the Applicant’s witnesses essentially to rely on the Residential City Centre Zone standards as providing a rigid benchmark against which effects the proposals are to be assessed. He considered that approach was pervasive in the evidence of Ms Skidmore (providing references by way of footnote) and was also applied by Mr Burns, Dr Mitchell and Ms Armstrong’s s42a report.¹⁰
46. Mr Cleary again referenced Mr Pizzey’s memorandum. He was largely in agreement with its conclusions. He concluded that the use of the anticipated development form approach should not be permitted in order to downplay the obvious effects on the submitters.
47. Mr Cleary took us through the High Court decision in *Sydney Street Substation v Wellington City Council*¹¹. He submitted that the Court accepted that the anticipated development model could be considered logical if one were dealing solely with the breach of a rule where the plan expressly restricted the assessment of effects to the extent of the breach or departure from the rule. However such logic did not apply in respect of rules which called for an assessment based on a range of matters that are not directly linked to a particular limit, but instead provide a broader assessment against contextual matters.¹²
48. Mr Cleary submitted that if we consider the anticipated built form approach to be lawful, we are not required to accept and apply it unquestioningly, rather it is proper to exercise our discretion as to whether or not to accord it any weight.¹³
49. Mr Cleary spent some time addressing the specific matters of discretion set out in Rule 14.15.9 highlighting the references to change to existing environments being appropriate to its context. He submitted that all indicators of what is meant by context are not specified in the Plan, although read together with the reference to existing environments, that it is at least implicit that context is not to be regarded as incorporating an unknown future receiving environment. He identified 14.15.9(iv) – whether or not a development is “*an appropriate response to context with respect to subdivision patterns, visible scale of buildings, degree of openness, building materials and design styles*”.¹⁴ He specifically referenced (vi) – “*residential amenity for neighbours, in respect of outlook, privacy, noise, odour, light spill, and access to sunlight, through site design, building, outdoor living space and service/storage space location and orientation, internal layouts, landscaping and use of screening*”.¹⁵
50. He submitted that the inclusion of those “while bringing change” obviously recognise that the establishment of retirement villages within residential zones will necessarily result in a degree of impact on the existing environment but that the degree of change must be appropriate to its context taking into account only matters listed in (i)-(viii).¹⁶
51. Mr Cleary addressed the relevant objectives and policies, emphasising those addressing the protection of amenity of inner city residential neighbourhoods, reflecting the context, character and scale of building anticipated in the neighbourhood, the range of residential opportunities including

9 Submissions on Behalf of Centro Roydvale Limited and Ors at [4.7]

10 At [5.1]

11

[2017] NZHC 2489

12 At [5.15]

13 At [6.1]

14 At [7.3]

15 At [7.4]

16 At [7.2]

medium to high density living, the form of built development enabling change to the existing environment while contributing positively to the amenity and cultural values of the area, and to the health and safety, and quality and enjoyment, for those living within the area.¹⁷

52. He accepted that the residential objectives and policies of the District Plan can be taken as providing directions or guidance as to the form of development contemplated. He submitted it was clear that development is intended to enable a variety of accommodation in order to provide for a range of housing needs, including high density accommodation. He described these as enabling directions.¹⁸
53. He submitted there was also an evident thread in the objectives and policies which seek to ensure that the development is “compatible the existing environment”(sic).¹⁹
54. He submitted further that this means that it is necessary to consider whether or not a development is anticipated by the Plan if it fails to:
 - (a) Protect and contribute positively to the amenity, quality and enjoyment of residents within the receiving environment; and
 - (b) Reflect the context, character and scale of building anticipated in the neighbourhood, a scale that is self-evident in the present circumstances.²⁰
55. He submitted that overall there were aspects of the proposal, in particular to its scale and mass, which will result in an obvious conflict with the compatibility thread of the residential objectives and policies.²¹

Reply

56. Mr Hinchey spent time in his comprehensive reply addressing:²²
 - (a) The relevance of the built form standards to decision-making, and the weight to be given to the standards; and
 - (b) The assessment approach adopted by the witnesses in relation to built form standards; and
 - (c) Interpretation of Rule 14.15.9, the retirement village-specific matter of discretion; and
 - (d) Interpretation of Rule 14.15.27–30, the matters of discretion relating to exceedances of the built form standards.
57. Mr Hinchey again acknowledged that there was no relevant permitted baseline and that the existing environment is the relevant starting point for the effects assessments. He confirmed that was not in dispute.
58. He identified that in relation to built form standard exceedances, the matters of discretion specifically limit the Commissioners’ consideration of the application to those exceedances, identifying Rule 14.15.27–30. He submitted that for this “confined aspect of the application” the weight to be given to the built form standards is therefore clear. He recorded his understanding that this point was also not in dispute.²³
59. He submitted, however, that the assessments of effects must not be restricted to only the effects arising from built form standard exceedances. Resource consent is required for the new proposed village buildings as a whole (that is, whether they comply with the standards or not) (Rule 14.15.9). He identified that for that aspect of the application, the weight to be given to the planning framework, including the built form standards, was a key issue at the hearing.²⁴

17 At [9.1] – [9.20]

18 At [9.15]

19 At [9.16]

20 At [9.16]

21 At [9.17]

22 Closing Legal Submissions dated 30 March 2021 at [40]

23 At [41]

24 Closing Legal Submissions on behalf of the Applicant at [42]

60. He submitted that there appeared to be agreement that built form standards can be taken into consideration to some degree.²⁵ He submitted that an assessment of effects cannot be made in a vacuum and must be informed by the District Plan context and that it would be an error to focus too closely on effects of the proposed village on the existing environment without properly considering the planning directions set out in the District Plan.²⁶
61. He submitted that for this application, the District Plan framework requires significant weight to be placed on the change that is “anticipated” in the environment. He submitted further that Policy 14.2.8.2 in particular is highly directive. He submitted this is a clear statement of the intention for the built form standards to guide the assessment of change on amenity effects on the Central City Residential Zone. He submitted this was one of the key tools used in the District Plan to resolve the “existing versus change” tension.²⁷
62. Our deliberations have also been assisted by the planning evidence, which we will identify and refer to where appropriate.

Planning evidence relevant to this issue

63. Very much by way of summary, Dr Mitchell for the Applicant considered the built form standards to provide “very helpful guidance” on the scale of building development that is generally considered to be appropriate.²⁸
64. Mr Archer relied on Mr Cleary’s legal submissions that the anticipated built form development approach was specifically rejected by the High Court in *Sydney Street Substation Limited v Wellington City Council*. Mr Archer raised a number of scenarios, including Scenario 3 (2-unit townhouses) which he considered to be a realistic development scenario for the zone which should still be considered for comparative purposes in terms of effects on neighbouring properties.²⁹
65. Ms Clay, who provided evidence on behalf of Centro Roydvale Limited, considered that the proposal did not reflect the context, character or scale of building anticipated in the neighbourhood, and considered that Ms Armstrong appeared to have carried out an assessment based on an anticipated built form approach.³⁰
66. Ms Armstrong’s approach is encapsulated in her paragraph 268 where she acknowledges the proposed facilities will be a considerable change to the area but high-density development is anticipated through the objectives and policies, as given effect to by the built form standards of the District Plan. Given the outcome sought for this area through the objectives and policies of the District Plan and informed through the built form standards, she considered the effects overall to be acceptable subject to conditions of consent.³¹

Assessment

67. In the preceding paragraphs we have set out a reasonably full summary of the submissions made by Mr Hinchey and Mr Cleary. We carefully considered those submissions. We have also considered the planning evidence, the expert evidence, and the evidence and statements made by the various submitters.

Our Assessment

The Issue

68. In our view this issue resolves to what should inform our assessment of effects and ultimately the overall appropriateness of the proposal, what weight should be given to the existing receiving environment, and what should be given to that anticipated by the Plan.

²⁵ At [43]

²⁶ At [43] citing *Summerset Villages (St Johns) Ltd v Auckland Council* [2019] NZEnvC 173, paras [18], [31]-[32] and [66]

²⁷ At [44]

²⁸ Statement of Evidence of Phillip Hunter Mitchell on behalf of Ryman Healthcare Limited 6 January 2021 at [48]

²⁹ Planning Evidence of Ethan Archer dated 22 January 2021 at [48(c)]

³⁰ Statement of Mary Clay at [14]

³¹ S42A Report prepared by Ms Louisa Armstrong dated 14 December 2020

Summary of Our Conclusions

69. We conclude that both what is there now – that is the existing receiving environment – and what the District Plan is seeking to enable, are relevant to our evaluation as to what is appropriate. We do not consider this as controversial.
70. The approaches potentially available to us range from an assessment largely focussed on effects and appropriateness in the context of the existing environment – through to one focusing almost exclusively on what the Plan “anticipates”.
71. As we consider both are relevant, the question then resolves to one of weight to be given to the various indicia in the Plan, including the built form standards, and also including the existing environmental context. It would be wrong, in our view, and given the planning framework, to in essence ignore, the effects upon the existing environment and the amenity currently enjoyed by the residents. It would equally be wrong for us to disregard the relevant provisions of the Plan, including its clear direction that change, through intensification, is sought within the Central City.
72. The resolution of this issue arises in the context of an activity specific rule (14.15.9) which we consider provides a very wide, albeit restricted, discretion and mandates a careful consideration of the existing environment. This differs from many of the restricted discretionary activity rules in the Plan.
73. The expert urban design witnesses have, at times, come perilously close to adopting an anticipated development approach. This may have led to an inappropriate discounting of effects but our discussions with the various witnesses have enabled us to reach a fully informed view as to the level of such effects.
74. On balance, and in the context of this proposal, on land within a zone anticipating intensification, we have tended to accord slightly greater weight to the planning framework, except where there are factors relating to particular properties and the persons residing there, and the proposal, generates discordant effects.

Rule 14.15.9

75. Much of the controversy and debate arises from the activity-specific rule – 14.15.9. This contains matters of discretion applying to retirement village buildings. It directs that we must consider:
 - a. *whether the developments, while bringing change to existing environments, is appropriate to its context taking into account: ...*
76. Of the 9 matters we are able to take into account, the most relevant for this discussion are the following:
 - iv. *appropriate response to context with respect to subdivision patterns, visible scale of buildings, degree of openness, building materials and design styles; ...*
 - vi. *residential amenity for neighbours, in respect of outlook, privacy, noise, odour, lightspill, and access to sunlight, through site design, building, outdoor living space and service/storage space location and orientation, internal layouts, landscaping and use of screening;*
 - vii. *creation of visual quality and interest through the separation of buildings, variety in building form, distribution of walls and openings, and in the use of architectural detailing, glazing and materials and colour; ...*
77. As Mr Hinchey stated, the introduction to that rule directly asks us to engage with the potential ‘existing versus change’ tension. He further submitted that did not need to be done in a vacuum.³²

Current Environment

78. As a first step, it is in our view, and we do not understand this was in contention, we must determine the existing environment. We accept Mr Hinchey’s submission that there are two elements to that environment, being:

³² Closing Legal Submissions at [80]

- The current environment; and
 - The known future state of the environment.
79. As Mr Hinchey submitted, the current environment – i.e. that which exists now, is a factual analysis.
80. As Mr Hinchey and Mr Cleary reminded us, we need to be conscious of the Court of Appeal decision in Hawthorn.³³ The Court of Appeal stated:
- “The “environment” embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district or regional plan or by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.”*
81. As Mr Cleary rightly pointed out, the Court of Appeal was clear that an assessment of the environment does not extend to a consideration of future applications that may be lodged within the receiving environment. It stated:
- “[74] ... such an approach would be a much less certain guide when consideration is being given to whether or not future resource consent applications might be made, and if so granted, in a particular area. It would be too speculative to consider whether or not such consent might be granted and to then proceed to make decisions about the future environment as if those resource consents have already been permitted.”*
82. Mr Cleary submitted that the Applicant’s experts had sought to develop a plan anticipated environment as a benchmark against which the effects of the proposal should be evaluated and submitted that such an environment is entirely speculative for the simple reason that the development envisaged in their “future” environment would inevitably require a range of consents from both the City Council and Regional Council.³⁴
83. Mr Hinchey also submitted the existing environment does not include speculative future development, such as the future development of 5 Salisbury Street or the future of 76 Park Terrace in light of the fire it experienced.³⁵
84. Ms Skidmore and Mr Burns both provided helpful descriptions of the current environment. Ms Skidmore identified that the sites are located within an established neighbourhood which she described in some detail. She did note that the area is going through considerable built change as a result of the earthquakes in 2011 which had led to demolition of a number of former buildings, with some of the sites having been recently redeveloped. Ms Skidmore also identified that a number of sites are currently vacant, some of which held resource consents for redevelopment.³⁶
85. Mr Burns agreed with Ms Skidmore’s description. He also noted the general trend in the area towards modern and ‘well-managed’ building design responding to their context.³⁷
86. Mr Burns noted the neighbourhood context has seen significant change due to the earthquakes, but he considered it to be a well-established high amenity residential area predominantly comprised of 1-3 storey dwellings of detached and multi-unit type. He noted the heights of buildings vary in the neighbourhood up to 7 storeys and larger apartment building forms. He also identified the “institutional scale” of the former Teacher’s College and the George Hotel and the backdrop of the Victoria Street commercial area to the east created a neighbourhood diversity and mix. Overall, he considered the neighbourhood context to be a genuinely mixed character.³⁸
87. Ms Clay gave evidence as to what she had witnessed during the ongoing redevelopment of the area post the 2010 and 2011 earthquakes. Her overall observation was that the vast majority of sites within the residentially zoned NW quadrant of the four avenues are fully developed, and

33 Queenstown Lakes District Council v Hawthorn Estate Ltd [2006] NZRMA 424 (CA) at para [84]

34 Submissions on Behalf of Centro Roydvale Limited and Ors at [4.7]

35 Opening Legal Submissions on behalf of Ryman Healthcare Limited, 25 January 2021 at [86]

36 Statement of Evidence of Rebecca Anne Skidmore, 6 January 2021 at [61]

37 Statement of Evidence of Andrew Burns dated 6 January 2021 at [54]

38 At [55]

unlikely to change significantly for the immediately foreseeable future. She noted that this includes, for example, redevelopment of a number of sites on Dublin Street, Dorset and Salisbury Street to provide for, predominantly, 2-3 storey apartment blocks of a relatively modest scale/footprint. She identified the development currently being constructed at 108 Dorset Street (sic) is larger but is proposed to contain only 5 large luxury apartments. She considered there were a limited number of vacant sites within this part of the Residential Central City Zone amounting to a very small percentage of the total number of sites. She considered that some form of residential development is likely for the vacant sites and, for the purposes of assessing the receiving environment, the District Plan enables development of 2 residences per site. Development of 3 or more residences per site being a restricted discretionary activity.

88. Several lay submitters commented on the current environment and what it was that they valued. Understandably, they tended to focus more on what they considered the effects of this proposal would be.
89. Mr Roper-Lindsay described his belief that this area was the “jewel” of Central Christchurch, with an attractive mix of residential and non-residential buildings, with new buildings complementing older ones.
90. Dr Roper-Lindsay addressed the amenity values of the Dorset Street/Dublin Street/Victoria Street/Park Terrace area as high and identified, in particular she identified:
 - generally small-scale and diverse nature of building types;
 - mix of residential and small commercial activities with associated pedestrian life and activity;
 - regular contact with visitors and local visitors passing;
 - the mix of buildings and structures set in an urban landscape with gardens, parks and most notably large trees;
 - architectural and aesthetic values of Dorset Street flats themselves. She also identified the previous Bishop Park Village which reflected the same peaceful garden setting for its residents.
91. ICON identified the amenity in this area as still of “quite low- rise streetscape with the amenity of the area being threatened by the huge mass and height of the bulk of the ‘village’ suddenly dominating and changing the character of the experience”.
92. Several other submitters identified what they value in relation to the existing environment and again expressed their concerns in relation to the impact of this proposal on those values.
93. Ms Schroder in her urban design assessment noted the residential development within the locale is to a relatively small scale, predominantly resulting in 2 and 3 storey townhouses, rather than large-scale apartment blocks. She also noted that the mature tree cover has generally reduced as residential intensity within the area has increased but some large-scale trees and boundary vegetation remain.³⁹

Site Visit

94. While we are both familiar with the application sites and the surrounding area, we undertook a site visit. We visited both sites and traversed the surrounding streets, including Dorset Street, Park Terrace, Salisbury Street and Peterborough Street. We also walked along Hagley Park along the Avon River.
95. There were some nuanced differences but overall we consider the current environment in the surrounding residential area is one of high quality, and predominantly consisting of 2-3 storey dwellings. There are obviously exceptions to this, including 108 Park Terrace. The commercial area along Victoria Street presents as containing built structures of a much greater scale, reflecting their role and zoning.

³⁹ Report of Josie Schroder at [27]

96. In that context, this proposal will bring considerable change to the area. We acknowledge that change is not of itself an adverse effect. However aspects of the change will impact on the existing residential amenity values, which were summarised by a number of the neighbouring residents as outlined above. The impact by the level of change and impact on the existing amenity values occurs largely as a symptom of the intensity and scale of this development. In some instances, the effects on neighbouring residents and bearing in mind the RMA definition of environment⁴⁰ are significant.

The Planning Context-Future State

97. The above discussion relates to the current environment as we find it to be. An assessment of the environment includes an assessment of the future state in accordance with *Hawthorne*. The District Plan provisions, and other relevant statutory documents have a wider role than simply determining the environment. They provide guidance and an overall framework for our ultimate assessment of appropriateness.

98. On a restricted discretionary activity application, it is appropriate for us to consider relevant objectives and policies to inform our understanding. We must have regard to the objectives and policies of the Plan, and the NPSUD in so far as they relate to the matters within the restricted discretion. Given the scope of the matters of discretion in Rule 14.15.9, a number of objectives and policies are relevant.

99. Reflecting a top down approach we start with a discussion of the relevant national policy statement.

Applicant's Position

100. Mr Hinchey advised that the National Policy Statement on Urban Development Capacity 2016 had been replaced by the National Policy Statement on Urban Development (NPSUD). That took effect on 20 August 2020. Mr Hinchey submitted that as the District Plan preceded the NPSUD, it may be given "considerable weight" by the Commissioners.

101. Mr Hinchey, in reliance on Dr Mitchell's evidence, submitted that the NPSUD underlined the importance of:

1. Well functioning urban environments that...:
 - (a) Enable all people and communities to provide for their wellbeing and health and safety;
 - (b) Enable a "variety of homes" that meet the needs of different households.
2. Enabling "more people" to live in areas that are in or near a centre zone, well serviced by public transport, and where there is a high demand for housing. He submitted that all of those characteristics applied to the site and that in tier 1 urban environments, such as Christchurch, plans were expected to enable high density urban forms in these locations to maximise the benefits of intensification.
3. Urban environments, including their amenity values, developing and changing over time in response to the needs of people, communities and future generations. He submitted that plans may provide for change that alters the present amenity of some and improves the amenity of other people and communities. Notwithstanding the District Plan not having yet been amended, the Residential Central City Zone provisions recognise the need for change in this area. He submitted that expectation of change to be particularly important when considering the potential residential amenity effects of the proposed village and its scale and character in the wider context. Mr Hinchey emphasised the NPSUD's expectations for the urban growth environment as being relevant to the assessment matter of "whether the

40 "Environment" includes –

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) – (c) of this definition or which are affected by those matters.

development[s], while bringing to change to existing environments, is appropriate to its context”.

102. Mr Hinchey submitted that the NPSUD provided additional support for the proposed village. Ryman however did not rely on that. He submitted the application stands on its own merits, having been designed prior to the NPSUD.
103. Dr Mitchell considered the NPSUD as intending in part to drive urban environments such as Christchurch towards providing for additional building height and density. He considered this particularly applies in locations such as Park Terrace given its proximity to certain public amenities, commercial premises and that it is well connected to public transport. He also noted that the existing zone already encourages high density.⁴¹
104. It was his opinion that the proposal was consistent with and gives effect to the development expectations of the NPSUD as it provided for a diversification of housing stock and increased density in the Residential Central City Zone.
105. Ms Armstrong had regard to the NPSUD but did not give it significant weight in the consideration of the present application as a plan change to give effect to it had not been prepared or notified.
106. We largely agree with Ms Armstrong. Ms Armstrong was right to note Policy 6(b) which states that the planned urban built form (in Plans that have given effect to the NPS) may involve significant changes to an area, and those changes may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, community and future generations, including by providing increased and varied housing densities and types; and (ii) are not, of themselves, an adverse effect.⁴²
107. A national policy statement must be given careful consideration in a process such as this. The NPSUD contains objectives, policies and implementation requirements that apply to these sites.
108. Objective 3 seeks to enable more people to live in in or near central zones, and/or areas that are well-serviced by public transport, and/or where there is high demand for housing.
109. Objective 4 amongst other things acknowledges amenity values in the development process.
110. Policy 3 seeks to maximize the benefits of intensification in city centre zones through building forms and density that realise as much development capacity as possible and requires building forms of at least 6 storeys there.
111. Policy 4 enables local authorities to modify those building height and density requirements to accommodate “qualifying matters”.
112. Qualifying matters are addressed in more detail in Part 3 (Implementation) of the NPSUD⁴³. This enables local authorities to set aside areas from the requirements of Policy 3, following site-specific analysis of particular characteristics that might make an area inappropriate for the high density of development envisioned under Policy 3.
113. Local authorities are required to prepare Housing Demand Capacity Assessments⁴⁴ and Future Development Strategies.
114. All these matters are to be given effect to through the relevant regional policy statements and district plans for the area.
115. Given that this area was described by Mr Roper-Lindsay as the “jewel” of the Central City, and certainly enjoys high amenity levels, it is perfectly foreseeable that the Council may identify the amenities of this area as a “qualifying matter” that sets it aside from the requirements of Policy 3. This would be similar to the existing “character areas” that already exist and are provided for in the district plan in a number of locations, particularly in older inner suburbs.

41 Summary and Rebuttal Evidence Phillip Hunter-Mitchell dated 28 January 2021 at para [35]

42 S42A Report at [294]

43 See Subpart 6, Clauses 3.31 and 3.32

44 At Clause 3.25

116. We also note that even if the Council does allow for the 6 storey minimum height in this area, there is nothing in the NPSUD that would preclude it from specifying standards such as boundary setbacks, recession planes and maximum building footprints to mitigate adverse effects. For example, taller tower blocks on compact floor plates can create less overall shading than long medium-rise buildings on a north-south axis such as those proposed on the Peterborough St site in particular.
117. We also note that the existing Residential Central City and Residential Medium Density zones already provide for a good deal of residential intensification capacity.
118. So although we have considered the NPSUD carefully we consider it would be premature to give much weight to it at this stage before the Council has completed its Housing Demand Capacity Assessments and other duties and prepared changes to the District Plan. Put another way, we would not rely on Objective 3 and Policy 3 to override the objectives and policies of the District Plan.

District Plan – Objectives, Policies and Other Matters

119. We have had the benefit of detailed legal submissions and planning evidence on these matters. Dr Mitchell, and Ms Armstrong, both provided, by way of an appendix, the relevant objectives and policies in full. Dr Mitchell's Appendix C was in a tabular form with a summary commentary of his assessment for each of the relevant objectives and policies. We found that particularly helpful.
120. In this part of the decision, we focus on the objectives and policies of Chapter 14 – the Residential Zone.
121. Objective 14.2.1 – Housing supply, seeks an increased supply of housing that will:
- Enable a wide range of housing types, sizes and density consistent with the Strategic Objectives;
 - Meet the diverse needs of the community, including social housing options; and
 - Assist in improving housing affordability.
122. In our view, that objective is not hugely influential on decision-makers on individual resource consents. In our view it is more of a scene setter for the more focussed policies which follow.
123. Policy 14.2.1.1 – Housing distribution and density, again mandates the provision for distribution of different areas for residential development in accordance with the residential zones identified and characterised in Table 14.2.1a in a manner that ensures:
- High density residential development in the Central City, that achieves an average net density of at least 50 households per hectare for the intensification development.
124. The character in Table 14.2.1.1a for the Residential Central City Zone is as follows:
- “Located within the Central City, the Residential Central City Zone has been developed to contribute to Christchurch’s liveable city values. Providing for a range of housing types, including attractive, high-density living opportunities, the zone utilises the potential for living, walking and playing in close proximity to the commercial centre of the city. The character, scale and intensity of non-residential activities is controlled in order to mitigate effects on the character and amenity of the inner-city residential areas.”*
125. As can be seen from that description, a range of housing types is anticipated, including attractive high-density. Other housing types are also anticipated.
126. We note that Objective 14.2.8 seeks medium to high density in the central city, and Policy 14.2.1.1 seeks to ensure high density residential development at an average net density of 50 households per hectare. This is actually not very high. Developments that achieve that level would give effect to this objective and policy. That is not to say that higher levels are inappropriate, but simply that those provisions should not be invoked to support a supposed need for much higher levels of density. A lesser level of density, with a corresponding decrease in height and building mass would give also effect to those provisions.

127. It would not be difficult to design, for example, a conventional 2 or 3 storey development on the Peterborough Street site that achieved far more than 50 households per hectare.
128. Policy 14.2.1.3 – Residential development in the Central City, is to restore and enhance residential activity in the Central City by:
- Providing flexibility for a variety of housing types which are suitable for a range of individual housing needs;
 - Providing for a progressive increase in the residential population of the Central City, assisting in the creation of new inner-city residential neighbourhoods and the protection of amenity of inner-city residential neighbourhoods; and
 - Encouraging the comprehensive redevelopment of sites that are no longer required for non-residential purposes.
129. Policy 14.2.1.3 addresses residential activity in the Central City and is not limited to the Residential Central City Zone.
130. Policy 14.2.1.8 – Provision of housing for an aging population, seeks to provide for a diverse range of independent housing options that are suitable for the particular needs and characteristics of older persons throughout the residential areas, and comprehensively designed and managed, well located, high density accommodation options and accessory services for older persons and those requiring care or assisted living, throughout all residential zones. It also recognises that housing for older persons can require higher densities than typical residential development in order to be affordable and, where required, to enable efficient provision of assisted living and care services.
131. Again, this policy is not targeted at the Residential Central City Zone. The policy applies in all residential zones. It is clearly relevant.
132. Objective 14.2.4 – High quality residential environments, is to provide high quality, sustainable, residential neighbourhoods which are well designed, have a high level of amenity, enhance local character, and reflect the Ngāi Tahu heritage of Ōtautahi.
133. Policy 14.2.4.1 – Neighbourhood character, amenity and safety, is to facilitate the contribution of individual developments to high quality residential environments in all residential areas as characterised in Table 14.2.1.1a, through design:
- Reflecting the context, character and scale of buildings anticipated in the neighbourhood;
 - Contributing to a high-quality streetscene;
 - Providing a high level of on-site amenity, minimising noise effects from traffic, railway activity and other sources where necessary to protect residential amenity;
 - Providing a safe, efficient and easily accessible movements for pedestrians, cyclists and vehicles; and
 - Incorporating principles of crime prevention through environmental design.
134. Objective 14.2.4 and Policy 14.2.4.1 are obviously important in informing our decision-making. Again, they are of general application. Policy 14.2.4.1, by use of the word “anticipated,” provides some support for greater weight to be given to the Plan. It is forward looking.
135. Policy 14.2.4.2 – High quality, medium density residential development, is of some assistance, notwithstanding it is addressing medium rather than high density residential development. It encourages innovative approaches to comprehensively design, high quality, medium density residential development, which is attractive to residents, responsive to housing demands, and provides a positive contribution to its environment (while acknowledging the need for increased densities and changes in residential character).
136. It lists a number of methods for achieving that, including recognition that built form standards may not always support the best design and efficient use of a site for medium density development, particularly for larger sites.

137. We also recognise Policy 14.2.4.8 – Best practice for health, building sustainability, energy and water efficiency, and the promotion of new residential buildings that provide for occupants’ health, changing physical needs, and life stages. We accept the proposal provides for that.
138. In terms of the specific zone, Objective 14.2.8 – Central City residential role, built form and amenity, is obviously of considerable importance.
139. Notably, it seeks a predominantly residential environment offering a range of residential opportunities, including medium to high density living, within the Central City to support the restoration and enhancement of a vibrant city centre. It also seeks a form of built development in the Residential Central City Zone that enables change to the existing environment, while contributing positively to the amenity and cultural values of the area, and to the health and safety, and quality and enjoyment, for those living within the area.
140. That objective although enabling change to the existing environment, requires that change to contribute positively to the amenity and cultural values of the area ...and the quality and enjoyment for those living in the area.
141. Policy 14.2.8.1 – Building height, is to provide for different maximum building heights in areas of the Residential Central City Zone with some areas requiring a reduced height compatible with existing predominant character.
142. That policy suggests reduced height limits are addressed through the planning process, rather than by assessment through individual resource consent applications. We do not consider it to be of much assistance here.
143. Policy 14.2.8.2 – Amenity standards, was given some considerable weight by Mr Hinchey. He submitted it to be a clear signal as to what is anticipated in the zone and the built form standards should be given considerable weight.
144. The policy provides:
- “Amenity standards**
- a. *Prescribing minimum standards for residential development which:*
- i. *are consistent with higher density living;*
- ii. *protect amenity values for residents;*
- iii. *integrate development with the adjacent and wider neighbourhood;*
- iv. *provide for a range of current and future residential needs; and*
- v. *recognise cultural values.”*
145. Dr Mitchell considered that these provided some important context with respect to the scale and degree of building that could be anticipated to occur in the Residential Central City Zone. His Summary and Rebuttal Evidence dated 28 January 2021 provides a helpful summary of his opinion.
146. At paragraph [22] he stated that the built form standards provide some important context with respect to the scale and degree of building that could be anticipated to occur in the Residential Central City Zone. At [23] of his Summary (and as noted in his primary evidence) any retirement village which complies with the built form standards is a restricted discretionary activity under Rule 14.6.1.3 (RD4). He noted that the Council would be required to consider a range of potential effects on the environment, including effects on the wider streetscape and the residential amenity of adjacent neighbours, but that public or limited notification would not be required. He concluded that paragraph by stating:
- “In my opinion, the built form standards provide very helpful guidance on the scale of building development that would generally be considered to be appropriate.”*
147. He again summarised his conclusions in relation to built form standards at [28.1] of his Summary and Rebuttal where he stated:
- “The built form standards are not an absolute determinant of whether a proposal is appropriate or not and Ms Skidmore and Mr Burns conclude that the height and bulk-related effects of the Proposed Village are acceptable and in line with what is anticipated in this area. The built form*

standards are not bottom lines for residential development in the Residential Central City Zone and should be used as a guide to inform the effects assessment.”

148. Ms Armstrong, in her summary, stated:

“As the built form standards have been prescribed to protect those values, they provide guidance for an assessment of appropriateness. There may of course be neighbours with unusual characteristics that mean the built form standards are not a useful guide.”

149. We largely accept Dr Mitchell's and Ms Armstrong's opinions in relation to built form standards. We would add to Ms Armstrong's comment that there may be neighbours with unusual characteristics that mean the built form standards are not a useful guide, but there may also be proposals with characteristics that mean the built form standards are not a useful guide. The built form standards have therefore informed our assessment of effects but, in the context of the activity specific rule, it is, in our view, very clear that the built form standards are no more than a guide.

150. Compliance with built form standards does not result in a permitted or controlled activity status. A retirement village which complies with the building height, daylight recession planes, road boundary building setbacks, minimum setbacks from internal boundaries, and water supply for firefighting, remains a restricted discretionary activity and subject to Rule 14.15.9.

151. While any application arising from that rule is not to be limited or publicly notified, the full range of matters contained in Rule 14.15.9 will still need to be assessed and a decision reached. It may be declined. Compliance with the built form standards does not, of itself, render a proposal appropriate.

152. Conversely, non-compliance with the built form standards, and there a number, does not, of itself, mean a development is inappropriate. Non-compliance again is no more than a guide. A careful analysis is appropriate.

153. The breadth of the matters of discretion are such that treating built form standards as a de facto permitted baseline would be an error. We have been careful to avoid such an approach.

Overall Approach

154. Overall, we accept that the planning framework anticipates change and particularly an intensification of residential development in this zone. The Plan is not however blind to the importance of the existing context, including the current amenity and quality of the environment.

155. The application of an anticipated development model, and reliance on that, would not meet the Plan's clear directions. The built form standards in particular can be given some weight but not to the degree that we can essentially discount effects that would arise from a building fully complying with the built form standards.

Assessment of actual and potential effects

156. We note that the applicant obtained written approvals from the owners of No. 90 Park Terrace and the George Hotel, and we have not considered effects on either of those properties.

157. We address each of the primary effects in turn.

Heritage

158. A number of submitters raised concerns in relation to heritage effects. The issue relates to two aspects:

- (a) The effects of the proposal on the Chapel and its setting on the Bishops Park site; and
- (b) Effects on the heritage values of the Dorset Street We address each of those in turn.

Former Bishop's Chapel, 100 Park Terrace

159. The former Bishop's Chapel is located at 100 Park Terrace. It is scheduled as a highly significant heritage item in the Christchurch District Plan. It has high historical and social significance. The heritage assessment identified that it may be the only Georgian Revival chapel in New Zealand. It has cultural and spiritual significance, it has high architectural and aesthetic significance, and has

contextual significance as the built remnant of the complex that was the Anglican Bishop's dwelling which was demolished following the Canterbury Earthquakes of 2010-2011.⁴⁵

160. Its significance was not in contention. We were fortunate enough to gain entry to the Chapel on our site visit. Its significance and heritage value was readily apparent to us. We consider its retention, repair and restoration to be of considerable benefit and value.

Objectives and Policies

161. To inform and provide context for our assessment, we have considered the relevant objectives and policies.

162. Objective 9.3.2.1.1 – Historic heritage, seeks, relevantly, that the overall contribution of historic heritage to the Christchurch District's character and identity is maintained through the protection and conservation of significant historic heritage across the district in a way that enables and supports ongoing retention, use and adaptive re-use; and the maintenance, repair, upgrade, restoration and reconstruction of historic heritage.

163. Policy 9.3.2.2.3 to is manage the effects of subdivision, use and development on heritage items, settings and areas scheduled in a way that provides for the ongoing use and adaptive re-use of scheduled historic heritage in a manner that is sensitive to their heritage values while recognising the need for works to be undertaken to accommodate their long-term retention, use and sensitive modernisation and associated engineering and financial factors.

164. The policy also recognises, subject to the above, the need for a flexible approach to heritage management with particular regard to enabling repairs, restoration and reconstruction in a manner which is sensitive to the heritage value and protecting those with particular heritage values from inappropriate subdivision, use and development.

165. (b) of the policy contains the principles for works on heritage items and settings, which we will not repeat.

166. Policy 9.3.2.2.5 – Ongoing use of heritage items and heritage settings, is to provide for the ongoing use and adaptive re-use of heritage items and heritage settings, including repairs and maintenance, temporary activities, specified exemptions (not relevant) and upgrade work, signs and new buildings in heritage settings.

167. Here the Chapel is to be structurally upgraded and restored, largely to its original form, so that it can be incorporated into the village and used by residents. The restoration of the Chapel ensures the retention of the heritage values and its ongoing use is preserved.

168. The structural works to be undertaken are comprehensive in relation to both structural upgrading and restoration and refurbishment.

169. Expert evidence was provided by Mr David Pearson, an architect with over 30 years professional experience in heritage architecture. Mr Pearson had prepared the Bishop's Chapel Technical Report – Heritage dated 24 March 2020, a temporary protection plan and also provided the heritage input into s92 responses provided.

170. Ms Richmond, a heritage adviser employed by the Council, prepared the heritage assessment and provided summary evidence at the January hearing.

171. Both were very supportive of the proposed works to maintain and upgrade the Chapel. There were initially some minor matters of disagreement or clarification, but they had been resolved by the time of the hearing.

172. Mr Pearson and Ms Richmond addressed the setting, both recognising that the multi-storeyed buildings and their proximity was not necessarily ideal. However, they were both of the view that any minor effect arising from that was mitigated by matters such as the retention and development of the space as courtyard around the Chapel, the low-rise structures behind it and the permeable

⁴⁵ Heritage Assessment Report updated 27/11/2020, Suzanne Richmond, Heritage Advisor

atrium in front of the Chapel. Ms Richmond recorded that the proposal opens up new viewshafts to the Chapel that were not previously possible.

173. Several submitters also expressed concerns in relation to the proximity of the buildings to the Chapel, and the encroachment into the heritage setting. For example, the Christchurch Civic Trust urged an increase in setback from the Chapel, describing the “imposition of an approx. 30m x 15m x 14m contemporary structure at such close proximity” as something of an affront.
174. Heritage New Zealand Pouhere Taonga filed a submission expressing concern about the scale of the development around the Chapel. By letter of 16 December 2020, it advised that the concerns raised in its submission had been met by the draft conditions 33 – 42 which were provided as an attachment to Appendix 4 of that letter. They therefore no longer wished to be heard in person but requested that the letter and attached conditions be drawn to the attention of the appropriate persons.

Assessment

175. We have carefully considered submissions and evidence on this issue. In our assessment, we have given weight to the views of the experts in this area. We acknowledge that the scale and location of the proposed buildings will impact on the contextual significance of the Chapel on its wider historical site and have considered whether there should be greater setback or other treatment to minimise those effects. We are satisfied that is not necessary. Subject to appropriate conditions, we consider that the effects on the heritage setting will be less than minor and appropriate. The positive effects from the retention, restoration and ongoing use of the Chapel, albeit not for specific religious purposes, are of considerable benefit.

Dorset Street Flats

176. Again, the importance of the Dorset Street Flats contribution to heritage was again not a matter in contention. The registration report for New Zealand Historic Places Trust Pouhere Taonga in October 2009 states:

“The Dorset Street flats in Christchurch were designed and built between 1956 and 1957 and are amongst the most important domestic buildings built in New Zealand in this second half of the 20th century. ...”

177. The Dorset Street Flats District Plan statement of significance report dated 4 February 2015 records:

“The Dorset Street Flats and their setting have high overall significance to Christchurch, including Banks Peninsula. They have high historical and social significance for their association with Sir Miles Warren as one of the original owners/occupiers and the evolution of inner-city housing choices in the mid 20th century. The Dorset Street Flats have cultural significance as they reflect the way of life of a group of professionals who commissioned and financed the flats. They have high architectural and aesthetic significance as one of the most iconic designs by Sir Miles Warren, one of the New Zealand’s most acclaimed 20th century architects. The flats have high technological and craftsmanship significance for the innovative use of concrete block construction, and the quality of their construction and detailing. The Dorset Street Flats have contextual significance within the immediate streetscape and the north-western sector of the Central City in which they contribute to the historic residential character of the city. The Dorset Street Flats and their settings have archaeological significance and the site is recorded as Archaeological Site M35/555.”

178. Mr Pearson identified that the flats are listed as a Category 1 Historic Place by HNZPT and scheduled as a Highly Significant Historic Heritage Place in the District Plan. He noted that it was recognised as one of the most significant Modern Movement buildings in New Zealand and that the significant heritage values of the flats are well recognised.⁴⁶
179. Mr Pearson acknowledged the proposed village is larger in scale to that which had previously existed on the site but identified that much of the recent development in the area is larger than the

⁴⁶ Statement of Evidence of David Alan Pearson 6 January 2021 at [73]

villas and Flats and the scale of the proposed village reflects its Residential Central City zoning. He noted that the proposed village had been designed by Warren & Mahoney and considered their design approach an appropriate response to the surrounding context, including the Flats. He noted that the Flats face north, that is away from the proposed village; efforts have been made to reduce the scale of the two wings of the BO1 building by stepping back their upper level and recorded his opinion that the heritage values of the Flats would not be adversely affected by the proposed village.⁴⁷

180. Ms Richmond addressed this issue in her heritage assessment and in her summary of evidence. In her summary she stated:

“In response to the submissions concerned about the heritage effects on the adjoining Dorset Street Flats, which is also nationally significant and scheduled as a Highly Significant Heritage Item in the District Plan, I note that there is no explicit consideration of heritage effects on adjoining sites and the District Plan Heritage Matters of Discretion.”

181. However, as heritage values contribute to amenity values, she considered heritage as an aspect of amenity effects which are assessed. She noted that amenity was an integral consideration in the Flats’ design, both in the design of the internal layout of the units and the external spaces of the heritage setting, including the south-facing rear communal space referred to in the owners’ submissions. That would be overlooked by Building BO1.

182. She agreed with Mr Pearson in so far as the design of the proposed BO1 building adjoining the Dorset Street Flats southern boundary would offer some mitigation of the potential dominance effects on the contextual values of the Flats. She also referred to a visual simulation attached to the submission of the Dorset Street Flats Owners Group which depicted the development as forming a visual backdrop to the Flats which would adversely impact on the views to the heritage building from Dorset Street and the views from the Flats within the heritage setting. It was her opinion that there would be an associated loss of amenity for the public, owners, residents and visitors engaging with the Dorset Street Flats heritage item and setting.

183. A number of the owners addressed both the heritage listing and, primarily, their concerns regarding BO1 and its visual dominance. It is clear, on the evidence, that the owners who provided submissions are passionate about the heritage values of the Flats. They have been involved in a lengthy, and extremely expensive, repair and restoration programme.

Limits to our discretion

184. The restricted discretionary activity status for heritage does, we accept, relate to the effects on the site of the proposal itself. However, in our view heritage does form part of the amenity values enjoyed by the community. The undisputed heritage values of the Dorset Street Flats clearly, on the evidence of a number of submitters, and the expert evidence, particularly from those experts for the Council, illustrate this. The restricted discretionary activity rule in relation to retirement villages, as identified earlier, enables us to consider amenity and character of the existing environment.

185. While the heritage matters of discretion clearly relate to a proposal to do works on or within a heritage building/area, and they are properly focused on that, we do not accept the argument that the restricted matters of discretion mean we are unable to assess heritage effects as a wider amenity issue. The definition of ‘amenity values’ as “those natural or physical qualities and characteristics of an area that contribute to peoples’ appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes” is wide. It would be artificial to exclude the heritage characteristics of the Dorset Street Flats from our consideration of the contribution the Flats make to amenity.

186. We address it on that basis. We are conscious to avoid any form of double-counting. We address the effects of this proposal on the Dorset Street Flats in our amenity effects assessment, including visual dominance.

⁴⁷ Statement of Evidence of David Alan Pearson 6 January 2021 at [72]-[80]

Amenity Effects

Preliminary comment

187. Before addressing the evidence and our conclusions on the important amenity issues, we address our understanding of Mr Hinchey's submissions in relation to evidence weighting. Mr Hinchey submitted that we can and should put considerably more weight on the opinions expressed by the experts who have presented evidence (subject to two exclusions) as opposed to the lay persons' view expressed by submitters. He submitted that the caution is particularly necessary where submitters have an inherent interest in the outcome, whereas an independent expert does not. He also submitted that lay people may perceive effects on them which are in fact unlikely to eventuate. This is to be compared to the role of the experts to objectively assess future realities.⁴⁸

188. In summary, we took Mr Hinchey's submissions to essentially identify that the views of residents in relation to amenity values needs to be objectively scrutinised and we need to ascertain whether they are reasonably held by reference to both the District Plan, and the experts' assessment of effects. If our summation of Mr Hinchey's submissions is correct, we agree with that.

189. While not a case cited by Mr Hinchey, we find the discussion of this issue in *Schofield v Auckland City Council*:⁴⁹ helpful.

"The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s7(c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activity they undertake, and the emotion they experience undertaking that activity.

Often these factors form part of the attachment people feel to an area or place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity effects must, in our view, start with an understanding of the subjective, it must be able to be tested objectively."

190. We spoke to a number of submitters to ascertain the matters which contributed to their amenity and the changes they perceived this proposal to bring.

191. It is apparent to us, from the submissions and statements presented that many of the amenity values appreciated by the submitters related to the existing character of development in the area, and particularly its general low-rise and tree-ed residential environment together with its location adjacent to Hagley Park, and the benefits of its inner-city location in terms of access to the facilities that provides.

192. We are conscious that the Bishops Park site has been vacant for some considerable time, as indeed has the Peterborough Street site. This may provide perhaps an unrealistic expectation in terms of amenity. We note, however, that a number of the submitters identified the previous use of the Bishops Park site in particular, as one they had no issue with, considering it contributed to their "community".

193. The residents' evidence was genuine and at times passionate. Without exception, none of the opposing submitters were opposed to change itself, nor the retirement village. They considered the proposal however went far beyond what they considered to be appropriate. There were references to over-development and a squeezing of as much from the sites as possible. We found the description by residents as to how they use their sites to be helpful.

⁴⁸ Closing Legal Submissions at [151]

⁴⁹ [2012] NZEnvC 68 at [51]

194. At the objective level, our earlier assessment of the residential objectives and policies and our findings on those are clearly relevant. The Plan clearly anticipates change, including intensification. These guide our decision making and provide the objective lens.
195. In terms of expert evidence, we received significant evidence from Ms Skidmore, evidence by way of peer review from Mr Burns, and evidence from Ms Schroder. There is a high level of agreement in relation to this issue between the experts. Ms Schroder's main concern was in relation to shading (and visual dominance) effects on the west-facing apartments on Level 3 and 4 of 15 Peterborough Street. She considered those effects would be moderate to high.

Limits to our discretion

196. In addressing residential amenity for neighbours, the rules, in combination, provide us with a wide discretion.
197. Pursuant to Rule 14.15.9 – Residential amenity for neighbours (which we have recited earlier), we are able to address outlook, privacy, noise, light spill and access to sunlight, through site design, building, outdoor living space and service/storage space location and orientation, internal layouts, landscaping and use of screening.
198. Pursuant to Rule 14.15.27, we are able to assess any effect of the increased height on the amenity of the neighbouring properties, including through loss of privacy, outlook, overshadowing or visual dominance of buildings.
199. Through Rule 14.15.28 – Daylight recession plane, we can consider any effect on the amenity of the neighbouring properties, including through loss of privacy, outlook, overshadowing, or visual dominance of the buildings.
200. The discretion provided by Rule 14.15.9 is, in our view, very wide. While that rule applies across all residential zones, and in that respect is general, it is specific in that it addresses the retirement villages. The other zone rules do not restrict its application.

Assessment

Relevant Policies and Objectives

201. We have identified the relevant residential objectives and policies in our previous discussion of the anticipated environment approach. We do not repeat those here. We have had careful regard to them.

Shading

202. A number of submitters raised concern in relation to shading, largely resulting from the scale of the proposed buildings.
203. It was identified as an important aspect of the residential amenity enjoyed by those neighbouring the site. It was an issue that we received considerable lay evidence, expert evidence and submissions in relation to. In our Fifth Minute, we sought that Ryman address cumulative effects on the neighbouring Salisbury Street and Peterborough Street properties, and also sought that the applicant address the scale reduction necessary to permit, what we described as useful late afternoon sun at 18 Salisbury Street (for outdoor living spaces) and 15 Peterborough Street (units).

Particular properties

204. In response to our Fifth Minute, Ms Skidmore and Mr Burns presented detailed evidence, accompanied by detailed shading diagrams which addressed the cumulative effects of shading on the neighbouring Salisbury Street and Peterborough Street properties.
205. We address, in particular, those neighbouring properties where concerns in relation to shading were identified.

6/17 Salisbury Street

206. Mr Begg owns the property 6/17 Salisbury Street. He advised that he uses the property primarily as a refuge for rest and sleep between and after consultation and the surgery, and to catch up on

admin tasks. Mr Begg expressed concern as to shading, considering that the development would have a major effect on his property due to its position on the immediate north and that there would be a cumulative loss of sunlight, cumulative on the loss from the buildings to the east. His evidence was that the development would “cumulatively” cause loss of sun for approximately a two-month period over winter and also block very valued late afternoon sun.

207. Ms Schroder assessed the shading effects at 6/17 Salisbury Street as low.

208. Ms Skidmore identified that the property would experience shading during mid-winter given its location to the south of the Bishops Park site. She noted that the northern wall of the unit had limited windows, and the outdoor living space was located to the west of the unit.

Assessment

209. We viewed Mr Begg’s property from Westwood Terrace, and from the neighbouring site and easement. We did not go on to the site. We acknowledge there will be minor cumulative shading effects. However we agree with the expert urban design evidence that the degree of additional shading is acceptable and appropriate in its context. We also acknowledge visual dominance is an issue at this site. Again we consider that is acceptable in context.

15 Salisbury Street

210. Ms Bennett identified, in her evidence, that BO1, BO2 and BO3 on the Bishops Park site, which are on the northern boundary of 15 Salisbury Street, breach the building height rule and/or breach the recession plane standard. Her concerns related to the “sheer density and volume of coverage” by the buildings would cause shading and loss of sunlight for the property. She considered these to be significant cumulative effects. She found the shading diagrams to be misleading and in relation to that property, did not take into account the additional shading effects from other pre-existing buildings creating even further loss of sunlight, particularly during the winter months when it is most needed. This cumulative effect was described as extremely significant in both the home and the backyard area, including the swimming pool. Mr Bennett stated that the outdoor amenity in the back yard at 15 Salisbury Street would become unusable for 3-4 months of the year due to the size and “recession breaches”.

211. Ms Skidmore and Mr Burns considered the overall shading effects to be less than minor and appropriate. In their supplementary statement for the 30 March hearing, they concluded that the cumulative shading work indicated that no additional shade from the proposed buildings fell upon that property at mid-summer, as any shading at that time was generated by existing buildings.⁵⁰

212. At spring equinox, shading occurred to varying degrees from 9.00am to 6.00pm from both existing and proposed buildings, with the bulk of the rear garden area receiving sun from 10.00am to 4.00pm. The additional proposed buildings would create additional shade over part of the pool area from 9.00am to 11.00am. From noon-2.00pm, the pool received sun and at 3.00pm the proposed buildings create shade over the pool. They noted at 5.00pm the pool is already shaded by existing buildings.

213. At mid-winter, the building and rear garden area was in full shade at 9.00am from existing buildings. At 10.00am still in full shade generated by the existing buildings (approximately 60%) and proposed building (approximately 40%). At 11.00am the rear area fully shaded by the proposed buildings. This reduces to partial shade from noon to 1.00pm. At 2.00pm the proposed buildings create additional shade over circa 40% of the outdoor space and from 3.00-4.00pm the rear outdoor area is effectively fully shaded by existing and proposed buildings with a 40:60 split. They also noted that at mid-winter there was significant cumulative shade effects over the majority of the rear area of 15 Salisbury Street, but that at equinox and mid-summer the sun was available to part or all of the rear for the majority of the day and overall, assessed across the year, they confirmed that the shading effects of the proposed village in light of the shading from the existing buildings would be less than minor.⁵¹

50 At [43]

51 At paras [45] and [46]

Our assessment

214. We acknowledge the concerns expressed in relation to this matter by Mr and Mrs Bennett. They made their position very clear. The property is of a very high standard with a considerable flow between the indoor and outdoor areas. The outdoor area to the rear of the property is one of high amenity and is clearly an area which is used and enjoyed by the Bennetts and their family.

215. We agree that they will experience an increase in shading, both from the proposed buildings themselves, and cumulatively. Overall, and by a fine margin, we conclude that the shading effects are minor and objectively acceptable in this context, including the planning context. We accept the expert evidence of Ms Skidmore, Ms Schroder and Mr Burns.

13 Salisbury Street

216. 13 Salisbury Street consists for 4 individual terraced housing units which each have a small patio garden on the eastern side of each of the units, and a green open space to the street frontage of the lot. There is a reasonably substantial carport located at the north of the site, together with a vehicle manoeuvring area. The western side contains a driveway.

217. The additional shading assessments carried out concluded that:

- There would be no additional shading from the proposed building on to the useable outdoor areas or habitable areas at mid summer and spring equinox as any shade generated was solely by existing buildings.
- At 9.00am in mid winter, units 1-4 and their patios are heavily shaded by existing buildings and again at 2.00-4.00pm the patios are in shade.
- At noon the gardens are generally free from shade.
- For the rest of the day, 10.00am to 11,00am, 1.00pm, the patios are partly or fully shaded by the proposed buildings.⁵²

218. Overall, they concluded that across the year the shading effects of the proposed village in light of the shading from existing buildings was “less than minor”.⁵³

219. Ms Schroder’s assessment of affected parties - level of effect table identified shading (and visual dominance) as low.

220. Overall, we agree with the expert evidence in relation to the level of shading effects at 13 Salisbury Street.

Goodland – 5 Salisbury Street

221. 5 Salisbury Street is a vacant property. Ms Goodland advised that it was purchased with a view to building a home in the future in the city. Her evidence was that they had planned the orientation of the homes to enjoy the sun. She and Mr Goodland own a property development company specialising in building townhouses in suburbs close to the inner city and due to that experience, they “know how important it is for residents to enjoy sunshine and privacy in areas where outdoor living is small and more congested”.⁵⁴

222. We visited the site on our site visit and met Mr Goodland there. There has been some recent planting on the western boundary of the site.

223. We acknowledge that there will be some additional shading effects on that property but overall, they will be acceptable and appropriate in this context.

76 Park Terrace

224. Mr Worthington raised shading as a concern. His evidence was that the home would be shaded for 6 months “when it needs it most” during the morning through mid-day and during winter. His

⁵² Supplementary Statement of Skidmore and Burns at [40]

⁵³ At [41]

⁵⁴ Written Statement dated 21 January 2021

evidence was that the windows of the home were primarily oriented to the east and north and the rooms most affected by the shading are the lounge, formal dining room and 3 of the 4 bedrooms, together with the breakfast room/solarium, outdoor garden and dining area.

225. Mr Archer, in his planning evidence, identified the non-compliances with building B07 and that the western wing of building B07 would protrude through the recession plane as it applied to the Worthington's northern boundary by a height of 5.3 metres over a length parallel to the boundary of approximately 11 metres.⁵⁵
226. He accepted that the applicant's shading diagrams were accurate and compared the shading against the anticipated environmental outcome (his comparison against scenario 2), a townhouse development (his comparison against scenario 3), and previous tower development (his comparison against scenario 4). Depending on which scenario was used as a comparator, he considered the shading effects ranged from minor through to significant. They were significant if considered against the comparator of townhouse development.
227. Ms Skidmore acknowledged that the proposed village would result in shading across much of the property in mid-winter. In her evidence, the shading is "not greater than the shading that would be generated a building complying with the built form standards (sic)". She noted that at equinox additional shading extends mostly across the driveway and northern boundary garden from mid morning. In the middle of the day, the additional shadow does extend to the northern face of the dwelling, and by 1.00pm it moves off with shading not extending to the outdoor terrace area adjacent to the dwelling. In mid summer, a small portion of shading extends over an area of driveway and garage in mid morning. In her opinion, the shading would not diminish the residential amenity to any noticeable extent and the adverse shading effects on the amenity would be minor. Mr Burns agreed.
228. Ms Schroder considered that shading effects would be low to moderate.

Assessment

229. We have again carefully considered the evidence on this aspect. We visited 76 Park Terrace. That provided helpful context. Unfortunately, as noted above, the property has been substantially damaged by fire. However, its built form, and the outdoor areas and accessory buildings, remained readily apparent.
230. We agree that there will be shading effects. In the overall context, given the transitory nature of such effects, we accept the expert evidence of Ms Skidmore, and Mr Burns' peer review. We agree with Ms Schroder's view that the shading effects would be low to moderate.

18 Salisbury Street

231. The property at 18 Salisbury Street contains eight 2-storey units which are arranged in rows. Again we visited the property on our site visit and that provided us with a helpful understanding of the site and context.
232. Ms Waddy, the owner of 4/18 Salisbury Street, spoke on behalf of the owners of 1-8/18 Salisbury Street. In terms of shading, Ms Waddy stated that both the updated and original shading diagrams did not represent the potential shading effects past 4.00 and 5.00pm. She explained the investigations which they had initiated to create shade drawings past 4.00pm so that they could better understand the potential effects of the shading. She stated:

"The result of these show that on every day of the year after 4.00pm, light is blocked into our buildings and courtyards by the proposed buildings, sunlight would ordinarily reach the properties at 18 Salisbury Street."

233. Ms Waddy noted that this was an important period as it was the time when the working residents enjoy the courtyards at the north-facing courtyards of their properties for gatherings, barbecues and other activities. She also noted the layout of the 2-bedroom properties meant that the north-facing courtyards run straight off the living areas and consequently extend the outdoor living space.

⁵⁵ Planning Evidence of Ethan Archer dated 22 January 2021 at [51]

She considered that with no sunshine and skyline, these would become less inviting and undesirable courtyards for residents to enjoy. She spoke about the importance of summer evenings in Christchurch and advised that the residents would like to see a more compatible low-rise design that sits aesthetically in its environment, with wider setbacks that allow sunshine into the courtyards, rather than dominating and shading them.

234. We also heard from Mr Davies, a resident at 5/18 Salisbury St. He expressed real concerns in relation to increased shading. Mr Archer, again by comparison against his various scenarios, disagreed with Ms Skidmore's evidence that the properties did not have any outdoor living spaces that could be affected by shading (its balconies are covered with a roof and wing walls). He considered that the shading at 18 Salisbury Street would be significant in comparison to the townhouse development scenario and would be greater in mid summer for the properties to the rear of the site which were unshaded by the previous tower development.
235. Ms Skidmore/Mr Burns addressed the cumulative shading work which had been undertaken. Their evidence was that this identified that at mid summer no additional shade from the proposed buildings falls on that property between 9.00am to 4.00pm and all units receive 7 hours of sun. They noted that there was one exception at 4.00pm when some shade fell onto the driveway and also on half of the front patio on unit 8 but the boundary fencing would likely already cast this area into shade.
236. From 6.00pm the north-facing open spaces of 1-4 and 6-8 are fully shaded and Unit 5 partially shaded by the proposed buildings although the rear spaces of units 5-8 received sun. From 7.00-8.00pm the existing buildings on this property partially or fully shade the north-facing outdoor spaces of all units 1-8 but the rear of units 5-8 are free from shade at 7.00pm. Shade from the proposed building adds to the shade created by the existing buildings on this property from 5.00pm to 8.00pm resulting in full shade on the north-facing spaces of all units in early evening from 7.00pm to 8.00pm.⁵⁶
237. At spring equinox 9.00am to 2.00pm there is no, or negligible shade from proposed buildings and all 8 units receive a minimum of 5 hours of sun, while units 1-4 receive 6 hours throughout the day. From 9.00am to 6.00pm existing buildings partially or fully shaded the rear open spaces of units 5-8 (except unit 8 at 6.00pm). At 4.00pm the proposed buildings create a small area of additional shade over the rear space of unit 8 and from 5.00 – 6.00pm the proposed buildings create additional shade over the rear spaces of units 5-8 and partial shade over the front yard space of units 1-4.
238. At mid winter at 9.00am to 4.00pm the rear units 5-6 and the front and particularly rear open spaces were almost completely shaded by existing buildings. The rear units of 6 and 7 receive a couple of hours of sun from 12.00 – 2.00pm. The proposed buildings generate "a little additional shade" over the front yard of unit 5 at 3.00pm and unit 8 experiences a "little additional shade at 4.00pm". Units 1-4 front yards experience some shade from existing buildings from 1.00-3.00pm and full shade on buildings and spaces by 4.00pm.
239. Overall, they considered that additional shade from the proposed buildings has little effects at that time of year on the property. Their assessment remained that the shading effects of the proposed village in light of the shading from the existing buildings was less than minor.
240. Ms Schroder acknowledged that evening sun is an important aspect of the living environment. In general terms, she advised, in response to questions, that if the proposal were to shade the properties at 18 Salisbury Street from 4.00pm on every day of the year, that would be significant but if there was access to sunlight at other times, then that may bring it down to moderate.

Our assessment

241. We have again given careful consideration to the evidence in relation to this issue. Ms Skidmore and Mr Burns were somewhat critical of our reference to shading in the late afternoon period, and what our Minute described as "useful" sunlight. They consider that to be an unusual and potentially

⁵⁶ Supplementary Statement at [54]

misleading approach because shading effects need to be measured objectively. They noted that there are a range of usage patterns and subjective responses to shading effects on neighbours. Some may prefer more sun in the morning, some in the middle of the day, or at different times of the year. It was their experience that it is more commonly accepted that the middle part of the day is an important time to be free from shade (e.g., 10.00am to 3.00pm).

242. We do not accept that criticism. We acknowledge that in the end it is an objective assessment but that is properly informed by direct evidence from residents as to what they value. We had clear evidence from Ms Waddy of the importance of evening sun. Ms Schroder also identified that evening sun is an important aspect of living environments. We agree.
243. Having attended the site, and carefully considered all of the evidence, we consider the shading effects on the owners and occupiers of 18 Salisbury Street (and there is likely to be some variation as to the level of effects on particular owners) will be more than minor. The additional shading will be noticeable and will detract, on the evidence provided by the submitters, considerably from their amenity. This relates particularly to evening sun.
244. However, we have, as we are required to do, viewed this objectively. We note that a building constructed to the built form standards will undoubtedly have adverse shading effects. We consider the qualities of the site, and its layout, together with the design of the Peterborough Street proposal, and particularly the substantial building form running a north to south orientation, causes shading effects which are, in our view, unreasonable. While we do not consider that shading effects internally will be significant, in terms of the outdoor areas, including balconies, there will be a significantly greater degree of shading from late afternoon, particularly in the summer months. That will significantly impact on the residents' enjoyment. We acknowledge the expert evidence of Ms Skidmore, Mr Burns and Ms Schroder, but overall we consider that the owners and occupiers will not retain reasonable access to sunlight and on an overall assessment we consider that is unacceptable and inappropriate in this context.

15 Peterborough Street

245. 15 Peterborough Street is a 7-storey high apartment building. The owners had lodged a submission but did not appear at the hearing. We understand that they had intended to but there was uncertainty about hearing times. We were joined by representatives of the owner on our site visit. The representatives were anxious to provide us with their views but we were conscious of the need to be careful in that regard.
246. Ms Schroder considers that building BO8 will have moderate-high shading effects on the property.⁵⁷ Her principal concerns related to the apartments at levels 3 and 4. She identified that while building BO7 was below the 20 metre height limit, there was a recession plane intrusion of some 40 metres in length and up to 6 metres in height. She described this as a substantive breach in relatively close proximity to the boundary (less than 4m) with 15 Peterborough Street, on the property's western aspect. She considered that the additional building bulk projecting into the recession plane for the extended length would have a moderate to high adverse effect upon the visual amenity and outlook of western neighbours located on the second and third floors of the adjacent apartment block as a result.
247. In terms of shading, she advised, that following the discussions between us and the applicant's expert, she undertook a further site visit to better understand the edge conditions, particularly in regard to 15 Peterborough Street. She noted that the bulk of the vegetation was within the subject site, and did not extend for the full length of the boundary with Peterborough Street and she did not consider the on-site vegetation of 15 Peterborough Street itself to have any substantive impact on potential amenity provided through access to sunlight. She still concluded that the amenity effects on the west-facing apartments at level 3 and 4 will have shading and visual dominance effects that are moderate to high.⁵⁸

⁵⁷ Schroder Summary at [49]

⁵⁸ Summary of Evidence at [48]-[49]]

248. Ms Skidmore and Mr Burns addressed 15 Peterborough Street in some detail in their supplementary statement of 30 March 2021 at paragraphs [61] through to [80]. They noted that each level includes 4 apartment units facing west towards the Peterborough site, and specifically towards building BO8. They noted that the apartments included living areas and outdoor spaces either as ground-level terraces or upper-level balconies, with the top 2 levels (5 and 6) including 3 apartments, 2 of which are in a 2-level duplex arrangement and face the Peterborough site. They reviewed the additional cumulative sun studies and noted the importance of the 3D elevation images which had been prepared. These show the effects on the different floor levels vary as the shading moves up the building. The plan view images show the shading from the proposed building and indicated the extent of shade from the form that complied with the built form standards. They noted that the 3D elevation images were not available when they conducted their primary assessments and they had therefore looked at them in more detail.⁵⁹
249. At mid summer, they identified that between 9.00am and 1.00pm, 15 Peterborough Street shades itself and specifically its west-facing units. The exceptions were units 23, 24 and 25 which all receive full sun onto their north-facing façades. They advised that the common lime tree (protected) casts shade over units 1-4 from 6.00-7.00pm and across units 5, 7, 9, 11, 13 and 15 at 8.00pm.⁶⁰
250. The evidence was, and this is supported by the diagrams, that no additional shade from the proposed buildings falls on 15 Peterborough Street as a whole from 9.00am to 1.00pm. At 2.00pm and 3.00pm, all units receive sun except ground level unit 1, which is partly shaded at 3.00pm over its outdoor terrace area and wall. In this regard, Ms Skidmore and Mr Burns advised that it should be noted that fence and relatively dense planting occurs along the boundary and is highly likely to cast shade at ground level. The opinion was expressed that shade from proposed buildings causes no additional shade effect on unit 1 at 3.00pm.⁶¹
251. We note, and as Ms Schroder has identified, most of that planting is on the proposal site.
252. At 4.00pm, the 4 ground floor units (1, 5, 17 and 23) are shaded, as well as parts of units 2 and 7 on the first floor. Unit 23 enjoys full sun due to its northern façade.⁶²
253. The joint statement acknowledged that this outcome does create adverse effects on their amenity but again reference the existing vegetation and stated further that shade from a form compliant with built form standards would shade unit 1, not unit 2, nor units 5, 17, 23. Those units (part of unit 2) experienced additional shading from the proposed buildings.
254. At 5.00pm mid summer, 8 ground and first floor units are shaded as well as part of unit 9 on the second floor. The evidence was that units 2, 7, 18 and 9 receive 3 hours of sun during 2.00pm, 3.00pm and 4.00pm at mid summer, losing it by 5.00pm. That was considered to be “acceptable”. At 5.00pm, shade from the form compliant with the built form standards shades the units.⁶³
255. From 6.00pm in mid summer, units 1, 5, 17, 23, 2, 7, 18, 24, 3, 9, 19, 25 as well as part of unit 11 on the third floor are in shade from the proposed buildings although it is noted that some shade from the common lime tree falls on some of the units. Again, that is considered to be acceptable by Ms Skidmore and Mr Burns. They note that a form compliant with the built form standards is the same as the shade from the proposed buildings.⁶⁴
256. At 6.00pm in mid summer, 14 ground, first, second and third floor units are shaded, being those earlier addressed and units 11 and 20. Again, no shading occurs from existing buildings. There is some shade from the common lime tree on units 1-4. Again, this was considered acceptable and again it is noted that a form compliant with the built form standards would result on the same or greater than shade.⁶⁵

59 At [65]

60 At [66]

61 At [68]

62 At [69]

63 At [70]

64 At [71]

65 At [72]

257. At 7.00pm, the top 3 levels, being levels 4, 5 and 6, are generally free from shade from the proposed buildings in summer. That is units 13, 21, 15 and 22, and as they only experience a small amount of early morning shade at the equinox (6.00pm) and mid-winter (4.00pm) that is considered to be acceptable sun year-round.
258. In terms of spring equinox, 15 Peterborough Street shades itself in the morning, and the building is free from shade generated by the proposed buildings from 9.00am to 2.00pm, and then a similar pattern arises but starting one hour earlier (i.e. from 3.00pm rather 4.00pm) and the fourth floor levels 13 and 21 are also in shade by 6.00pm. As at mid summer, units 2, 5 and 17 receive 2 hours of sun at 1.00pm and 2.00pm, losing sun by 3.00pm. That outcome is noted as affecting their amenity but again it is noted that over this time shade from a form compliant with the built form standards is the same or greater in scale.
259. Again in mid winter, 15 Peterborough Street shades itself in the morning and the buildings at 18 Salisbury Street create partial shade on 15 Peterborough Street from 10.00am to 4.00pm to varying degrees, although that shading only affects the northern most unit 23 and possibly 24 and 25 depending on how far up the building the shade extends.
260. At mid-winter, shade on the lower levels begins at 2.00pm, one hour earlier than at the equinox, and at that time, shading affects units 1 and 2 on the ground floor and first floors, and at other times through to 4.00pm the shade tracks up the building affecting the apartment units in a pattern similar to the summer and equinox patterns described. Unit 2 receives limited sun for one hour around 1.00pm. Units 5, 17, 7, 18, 3 and 9 receive 2 hours of sun at 1.00pm and 2.00pm, losing sun by 3.00pm. Unit 23 and possibly unit 24 receive some shade from 18 Salisbury Street from 2.00-3.00pm but overall have good sunlight exposure (4-5 hours) and all other units receive 3 hours or more sunlight. From 2.00pm to 4.00pm shade from a form compliant with the built form standards is the same or greater than the proposed buildings.⁶⁶
261. By way of conclusion, Ms Skidmore and Mr Burns conclude that 15 Peterborough Street has a significant effect on existing shading – it shades itself, specifically all units facing the Peterborough site to the west. 18 Salisbury Street has a small existing shading effect on the lower-level northern unit 23 and possibly first floor level unit 24 in winter, but its contribution to cumulative shading effect is negligible. At mid-summer, the common lime tree casts shade on units 1-4 from 6.00-7.00pm and this shade moves across units 5, 7, 9, 11, 13 and 15 at 8.00pm.⁶⁷
262. At [79] it is noted that the proposed buildings will generate shade over various apartments across the ground, first, second, third and fourth levels from mid to late afternoon across the year. The fifth and sixth levels are generally free from shade throughout the year. The ground floor apartments and unit 2 on the first floor experience the greatest cumulative shade effects as they receive some 2 hours of sun per day throughout the year, with unit 2 receiving 1 hour at mid-winter. The first and second floor apartment units 7, 18, 3 and 9 receive 2 hours of sun at mid-winter but 3 hours or more at mid-summer and the equinox.
263. Recognising the level of shade anticipated by the central city location, Ms Skidmore and Mr Burns revised their original assessment to conclude that, overall, shading effects are less than minor through to moderate for different apartments at this property. Specifically, for units 2, 5 and 17, based on the cumulative effects information, they considered the shading effects on these particular ground and first floor units to be moderate.⁶⁸
264. While acknowledging the moderate effects on units 2, 5 and 17 at 15 Peterborough Street, they consider that the effects of the proposed village on both 18 and 15 Salisbury Street across the day throughout the year were generally acceptable for the central city environment. They stated further that the shading effects analysis must also account for the expectations of the District Plan, which provided an objective lens to the effects assessment. They noted the District Plan does not specify a particular period to assess shading effects in this location, nor does it distinguish between

66 At [77]

67 At [78]

68 At [80]

different neighbouring orientation, but it “does however contain guidance on the expectations of change and achieving the high-density objectives of the area. It also notes the relevance of the built form standards as a guide when seeking to protect amenity”. Ms Skidmore and Mr Burns provided their opinion that the District Plan provisions reflect the fact that shade is a reasonably anticipated result of the more compact living environments created in the central city location.

Assessment

265. It is readily apparent, on the evidence, including that by the applicant’s experts, that there will be significant adverse shading effect on level 3 and 4, in particular. The level of change will be, in our view, significant in terms of the late afternoon/evening sun, that is as a consequence of both the height and orientation of the buildings, and particularly BO7.
266. On the evidence before us, it seems clear that any changes to the buildings i to have any effect in minimising the adverse effects, will need to be significant. The lower-level apartments will experience the most shading. Ms Schroder when identifying and addressing shading, was, on our understanding, considering the effects arising from the recession plane intrusion which she described as being a substantive breach, in relatively close proximity to the boundary (less than 4 metres) with 15 Peterborough Street, on the property’s western aspect, with units, balconies and large areas of glazing on that aspect. We understand that it was the additional building bulk projecting into the recession plane for the extended length which led to Ms Schroder’s finding of high impact and her concerns on the west-facing apartments at level 3 and 4; that is, the lower-level apartments would be adversely affected by almost any construction on that part of the site. While Ms Schroder’s evidence in chief focused on visual amenity and the outlook of western neighbours on the second and third floors, her summary concluded that the adverse effects on level 3 and 4 would be shading and visual dominance.
267. Overall, we agree and accept Ms Schroder’s evidence in this regard.
268. We acknowledge that the Resource Management Act is not about ensuring that there are no effects but in our view the issues associated with this building, and its impacts on the neighbouring properties, does give some credence to the over-development view expressed by a number of submitters. The nature of this part of the site is such that the buildings cannot be set further back. It appears that the only method of addressing issues is by a substantial reduction in the building height, or through a carefully nuanced redesign. In its present form, we consider the shading effects, and visual dominance effects, are unacceptable.

Possible scale reduction

269. In our Fifth Minute we requested the applicant to address what would be required to ameliorate late afternoon shading effects at 18 Salisbury Street and 15 Peterborough Street caused by buildings BO7 and BO8. That was to include how much the buildings would have to be reduced in scale below the limits of the built form standards to permit useful late afternoon sun at those properties.
270. In terms of 18 Salisbury Street, they advised that none of the scale reduction scenarios would alter the winter amount of shading for the units. At equinox, none of the scale reduction scenarios would alter the amount of shading at 5.00pm or 6.00pm. At 4.00pm even a minus 3 floors scenario would not reduce shading to all of the units.
271. In summer, a minus 1 floor unit or minus 2 floors unit would achieve an additional hour or 2 hours free from shading at different times for different units. From 7.00pm, even the minus 2 floors scenario would not reduce shading to any of the units.
272. They considered that to maintain late afternoon access to sun for all units at 18 Salisbury Street, even a very conservative development form designed to be well below an envelope created by the built form standards would create a late afternoon shading impact, primarily as a consequence of

the site and neighbour orientations, and it would not therefore be possible to achieve late afternoon sun.⁶⁹

273. In terms of 15 Peterborough Street, a minus 1 floor scenario – that is a 3-storey building, would maintain access to afternoon sun for units 4, 11 and 20 in mid-summer and either side through to the equinox. A minus 2 floors scenario would additionally maintain access to late afternoon sun for units 3, 9, 19 and 25 in mid-summer and either side through to the equinox but would still create extensive late afternoon shading in mid-summer and either side through to the equinox for the units on the lower two levels of the apartments. A minus 2 floors scenario would also still create extensive late afternoon shading in the mid-winter for the units on the lower 4 levels of the apartments.

274. We are concerned about the effects of the proposed development caused by shading and visual dominance (which we discuss next) along the entire eastern boundary of the Peterborough St site

275. At paragraph 103 of their supplementary statement in reply included with the closing submissions in reply Ms Skidmore and Mr Burns expressed a concern that the removal of two or more floors would result in the loss of a considerable numbers of apartments and therefore diminish the ability of the proposed village to meet the high density expectations of the district plan. We disagree. We have previously identified that the high density expectation of the district plan is for at least 50 household per hectare. As proposed the equivalent density of the proposed village would exceed that by a considerable margin.

Visual dominance/overlooking/privacy

276. Visual dominance was raised by a number of the submitters.

277. There was a significant level of agreement between Ms Skidmore, Mr Burns and Ms Schroder.

278. Ms Clay, in her planning evidence, identified the comments by Ms Schroder and, taking into account Ms Schroder's expert opinion on visual dominance and scale, was of the view that it was clear that issues of dominance, scale and visual amenity effects on the adjoining neighbours are more than minor.⁷⁰

279. Ms Clay relied on Ms Schroder's comments for her planning conclusions. Dr Mitchell relied on the applicant's expert evidence for his conclusions as to these effects. Ms Armstrong responded to a question from us in relation to criticism which had been made by a number of submitters that she had essentially ignored the concerns expressed by the contributing Council officers. Ms Armstrong advised that she had considered those views, and the views of other experts, and then reached her conclusion through the application of a planning lens. We consider such an approach is entirely proper. The evidence of planners, as to the level of effects, when their evidence is simply accepting the evidence of the respective witnesses, is of very little value to us in our decision-making role. Ms Armstrong's approach is appropriate.

Dorset Street Flats

280. The owners of the Dorset Street flats identified concern with the visual dominance. In her report, and more particularly in her summary of evidence, Ms Schroder noted the large windows on the southern façade in relation to those units. She advised that the building was and remains under cover and she determined the outlook using Google Earth rather than reference to the building consent plans. She properly advised that she considered this was in error noting that the windows were, and remain, partially screened from this view as identified by her. She considered there still remained a visual dominance effect when standing looking out from the kitchen windows but she assessed that as low rather than low/moderate as she had previously identified. She also noted that this was due to the limited extent of glazing and limitations to the direct outlook from them from further within the apartments.

69 At [99]

70 Expert Statement of Evidence of Mary Clay at [61]

281. In terms of 4A Dorset Street – the Stables Building, she clarified that in her report, she had assessed the proposal in relation to the s127 plan and the opacity of the south-facing windows was not noted on the southern elevation of those plans. She advised that if the windows are to be opaque, she would agree with Mr Burns that there would be no immediate impact from the southern views from the Stables Building. She remained of the view that the values the Dorset Street Flats contribute to the Dorset Street context and neighbourhood amenity will be diminished by the visual impact of the north elevations of BO1.
282. Mr Garlick, one of the owners, had lodged his own submission. He provided helpful background as to the process that the owners had undertaken to ensure the protection of the Dorset Street Flats following the extensive damage in the February 2011 earthquake. He noted that they sat empty for some considerable time and were only saved by the determination of the owners. This was at “enormous personal cost to the owners” as the Flats sat empty for the next 8 years while insurance issues were addressed.
283. He identified specific concerns with BO1. He described the size and bulk of BO1 block as totally out of character with the Dorset/Dublin Street area and dwarfed the Dorset Street Flats. He described it as domineering, looming, and overbearing. Mr Garlick also identified the importance of use of the rear community area, particularly once that was reinstated.
284. The Dorset Street Owners Group lodged a joint submission.⁷¹ The joint submission identified that their main concerns were with BO1 block. They submitted that the size and bulk of the BO1 block was not in character with the Dorset/Dublin Street area and attached an elevation diagram. In terms of the residential design principle, they considered that the proposal would have a significant adverse effect on the residents of 4A and the Dorset Street Flats through the “bulk and appearance of the two end walls of BO1 which are shown as the 1.8m setback”. The submission recognised that while much of the communal garden area of the Flats is adjacent to the swimming pool in application site, the sense of enclosure and loss of sky view would be considerable. Amongst the relief sought was improving the visual quality of the end walls in BO1 adjacent to the Dorset Street Flats/4A, increase the internal setback of the buildings adjacent to 2-16, 4A and 18 Dorset Street, and various other matters.
285. Mr Roper-Lindsay sought reduction in the bulk of BO1 by reducing its height, increasing its setback, and treatment.
286. Dr Roper-Lindsay considered that the proposed retirement village would adversely affect those amenity values of the Dorset Street Flats through introducing tall and bulky, large-scale buildings right to the boundaries of the Bishops Park site. She considered that the proposal appeared to maximise floor space at the expense of a setting with an open space. She stated that while other tall apartment and hotel blocks in the area are single, isolated units set in the context of smaller residential units, and some distance from the Flats, the building BO1 would be approximately 2 metres from the Dorset Street garden boundary and the wall of the proposed 4A Stables rebuild. She identified that BO3 would shade 4A for a short time in the winter but the most notable effect, in her view, would be on the sense of privacy, space and calm within the Flats and garden. She noted that while BO1 had 2 wings, and the open area with the swimming pool would be opposite approximately half of the Flats’ boundary, the end walls of the 2 wings would be close to the other half. She considered this would lead to an increased sense of enclosure for the Flats’ residents and appeared contrary to District Plan Rule 14.15.30.⁷²
287. Ms Schroder had concerns in relation to BO1 and the interface of the wings with the Dorset Street Flats in particular. She considered that a more nuanced response was required. She considered that a similar response to the refinement of the scale of the building that had been applied to 76 Park Terrace, or an even more nuanced design approach, increased building setback and/or change to the scale and form of planting would be appropriate to address the dominance over the Dorset Street Flats.

71 Joint Submission of Dorset Street Flat Owners Group 14 October 2020

72 Personal Statement of Dr Judith Roper-Lindsay at [16]

288. For the applicant, Mr McGowan disagreed with Ms Schroder's concerns. He considered that with the new buildings located on the south side beyond a proposed replacement Stables Building, combined with the principal outlook from the Flats being to the north with the service spaces minimally glazed to the south, the height and proximity of the new buildings would have negligible impact on the Flats and the heritage settings, as experienced both from within the Flats and from Dorset Street – beyond that anticipated by the Plan.⁷³
289. Ms Skidmore again noted the units have a primary orientation to the north with their outside living spaces (in the form of courtyards at ground level and balconies at the upper level) on the northern side of the property facing away from the site. She noted the consent drawings for the building alterations show the southern building façades as being relatively solid with both small-scale windows and larger windows screened with louvres.⁷⁴
290. She described the shorter end walls of the eastern and western wing of building BO1 that faced the properties. The wings are separated by a communal courtyard and windows on the northern face of proposed building BO1 have angled louvres to avoid overlooking. She identified that a single unit is located at the upper level of each wing of BO1 which open up to a deck and that those units would look across the top of the Dorset Street Flats but not into the units.⁷⁵
291. Overall, she considered that given the characteristics of BO1 and the orientation of the Dorset Street Flat units, any adverse overlooking or privacy effects from the proposed village would be negligible.⁷⁶ For completeness, she identified that a small amount of shading on units 12 and 16 would occur at equinox only and considered the adverse amenity effects would be less than minor given the small amount, and when it occurred.
292. Mr Burns noted that building BO1 would present a larger built presence as a backdrop to the Flats given the infringement of the recession plane standard. He described the north elevation of building BO1 along that boundary being "benign" with largely blank walls and narrow vertical strip windows (with directional louvres). He considered that design to be appropriate as a "back-to-back" condition and additionally that due to the general orientation of properties away from the site towards the north, the small windows on the southern façade of the dwellings and their 7.5m – 12m setback, any visual dominance effects would be acceptable (and agreed there would be no adverse shading effects).⁷⁷

Our assessment

293. In our view, BO1 does have some visual dominance effects in relation to the Dorset Street Flats in particular. We acknowledge the break between the 2 wings assists in breaking that dominance. We also acknowledge that from the Flats, and potentially from 4A Dorset Street, any views of the wings are restricted. The Dorset Street Flats in particular face away from BO1. This was clearly apparent from our site visit. Mr Burns describes this as a back to back condition, and we agree.
294. Overall we conclude that adverse effects on the Dorset Street Flats (and for that matter the proposed replacement for the former Stables building to be erected between the Flats and B01) are likely to be no more than minor. This applies also to the buildings at the interface with Dorset Street, which is a much more residential setting than Salisbury St and Park Terrace.
295. We agree that the interface could have been improved by a more nuanced approach and potentially an additional setback as requested by submitters. We have considered this carefully. However we consider the effects are acceptable, particularly because of the back to back condition described by Mr Burns.
296. We do not see privacy as an issue to any significant degree because of the combined effect of the orientation of the Flats and the design of the ends of the wings of Building 01.

73 Statement of Evidence of Richard Wright Vere McGowan dated 6 January 2021 at [92.1]

74 Statement of Evidence of Rebecca Anne Skidmore dated 6 January 2021 at [147]

75 At [148]

76 At [149]

77 At [106] and [107]

108 Park Terrace

297. 108 Park Terrace is a 6-storey apartment building which is well through the construction process. It is located to the north of building BO2. BO2 breaches both the height and recession plane standards. The windows of the living spaces of the top-level apartments will have views towards 108 Park Terrace and there will be a degree of overlooking.
298. In terms of shading, the effects were assessed by Ms Skidmore, Ms Schroder and Mr Burns as less than minor due to time, extent and location of shading. We agree.
299. In terms of visual dominance, we agree with Ms Skidmore and Mr Burns that the wing has been designed largely to orientate away from the site with views primarily to the park. Any adverse effect is likely to be negligible.

5/2A and 6/2A Dorset Street

300. The proximity of these properties, and the glazing to the south and facing the site is quite striking. We did not hear from the owners or occupiers of these properties, but they were addressed by Ms Skidmore, Mr Burns and Ms Schroder. Ms Skidmore identified that the end wall of the western wing of proposed building BO1 faced those properties. She also identified that part of building BO1 exceeded the recession plane standard and that the portion of BO1 that exceeded the standard would look towards the roofline of the buildings. She considered it would not result in overlooking of first floor bedrooms.⁷⁸ Ms Skidmore noted there would be no shading and that there was suitable separation to ensure that adverse overlooking/privacy amenity effects would be less than minor.⁷⁹
301. Mr Burns largely agreed with those conclusions. His cross-section (figure 20) indicated to him that views from the top level of building BO1 would not be directly onto the rear windows of 6/2A or 5/2A and at lower levels, externally mounted louvres would prevent direct views. He did not consider there to be any overlooking/privacy effects on those properties but that in terms of number 6/2A there would be some degree of increased visual dominance. He agreed that this was a very low effect in the context of "RCC zone expectations of intensive residential development".⁸⁰

18 Dorset Street

302. 18 Dorset Street contains a 3-level dwelling with a driveway along its eastern boundary adjacent to the application site. As Ms Skidmore described, the north-eastern wing of building BO1 interfaces with the western portion of the rear boundary of that property. The upper levels project through the recession plane standard and the north-eastern corner "clips" the height standard. The northern end of BO3 interfaces with the property's eastern boundary and the upper level of that building also projects through the recession plane and height standards.⁸¹
303. Ms Skidmore identified that the northern façade of building BO1 was screened by angled louvres avoiding overlooking of the property. She advised that proposed building BO3 as configured with apartments orientated towards 18 Dorset Street, but she considered suitable separation was provided between that building and the adjacent dwelling.⁸² She considered that adverse overlooking/privacy effects would be less than minor given the location and orientation of the dwelling at 18 Dorset Street, the location and design of buildings BO1 and B03, and "in the context of the built form standards for the zone".
304. Mr Burns considered that the amenity of the property would not be diminished by overlooking/privacy or visual dominance effects. He considered visual effects to be very low in "the context of development enabled by the zone provisions".⁸³ He also agreed that the proposal would not result in shading effects beyond the shading from a built form anticipated by the District Plan.

78 Skidmore at [144]

79 Skidmore at [145]

80 Burns at [103]

81 Skidmore at [154]

82 Skidmore at [156]

83 Burns at [112]

305. Ms Skidmore considered shading and visual dominance/outlook effects to be low.
306. While we did not hear from the owners and occupiers of the property, Mr and Mrs Logan, we have carefully considered their submission. It addressed what they described as proposed oversized buildings breaching RMA recommendations. They submitted that design “appears to be squeezing as many people into the available space as possible. It is overwhelming in height, dimension and bulk”. They were concerned about shading on their home on a cumulative basis given that they “have major shading on the east side” of their property. They also noted that they had 3 balconies within metres of the main living room window where they will be “on view” 24/7.⁸⁴
307. We have some sympathy for their concerns. Overall however we agree with the expert evidence in relation to this property and conclude the adverse amenity effects will be less than minor.

155 Victoria Street – Centro Roydvale Limited

308. Centro Roydvale provided a comprehensive submission. They appeared at the hearing, represented by Mr Cleary and with evidence from Ms Clay. Amongst the concerns raised was that the buildings proposed did not meet the tests included within the matters of discretion in Rule 14.15.9 and others, and is considered to represent an over-development of the site, particularly in regard to height and recession plane intrusions. The submission went on to state that the cumulative effects of the numerous bulk and location non-compliances result in a scale of development that is incongruous in the local environment and not anticipated by the District Plan. Whether viewed individually or cumulatively, the effects created by the non-compliances represented effects that can be considered to be more than minor.
309. Mr Glen Stapley, a director of Centro Roydvale Limited, provided evidence. He noted the split zoning of the Centro site between Residential Central City zoning and Commercial Central City Business zoning. He confirmed the construction of a 70 room hotel with 16 rooms looking into building BO3.⁸⁵ He described the hotel as a sensitive activity which would enjoy views of the Port Hills and Hagley Park.⁸⁶ His evidence was about the sensitivity of the hotel and he was concerned that with the modern approach to hotel and guest decision-making online, the statement that the hotel is less sensitive, as guests will only be there for a few days, was “an old school view of hotels, as current guests inform future guests via social media”.⁸⁷
310. Mr Stapley told us that the tenant is “simply devastated” as to the effect on the amenity of the hotel including the dominance, bulk and density of the development, loss of views, a “60 metre plus straight wall that 16 hotel rooms will look at”, and construction and related noise.⁸⁸ He noted that the hotel was designed to have views of Hagley Park and the Port Hills from at least the third, fourth and fifth floor, but now the view would be of a 60 metre long 15 metre high wall with no visual break.⁸⁹
311. As noted earlier, Ms Clay provided planning evidence. The applicant has suggested that her evidence be given little weight as she has strayed outside her areas of expertise. That was discussed with Ms Clay at the hearing. She acknowledged the limits to her expertise but advised that her conclusions in relation to matters such as visual dominance, overdevelopment, scale and visual amenity effects on adjoining neighbours, were founded on Ms Schroder’s expert opinion.
312. Ms Clay concluded that the degree and magnitude of actual effects of the proposed development on 155 Victoria Street and on other adjoining properties are more than minor. Having examined the proposal and considered the effects on the neighbouring properties, she was of the view that the proposal represented an overdevelopment of the site. She considered that a redesigned development, with more careful consideration of neighbouring properties, reduced bulk, scale and

84 Submission on an application for resource consent dated 13/10/20 at [3]

85 Statement of Evidence of Glen Alan Stapley dated 25 January 2021 at [2] and [3]

86 At [13]

87 At [15]

88 At [19]

89 At [21]

allowance for planting, would have a “greater chance of being a positive influence on the surrounding neighbourhood”.⁹⁰

313. Ms Skidmore noted that BO3 contains limited glazing in the direction of the property. She stated it was substantially set back from the hotel units and recorded her opinion that any overlooking/privacy effects of the development would be avoided.⁹¹
314. She noted that the village would result in a small amount of shading extending to the western edge of the property where access to car parking is located, and in late afternoon the shading extended to the hotel rooms at the rear of the building although that was less than what would result from a building complying with built form standards. Overall, she considered the adverse shading amenity effects on the property would be less than minor because of the short-term nature of the hotel use, and the minimal extent of shading.⁹²
315. Mr Burns described the hotel and, from the consented drawings, noted that the 5-storey hotel was arranged with the primary façades onto Dorset and Victoria Street. The upper levels facing west towards the site include hotel accommodation with glazing and balcony. Of those, he noted that the corner room on each level also faced Dorset Street as its primary façade and there were therefore a total of 12 rooms orientated towards the site and the 4-storey building BO3.⁹³
316. He agreed that the recession plane and height standard infringement as noted in the UDLVA were very small and would not be readily perceptible and would not adversely affect amenity. He also agreed with the UDLVA that the limited glazing of building BO3 and the setback between it and the hotel would ensure that overlooking and unacceptable visual dominance was avoided.⁹⁴
317. Ms Schroder agreed that the commercial uses of the properties to the east of the site were not sensitive to change and that the small projections of buildings BO3 and BO4 through the height and recession planes along the eastern boundary would not be readily perceptible or adversely affect the amenity of the adjacent commercial properties. She identified the hotel as an exception but considered that the impacts of the intrusions above that anticipated in the built form standards to be minimal. In addition, given the “general transience of hotel patrons, she considered any visual effects or impacts of shading to be low.”⁹⁵

Our assessment

318. Centro raised a number of issues. One of the primary issues in its submission related to views of Hagley Park and the Port Hills. Following discussions during the hearing, that concern was amended to one of outlook. We acknowledge outlook can be important for hotel guests.
319. In terms of the sensitivity or otherwise of hotel guests compared to residential owners and occupiers, we received no expert evidence on this. Mr Stapley is associated with the developer. His evidence contained some expression of the concerns from the tenant (albeit hearsay) and we acknowledge the role of social media and the concern in relation to negative reviews.
320. Nevertheless, looked at in context, and given the at least usually transient nature of stays, we agree that the hotel and its guests are not as sensitive as their neighbouring residential occupiers. While we acknowledge that the hotel fits within the description of a “sensitive activity” in the Plan, that is in relation to reverse sensitivity effects, particularly on the airport.
321. Overall, we consider that the residential amenity effects on the guests of the hotel will be less than minor and are appropriate.

90 Statement of Evidence of Mary Clay dated 21 January 2021

91 Skidmore at [162]

92 Skidmore at [163]

93 Burns at [119]

94 Burns at [120]

95 Schroder at [87]

76 Park Terrace

322. We addressed this property in our earlier discussion on shading. There are also, in our view, visual dominance and overlooking issues. We consider these to be minor but noticeable.

15 Salisbury Street

323. In terms of 15 Salisbury Street, visual dominance was raised, as was privacy concerns. We acknowledge again that there will be a degree of overlooking and impact on privacy but we do not consider that would be significant.

15 Peterborough Street

324. We spent considerable time addressing shading effects on the residents of the Park Terrace apartments. Visual dominance is also an issue for the west facing apartments in the middle to lower levels. Again, that is a symptom of the location, scale and height of the BO7, together with the close proximity of B07 and the apartments. It will undoubtedly form a significant, and visually dominant, component of the outlook from the middle to lower floors. Privacy is not, in our view, an issue.

Other submitters

325. We have not specifically identified addressed each amenity issue raised by individual submitters. To do so would be, to a degree, repetitive, and would lead to necessary lengthening of this decision. We have considered all submissions in our overall evaluation. Where we have not done so, we have accepted the evidence of Ms Skidmore, Mr Burns and Ms Schroder.

Landscaping

326. The applications propose significant landscaping on the sites. The adequacy of this was a particular concern of the Christchurch City Council reporting officers. They considered that the height and scale of the trees along some of the frontage and internal boundaries was inadequate. This was also of concern to some of the submitters, who considered that the proposed landscaping was insufficient throughout the site, that there would be a lack of green open space, and there was a concern about the viability of a proposed relocation of a large existing Common Beech tree. We note that the applicant no longer proposes to relocate this tree, and that it is not a protected tree under the district plan.

327. The proposed landscaping comprises plantings of specimen trees around the boundaries of the sites and planted courtyards within the sites for the use and enjoyment of residents. In particular large and medium exotic trees are proposed along the frontages of Park Tce and Salisbury Streets and most of the internal boundaries, with the exception of the eastern boundary of the Bishops Park site adjoining the Central City Commercial Zone where no landscaping is proposed.

328. Expert evidence on this for the applicant was given primarily by Mr Sean Dixon, a qualified landscape architect, who discussed the details of the species to be planted, and why these had been selected.

329. Mr Dixon said that the boundary treatments have been designed to balance streetscape integration, residential privacy, and security. The Park Terrace boundaries are based on a typical inner-city townhouse boundary with individual gated access from the ground level apartments. Moments of transparent aluminium fencing are intended to allow visual connections in and out of the Site. Planting softens the street frontage. ⁹⁶

330. He said that exotic trees were selected for the larger specimen trees because they were more representative in the local context, would grow better in the local environment and because suitable native species would be evergreen and create shading in the winter⁹⁷. However there would be native shrubs included in the courtyard plantings.

⁹⁶ Sean Dixon, evidence para 13

⁹⁷ At paragraph 46 of his evidence.

331. He said that some trees would be in various types of planter boxes over the concrete floor slabs above the basements. He was confident that because of the size of the planters, the soil medium to be employed, aeration and drainage, and annual trimming and maintenance that the trees would thrive. In answers to questions he said he had considerable experience of container-grown trees over many years.⁹⁸
332. He considered the trees proposed in the original application would be appropriate in the site and their context. However in response to the Council officers concerns, at the hearing he proposed some amendments which would see an increase of the size of trees in selected locations.
333. He presented and discussed some amendments to the proposed tree plantings in response to the evidence of the Council officers. He proposed changes for some selections to fastigate, or columnar species that would be more able to thrive successfully in some of the narrow setbacks. For example he proposed Purple European beech trees in the 2 metre internal setbacks along the internal northern and southern boundaries. These are capable of growing to 8-10 metres in height but have a canopy spread of only 2.5 metres. He also proposed Prunus Amanogawa trees, an upright flowering cherry capable of growing to 7 metres in the narrow 2m setback to Building 7 on the Salisbury St frontage of the Peterborough St site instead of the columnar oaks originally proposed. He proposed annual maintenance pruning to restrict the canopy growth where necessary and said this was feasible and would not affect the health of the trees. He also proposed two trees on the Park Terrace frontage of the Bishops Park site, a Liquidamber and a Plane tree which would be allowed to grow to their natural heights. These would reflect the Hagley Park and riverbank context and be landmarks.
334. For the Council, the primary expert evidence was given by Ms Jennifer Dray, from a landscaping perspective, with Ms Josie Schroder, an urban designer contributing from that perspective.
335. Ms Dray said that there were multiple reasons for the establishment of larger scale trees. This included their ability to assist with visual amenity and surrounding context, and their capacity to provide landscape amenity in perpetuity. This was considered by both her and Ms Schroder as important element to address the existing site context and contribute to visual amenity beyond both of the sites in terms of mitigating the visible scale of the buildings, and providing amenity at street level.⁹⁹
336. She said that the surrounding context includes both the immediate neighbourhood (residential and commercial), the surrounding streetscape, and the large open space of Hagley Park and the Ōtakaro Avon River. Surrounding residential properties contain a mix of tree and garden plantings, with the treed environment being composed of a variety of large and small trees, deciduous and evergreen. The neighbouring Hagley Park is predominantly planted with large English-style deciduous trees, mostly with large spreading canopies. The Ōtakaro Avon River is also lined with large trees, typically weeping willows, which are valued for both their landscape character and historical associations. An appropriate landscape response to this treed environment would be to represent the surrounding landscape by planting a similar combination of tree species, replicating the tree heights and growth forms.
337. She said that in terms of contributing to visual amenity beyond both of the sites in order to mitigate the visible scale of the buildings, the trees must be of an adequate size to form a meaningful relationship to the buildings, when viewed from a distance. In addition to the trees providing amenity for street users she would also expect that the trees provide a similar level of visual amenity from further afield. That is from residential areas, the neighbouring streets, and from Hagley Park and the associated footpath network.¹⁰⁰
338. Overall she was more comfortable with the amended selections proposed by Mr Dixon, but with the exception of the Salisbury St frontage to Building 7. She still considered larger trees necessary

98 At paragraphs 37 – 41 of his evidence.

99 Jennifer Dray Summary evidence statement at paragraph 4,

100 At paragraph 6-7 of her summary statement.

here, capable of growing to 12 metres, such as the fastigate oaks originally proposed here, but said that it would be necessary for the building to be setback more to achieve this.¹⁰¹

339. This issue was also discussed by the urban design witnesses, Ms Rebecca Skidmore for the applicant and Ms Josie Schroder for the Council.
340. Ms Skidmore made the point that the objectives and policies, and the zone description in the district plan do not emphasise the role of natural vegetation in this environment, and that vegetation within the site needs to be of an extent and scale that is compatible with the higher density living environment that is anticipated here. She agreed that the large trees in Hagley Park make a particular contribution to its special character. She did not see the need for this to be repeated on the application sites¹⁰² and was satisfied that the extent of planting was appropriate for the context. She said that planting along the street boundaries is not intended to mitigate the effects of the buildings, but rather to enhance the streetscape and the village's relationship to it.¹⁰³
341. For the Council Ms Schroder said that large scale tree planting is crucial to achieving an adequate level of amenity and providing visual relief to the built form. She accepted that the amendments proposed would address the context and offset visual effects at the boundaries of the sites in some cases but not all.¹⁰⁴ She agreed with Ms Dray about the Salisbury St frontage of the Peterborough St site and also identified the north end facades of Building B01 facing the Dorset St flats as requiring more attention to mitigate their visual appearance and visual domination, both for visual relief and to respect the heritage context of the listed Dorset St flats which we discuss elsewhere. She considered a greater setback here was needed to enable a larger scale of tree planting to offset these effects.¹⁰⁵
342. Detailed technical evidence was given by Mr Alan Parker, a qualified arborist on the proposed techniques to be employed in the vicinity of the single large existing tree that is to be retained on either site. This is a large Common Lime on the Peterborough St site. The construction of the underground basement would necessitate excavations well within the dripline of this tree with the potential for root damage.
343. Through the use of ground penetrating radar Mr Parker had been able to determine that the actual root mass of the tree within the basement area was minimal and that the effects of the excavation on the health of the tree would be minimal. He considered that with the use of standard arboricultural techniques to protect the tree during construction that effects on the tree would be negligible.
344. For the Council, its arborist, Mr John Thornton largely agreed with Mr Parker about the effects on the Common Lime tree. The only disagreement between them was whether any pruning required for access for the piling machinery should be carried out before or after the underground basement construction. Mr Parker preferred to have this carried out after the operation because this would result in the pruning being minimised to the extent necessary. Mr Thornton's view, based on experience is that it is better to judiciously prune before the operation to reduce the potential for broken or damaged limbs. He said that he considered it is usually preferable to prune an undamaged limb than to attempt to fix up a damaged one. He considered there would be scope for both methods, with an initial careful pruning of what is estimated to be required, before excavation, followed by remedial pruning afterwards if necessary. Quite fairly, he said there was merit in both methods.
345. Mr Thornton accepted Mr Dixon's views on the practicability of growing trees in containers, but said that in this opinion this was likely to prevent the trees achieving their natural size and there would be a risk of trees dying prematurely.¹⁰⁶

101 At paragraphs 11 and 14-15 of her summary statement.

102 Skidmore Summary of evidence paragraph 30

103 Skidmore summary of evidence paragraphs 16 and 19

104 Schroder, summary of evidence paragraph 21.

105 Schroder, summary of evidence, paragraphs 12-24.

106 Thornton Summary of evidence paragraph 24

Earthworks and Construction Effects – Noise, vibration, dust, damage to adjoining property through settlement.

346. Adjoining neighbours were very concerned about potential construction effects. Their concerns were with noise, vibration and dust during the construction period and the potential for settlement of their properties causing damage to buildings and other features due to the extensive excavations under all of the buildings for the proposed basements. These excavations, of around 4.5 metres in depth, would be close to their boundaries, in some cases as close as 2 metres.
347. Their concerns were in part based on their experience of the demolition of the former 10 storey building on the Peterborough St site following the Canterbury earthquakes.

Noise and Vibration

348. For the applicant, evidence on noise and vibration was given by Ms Siri Wilkening. She said that the construction noise standard of 70dB in the district plan (which varies between 55-70 dB LAeq) would generally be able to be observed¹⁰⁷. In response to a question she said that noise from construction of buildings is almost always less than noise from demolition so the two should not be compared. She said the construction activities should not commence prior to 7.30am and that the conditions should reflect this,
349. She said that although a continuous retaining wall of piles were proposed to be installed all around the perimeter of the basements, these piles would not be driven. Rather holes would be drilled and the piles pushed into place, which is a much quieter process than traditional pile driving¹⁰⁸. The noisiest part would be the motor noise from the drilling rig. She calculated that the 70dBA construction noise standard would be exceeded slightly for a period of around 4 days at the boundaries of each residential neighbour, as work proceeded around the site, which she considered reasonable¹⁰⁹. She said that there should be a Construction Noise and Vibration Management Plan and that this should set out in detail the various measures to reduce noise and vibration¹¹⁰.
350. Once construction commenced above ground level, she said that the noisiest aspects would be from small portable machinery, and it would usually be easy to use portable screening for this. Such noise would move around the site and the project was to be carried out in stages, so not all areas were to be worked on at once. She expected the 70dBa noise standard would generally be able to be observed after construction commenced above ground and was satisfied with the proposed conditions.
351. She had conducted computer modelling to predict noise levels at buildings around the site. The highest noise levels she predicted would be up to 76 dB LAeq at a dwelling and 77 dB LAeq at commercial premises. These external noise levels would equate to internal noise levels of approximately 51 to 57 dB LAeq because typical building construction reduces transmission by 20 – 25dBA. For the brief periods when such high noise levels may occur, it would be likely that people would seek respite by moving to a part of the building away from the Proposed Village works. However she predicted highest noise levels for only about four days per building, before the piling rig would be moved to a new location and be at a distance that means compliance with the limits is expected to be achieved.
352. Overall, for most of the four year construction duration on both sites together, noise levels in buildings adjacent to the Site will not adversely affect residential or commercial activities. There will be some amenity effects on neighbouring properties for a very short period during the basement piling works.
353. She recommended that a Construction Noise and Vibration Management Plan (CNVMP) be prepared to provide the necessary controls. She relied on the proposed construction management plan to ensure these processes were followed and that noise was adequately monitored.

107 Siri Wilkening Evidence paragraph 11.

108 This process was described in considerable detail by Mr Pierre Malan in his geotechnical engineering evidence

109 Siri Wilkening evidence at paragraph 136.

110 At paragraph 129.

354. She said that once the complex was operational, noise on the driveways needed to be considered. She considered that the district Plan noise standards would be able to be observed at all times including at night. The only exception would be if large-engined trucks were used to collect waste at night. Other witnesses confirmed that waste collection would be a daytime operation and the conditions would require that.
355. With regard to vibration, Ms Wilkening said that there is no applicable New Zealand Standard. There is a German standard which is sometimes referred to in consent conditions. In her experience this is complicated and difficult to apply. Because of the drilling method to be applied, she did not expect unacceptable vibration effects to arise from the works below ground and did not foresee any sources of unacceptable vibration at the above ground stages. I
356. For the Council, expert evidence on noise and vibration was given by Ms Isobel Stout, who also contributed to the Council's section 42A report. Ms Stout essentially agreed with and accepted Ms Wilkening's evidence.
357. She said that she was satisfied that operational noise from the sites would comply with the applicable limits.¹¹¹
358. Ms Armstrong described how noise and vibration is proposed to be addressed through a Construction Noise and Vibration Management Plan (CNVMP) which will ensure that suitable measures are employed by the applicant. It is worth setting out her relevant paragraphs in full.

“242 Noise and vibration will be addressed in a similar manner through a Construction Noise and Vibration Management Plan (CNVMP) so that construction noise and vibration levels comply with NZS6803:1999 and DIN 4150 199902 –these being the standards that apply to permitted earthworks activities under the District Plan. The applicant has proposed a condition requiring a CNVMP such that it forms part of the application. The CNVMP will include the following:

- *The construction noise and vibration criteria to be applied;*
- *The identification of the most affected locations where the potential for noise and vibration effects exist;*
- *Description of the works, anticipated equipment/processes, and durations; time and days when construction activities causing noise and vibration will occur;*
- *Mitigation options, including alternative strategies where full compliance with the relevant noise and vibration criteria cannot be achieved. (It is noted that if noise and vibration could not meet the District Plan rules then a further resource consent would be required).*
- *Methods for monitoring and reporting on construction noise and vibration during each stage of construction;*
- *Procedures for maintaining contact with stakeholders;*
- *Contact numbers for key construction staff, staff responsible for implantation of the CNVMP, and*
- *A complaints register and methodology for addressing noise and vibration complaints, to provide for addressing neighbour's concerns.*

243. The applicants have also proposed conditions for pre- and post-construction building condition surveys of neighbouring properties be carried out. I note these would be subject to the agreement of the neighbouring property owners.”

359. For the submitters, no expert evidence on noise and vibration was provided. Several spoke of their concerns about noise and vibration and their unsatisfactory experience of the Peterborough St site building demolition. Although accepting that demolition and construction are different, they said that the demolition contractors did not respect or observe applicable standards and so they were unwilling to accept and rely on a Construction Management Plan approach.

111 At paragraph 134

Assessment

360. The relevant matters for discretion for temporary construction noise are set out in Rule 6.1.8 and are;

- i. *The level, duration and character of the noise, and proximity and nature of nearby activities, and the adverse effects that may arise from these factors on activities anticipated in the receiving environment and associated amenity.*
- ii. *Whether the noise generated would be of such a level as to create a threat to the health or well-being of persons living or working in the vicinity.*
- iii. *The proposals made by the applicant to reduce noise generation, including:*
 - a. *reduction of noise at source;*
 - b. *alternative techniques or machinery which may be available;*
 - c. *insulation or enclosure of machinery;*
 - d. *mounding or screen fencing/walls;*
 - e. *hours of operation*

361. The proposed conditions deal with noise and vibration by the requirement for the Construction Management Plans including the Construction Noise and Vibration Management Plan (CNVMP).

362. We identified two decisions of the Environment Court in which the Court was not satisfied with a generic Construction Management Plan to control noise and vibration, and required more specific conditions to be prepared¹¹². We discussed those with Mr Hinchey during the reply hearing. He advised the fact situation was very different, We agree. In that case it was necessary to break up volcanic rock before it could be excavated, which is a much more intensive process than the digging out of soft soils and pushing into place of piles proposed here. On the evidence we are satisfied with the approach adopted here, and that it can be satisfactorily managed through the use of the Construction Noise and Vibration Management Plan

363. In terms of the assessment matters, we are satisfied that the minor exceedance of the construction noise during standard daytime working hours identified by Ms Wilkening would be reasonable for a proposal of this magnitude, that the effects on the health and well-being of the residential and commercial neighbours would be less than minor, and that the means of mitigation and reduction of these effects would be acceptable. We accept the evidence of Ms Wilkening and Ms Stout that other sources of noise disturbance would be largely reduced at source and in any case would be brief.

364. The objectives and policies of the district plan in relation to noise, in summary, provide for:

- Management of adverse noise effects managed to levels consistent with the anticipated outcomes for the receiving environment
- limitations on the sound level, location and duration of noisy activities.¹¹³

365. For the reasons already stated, we accept that the proposals are consistent with the objectives and policies for noise.

366. For vibration the relevant matter for discretion is set out in Rule 8.9.4.1 in the Subdivision, Development and Earthworks Chapter which deals with earthworks. This is

“The extent to which any adverse effects from noise and vibration associated with earthworks and land improvement can be avoided or mitigated, and the effectiveness of any methods to mitigate such effects.

367. There do not appear to be any specific objectives or policies relating to vibration.

Dust

368. Evidence on dust control was given by Mr Ajay Desai as part of his evidence on civil design issues.

112 Panuku Development Auckland Ltd v Auckland Council Decision No. [2020] NZEnvc 024 and 211

113 Christchurch District Plan, Clause 6.1.2

369. He said that the excavation for the basements and foundations would be mostly carried out below the water table resulting in the excavated material being wet and not producing dust. Other onsite dust management measures would also be implemented, which he considered would control the potential for dust nuisance during construction, including.

- Progressive stabilisation of exposed areas to minimise open exposed surfaces that have the potential to generate dust;
- The use of approved soil binders on exposed surfaces. Soil binders effectively bind together small particles creating a crust, making the particles heavy enough to stop them becoming airborne, even with strong winds; and
- The use of water via water tankers or a sprinkler/irrigation system over exposed areas.
- These measures would be confirmed in the Construction Management Plan (CMP).

370. In his opinion the implementation of these measures would ensure the potential for dust effects on neighbours will be very low.¹¹⁴

371. Evidence for the Council on this was given by Ms Yvonne McDonald, a Senior Subdivisions Engineer. She accepted that the applicant's evidence and considered that subject to the inclusion of appropriate conditions including an Erosion and Sediment Control Plan within the overall Construction Management Plan then effects would be acceptable.

372. No expert evidence on dust control was given on behalf of the submitters. A number of submitters did express concerns about the potential for adverse effects from dust. As with the noise and vibration issue, we believe that their concerns were based at least in part on unsatisfactory experiences with dust during the demolition of the former Peterborough St apartments.

373. The applicant has provided a draft Construction Management Plan (CMP) to control dust, noise, vibration, traffic, hours of work and contaminated soil removal. Dust management measures include staging of works, stabilising stockpiles and sprinklers. The applicant stated construction stage sediment and erosion control would be managed through the application of an Erosion and Sediment Control Plan (ESCP) including a suite of measures, complying with the Environment Canterbury toolbox and maintained by the contractor on site. Draft ESC plans had been provided which include reference to dewatering discharges.

374. Although this is a large project, the Council has extensive experience with assessing and dealing with dust at large construction sites through the use of Erosion and Sediment Control Plans. We accept that this technique is appropriate and if implemented properly and carefully monitored, any effects would be no more than minor and acceptable.

375. Ms McDonald advises that as these plans do not include management processes it is suggested that if consent is granted that conditions are imposed requiring the submission of a full ESC plan for acceptance. We concur with this.

376. The relevant matter for discretion for dust issues is contained in a clause to earthworks generally and is:

8.9.4.1 – Nuisance;

A. The extent to which any potential dust nuisance, sedimentation and water or wind erosion effects can be avoided or mitigated

377. There do not appear to be any specific objectives relating to dust control, which is not surprising given that the subject is more generally the responsibility of the Regional Council.

Other Construction Issues

378. The other major construction issue of concern is the potential for differential settlement close to property boundaries following the excavation and construction of the large basements, and whether this would cause damage to neighbouring buildings and structures.

¹¹⁴ Ajay Desai, statement of evidence, paragraph 47

379. Expert evidence on this was given for the applicant by Mr Pierre Malan, a geotechnical engineer. He outlined the preliminary geotechnical investigations carried out of the site and assessed the types of effects that could potentially occur.¹¹⁵ He then described the foundation and retaining systems proposed to be employed and how these would address any adverse effects at adjacent properties.¹¹⁶ At the hearing he described an amendment proposed to the location of the basement and retaining wall adjacent to the boundary of No 15 Salisbury St, where there is a swimming pool close to the boundary and which he considered potentially the most affected property. At this location the retaining wall and basements could be pulled well back from the boundary as there was to be a garden on the site at that location rather than buildings. He also described an experts' conference which had been conducted between himself, Mr Aramowicz the geotechnical engineer for some of the submitters and Ms McDonald, the Council's engineering witness.
380. Mr Malan said the underlying strata for the site consists of fill overlaying alluvial deposits, including silts sands, gravel and peat. He said that the key risks would include liquefaction under seismic loading, consolidation settlement and subsidence effects, and effects relating to the basements, including deformation during construction and permanent effects.
381. He then described how the design and construction methods would mitigate those risks to a level which he considered would be low to very low.
382. Importantly, the excavation of the basement would not be carried out all at once. The retaining wall would be constructed by drilling holes, followed by the insertion of the clutch piles, which are circular steel piles attached to each other by clutches which are welded together to make them water tight. The piles are encased in concrete to form the retaining wall. A narrow band is excavated and the first strip of the concrete floor is poured, and the retaining wall temporarily braced to that, before the rest of the excavation occurs and the rest of the metre thick basement floor is constructed, which provides the permanent bracing.
383. He said that these are standard building techniques for large buildings and he has experience of their use elsewhere.
384. Because the retaining wall is constructed by drilling and pushing rather than driving, there would be no little vibration or noise.
385. Using a computer model he had calculated maximum subsidence caused around the boundaries would be no more than 10mm at the boundary and less moving away from the boundary. He said that in fact experience has shown that the model tends to be conservative and actual outcomes are usually less than the predictions¹¹⁷. He said that around all the boundaries any neighbouring structures are accessory buildings rather than dwellings and any damage would be cosmetic and easily repaired.¹¹⁸
386. He said that a requirement for the applicant to conduct before and after surveys of surrounding buildings would be appropriate and enable any necessary repairs to be identified and carried out.
387. Although dewatering of the excavation is the subject of applications to the Canterbury Regional Council and is not one of the matters we can take account of under the restricted discretionary status, it was raised by several submitters at the hearing. In the interests of providing some reassurance Mr Malan commented that water would be discharged to the Avon River during the excavation and construction stage. After construction he calculated that there would be mounding of groundwater at the outside of the retaining wall of up the 200mm and he would expect this water to make its way either to the underground aquifer system or to the Avon River without adverse effects
388. Expert evidence for Mr and Mrs Bennett, submitters, 15 Salisbury St was given by Mr John Aramowicz, a qualified and experienced geotechnical engineer.

115 Pierre Malan, paragraphs 16 – 26 and 31-38

116 At paragraphs 28-29

117 At paragraphs 41-42

118 At paragraph 45

389. Mr Aromowicz referred to the applicant's geotechnical report prepared by Tonkin and Taylor Ltd and contained within the applicant's Assessment of Environmental Effects. He said that the report confirms the presence of soft soils beneath the site, with a peat layer nearby, to a depth of around 9 metres below ground level with groundwater likely to be present around 1.1 metres below ground level. He said that "Put simply, the masonry wall along the north boundary of 15 Salisbury St, and the swimming pool, are founded over soft alluvial soils that are at a high risk of liquefaction."¹¹⁹
390. Therefore he considered that there would be a high risk of that the construction work would cause ground subsidence and damage to the north part of Salisbury St and to other nearby properties.¹²⁰
391. He acknowledged that the Tonkin Taylor report concluded "the risk of subsidence affecting adjacent sites due to the construction of the proposed village is negligible." However he said the report contained no supporting evidence for this.
392. He said that the fact that the Council and the applicant propose before and after building surveys suggested that there was a moderate to high risk of damage to adjoining property.¹²¹
393. At several points in his evidence he appeared to assume that the piles would be driven into place, and that the consequent vibration would increase the risk of ground deformation.
394. Expert evidence for this on behalf of the Council was given by Ms Yvonne McDonald, a Senior Subdivisions Engineer at the Council. Ms McDonald essentially accepted the position of Mr Malan but discussed amendments to the proposed condition relating to the proposed Construction Management Plan. This would involve the addition of a requirement for a monitoring and methodology amendment report to be presented to the Council.
395. Commenting on Mr Malan's evidence, she said that 'I believe that the proposed methodology of installation, review and amendment, provides the best mechanism to ensure the installation provides for minimal settlement and therefore reduces the incidence of damage.
396. Her overall conclusion was "the proposed conditions will mitigate the land stability effects of the development and reduce the potential for subsidence or damage to the structures to a very low level."
397. Because of this strong difference of opinion amongst the engineers, we asked them to confer and report back to us. This was done during the hearing and a joint witness statement was presented to us. In this
- All the experts agreed that by avoiding pile driving the risk of damage to adjacent properties would be minimised.
 - Mr Malan accepted that his evidence at paragraph 28.1 was incorrect where he inadvertently referred to the driving of piles. Mr Aromowicz and Ms McDonald considered that this would alleviate a significant number of their concerns.
 - Mr Aromowicz accepted that the 10mm of subsidence calculated by Mr Malan appears to be low but that he could not confirm that this would be sufficient to avoid damage to the masonry wall.
 - Ms McDonald considered that with review conditions to confirm that subsidence would be under 10mm, that any subsidence would be largely cosmetic.
 - Mr Malan said that deformations below 10mm are normally considered to be below levels that would compromise structural performance.
 - All the experts agreed that the construction management plan should provide for the identification of potential at risk structures, the review of the performance of the basement at a

119 John Aromowicz at paragraphs 21-23

120 at paragraph 33

121 At paragraphs 42-43

low risk location, revisiting the construction methodology and reporting back to Council and the neighbours.

Assessment

398. The relevant assessment matters for this are:

8.9.4.1 – Nuisance;

A. The extent to which any potential dust nuisance, sedimentation and water or wind erosion effects can be avoided or mitigated.

B. The extent to which effects on neighbouring properties, and on the road network, of heavy vehicle and other vehicular traffic generated as a result of earthworks can be avoided or mitigated.

C. The extent to which any potential changes to the patterns of surface drainage or subsoil drains can be avoided or mitigated if those changes would put the site or adjoining land at higher risk of drainage problems, inundation run-off, flooding, or raise that site's or adjoining land's water table.

D-E omitted.

F. The extent to which any adverse effects from noise and vibration associated with earthworks and land improvement can be avoided or mitigated, and the effectiveness of any methods to mitigate such effects.

G. omitted.

8.9.4.3 - Land stability;

A. Whether the earthworks affect the stability of adjoining land and its susceptibility to subsidence or erosion upon excavation taking place.

B. The extent of any alteration to natural ground levels in the vicinity and, consequently, to the height and bulk of buildings that may be erected on the site.

C. Whether the earthworks affect the future development potential of land for permitted activities, taking account of the nature of filling material proposed and the degree of compaction.

8.9.4.6 – Amenity;

A. The level of alteration to existing ground levels and the degree to which the resultant levels are consistent with the surrounding environment.

B. The resultant effects that result from the earthworks in terms of visual amenity, landscape context and character, views, outlook, overlooking and privacy.

399. The witness conferencing and joint witness statement have resolved some but not all of the issues between the witnesses. It was accepted that pile driving was not proposed and that this is desirable to avoid vibration that would exacerbate settlement and deformation of construction. It was accepted that the chosen methodology which had been chosen to minimize the risk to adjacent properties. It was accepted that the proposed construction management plan should be improved in regard to monitoring, review and reporting back. Nevertheless it was clear from his evidence and response to questions that Mr Aramowicz remained uncomfortable.

400. We considered Mr Malan's evidence to be comprehensive, and well-reasoned. He carefully addressed all the relevant issues. He relied on proven methodologies and experience. His descriptions of the proposed construction techniques and why he considered they would work were clear and specific.

401. Ms McDonald was able to provide local knowledge and experience, which is extremely important in the Christchurch post-earthquake context where large excavations and buildings, some with similar basements are being regularly designed and constructed on similar sites.

402. In contrast, Mr Aramowicz' concerns were expressed in much more general terms. We accept his concerns are genuinely held. However he did not discuss in detail any physical processes which could plausibly lead to failure. He did not discuss experience and developing knowledge in the post-earthquake Christchurch context. To that extent his conclusions are very conservative and perhaps somewhat speculative.

403. It follows that we prefer the evidence of Mr Malan and Ms McDonald.

404. With regard to the assessment matters, of the set related to nuisance, the only really relevant one is the effects of traffic associated with the earthworks. Clearly there will be a very large number of truck movements onto and off the site over the 4 year construction period and this will continue until all the excavations have been completed, noting construction will not be commencing or proceeding on all parts of the site at once. The proposed conditions would deal with this sufficiently by requiring a Construction Traffic Management Plan be prepared by the applicant, certified by the Council and adhered to. This is a situation which is common to all major earthworks projects. These have been very common in the central area of Christchurch since the earthquakes, are inevitable during the rebuild and with on-going development and techniques have been established for their management.
405. Of the set relating to land stability, we conclude that the earthworks will not affect the stability of adjoining land and its susceptibility to subsidence or erosion upon excavation taking place except to a very minor extent, will not alter final natural ground levels in the vicinity and will not affect the future development potential of land for permitted activities.
406. Of the set relating to amenity there will be alteration to existing ground and the earthworks themselves will not result in adverse in terms of visual amenity, landscape context and character, views, outlook, overlooking and privacy. It is the new buildings which may have this effect, and that is discussed separately.
407. The objectives and policies relating to earthworks are in Chapter 8 of the district plan. The most relevant provisions are
- 8.2.5 *Objective - Earthworks health and safety*
 - a. *People and property are protected during, and subsequent to, earthworks.*
 - 8.2.6 *Policy - Land stability*
 - a. *Avoid earthworks that will create a significant risk to people and property through subsidence, rockfall, cliff collapse, erosion, inundation, siltation or overland flows.*
 - 8.2.5.2 *Policy - Nuisance*
 - a. *Subject to Policy 8.2.4.3, ensure that earthworks avoid more than minor adverse effects on the health and safety of people and their property, and do not generate continuous or persistent noise, vibration, dust or odour nuisance.*
 - 8.2.5.3 *Policy - Vehicle movement*
 - Subject to Policy 8.2.4.3, ensure that the transportation to and from a site of earth, construction or filling material is safe and minimises adverse transport network and local amenity value effects.*
 - 8.2.5.4 *Policy - Earthworks design*
 - Ensure that earthworks over identified thresholds are designed to enable the anticipated land use.*
408. For the reasons set out in the discussion above, we are satisfied that the proposals will be consistent with these objectives and policies.
409. Our overall conclusion on adverse effects due to construction activities is that these would be no more than minor, and acceptable.

Transport

410. As well as the temporary transport effects discussed above in relation to the construction phase, there were some permanent issues raised by submitters and the Council.
411. There was a concern raised by the Council and some submitters about the accessibility of the Bishops Park site for waste management trucks removing waste from the site. As all waste is to be collected and stored on site in the basement, it will be necessary for the trucks to use the one way accessway leading to Dorset St and either reverse into or out of the site to or from the street.

This may create hazards for other vehicles and cyclists using the street and pedestrians. Dorset St is a narrow residential street at this point with parking on both sides and visibility is limited.

412. The expert evidence for the applicant was given by Mr Leo Hills, a transport engineer. He was satisfied that it would be safe and acceptable for trucks to reverse into the site. ¹²²

413. Expert evidence on this for Centro Hotel Ltd, a submitter on an adjacent site in Dorset St, was given by Mr Antoni Facey, a traffic and transport engineer. He was strongly opposed to the prospect of vehicles reversing into or out of the site, because either would create hazards on Dorset St, because of poor visibility especially due to blind spots, confusion for other vehicles, the presence of pedestrians and mobility scooters and the like on the footpaths, the narrow carriageway and the presence of parked cars on both sides of the road.

414. Expert evidence for the Council was given by Mr Michael Calver¹²³, a transport planner. He said that in his opinion it would be satisfactory for the trucks to reverse off the site, provided there was a traffic spotter on the road to guide the driver. The applicant accepted this and has included a draft condition to achieve it.

415. Other transport issues raised by submitters and the Council include

- emergency vehicle access,
- the use of Westwood Terrace by construction vehicles and by residents moving between the two sites,
- the safety of the pedestrian facility across Peterborough St,
- the loading arrangements for the Peterborough St site, which require a vehicle to temporarily block the one way access.
- The effects of the villages on general traffic generation and on-street parking

416. These matters were discussed by both Mr Hills and Mr Calvert who were both satisfied that the proposed arrangements were satisfactory. They said that;

- Westwood Lane is a short private lane providing access to the Bishops Park site, some residential properties in Salisbury St on the western side of the lane, and the rear of a large commercial building fronting Victoria St to the east. The applicant has agreed that Westwood Terrace would not be used for construction traffic and that a condition to this effect could be included. It is proposed for Westwood Terrace to be the main route for pedestrians moving between the two sites. The applicant has estimated that this would be no more than 30 pedestrian movements per day, and with such low numbers there would be minimal safety issue with other traffic on the Terrace. Westwood Terrace is not proposed to be used for vehicular access to the Bishops Park site once it is operational.
- With the low numbers of pedestrians, kerb build outs would provide adequately for pedestrian safety, although Mr Calvert noted there would need to be some works at the nearby intersection of Salisbury St and Park Tce. He said that there would be a separate Council approval process for works in the legal road, including a detailed design and a road safety audit.
- The Peterborough St site loading arrangements would be satisfactory given the expected low numbers of movements, although some drives would experience short delays.
- The design provided adequately for large emergency vehicles such as fire engines to access the site.
- The traffic generated by the villages could be safely distributed onto the surrounding road network.

¹²² Leo Hills Evidence paragraph 12.2

¹²³ Evidence of Antoni Fauci, paragraphs 16-30

Assessment

Matters for discretion

417. Mr Hills pointed out that in fact there are no matters for discretion relating to most of these transport matters listed in the district plan for retirement villages¹²⁴. If that is so it is an obvious deficiency in the district plan, given the scale of this and other recent retirement village developments in Christchurch. However the applicant has taken the responsible course of carrying out an assessment anyway and engaging with the Council and the submitters to resolve the transport-related issues that have arisen.
418. Whether or not we have jurisdiction on these matters, we accept the conclusions of Mr Hills and Mr Calvert summarised above and consider that and any transport related effects would be less than minor. We note that matters relating to the detailed design of the pedestrian facility on Salisbury St or even whether it is permitted to be constructed at all is outside our jurisdiction and will need to be separately considered by the Council in its capacity as a road controlling authority. However we consider it essential that there be a suitable facility, and this can be ensured through the use of an appropriate condition or conditions requiring that it be provided prior to the occupation of the village. Suitable conditions have been provided in the draft conditions provided to us by the applicant and the Council.

Signage

419. Under the district plan rules the maximum total area of a sign on each site shall be 0.2m². A sign of 1.68m² is proposed on each site frontage. No further details of the proposed signage were given to us.
420. This is a very small departure from the district plan standards and did not appear to have been a matter of concern to the Council or any of the submitters. None of the applicant's witnesses even referred to it and we have been unable to find any reference to it in any of the original application documents other than the identification of the need for the consent. The only reference to it in the Council 'officers' evidence is a brief statement in Ms Armstrong's planning report where she said,
- "The signage outside the main entrances to the sites will be approximately 160cm by 80cm. The name of the village has not been confirmed and thus the number of letters within each sign has not been confirmed. The relevant matters of discretion relate to the visual amenity on the surrounding area, the visibility of the signage and the potential distraction of the signage.*
- The signs will be erected on the two Park Terrace road frontages. Although limited details have been provided on the signage, a sign of 160cm by 80cm is considered to be appropriate for Bishops Park and Peterborough site and will not create visual clutter or cause distraction to drivers. The signage will be relatively discrete and not adversely affect the visual amenity or character of the surrounding environment. Further, given there is only one sign for each site and the surrounding area is mostly residential in character with limited signage, the proposed signage will not result in visual clutter. The signs will not obscure or detract from the interpretation of any traffic sign or controls,*
- With regard to the Bishops Park site, the signage will be located away from the heritage building and setting given it is to be located on the Park Terrace road frontage."*¹²⁵
421. There is no reference to signage in the proposed draft conditions.
422. We accept Ms Armstrong's advice and consider that any effects of the proposed signage will be less than minor. If any more significant signage is proposed at a later date, this may trigger the need for a further resource consent application.

¹²⁴ Rule 14.15.9 is the matter for discretion relating to retirement villages, and it is specifically stated to be the only applicable matter for discretion. We note that aspects of this rule do relate to transport matters, although not comprehensively.

¹²⁵ Louisa Armstrong, section 42A report at paragraphs 173-175.

Soil Contamination

423. Council's Senior Environmental Health Officer, Isobel Stout, has reviewed the proposal in terms of the National Environmental Standard – Soil Contamination (NES). Ms Stout considers that the NES matters have been comprehensively addressed in the combined Primary Site Investigation/Detailed Site Investigation that covers all the land involved across the two locations for this project. Ms Stout considers that as the project includes basement car parking at both sites a large amount of site material will have to be excavated and disposed of and this is effectively going to remediate the sites at the same time. Given this, a full Remediation Action Plan will not be required and Ms Stout agrees with the applicant that a Contamination Site Management Plan will be sufficient.¹²⁶

424. We accept the assessment provided by Ms Stout and adopt it for the purposes of this decision. Appropriate conditions regarding handling and disposal of any contaminated soils and the Contamination Site management Plan have been included in the draft conditions.

Positive Effects

425. Ms Armstrong wrote that the applicant identified in the Assessment of Environmental Effects (AEE) a range of positive effects from the proposal. She noted that the applicable matters of discretion do not cover the range of positive effects expressed by the applicant. She considered that that in terms of the discretion available, the proposal will provide for ongoing use of the heritage item, will provide for its repair and restoration and ¹²⁷represents an efficient, practical use of the sites, which are positive effects.

426. Dr Mitchell wrote that the proposed Village would result in significant positive effects by providing a much-needed comprehensive care retirement village within the established community of Central Christchurch, and economic benefits through creating construction and operational jobs and demand for services.¹²⁸ Mr Pearson also noted the positive effects of the restoration of the heritage Bishops Chapel building¹²⁹.

427. The Assessment of Environmental Effects submitted with the original applications discussed the urgent need for additional retirement facilities due to the rapidly increasing numbers of people requiring such care. It also discussed the benefits for the residents of the proposed facilities.¹³⁰

428. Several submitters noted enthusiastically the benefits of having such a facility in the Central City with close access to so many amenities.

429. In closing submissions for the applicant, Mr Hinchey addressed this again, writing that

"It is submitted that the key positive effects of the Proposed Village (such as its contribution to housing supply for an ageing Christchurch population, to the health, safety, quality and enjoyment of those living in the area and a vibrant City Centre) are relevant. These significant positive effects are some of the reasons the application is an appropriate response to its Residential Central City Zone context."¹³¹

430. He said that this was captured by Rule 14.15.9(a), which refers to appropriateness to the context of the application.

431. We are not convinced that direction matter (a) is as broad as Mr Hinchey stated, as it actually goes on to direct us, when having regard to that context, to a range of very specific built form characteristics and amenity effects, not including any of the matters Mr Hinchey mentioned.

432. We remind ourselves that this is a restricted discretionary activity and that under section 104C of the RMA we can consider only those matters which are set out in the district plan for our consideration. The positive heritage effects are identified in that way in Rule 9.6.3.1 which contains

¹²⁶ Louisa Armstrong, section 42A report at paragraphs 252 – 255.

¹²⁷ Section 42A report paragraph 54.

¹²⁸ Mitchell evidence paragraph 16

¹²⁹ Pearson evidence paragraph 18.

¹³⁰ Assessment of Environmental effects Section 5.2

¹³¹ Applicant's Closing submissions, paragraph 18

the matters for discretion for alterations to heritage buildings, although not very clearly. More generally, in the matters for discretion for retirement villages in Rule 14.15.9, importantly, it is stated there that these are the only matters for discretion for retirement villages.

433. We do not wish to belittle those benefits of the proposals in any way. We accept that these and possible other positive effects would result. However in a legal sense we do not think we are entitled to consider any of them except possibly the restoration of the chapel, which is uncontroversial and has no adverse effects in any case.

434. We also acknowledge that Mr Hinchey was not seeking to rely on these positive effects to offset any adverse effects.¹³²

Overall Conclusion on effects on the environment

435. Our overall conclusion on adverse effects on the environment is that:

(a) In the case of the application for the Bishops Park Site, any adverse effects of the proposal would be no more than minor, and are objectively acceptable in the context of the existing environment and the planning framework, subject to adjustment of the proposed conditions so that they refer to this site alone.

(b) In the case of the application for the Peterborough St site, we conclude that the proposal, as it currently stands, results in moderate to high adverse effects in terms of visual domination and shading at 15 Peterborough Street and shading at 18 Salisbury Street, and requires revision, and in our view reduction in scale, to address those matters.

Statutory considerations

Resource Management Act 1991

436. When considering an application for resource consent for a restricted discretionary activity and any submissions received, the consent authority must have regard to the matters listed in Sections 104 and 104C of the Resource Management Act 1991.

437. Section 104(1) states that Subject to Part II of the Act, which contains the Act's purpose and principles, including matters of national importance, the consent authority shall have regard to:

(a) any actual and potential effects on the environment of allowing the activity;

438. We have discussed the effects on the environment extensively throughout this decision and summarised our conclusions immediately above.

(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;

439. No environmental offsets or compensation have been proposed.

(b) any relevant provisions of—

(i) a national environmental standard:

440. We have considered the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human health above. We conclude that the conditions that have been proposed will ensure that any adverse effects arising would be less than minor. There are no other relevant Standards.

(ii) other regulations:

441. There are no other relevant regulations.

¹³² Closing submissions, paragraph 9.

(iii) a national policy statement:

442. We have discussed the NPSUD above and concluded that at this stage we can give limited weight to it considering the extent of work the City and Regional councils still have to undertake to implement it.

(iv) a New Zealand coastal policy statement:

443. This is not applicable to these sites.

(v) a regional policy statement or proposed regional policy statement:

444. We do not consider it is necessary to refer to the Canterbury Regional Policy Statement (the RPS). Although this provides high level and over-arching guidance for land planning in Canterbury, the Christchurch District Plan was prepared in the light of the RPS and can be assumed to be consistent with it and to give effect to it. In any case, this is a local matter, and the RPS is much more concerned with matters of regional significance.

(vi) a plan or proposed plan;

445. We have considered the provisions of the Christchurch District Plan throughout this decision, particularly the objectives, policies and rules and the matters to which the Council has restricted its discretion.

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

446. In the context of a restricted discretionary activity, we consider the opportunity to consider other matters, in a broad way, is unavailable. We note that s60(2) of the Greater Christchurch Regeneration Act 2016 requires that decisions and recommendations on resource consent applications are not inconsistent with recovery plans and regeneration plans. S60(5) provides that such plans are a matter over which discretion is restricted and that s87A(3) of the RMA applies accordingly.

447. The Christchurch Central Recovery Plan is relevant to this proposal as the proposal is to occur within the Central City. One of the visions of that plan is to attract more people to live and invest in the Central City and for it to be a vibrant, well-formed with a compact core, safe and accessible to everyone and responsive to future changes.

448. We consider the proposal is not inconsistent with the Recovery Plan. Even if there is a reduced scale of development on the Peterborough site to address our concerns, the proposal will remain consistent.

449. Section 104C(1) states that:

“When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which

(a) discretion is restricted in national environmental standards or other regulations:

(b) it has restricted the exercise of its discretion in its plan or proposed plan.”

450. Throughout this decision we have referred to and applied the matters to which the council has restricted its discretion and have not considered other matters.

451. Section 104C(2) states that:

“The consent authority may grant or refuse the application.”

452. We have concluded that these applications are best dealt with by an interim decision. We anticipate that the Bishops Park application will be readily able to be approved following editing of the conditions so that they apply only to this site. As discussed, we do not consider it appropriate to approve the application for the Peterborough St site in its present form, as it requires a more fundamental revision and reduction in scale to deal with adverse effects. We consider it is

appropriate to give the Applicant the opportunity to consider whether it wishes to undertake that exercise.

Part 2 of the Resource Management Act 1991

453. Taking guidance from the most recent case law¹³³, the District Plan is considered to be the mechanism by which the purpose and principles of the Act are given effect to in the Christchurch District. It was competently prepared through an independent hearing and decision-making process in a manner that appropriately reflects the provisions of sections 5-8 of the Act. Accordingly no further assessment against Part 2 is considered necessary.

Conditions – ss108/108AA RMA

454. In our Minute 5 we made directions in relation to conditions. Those directions placed an obligation on the Applicant to prepare an updated set of conditions, forward those to Council and then allow submitters the opportunity to comment.

455. We received the Applicant's conditions, Council's amendments and comments from a number of submitters. We have taken all of those matters into account.

456. Overall, we consider the conditions provided with the Applicant's submissions in reply are appropriate in respect of RMA/2020/673. They will need to be amended in light of our interim decision.

Interim Decision

457. We have decided to issue an interim decision, as we have concluded that both the applications are able to be granted but will require some modification before doing so. It is an unusual step, but not without precedent. We note that in closing submissions Mr Hinchey accepted our ability to do so and cited decisions of the Environment Court confirming this.¹³⁴

Application RMA202/673

458. In the case of the Bishops Park site, the required modifications are simple, consisting only of editing the draft conditions included with the closing submissions to remove anything related to the Peterborough St site. The applicant should, in consultation with the Christchurch City Council, prepare and provide us with the edited conditions and we will issue a final decision accordingly.

Application RMA2020/679

459. In the case of the Peterborough St site, the required alterations are considerably more significant, as we have outlined above. If it wishes to take up this opportunity the applicant is to reconsider the design and layout of this site, particularly along its eastern boundary, and produce a design that is significantly less visually dominant and creates significantly less shading at the middle level apartments at 15 Peterborough St, and less shading at 18 Salisbury Street. We do not require the amendments to achieve what would be an appropriate degree of shading in a suburban residential environment. We acknowledge some degree of shading is part and parcel of inner city living. An hour or two of extra afternoon sun in the summer period may be sufficient.

460. We direct that the applicant is to notify us no later than 2 weeks from the date of this interim decision whether it wishes to take up the opportunity to prepare revised proposals. This should include an indication of the time required to consider and produce the revised proposals. We will then issue further directions as to timeframes and circulation of the revised proposals to the Council and relevant submitters for comment.

If the applicant does not wish to take up this opportunity, it is to notify us within 2 weeks of the date of this interim decision. If that is the case it may then withdraw the application, or advise us, and we will issue a decision declining the application.

¹³³ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

¹³⁴ Mr Hinchey, closing submission, paragraph 335.

D. L. Mountfort

Commissioner David Mountfort (Chair)

Dated: 4 June 2021

D. Caldwell

Commissioner David Caldwell

Appendix 1

Relevant District Plan Rules requiring consents

Activity status rule	Standard not met	Reason	Matters of control or discretion <i>(if relevant)</i>
14.6.1.3 RD5	<p>Any new building, or alteration or addition to an existing building for a retirement village that does not meet one or more of the following built form standards:</p> <p>14.6.2.1 Building height</p> <p>14.6.2.2 Daylight recession planes</p> <p>14.6.2.3 Road boundary building Setback</p>	<p>The maximum height of any building shall be 14m (100 Park Terrace/Bishops park) – Building B01 – 15.047m Building B02 -19.549m Building B03 - 15.005m</p> <p>The maximum height of any building shall be 20 m (78 Park Terrace/Peterborough) Building B07 – 20.002m</p> <p>The maximum height of any building shall be 20 m (78 Park Terrace/Peterborough)</p> <p>Building B07 – 20.002m 100 Park Terrace – Parts of Buildings B01, B02, B03 and B04 will breach the recession plane standards.</p> <p>100 Park Terrace - A 4.5m setback is required – Building B02 is setback approximately 3.7m from Park Terrace road boundary. A setback of 4.5m is required.</p> <p>100 Park Terrace – A 2m setback is required. Building B03 will be setback approximately 1.8m from the Dorset Street road boundary. A setback of 2m is required.</p>	<p>Retirement villages – Rule 14.15.9 And as relevant to the built form standard that is not met: Building height – Rule 14.15.27</p> <p>Street scene and access ways – Rule 14.15.29</p> <p>Street scene and access ways – Rule 14.15.29</p>

	14.6.2.4 Minimum building setbacks from internal boundaries	100 Park Terrace – A setback of 1.8m along the eastern internal boundary is required. Building B04 has no setback Building B04 has no setback for a length of approximately 45m along this boundary.	Minimum building setbacks from internal boundaries – Rule 14.15.30
6.8.4.1.3 RD1	6.8.4.2.6 Free standing signs – the maximum total area of a sign on each site shall be 0.2m ² . A sign of 1.68m ² is proposed on each site frontage.	The signage outside the main entrances to the proposed village will be approximately 160cm by 80cm. The number of letters in the name of the proposed villages have not been confirmed.	Rule 6.8.5.1 – All signs and ancillary support structures
7.4.2.3 RD1	7.4.3.7 Access design	Appendix 7.5.7 requires a minimum access width of 6.5m legal width and a 5.5m formed width. The Park Terrace access to the Peterborough site (78 Park Terrace) will have a legal and formed width of 4m.	Rule 7.4.4.10 - Vehicle access design
9.3.4.1.2 C1	Heritage upgrade works for Highly Significant (Group 1) heritage items.	Heritage upgrade works to the Bishop's Chapel, which is listed as a Category 1 heritage item.	Heritage upgrade works, reconstruction and restoration – Rule 9.3.5.1
9.3.4.1.3 RD2	New buildings in a heritage setting.	New buildings are proposed within the heritage setting.	Rule 9.4.6 Effects of activity/works on the tree(s) Extent of benefit or need for activity/works a. – o.
9.4.4.1.3 RD1	Any pruning of any significant tree listed in Appendix 9.4.7.1.	78 Park Terrace – Pruning of a significant tree (Common Lime Tree T271) is proposed	Rule 9.4.6 Effects of activity/works on the tree(s) Extent of benefit or need for activity/works a. – o.
9.4.4.1.3 RD5	Any works within the dripline of a significant tree listed in Appendix 9.4.7.1	78 Park Terrace – Works within the dripline of a significant tree (Common Lime Tree T271) are proposed.	Rule 9.4.6 Effects of activity/works on the tree(s) Extent of benefit or need for activity/works a. – o.