

**BEFORE THE HEARINGS PANEL  
TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHĪ**

**IN THE MATTER** of the Resource Management  
Act 1991

**AND**

**IN THE MATTER** of hearing submissions on Plan  
Change 13 (Heritage) to the  
Christchurch District Plan

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**OPENING LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL**

**17 June 2025**

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### **MOST APPROPRIATE OBJECTIVES AND POLICIES**

## **INTRODUCTION:**

1. The heritage objectives of the District Plan are well settled. The purpose of PC13 is to make some changes to policies to more appropriately implement the objectives and for rules and other provisions to more appropriately implement the policies.
2. PC13 (as amended) does this by
  - (i) Introducing 9 residential heritage areas (RHA) – a new concept for this Plan but well tested nationally (Ms Dixon describes this);
  - (ii) Adding 43 heritage items and settings to the schedule with the owners' approval;
  - (iii) Scheduling additional heritage interiors for protection;
  - (iv) Proposing changes to policies and rules that are intended to improve the manner in which the provisions achieve the heritage objectives.
3. These legal submissions address the following topics:
  1. Relationship to Plan Change 14;
  2. Council's current position;
  3. The legal framework (set out in Appendices A and B);
  4. Scope to make changes to this plan change;
  5. Relevant planning documents;
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  7. Most appropriate objectives and provisions.

## **RELATIONSHIP TO PLAN CHANGE 14 (PC14)**

4. PC14 is the intensification planning instrument (IPI) that the Act requires councils to introduce. It proposes changes to the Plan to implement medium density residential standards (MDRS) and Policy 3 of the National Policy Statement on Urban Development (NPS-UD).
5. Council had been working towards notifying PC13 prior to the statutory direction to notify the IPI. When preparing PC14 the Council considered that there were ambiguities about the scope of decision making possible

in the IPI process. As a result, there is overlap between the heritage provisions notified in PC13 and PC14 because the scope of decision making on PC14 was unclear.

6. Council notified PC13 and PC14 at the same time. It held back on hearing PC13 until after the first set of Council and Minister decisions on the IHP recommendations on PC14. The reason for delaying hearing of PC13 was so that the Council would be able to withdraw heritage matters from PC13 if they were duplicated in the two plan changes and were determined in the PC14 process.
7. Council officers were also aware that notifying the two plan changes together was likely to cause confusion for some submitters. Council treated all submissions that raised heritage matters as being submissions on both PC14 and PC13. Submissions were combined in that way in the summary of submissions for the purposes of further submissions.
8. The IHP delivered all of its PC14 recommendations to the Council, and responses to questions about them, by November 2024.
9. Decision making on the IHP's PC14 recommendations is in two stages. That is because central government intends to allow the Council the opportunity to "opt out" of implementing the IPI requirements, but not for intensification areas in and around commercial centres<sup>1</sup>. The Minister's timetabling direction is that the Council publicly notify its decisions on the IHP recommendations on intensification in and around centres (that is, on Policy 3 of the NPS-UD) by December 2024, and on the balance of the IHP recommendations on PC14 by December 2025.
10. The Council decisions of December 2024, and the Minister's decision of June 2025 on some IHP recommendations rejected by the Council, is confined to the Policy 3 intensification areas, with two exceptions further discussed below: heritage scheduling for Antonio Hall and Daresbury.

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<sup>1</sup> The Select Committee report on the "opt out" opportunity was released on 11 June 2025.

## **COUNCIL'S CURRENT POSITION**

11. I here describe the Council's current position under four heads:

- (a) Changes withdrawn from PC13 because of decisions on PC14;
- (b) The Council position decided in PC14 on submissions seeking removal of Antonio Hall and Daresbury from the schedule;
- (c) The Council position on the Council submissions;
- (d) The Council position on other evidence.

### **(a) Changes withdrawn from PC13 because of decisions on PC14**

12. The Council has withdrawn the following matters from PC13:

(i) Resolution of 11 December 2024:

Items:

Amendments to the extent or location of:

- The Citizens' War Memorial
- 59 Hansons Lane (Rannerdale)
- The setting of New Regent Street shops
- 135 High Street

The proposed scheduling of the Yaldhurst War Memorial Hall

Residential Heritage Areas (RHAs):

- Heaton St RHA withdrawn
- Piko/Shand RHA withdrawn
- The blue cottage, its setting and the whole property at 32 Armagh Street removed from the Inner City West RHA.

Residential Heritage Areas – Rules:

- Withdrawn proposed RHA interface provisions around five of the RHAs (Chester St/Dawson St, Englefield, Inner City West, Heaton St, Piko/Shand) which share a boundary or part of a boundary with High Density Residential or Residential Guest Accommodation zones;
- Withdrawn all area specific built form rules for RHAs in Chapter 14 Residential, Rule 14.5.3.2. Built form rules in these areas will be the same as those of the underlying zone.

- (ii) Resolution of 16 April 2025 reduced the size of the proposed Lyttelton RHA by withdrawing 78 properties;
- (iii) Resolution of 4 June 2025
  - Maximum height overlay (qualifying matter) and Heritage interface (qualifying matter) solely as it applies to:
    - New Regent Street
    - Arts Centre
  - Heritage item: Cathedral of the Blessed Sacrament, 136 Barbadoes Street
  - Lyttelton RHA: Removing 24 more properties from the RHA.
- 13. Maps of the reduced Lyttelton RHA for decision in PC13 are under “Updated provisions and maps” on the PC13 webpage [AP85711.PDF](#)
- (b) The Council position decided in PC14 on submissions seeking removal of Antonio Hall and Daresbury from the schedule**
- 14. The Council position on continued scheduling of Antonio Hall and Daresbury differs from the s42A report planning recommendations.
- 15. The Council determined its position on the heritage scheduling of Daresbury and Antonio Hall in December 2024 when considering the Independent Hearing Panel (IHP) recommendations on Plan Change 14 (PC14). The notified PC14 continued to schedule these two heritage items and their settings as a qualifying matter that warranted lesser development of those sites than is otherwise enabled by MDRS. Submissions sought their removal from the schedule of heritage items. Council’s expert evidence was (broadly) the same as the Council’s expert evidence on them for this hearing. The PC14 IHP recommendation is that they remain scheduled in the Plan as a qualifying matter.

16. On 2 December 2024 Council made decisions on the IHP recommendations for the intensification areas required by Policy 3 of the NPS-UD, being intensification in and around commercial centres <sup>2</sup>.
17. Daresbury and Antonio Hall are not within the NPS-UD Policy 3 intensification areas that the Council decided on in December 2024. However, elected members decided to address them in that December 2024 decision as they wanted to determine the merits of scheduling those two heritage items in advance of deciding on the remainder of the IHP recommendations on PC14.

### Daresbury

18. Council resolution CNCL/2024/00214 of 2 December 2024 <sup>3</sup> was to reject the PC14 IHP recommendation and recommend to the Minister that Daresbury and its heritage setting not remain scheduled in the Plan.
19. The Council's recommendation report to the Minister said: <sup>4</sup> *"Council considers that the house has been damaged to an extent where it is uneconomic to repair, as reflected in the evidence of the landowner"*.
20. The Minister declined to make a decision on that recommendation and on the one for Antonio Hall. His decision letter to the Council said <sup>5</sup>

Please note I am not making decisions on the referred recommendations relating to Daresbury House, Antonio Hall and the Piko Residential Character Area at this time. This is because the Council has not yet made decisions on the zoning of these areas. I intend to consider these three referred recommendations once the Council has decided on the zoning of these areas. The Council may refer these decisions to me again ahead of deciding on the balance of Plan Change 14.

21. If the Minister's decision on PC14 had been to accept the Council's recommendation to not retain the scheduling of these items then the Council would have withdrawn them from PC13.

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<sup>2</sup> The Minister's timetabling directions required the Council to notify decisions on IHP recommendations for policy 3 areas in December 2024. Council has not yet made decisions on the balance of the IHP recommendations. The Minister's direction requires the Council to notify decisions on the balance by December 2025. That might still change if legislative changes enable the Council to "opt out" of implementing the rest of the IHP recommendations.

<sup>3</sup> [Minutes of Council - Monday, 2 December 2024](#) p33.

<sup>4</sup> [CCC-report-for-referred-PC14-recommendations-Final-250225-w-attachments.pdf](#), p11.

<sup>5</sup> [CB-COR1290-Letter-to-Christchurch-City-Council-re-IHP-recommendations.pdf](#). Decision released 5 June 2025.

22. As the matter has not yet been resolved in PC14, the Council position in PC13 is in support of the submitter's request to not retain the scheduling of Daresbury as it is uneconomic to repair. The Council's neutral independent experts are providing their expert opinions relevant to this matter; however, there is no dispute between the Council *position* and the Daresbury submitter's position.

#### Antonio Hall

23. Council resolution CNCL/2024/00215 of 2 December 2024 <sup>6</sup> was to reject the IHP recommendation and recommend to the Minister that Antonio Hall and associated heritage setting is removed from the heritage schedule.
24. The Council's recommendation report to the Minister said <sup>7</sup> "*Council considers that the building is significantly compromised and the site is better placed to deliver housing given its highly accessible location*".
25. The Minister's decision on this (and Daresbury) is set out above.
26. As the matter has not yet been resolved in PC14, the Council position in PC13 is in support of the submitter's request to not retain the scheduling of Antonio Hall as *the building is significantly compromised and the site is better placed to deliver housing given its highly accessible location*. The Council's neutral independent experts are providing their expert opinions relevant to this matter. There is no other expert evidence on the matter. The Council *position* differs from the planning recommendation in the s42A report.

#### **(c) The Council position on the Council submission**

27. The Council's position is that recommended by Mr Langman, the planner giving expert evidence for the Council as submitter. The s42A reports do not comment on the relief sought in the Council's submission. The Council relies on Mr Langman's evidence.

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<sup>6</sup> [Minutes of Council - Monday, 2 December 2024](#) p33.

<sup>7</sup> [CCC-report-for-referred-PC14-recommendations-Final-250225-w-attachments.pdf](#) p12.

28. Those submission points and evidence are, in summary:

- (i) Minor corrections and clarifications (#1058);
- (ii) Rejecting submission points that are on matters withdrawn from PC13;
- (iii) Improved clarity of rules for earthworks affecting heritage items and settings;
- (iv) Adding Spreydon Lodge as a heritage item (with the approval of the landowner);
- (v) Heritage setting revisions for some scheduled items
- (vi) Mapping change for the Inner City West RHA (for which Ms Dixon's s42A also (consistently) comments due to another submission raising it);
- (vii) Miscellaneous changes for heritage item exemptions in Appendix 9.3.7.4;
- (viii) A rule change for buildings in heritage areas that are not heritage items. Ms Dixon's s42A report comments on this as it was raised by another submission. Mr Langman agrees with her recommendation.

**(d) The Council position on all other matters**

29. The Council position on all other matters is, at this stage, that recommended in the planning evidence of Mrs Richmond and Ms Dixon.

30. I explain that further in "The Council's Approach to the Issues" below.

**THE LEGAL FRAMEWORK**

31. **Appendices A and B** to these submissions set out the provisions of the RMA that are relevant to considering district plan changes. Those provisions are described briefly because the principles are well established in case law.

32. There is a recent addition to that framework relevant to PC13. The Act's provisions regarding plan changes that constrain MDRS and Policy 3 intensification are relevant.
33. Section 77G requires that:
- (1) *Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.*
  - (2) *Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.*
34. The effect of PC13 is to make heritage sites and heritage areas less enabling of the development that would otherwise be enabled by the MDRS and by Policy 3 of the NPS-UD.
35. Section 77I provides that plan changes can constrain that intensification only to the extent necessary to accommodate one or more qualifying matters that apply to the relevant site or area. One of those qualifying matters in s77I is "*a matter of national importance that decision makers are required to recognise and provide for under [section 6](#)*".
36. As "*the protection of historic heritage from inappropriate subdivision, use, and development*" is a matter of national importance under s6(f), the PC13 proposed constraints on development that would otherwise be enabled by the MDRS and Policy 3 can be a lawful qualifying matter.
37. Section 77J(3) (for residential zones) and 77P (for non-residential areas) contains additional requirements for evaluation reports for the area where a qualifying matter is proposed (as it is here). The evaluation report must:
- (a) demonstrate why the territorial authority considers—
    - (i) that the area is subject to a qualifying matter; and
    - (ii) that the qualifying matter is incompatible with the level of development that the MDRS or Policy 3 provides for the area; and
  - (b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and

- (c) assess the costs and broader impacts of imposing those limits.
38. That additional requirement for the Council's evaluation report is relevant only to the heritage areas and proposed new heritage items/settings within the Policy 3 areas that have been decided by the Council or Minister. These are:
- RHAs: Chester St/Dawson St RHA and Inner City West RHA;  
New items/settings:
- 35 Rata Street, Riccarton
  - 28 Bealey Avenue (Knox Presbyterian Church and setting)
  - 167 Hereford Street (Commercial building and setting)
  - 129 High Street (Commercial building and setting, Former Bank of New Zealand)
  - 159 Manchester Street (Commercial building and setting, Former Canterbury Terminating Building Society)
  - 152 Oxford Terrace (Commercial building and setting, Former Public Trust Office)
39. That evaluation is provided in:
- (a) Ms Dixon's evidence at 5.1.9 – 5.1.17;
  - (b) Mrs Richmond's evidence at 5.1.10 – 5.1.17;
  - (c) Mr Osborne's summary evidence at 18.

### **SCOPE TO MAKE CHANGES TO PC13**

40. For the Hearings Panel to have jurisdiction to recommend changes to PC13 in response to submissions:
- (a) The changes must be within the scope of a submission; and
  - (b) The submission must be "on" PC13.

### **First limb: are changes within the scope of a submission**

41. The test is whether the proposed changes were "reasonably and fairly raised" in a submission on the plan change <sup>8</sup>. Key principles in relation to this test are:

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<sup>8</sup> *Countdown Properties (North/ands) Limited v Dunedin City Council* [1994] NZRMA 145 at 166.

- (a) This will usually be a question of degree to be judged by the terms of the plan change and the content of the submissions;<sup>9</sup>
- (b) The question of scope should be approached in a realistic workable fashion rather than from the perspective of legal niceties;<sup>10</sup>
- (c) Another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought;<sup>11</sup>
- (d) To take a legalistic view and hold that a decision-maker could only accept or reject the relief sought in any given submission would be unreal;<sup>12</sup> and
- (e) The whole relief package detailed in submissions should be considered when determining scope.<sup>13</sup>

### **Second limb: is the submission "on" the plan change**

42. The leading authority<sup>14</sup> on whether a submission is "on" a plan change is the High Court decision in *Clearwater Resort Ltd v Christchurch City Council*,<sup>15</sup> which sets out a two limb test:
- (a) First, the submission must reasonably fall within the ambit of the plan change by addressing a change to the status quo advanced by the proposed change.
  - (b) Second, the decision-maker should consider whether there is a real risk that persons potentially affected by changes sought in a submission have been denied an effective opportunity to participate in the plan change process.

<sup>9</sup> At [166].

<sup>10</sup> *Royal Forest and Bird Protection Society Inc v Northland District Council* [1997] NZRMA 408 (HC) at 413.

<sup>11</sup> *Westfield (NZ) Ltd v Hamilton CC* [2004] 10 ELRNZ (HC) 254 at [73]. This decision related to whether an appeal provided scope for the changes made by the Environment Court.

<sup>12</sup> *General Distributors v Waipa District Council* (2008) 15 ELRNZ 59 (HC) at 72.

<sup>13</sup> *Shaw v Selwyn District Council* [2001] 2 NZLR 277 (HC).

<sup>14</sup> As confirmed by the High Court in *Turners & Growers Ltd v Far North District Council* [2017] NZHC 764.

<sup>15</sup> *Clearwater Resort Ltd v Christchurch City Council* AP 34/02, 14 March 2013, Young J.

43. The Clearwater test was applied by Kos J in *Palmerston North City Council v Motor Machinists*.<sup>16</sup>

44. In relation to the first limb:

(a) The first limb in the *Clearwater* test is the dominant consideration. This involves two aspects: the degree of alteration to the status quo proposed by the notified plan change; and whether the submission addressed that alteration. Or, as Kos J said, whether the submission reasonably falls within the ambit of the plan change.<sup>17</sup>

(b) The section 32 assessment is a comparative evaluation of the efficiency, effectiveness and appropriateness of options. For variations advanced in submission to be "on" the plan change, they should be assessed in the section 32 assessment. If a change advanced in a submission is not a matter that either was addressed, or should have been addressed, in the section 32 evaluation, then the change is unlikely to meet the first limb of the test in *Clearwater*.<sup>18</sup>

45. In relation to the second limb of the *Clearwater* test Kos J in *Motor Machinists* stated:

(a) The second limb in *Clearwater* concerns procedural fairness. It is whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission (so called "submissional side-winds") have been denied an opportunity to respond to those proposed changes.<sup>19</sup>

(b) *"It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have*

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<sup>16</sup> *Palmerston North City Council v Motor Machinists* (2013) NZHC 1290.

<sup>17</sup> At [80] to [81].

<sup>18</sup> At [76].

<sup>19</sup> At [83].

*been had it been included in the original instrument. It is that unfairness that militates the second limb of the Clearwater test".*<sup>20</sup>

46. If the effect of treating a submission as being "on" the plan change would be to permit the plan change to be appreciably amended without any real opportunity for participation by those potentially affected, then that is a "powerful consideration" against finding that the submission was truly "on" the plan change.<sup>21</sup>

### **Applying scope caselaw here**

*First limb: are changes within the scope of a submission*

#### Ceres Further Submission

47. The issue arises from the Ceres New Zealand further submission seeking to expand their original submission, by adding a new provision for a controlled activity status for demolition<sup>22</sup>.
48. The notified PC13 had no schedule for significantly damaged buildings. The notified provisions had the same rules for those as for other heritage items. The Ceres original submission sought a new schedule for significantly damaged buildings (1064.16) and an associated policy/rules framework (1064.17-1064.20). Their original submission point 1064.19 seeks a restricted discretionary activity rule for demolition of buildings in this schedule.
49. Ceres lodged a further submission (FS103.1) on its own submission seeking controlled activity status for demolition of buildings in this schedule where building has a s124 (dangerous building) notice issued under the Building Act.

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<sup>20</sup> Paragraph [77].

<sup>21</sup> Clearwater Resort Limited v Christchurch City Council HC Christchurch AP34/02, 14 March 2003, at [66].

<sup>22</sup> Ms Richmond's s42A at 7.1.6 and 7.1.7.

50. Mrs Richmond's s42A analysis rightly highlights a potential scope issue because the further submission seeks different relief than that sought in the original submission that it supports <sup>23</sup>.
51. However, in my submission the Panel is entitled to consider the evidence that Mr Joll presents on the merits of this change, and consider whether that additional relief he recommends is within the scope of the original submission.
52. As the original submission sought a special activity status for a subset of heritage buildings – significantly damaged ones – it is reasonable to expect that the Panel would be considering whether that activity status or another activity status is appropriate for all, or part, of that subset of heritage items. The change sought in Mr Joll's evidence (and the further submission) is to have a further discrete activity status for a smaller subset of buildings - those subject to s124 notices – from within the group raised in the original submission.
53. I submit that granting that relief would be within the scope of the original submission. The amendment is a foreseeable consequence of the relief sought.

#### Reducing protection for Daresbury and Antonio Hall

54. Amanda Ohs' evidence adopted in the s42A planning recommendations favours a reduced setting for Daresbury and reduced coverage for the structures that comprise the Antonio Hall item. The s42A report flags this as a possible scope issue as this was not sought in submissions <sup>24</sup>.
55. The Council position set out below is that submissions seeking that these items be removed from the schedule are within scope. Evidence supporting reducing the scale of protection is also within scope.

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<sup>23</sup> Ms Richmond's s42A report at 7.1.7. RMA Schedule 1 cl.8(2): "A further submission given under subclause (1) or (1A) must be limited to a matter in support of or in opposition to the relevant submission made under [clause 6](#) or [6A](#)".

<sup>24</sup> Items s42A at 8.1.51.

Second limb: is the submission “on” the plan change

56. The Council considers that there are contextual factors that weigh in favour of taking a relatively wide view of scope for PC13.
57. First, the wide terms in which PC13 was described in the s32 report and the public notice.
58. The section 32 evaluation described the purpose of the Plan change as follows:
- The primary purpose of the Plan change is to better reflect aspects of the City’s history and development through adding to the schedule of heritage items, adding further interiors for protection and introducing residential heritage areas as a mechanism to protect buildings and features which collectively rather than individually are of significance to the City’s heritage and identity. A further purpose is to simplify and clarify the rule provisions in the light of experience, to strengthen a small number of rules by requiring a higher category of consent, and to reflect changes in circumstances over time. Wording changes are also proposed to five of the policies.
59. That explanation does not expressly refer to removing any heritage items from the schedule. However, the issue statement in the s32 report stated that the plan change included deleting some items from the schedule because they had been demolished or because resource consent had been granted for demolition<sup>25</sup>.
60. The section of the s32 report headed “3.4 Description and scope of the plan change” included:

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<sup>25</sup> At 2.2.9: There are five cases of deletion of items which have been demolished. These include the Cathedral of the Blessed Sacrament in Barbadoes Street, the original house at 19 Kotare Street, Fendalton, and the Phillipstown Church of the Good Shepherd Vicarage at 38 Phillips Street. The dwelling at 14 Kirkwood Avenue was destroyed by a fire in September 2022, and the dwelling Devonian at 10A Bridle Path Road in Lyttelton suffered the same fate in November 2022. Two other items have been granted resource consent for demolition, and have also been removed from the Schedule. These are the Riccarton Racecourse Grandstand, and the dwelling at 300 Hereford Street.

- A list of five purposes, one of which is “*To correct the Schedule of Significant Historic Heritage Items to reflect changes in circumstances over time and to correct errors*”<sup>26</sup>;
- “*There are a number of corrections to the Schedule of Significant Historic Heritage Items, including to the Heritage Aerial Maps showing items and settings, which are reached through links from this Schedule*”<sup>27</sup>.

61. The public notice on 17 March 2023 was a full page joint one for PC13 and PC14. Due to the extent of plan changes across those two plan changes the public notice made broad statements above the content of the plan change:

*Christchurch City Council has prepared proposed changes to our District Plan that affect the development allowed in the city, and that affect sites and areas proposed to be protected for their heritage values. These are Plan Change 14 (PC14 Housing and Business Choice) and Plan Change 13 (PC13 Heritage).*

*Changes we are proposing to the Christchurch District Plan*  
*The changes to the District Plan proposed in PC14 and PC13 are extensive. Read the Plan Change for full details. The changes include but are not limited to:....*

62. The detailed list of plan changes in that joint public notice for PC13 and PC14 included these two items:

*viii. Protecting heritage areas across the city to recognise Ōtautahi Christchurch’s special identity. We are introducing 11 Residential Heritage Areas, and adding 44 buildings and items, and 26 building interiors to the Schedule of Significant Historic Heritage. (PC13)*

*ix. Simplifying and clarifying heritage provisions and strengthening some rules by changing the activity status for resource consent. Minor wording changes are also proposed to five of the heritage policies. (PC13)*

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<sup>26</sup> S32 report at 3.4.2.

<sup>27</sup> S32 report at 3.4.10.

63. Secondly, the complexity and confusion arising from the duplications and overlap between PC13 and PC14 warrants approaching scope issues here in a realistic workable fashion rather than from the perspective of legal niceties.
64. Thirdly, the range of changes Council proposes in PC13 include:
- Changes to policies and rules;
  - Additions and amendments to the heritage schedule;
  - Removals from the heritage schedule;
  - Determining appropriate sizes and locations of RHAs to include in the District Plan;
  - Determining what status applies to specific buildings and specific activities within RHAs.
65. Fourthly, the merit of removing Daresbury and other items from the schedule was expressly discussed in the s32 report <sup>28</sup>:
- Feedback from heritage building owners sought the removal of four heritage items from the schedule – dwellings at 14 Kirkwood Avenue, 300 Hereford Street, 67 Fendalton Road (Daresbury) and 32 Armagh Street. Some of these buildings have been vacant for some time and one has suffered fire damage and has not been repaired to date. 14 Kirkwood Avenue has now been demolished as a result of fire damage, and 300 Hereford Street has suffered fire damage and has a resource consent for demolition, so they have been removed from the schedule. Insufficient information was provided in the timeframe to enable staff to determine whether it was appropriate to remove the other two items from the schedule prior to the plan change being notified.*
66. Fifthly, persons potentially affected had an opportunity to make a further submission. A range of further submissions were made on the requests for removals from the Schedule, including from parties such as Heritage New Zealand Pouhere Taonga and the Christchurch Civic Trust.

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<sup>28</sup> S32 report at 3.5.14.

67. In my submission, in the above context, requests to remove items from the Schedule are within the scope of PC14. It is not a “submissional side-wind”.
68. However, additions to the schedule of heritage items or the size of RHAs is, in my submission, widening the plan change and so not “on” the plan change if the people affected are not party to the request. Here, the owners of Spreydon Lodge support the Council’s submission seeking that it be added to the schedule of heritage items.
69. Ms Dixon’s s42A report notes several potential scope issues concerning RHAs:
- (i) Dr McEwan’s suggestion that three cottages on Barbadoes St could be included in the Chester St East RHA: In my submission this is outside the scope of submissions and of the plan change. Affected people have not had the opportunity to participate in the proposal for their inclusion<sup>29</sup>;
  - (ii) Dr McEwan’s recommendation to exclude the new YMCA buildings on Hereford Street from the Inner City West RHA <sup>30</sup>: Ms Dixon has correctly identified that the broad nature of PC13 provides wide scope for changes to be made to the proposed RHA provisions, including “shrinking” of boundaries. The range of submissions received, ranging from deleting RHAs entirely to supporting the proposed RHAs and seeking more of them, supports that assessment;
  - (iii) Dr McEwan’s suggestion that an area based around Ryan St might meet the criteria for an RHA: as there are no submissions seeking that it be made an RHA this is outside the scope of submissions<sup>31</sup>;
  - (iv) Dr McEwan’s evidence recommended changes to the rating within the Plan of properties within RHAs <sup>32</sup>: These rating changes are a straightforward evidential matter. The Council’s evidence is that the notified ratings are inappropriate. The possibility of such a change is clearly within the scope of what was notified;

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<sup>29</sup> Ms Dixon’s S42A at 7.1.5 and 8.1.8.

<sup>30</sup> Ms Dixon’s s42A at 7.1.5 and 8.3.3-8.3.4.

<sup>31</sup> Ms Dixon’s s42A at 8.7.2.

<sup>32</sup> [Appendix 2 rating changes](#)

- (v) Dr McEwan's s42A report recommendation to remove sites from the Lyttelton RHA is not an issue for the PC13 hearing. Those sites have been removed from the RHA by a Council decision on partial withdrawal of PC13.
70. Mrs Richmond's s42A analysis raises potential scope issues concerning submissions seeking removal of heritage protection for some heritage items and setting: Taylors Mistake baches, Antonio Hall and Daresbury<sup>33</sup>. The Council's position is that these submissions seeking removal from the schedule of some items and settings are within scope, for the reasons described above.

## THE RELEVANT PLANNING DOCUMENTS

71. The section 32 report provides an analysis of the relevant higher order planning documents to consider when evaluating this plan change<sup>34</sup>.
72. Giving effect to the NPS-UD and MDRS is subject to the historic heritage qualifying matter described above. The s77J and s77P requirements for evaluation reports are, it is submitted, met in the Council's heritage, economic and planning evidence.
73. As noted in the s32 report,<sup>35</sup> PC13 must **give effect to** the following higher order directions in the CRPS:
- i. Objective 6.2.3 – Sustainability – recovery and rebuilding should retain identified areas of special amenity and historic heritage value;
  - ii. Objective 6.3.2(1) - Tūrangawaewae – the sense of place and belonging – recognition and incorporation of the identity of the place, the context and the core elements that comprise the (sic) Through context and site analysis, the following elements should be used to reflect the appropriateness of the development to its location: landmarks and features, historic heritage, the character and quality of the existing built and natural environment, historic and cultural markers and local stories.

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<sup>33</sup> Ms Richmond's s42A report at 7.1.8-7.1.9.

<sup>34</sup> Part 2.1

<sup>35</sup> At 2.1.5.b.

- iii. Objective 13.2.1 – Identification and protection of significant historic heritage items, places and areas and their particular values that contribute to Canterbury's distinctive character and sense of identity, from inappropriate subdivision, use and development;
- iv. Objective 13.2.3 – Repair, reconstruction, seismic strengthening, ongoing conservation and maintenance of built historic heritage.
- v. Policy 13.3.1 – Recognise and provide for the protection of significant historic and cultural heritage items, places and areas, from inappropriate subdivision, use and development;
- vi. Policy 13.3.4 – Appropriate management of historic buildings – recognise and provide for the social, economic and cultural wellbeing of people and communities by enabling appropriate repair, rebuilding, upgrading, seismic strengthening and adaptive reuse of historic buildings in a manner that is sensitive to their historic values. The explanation to this policy recognises that economics will often be a factor as to how quickly or easily reuse can be achieved

74. The s32 report notes that PC13 decision making must have regard to the Christchurch Central Recovery Plan's (CCRP) identification of "*the need to recognise the character and sensitivity of certain areas*" <sup>36</sup>. The CCRP there expressly referred to New Regent St as an example <sup>37</sup>.

75. As also noted in the s32<sup>38</sup>, PC13 decision making must have regard to Christchurch City Council's Our Heritage, Our Taonga Heritage Strategy (2019- 2029) <sup>39</sup>. The Heritage Strategy was produced in partnership with the six papatipu rūnanga and community engagement.

76. That Strategy has four goals:

- 1. *Our Heritage, Our Taonga is accessible to all and shared and celebrated.*
- 2. *Our Heritage, Our Taonga from Christchurch and Banks Peninsula's six papatipu rūnanga is acknowledged with respect to*

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<sup>36</sup> S32 report at 2.1.5 c.i.a.

<sup>37</sup> [Christchurch Central Recovery Plan - fullpage spreads version](#) p40.

<sup>38</sup> S32 report at 2.1.5 d.

<sup>39</sup> [Our-Heritage-Our-Taonga-Heritage-Strategy-2019-2029.pdf](#)

*their mana whenua and in accordance with their values and culture.*

3. *Our Heritage, Our Taonga includes and respects all the cultures and distinct communities of the district.*
  4. *Our Heritage, Our Taonga is protected through collaboration and partnership.*
77. The Strategy sets out “Actions” to achieve those goals. Some of the “*protect heritage*” actions to achieve Goal 4 above are <sup>40</sup>:
- a. *Seek to develop the strongest possible regulatory framework to ensure effective protection of significant and highly significant heritage places.*
  - b. *Seek to increase the scope and breadth of regulatory and non-regulatory protection measures which could achieve recognition of heritage interiors ... a broadened range of heritage places and values ... heritage areas...”.*

78. The s32 report’s summary of the higher order direction is usefully repeated here <sup>41</sup>:

*The higher order documents broadly identify the resource management issues relevant to the district and provide a consistent direction in resolving these issues. Section 6 of the RMA is relatively prescriptive in requiring that Council must recognise and provide for the protection of historic heritage, but both the Independent Hearings Panel’s Decision 45 and the CRPS indicate that this direction is to be tempered with consideration of, and allowance for, on a case by case basis, what might be appropriate subdivision, use and development in a location of historic heritage. As noted in Policy 13.3.4 of the CRPS, economics will often be a factor as to how quickly and easily reuse can be achieved and in providing for the social, economic and cultural wellbeing of people and communities under section 5 of the Act. Nevertheless appropriate repair, rebuilding, upgrading, seismic strengthening and adaptive reuse of heritage buildings*

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<sup>40</sup> Page 39 of the Strategy.

<sup>41</sup> 2.1.6 – 2.1.7.

*and places needs to occur in a manner that is sensitive to their heritage values.*

*Council's Heritage Strategy adopts a best practice heritage conservation approach, and includes the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value (ICOMOS New Zealand Charter 2010). The Strategy and Charter underlie all Council's heritage advice and decision making, since they encompass Ngāi Tahu, community and Council perspectives, objectives and goals around heritage identification and management in the district. As non-statutory documents, they are not higher order documents in terms of statutory weight. It is noted however that best practice conservation management principles and processes are not incompatible with statutory directives under section 6 of the RMA and the CRPS.*

## **COUNCIL'S APPROACH TO THE ISSUES**

### **RHA ISSUES**

79. The RHA s42A identifies six key issues in contention <sup>42</sup>.

Issue 1 – Opposition to RHAs as a concept or opposition to so many RHAs.

Issue 2 – Support for RHAs/seek more RHAs.

Issue 3 – Amendments sought to RHA rules so they are less restrictive.

Issue 4 – Clarification sought of how RHA rules will work, and requests for minor amendments so the rules work better.

Issue 5 - Opposition to or questioning of zoning proposed in PC14 in and around RHAs.

Issue 6 – Other miscellaneous RHA related submissions e.g. provide economic incentives or compensation.

80. I now summarise the Council position and evidence on those issues.

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<sup>42</sup> At 3.1.2. Issues 7 and 8 and adequately addressed in the RHA s42A under other Issue headings in the following summary.

**Issue 1: Opposition to RHAs as a concept or opposition to so many RHAs<sup>43</sup>**

**(A) That RHAs do not have unique features <sup>44</sup>**

81. The criteria for proposing that an area be subject to RHA provisions<sup>45</sup> ensure that they have special heritage value:
- a. Fulfils one or more of Council's standard heritage assessment criteria (historical/social, cultural/spiritual, aesthetic/architectural, technological and craftsmanship, context/environment, archaeological or scientific significance), at a significant or highly significant level;
  - b. Incorporates a collection of elements that together addresses the interconnectedness of people, place and activities;
  - c. Contributes to the overall heritage values, identity and amenity of the city;
  - d. Has a coherent heritage fabric which meets recognised criteria for heritage assessment;
  - e. Demonstrates authenticity and has integrity, applying to both tangible and intangible heritage values;
  - f. Contains a majority of sites/buildings that are of Defining or Contributory importance to the Heritage area;
  - g. Has been predominantly developed more than 30 years ago; and
  - h. Includes no less than 15 properties.
82. Dr McEwan's evidence and the detailed heritage reports for the RHAs provide extensive evidence of the heritage values of these areas.

**(B) That RHAs represent inappropriate regulation <sup>46</sup>**

83. A Strategic Objective of minimising consent processes<sup>47</sup> is given effect through the other chapters of the Plan. Those provisions include the

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<sup>43</sup> Renumbered Issue 8 in Part 8.8 of the s42A report.

<sup>44</sup> RHA s42A at 8.9.

<sup>45</sup> RHA s42A at 6.1.8.

<sup>46</sup> RHA s42A at 8.10

<sup>47</sup> District Plan Objective 3.3.2 That the Plan minimises transaction costs and reliance on resource consent processes; and the number, extent, and prescriptiveness of development controls and design standards in the rules.

heritage objective 9.3.2.1.1, unaltered by PC13, of not solely facilitating use and reuse, restoration and reconstruction but also maintaining the overall contribution of historic heritage to the Christchurch District's character and identity through the "protection and conservation" of significant historic heritage.

84. Ms Dixon's planning evidence is that because of the extensive loss of heritage in the Canterbury earthquakes, what is left is relatively more significant than previously. She applies this to RHA identification, since so many potential areas have already had their heritage values eroded<sup>48</sup>.

**(C) That RHAs conflate character and heritage<sup>49</sup>**

85. Concern about the difference (or lack of difference) in proposed provision for character areas and heritage areas was an issue in the PC14 hearings and remains an issue for PC13. However, the Council has addressed it in part by withdrawing RHA built form rules from PC13. The s42A assessment sets out the key differences between RHAs and character areas<sup>50</sup>. RHA assessment focuses on six values including *historical and social value* and *cultural and spiritual value*, which are non-visual values. Physical expression of heritage values is of course relevant but this is assessed through a historical lens: e.g., for architectural values, the values being looked at are those associated with a particular style, period or designer, or design values.
86. Council's evidence is that the high threshold set by the assessment criteria for potential RHAs means that the 9 which meet that criteria are the best examples of possible RHAs and are the residential areas of most heritage significance to the City<sup>51</sup>.

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<sup>48</sup> 8.10.1.

<sup>49</sup> RHA s42A at 8.11.

<sup>50</sup> Section 6, 8.11.2 and Appendix F.

<sup>51</sup> 8.11.7.

**(D) Appropriateness of the Inner City West RHA applying over School Zone land**

87. Dr McEwan's evidence is that those properties make a significant contribution to the heritage values of the area. Excluding them from the RHA would be inconsistent with the Council's heritage methodology and criteria. Ms Dixon's agrees with her assessment <sup>52</sup>.
88. Ms Dixon's evidence evaluates the relevance of the school having certificates of compliance (CoC) for demolition of the buildings they own in that proposed RHA. Those will be relevant if demolition is proposed. But in the meantime, those sites and buildings continue to contribute to the heritage values and identity of these areas <sup>53</sup>.

**(E) Submissions challenging existence or boundaries of notified RHAs<sup>54</sup>**

89. The Council position on these is as summarised in the RHA s42A:
- (i) Chester St/Dawson St RHA: Agreed reduction in the boundary at the FENZ site<sup>55</sup>;
  - (ii) MacMillan Ave RHA: 20 MacMillan Ave should remain in the RHA due to Dr Ewan's evidence of its values <sup>56</sup>;
  - (iii) Inner City West RHA:
    - Submissions by Carter Group and Catholic Diocese challenged the definitions of defining, contributory, neutral and intrusive buildings in RHAs on the grounds of vagueness and uncertainty. Dr McEwan's evidence addresses that in detail.
    - Those submissions also challenged all aspects of RHAs. Those broader issues are addressed above.
    - 31 Cashel St should remain in the RHA as a defining building<sup>57</sup>;
  - (iv) Church Property Trustees/North St Albans RHA:

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<sup>52</sup> RHA s42A at 8.3.1 and 8.12.2.

<sup>53</sup> RHA s42A at 8.12.7 and 8.12.8.

<sup>54</sup> Parts 8.1 – 8.6 of the RHA s42A.

<sup>55</sup> RHA s42A at 8.1.10.

<sup>56</sup> RHA s42A 8.2.1.

<sup>57</sup> RHA s42A at 8.3.8.

- Dr McEwan’s evidence and the Council’s position is that the area demonstrates significant historic heritage values and a high level of authenticity and integrity that warrant it being an RHA <sup>58</sup>.
  - 48 Malvern St: due to the modifications to the building described by the submitter, Dr McEwan recommends that it be classified as “contributory” rather than “defining” <sup>59</sup>.
  - Rugby Park and the Malvern St properties raised in the submission by CRFU should remain in the RHA. The development history of the park is integral to the history and heritage significance of the RHA <sup>60</sup>.
- (vi) Shelley/Forbes RHA:
- 10 Shelley St: No change to the Council position that it be identified as a contributory building rather than a defining building <sup>61</sup>;
  - Forbes St does have the requisite heritage value to warrant including in the RHA despite a recent two storey development<sup>62</sup>.
- (vii) Lyttelton RHA: No boundary changes are at issue for this hearing. They were addressed by Council’s resolutions making changes to the scope of PC13 described above.

## **Issue 2: Seeking more RHAs or expansions of RHAs**<sup>63</sup>

90. Dr McEwan’s evidence is that none of the new RHAs proposed in submissions or submissions seeking expansions to notified RHAs meet the criteria for being an RHA, for reasons such as the extent of modification and redevelopment being too great.

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<sup>58</sup> RHA s42A at 8.4.1.

<sup>59</sup> RHA s42A at 8.4.2.

<sup>60</sup> RHA s42A at 8.4.5 and Dr McEwan at para 75.

<sup>61</sup> RHA s42A at 8.5.1 and Dr McEwan at para 103.

<sup>62</sup> RHA s42A at 8.5.2 and Dr McEwan at 103.

<sup>63</sup> Renumbered Issue 7 in Part 8.7 of the RHA s42A.

### **Issue 3 – Amendments sought to RHA rules so they are less restrictive**<sup>64</sup>

#### **(A) Removing defining/contributing or neutral categories**<sup>65</sup>

91. Removal of these categories would undermine heritage protection. Dr McEwan's evidence explains the two reasons for the categorisation: first; to establish whether a potential area includes a sufficient number of Defining and Contributory elements to embody significant heritage values; secondly, to enable a nuanced planning response to facilitate protection of heritage values<sup>66</sup>. Removing the categories would defeat those purposes.

#### **(B) That RHAs (wrongly) have the practical effect of scheduling buildings**<sup>67</sup>

92. The submitters are challenging the proposed drafting of policies 9.3.2.2.3, 9.3.2.2.5 and 9.3.2.2.8 and the rules and matters of discretion that implement them. The submitters' concern is that the policy framework applies the same policy tests for RHA buildings as for scheduled heritage items.
93. Ms Dixon's s42A assessment and the Council position reaffirms the need for provisions to manage the values of individual defining and contributing buildings, otherwise the remaining values of the RHA could easily be cumulatively degraded over time<sup>68</sup>; however, the s42A also acknowledged that changes to the notified provisions are appropriate so that there is a primary focus on the collective values of the heritage area, with only a secondary focus on individual buildings<sup>69</sup>. Those drafting changes are set out in the s42A report<sup>70</sup> and are the Council position at this stage.

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<sup>64</sup> Renumbered Issue 10 in Part 10 of the RHA s42A.

<sup>65</sup> RHA s42A Part 10.2.1 – 10.2.5.

<sup>66</sup> RHA s42A at 10.2.1 and Dr McEwan at para 32.

<sup>67</sup> RHA s42A at 10.2.6 – 10.2.14.

<sup>68</sup> RHA s42A at 10.2.9.

<sup>69</sup> RHA s42A at 10.2.10.

<sup>70</sup> At 10.2.11 – 10.2.12.

**(C) Demolition policy and rules <sup>71</sup>**

94. The notified proposal is that demolition of defining or contributing buildings is a restricted discretionary activity. Several submissions propose that demolition be a permitted activity. The Council position is that this would make the RHA protection void as the values of the area could disappear as a permitted activity.
95. However, Ms Dixon's s42A report accepts that it is appropriate to amend the notified Policy 9.3.2.2.8 and matters of discretion at 9.3.6.5 to provide a clearer distinction in provisions between scheduled items and unscheduled buildings in the RHA.
96. Ms Dixon's s42A report also recommended introducing a non-notification rule at 9.3.4.1.3 RD7 for demolition of contributory buildings.
97. Those drafting changes set out in the s42A report<sup>72</sup> are the Council position at this stage.

**(D) Providing permitted activity for improvements for sustainability purposes <sup>73</sup>**

98. The s42A report agreed with the merits of this submission and proposed an exception to Rule 9.3.4.1.3 RD6 for that purpose <sup>74</sup>. That is the Council position at this stage.

**(E) Providing permitted activity for alteration to neutral or intrusive buildings <sup>75</sup>**

99. Ms Dixon's s42A report agreed with the appropriateness of providing for this and recommended a change to the exemption at Rule 9.3.4.1.3 RD6 to provide for it <sup>76</sup>. That is the Council position at this stage.

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<sup>71</sup> RHA s42A Part 10.3

<sup>72</sup> At 10.3.7 and 10.3.10 and 10.3.16.

<sup>73</sup> RHA s42A at Part 10.4.

<sup>74</sup> RHA s42A at 10.4.1.

<sup>75</sup> 10.5.1 – 10.5.3.

<sup>76</sup> 10.5.3.

**Issue 4 – Clarify how RHA rules will work, and requests for minor amendments so the rules work better** <sup>77</sup>

**(A) That the Plan provisions and/or standards describe the specific heritage “character” of each RHA** <sup>78</sup>

100. Ms Dixon’s planning assessment is that this would be difficult, unwieldy and inappropriate. The heritage reports describing the values of the areas are “living” documents, subject to change outside of the District Plan, and these will be publicly available <sup>79</sup>.

**(B) Removal of overlap between rule 9.3.4.1.3 RD1 and RD6 for alteration to scheduled heritage items and unscheduled RHA buildings** <sup>80</sup>

101. Ms Dixon’s s42A report agreed with the appropriateness of providing for this and recommended an exception from RD1 for alterations in heritage areas in favour of RD6 <sup>81</sup>. That is the Council position at this stage.

**(C) Correction and updating of Dr McEwan’s building contribution ratings**<sup>82</sup>

102. Dr McEwan has recently checked and updated her 2022 work on all contributions ratings in RHAs. She lists all changes in Appendix 2 to her s42A report <sup>83</sup>.

**(D) Miscellaneous clarifications** <sup>84</sup>

103. Ms Dixon’s s42A assessment agreed with the appropriateness of amending proposed Rule 9.3.4.1.1 P2 to provide that repairs to neutral

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<sup>77</sup> Renumbered Issue 11 in the RHA s42A.

<sup>78</sup> RHA s42A Part 11.2.

<sup>79</sup> 11.2.1 – 11.2.2.

<sup>80</sup> RHA s42A Part 11.3.

<sup>81</sup> 11.3.1.

<sup>82</sup> RHA s42A Part 11.4

<sup>83</sup> [Appendix 2 rating changes](#)

<sup>84</sup> RHA s42A at 11.5.

or intrusive buildings are excluded from the need to comply with permitted activity standards<sup>85</sup>.

#### **Issue 5 - Opposition to or questioning of zoning in and around RHAs<sup>86</sup>**

104. Zoning is outside scope of PC13. It is a topic for PC14 only.

#### **Issue 6 - Other miscellaneous RHA related submissions e.g. provide economic incentives, resource consent fee rebates or compensation<sup>87</sup>**

105. The relief the submitters seek is not within the jurisdiction of decision makers on Plan Change 13. They are not District Plan matters. They are matters for the Council to separately consider under its general Local Government Act role. District Plan Policy 9.3.2.2.10 already states

*“Provide incentives (including financial incentives) and technical advice to assist in achieving the retention, conservation and ongoing use of historic heritage, including earthquake repairs and seismic strengthening, in recognition of the public good value of heritage to the community.”*

That policy is unchanged in PC13. Funding and budget decisions in implementing it are decided in Annual Plan and Long Term Plan processes. They are not matters for PC13 decision makers.

### **ISSUES FOR HERITAGE ITEMS AND SETTINGS**

106. Mrs Richmond’s “Items” s42A report analyses submissions under the following issues<sup>88</sup>:

Issue 1 – Protection of new heritage items – support and opposition

Issue 2 – Removal of protection for heritage items

Issue 3 – Support changes or seek changes to protection of heritage items and heritage settings

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<sup>85</sup> RHA s42A at 11.5.4.

<sup>86</sup> Renumbered Issue 12 in Part 12 of the RHA s42A.

<sup>87</sup> Renumbered Issue 13 in Part 13 of the RHA s42A. Also addressed in the Items s42A at 8.1.154 – 8.1.155.

<sup>88</sup> She has an Issue 6 for “Other submissions related to heritage items”. I do not summarise that here as they are do not raise matters that can be addressed in PC13.

Issue 4 – Support provisions for heritage items and heritage settings

Issue 5 – Oppose or seek amendments to provisions for heritage items and heritage settings, including to make them more or less restrictive

**Items Issue 1: Adding new heritage items – support and opposition**<sup>89</sup>

107. Princess Margaret Hospital: It is possible that it meets the significance threshold in Policy 9.3.2.2.1.c.i. But the owner is not supportive of scheduling it. Given the lack of available financial and engineering information, Ms Ohs does not support scheduling it and Mrs Richmond adopts her recommendation<sup>90</sup>.
108. Former Court buildings (282 Durham St): It is possible that it meets the significance threshold in Policy 9.3.2.2.1.c.i. But the owner is not supportive of scheduling it and major alterations are underway. Scheduling is inappropriate at this time<sup>91</sup>.
109. War memorial plaque in Jane Deans Close, Riccarton: Ms Ohs' evidence is that it does not meet the Policy 9.3.2.2.1 criteria<sup>92</sup>.
110. Teddington Lockup, (Former Governors Bay Lock-up): The Council owns it and agrees to it being scheduled. Ms Ohs' assessment is that it meets the Policy 9.3.2.2.1 criteria and Mrs Richmond recommends scheduling it<sup>93</sup>.
111. Burnside Stable (Former Quarry Stables) in Allandale: Ms Ohs' assessment is that they meet the Policy 9.3.2.2.1 criteria but the owner has not supported scheduling it. The heritage team practice and the Council position is to not schedule new items without owners' support<sup>94</sup>.
112. Several submissions oppose aspects of new and operative scheduling. The Council position on those is that all of the items and settings that PC13 proposed adding to the schedule have owner support for

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<sup>89</sup> Mrs Richmond's "Items" s42A at 8.1.1 – 8.1.46.

<sup>90</sup> S42A 8.1.8.

<sup>91</sup> S42A 8.1.9.

<sup>92</sup> S42A 8.1.11.

<sup>93</sup> 8.1.12.

<sup>94</sup> 8.1.12.

scheduling, and Amanda Ohs has assessed all as meeting the Policy 9.3.2.2.1 criteria. Those criteria are based on national and international best practice and have been developed with reference to definitions and criteria including those in the RMA, the ICOMOS NZ Charter, 2010, and the Heritage New Zealand Pouhere Taonga Act 2014 <sup>95</sup>. The Property Economics CBA in the s32 report <sup>96</sup> and Mr Osborne's report in the s42A describes the broad economic benefits to the City of heritage protection<sup>97</sup>.

113. 47 Rue Balguerie, Akaroa (item 1152) – the owner's request to remove the operative Plan's protection for the setting: the s42A recommendation and the Council position adopts Amanda Ohs' recommendation to retain the operative heritage setting <sup>98</sup>.
114. Taylors Mistake baches<sup>99</sup>: PC13 proposed to add 25 baches to the schedule. The Statements of Significance<sup>100</sup> for each proposed bach and Amanda Ohs' evidence establish that they meet the significance criteria for scheduling<sup>101</sup>. The operative district plan heritage items schedule contains links to the heritage aerial maps and Statements of Significance for the baches that were in the operative schedule prior to PC13.
115. With regard to various Taylors Mistake bach submission points:
  - (i) Heritage protection is consistent with the RMA section 6(d) matter of national importance for public access to and along the coastal marine area. The Council is satisfied that there is adequate pedestrian access on walkways along Council land;
  - (ii) Taylors Mistake baches on Council land rely on a licence to occupy from the Council. The Council is not granting those licences if unmitigated land instability and rockfall risk makes occupancy unsafe. Mrs Richmond's opinion and the Council position is that the PC13 proposed permitted activity for demolition if the Council

<sup>95</sup> Amanda Ohs evidence and s42A at 8.1.14.

<sup>96</sup> [PC13-Section-32-Appendix-14-Heritage-Cost-Benefit-Analysis-December-2022.PDF](#)

<sup>97</sup> Items s42A at 8.1.17.

<sup>98</sup> 8.1.18.

<sup>99</sup> S42A at 8.1.19 – 8.1.28.

<sup>100</sup> [Plan-Change-13-Heritage-Council-Agenda-01-Mar-2023-Sub-chapter-9.3-Historic-Heritage-Statements-of-Significance-New-Items.PDF](#)

<sup>101</sup> S42A 8.1.20.

has not granted a licence to occupy (9.3.4.1.1 P7) is an efficient and effective pragmatic rule<sup>102</sup>.

116. Papanui War Memorial Avenues<sup>103</sup>:

- (i) The notified heritage item is street trees, plaques and road reserve in 16 streets in Papanui. It does not include the adjoining houses. Submissions seeking heritage protection for adjoining dwellings should be rejected. Amanda Ohs' assessment describes the reason for this and that the dwellings are not part of the heritage significance associated with the street trees<sup>104</sup>.
- (ii) Amanda Ohs evidence and the s42A report describe the appropriateness of the heritage scheduling treating the avenues including old and replacement trees and plaques as a whole, rather than separately considering each tree or plaque.
- (iii) Submissions raised some good planning points about detailed drafting of provisions. The s42A recommends changes to address those points<sup>105</sup>. That is the Council position at this stage.

117. Sydenham Cemetery<sup>106</sup>: the s42A report proposed fixing errors in the mapping of the heritage item.

**Items Issue 2 – Removal of protection for Daresbury and Antonio Hall**<sup>107</sup>

118. The Council *position* on this is set out above. The Council evidence on this is described in the s42A report.

**Items Issue 3 – Changes to the protection**<sup>108</sup>

119. Submissions seeking changes to two items and settings are agreed.

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<sup>102</sup> Items s42A 8.1.25- 8.1.28.

<sup>103</sup> Items s42A 8.1.29 – 8.1.43.

<sup>104</sup> Items s42A 8.1.30.

<sup>105</sup> Items s42A 8.1.37 – 8.1.44.

<sup>106</sup> Items s42A 8.1.45-8.1.46

<sup>107</sup> Items s42A 8.1.47 – 8.1.72

<sup>108</sup> Items s42A 8.1.73 – 8.1.76.

#### **Items Issue 4 – support provisions** <sup>109</sup>

120. No issues arise.

#### **Items Issue 5 – oppose or change provisions to make them less restrictive** <sup>110</sup>

121. Submissions challenging PC13 on the basis that it is unduly increasing restrictions for heritage items, and/or is contrary to a Strategic Objective of minimising consenting requirements, seem to be exaggerating the level of restriction proposed in PC13.

122. The sole changes to provisions in PC13 that increase restrictions regarding heritage sites are<sup>111</sup>:

- (a) Building code related repairs moving from being permitted repairs to being Heritage Building Code works (operative term “Heritage Upgrade Works”);
- (b) Heritage Building Code works, Reconstruction and Restoration moving from Controlled to Restricted Discretionary activity status where the permitted activity standard for a Heritage Works Plan is not met;
- (c) Removing the non-notification rule for Heritage Building Code works, Reconstruction, Restoration and temporary buildings. This will mean that the consent authority can publicly notify proposals which have more than minor effects; and
- (d) Adding a limited number of permitted activity standards.

123. I submit that this is a very moderate change to consenting requirements. When placed in the context of other changes proposed in PC13 that reduce consenting requirements, Mrs Richmond predicts that the net increase in consenting requirements will be negligible<sup>112</sup>.

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<sup>109</sup> Items s42A 8.1.77 – 8.1.84.

<sup>110</sup> Items s42A 8.1.85 – 8.1.152.

<sup>111</sup> Items s42A 8.1.88.

<sup>112</sup> Items s42A 8.1.89.

## Rymans, Park Tce

124. The submitter seeks site-specific provisions to maintain the status quo for this site. Mrs Richmond's evidence is that this is unnecessary as Rymans have resource consent for works with effects on heritage items and settings. Regardless of the content of the District Plan, the consented works can proceed and any variation to the consent will be assessed as a fully discretionary activity <sup>113</sup>.

## Provisions for significantly damaged buildings<sup>114</sup>

125. Submissions oppose PC13 deleting provisions that provide less restrictive consenting pathways where there is damage from the 2011 Earthquakes. Ceres seeks a special schedule of earthquake damaged buildings.

126. Mrs Richmond's evidence describes the minor changes to consenting processes arising from the notified provisions. Given the 14 years since the Canterbury Earthquakes it is appropriate that the Plan return to more "business as usual" provisions. There is no need for special provisions addressing the earthquake legacy. Appropriate provisions for addressing earthquake-damaged buildings was considered in drafting the PC13 provisions. As Mrs Richmond's notes, the operative and notified heritage policies and matters of discretion for heritage items, allow for the consideration of the condition of buildings, engineering and economic factors (specifically Policies 9.3.2.2.1, 9.3.2.2.3, 9.3.2.2.8), and Matters of Discretion for heritage items and settings in 9.3.6.1 (specifically notified clauses a. and f.).

127. The PC13 provisions have been in legal effect and, in Mrs Richmond's assessment, operating successfully for two years<sup>115</sup>.

128. As noted above, the Ceres further submission seeks a special controlled activity status for demolition of significantly damaged buildings that are subject to a s124 Building Act notice (being a notice that the building is

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<sup>113</sup> Items s42A at 8.1.99.

<sup>114</sup> Items s42A 8.1.100 – 8.1.120.

<sup>115</sup> 8.1.108.

dangerous, affected or insanitary). Mrs Richmond's comprehensive assessment establishes that this addition is inappropriate<sup>116</sup>. Demolition is not the sole way to address a s124 notice. Demolition may not always be the most appropriate response in RMA terms. There might be reasonable alternatives to demolition. PC13 as notified enables that appraisal in the consenting process. Controlled activity status would prevent it.

129. Rules 9.3.4.1.1 P11 Reconstruction and Restoration and P12 for temporary lifting of damaged heritage items: Some submissions oppose PC13 deleting these rules and amalgamating them with others as RDA. Mrs Richmond explains that from her experience over the past 14 years, the restricted discretionary activity status will more appropriately enable assessment of alternative methodologies.

#### Definitions<sup>117</sup>

130. "Alteration": the change proposed is for clarity. It does not increase the types of change covered by the definition. It better expresses the type of works that may impact on heritage values.
131. "Demolition": The changes do not introduce a new test or threshold to the definition. The change appropriately focuses on heritage values rather than scale.
132. "Heritage setting": Mrs Richmond's recommended change – prompted by Mr Cleese's planning evidence – in the s42A report is the Council position at this stage<sup>118</sup>.
133. "Heritage fabric": Mrs Richmond's recommended change in the s42A report, prompted by a Heritage New Zealand Pouhere Taonga submission, is the Council position at this stage<sup>119</sup>.

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<sup>116</sup> 8.1.109-8.1.116.

<sup>117</sup> 8.1.121 – 8.1.129.

<sup>118</sup> 8.1.125.

<sup>119</sup> 8.1.128 – 8.1.129.

## Policies <sup>120</sup>

134. Some submissions oppose proposed changes to the policies on the basis that the changes broaden the scope of the policies.
135. Mrs Richmond's planning assessment establishes the appropriateness of those changes. Her opinion is that that the notified provisions clarify the demolition policy so that it better supports the operative activity statuses for demolition. The changes strengthen the policy in the sense of being a stronger basis for the operative rules framework. The policy changes are not increasing constraints and making the rules framework less enabling, as the activity statuses for demolition of heritage items are not proposed to change <sup>121</sup>.
136. However, she also proposes an addition to the demolition policy. The proposed addition is that demolition of heritage items is "*...to be avoided, wherever possible, particularly in the case of Highly Significant heritage items*". She considers that this provides better direction for implementing the policy <sup>122</sup>. That is the Council position at this stage.

## Rules and matters of discretion <sup>123</sup>

137. The notified permitted activity rule 9.3.4.1.1. P8 for alteration, relocation or demolition of a building, structure or feature in a heritage setting, where the building, structure or feature is not individually scheduled as a heritage item: the notified permitted activity status is more appropriate than the RDA sought by Heritage New Zealand Pouhere Taonga <sup>124</sup>.

## **MOST APPROPRIATE OBJECTIVES AND POLICIES**

138. The legal test for ascertaining what is the "most appropriate" under section 32 of the RMA, whether for objectives, policies or other provisions, requires a comparison to be made between at least two

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<sup>120</sup> 8.1.130 – 8.1.140.

<sup>121</sup> 8.1.135.

<sup>122</sup> 8.1.137.

<sup>123</sup> 8.1.141 – 8.1.146.

<sup>124</sup> 8.1.141 – 8.1.142.

options. The Courts have often described the comparative test by asking which is the "better" option or outcome.<sup>125</sup>

139. It is submitted that retention of the status quo is not the most appropriate outcome and neither are the amendments to PC13 proposed in the relevant submissions. The Council's s32 report, s42A report and evidence at this hearing explains why the notified PC13, as altered with the recommended changes from Ms Dixon and Mrs Richmond, is the most appropriate (or better) option. That evidence considers and responds to submitter requests seeking changed provisions and explains why those requests are not the most appropriate.

140. The expert witnesses for the Council are:

Stephen Hogg – Heritage Engineering (Daresbury)

Gavin Stanley – Quantity Surveying (Daresbury)

William Fulton – Heritage Conservation (Daresbury)

Philip Osborne – Economics

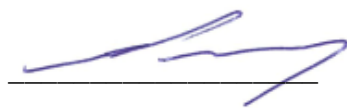
Amanda Ohs – Senior Heritage Advisor (Heritage items and settings)

Suzanne Richmond – Planning (Heritage items and settings)

Dr Ann McEwan – RHA identification and assessment

Glenda Dixon – Planning (RHAs)

17 June 2025



BK Pizzey

Counsel for the Christchurch City Council

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<sup>125</sup> See for example *Griffiths v Auckland Council* [2013] NZEnvC 203 at [26].

## Appendix A – Legal Framework

1. This section mentions the provisions in the RMA that are relevant to the consideration of district plan changes. It does so only briefly because the principles are well established in case law.
2. The purpose of the RMA, and therefore of this exercise, is, under section 5 of the Act, to promote the sustainable management <sup>126</sup>13 of natural and physical resources. Under section 6, identified matters of national importance <sup>127</sup>14 must be recognised and provided and, under section 7, particular regard is to be had to the "other matters" listed there which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
3. Section 31 provides that a function of territorial authorities is, through the establishment of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and natural and physical resources.
4. Under section 32, an evaluation report must examine whether purpose of the plan change is the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving that purpose. This requires identifying reasonably practicable options, and assessing the efficiency and effectiveness of the provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment.
5. When preparing or changing a district plan a territorial authority, in terms of section 74, shall have regard to the instruments listed there, which include any proposed regional policy statement, a proposed regional plan and management plans and strategies prepared under other Acts. It must take into account any relevant planning document recognised by an iwi authority.
6. Under section 75, it must give effect to any national policy statement, any New Zealand coastal policy statement and any regional policy statement and must give effect to a water conservation order or a regional plan (for any matter specified in subsection 30(1)).

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<sup>126</sup> As that phrase is defined in s 5(2) of the RMA.

<sup>127</sup> Relating to the natural character of the coastal environment, the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and enhancement of public access to the coastal marine area, lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, Waters, sites, waahitapu and other taonga and the protection of historic heritage and customary rights.

7. Finally, under section 75(1), district plan policies must implement objectives, while any rules must implement the policies. Section 76 requires rules to achieve the objectives and policies of a plan.
8. The Environment Court gave a comprehensive summary of the mandatory requirements for district plans in *Colonial Vineyard Ltd v Marlborough District Council*,<sup>128</sup> the content of which is set out in Appendix B to these submissions.

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<sup>128</sup> [2014] NZEnvC 55, at [17]

## APPENDIX B: CASE EXTRACT

*Colonial Vineyard Ltd v. Marlborough District Council* [2014] NZEnvC 55 at [17] (bolded emphasis original):

### A. General requirements

1. A district plan (change) should be designed to **accord with**<sup>129</sup>, and assist the territorial authority to **carry out** – its functions<sup>130</sup> so as to achieve, the purpose of the Act<sup>131</sup>.
2. The district plan (change) must be prepared **in accordance with** any Regulation<sup>132</sup> (there are none at present) and any direction given by the Minister for the Environment<sup>133</sup>.
3. When preparing its district plan (change) the territorial authority **must give effect to** any national policy statement or New Zealand Coastal Policy Statement<sup>134</sup>.
4. When preparing its district plan (change) the territorial authority shall:
  - (a) **have regard to** any proposed regional policy statement<sup>135</sup>;
  - (b) **give effect to** any operative regional policy statement<sup>136</sup>.
5. In relation to regional plans:
  - (a) the district plan (change) must **not be inconsistent with** an operative regional plan for any matter specified in section 30(1) or a water conservation order<sup>137</sup>; and
  - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc<sup>138</sup>;
6. When preparing its district plan (change) the territorial authority must also:
  - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations<sup>139</sup> to the extent that their content has a bearing on resource management issues of the

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<sup>129</sup> Section 74(1) of the Act.

<sup>130</sup> As described in section 31 of the Act.

<sup>131</sup> Sections 72 and 74(1) of the Act.

<sup>132</sup> Section 74(1) of the Act.

<sup>133</sup> Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

<sup>134</sup> Section 75(3) Act

<sup>135</sup> Section 74(2)(a)(i) of the Act.

<sup>136</sup> Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

<sup>137</sup> Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

<sup>138</sup> Section 74(2)(a)(ii) of the Act.

<sup>139</sup> Section 74(2)(b) of the Act.

- district, and to consistency with plans and proposed plans of adjacent territorial authorities <sup>140</sup>;
  - **take into account** any relevant planning document recognised by an iwi authority <sup>141</sup>; and
  - **not have regard to** trade competition <sup>142</sup> or the effects of trade competition;
7. The formal requirement that a district plan (change) must <sup>143</sup> also state its objectives, policies and the rules (if any) and may <sup>144</sup> state other matters.

**B. Objectives [the section 32 test for objectives]**

8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act. <sup>145</sup>

**C. Policies and methods (including rules) [the section 32 test for policies and rules]**

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies <sup>146</sup>;
10. Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives <sup>147</sup> of the district plan **taking into account**:
- (i) the benefits and costs of the proposed policies and methods (including rules); and
  - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods <sup>148</sup>; and
  - (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether

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<sup>140</sup> Section 74(2)(c) of the Act.

<sup>141</sup> Section 74(2A) of the Act.

<sup>142</sup> Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.

<sup>143</sup> Section 75(1) of the Act.

<sup>144</sup> Section 75(2) of the Act.

<sup>145</sup> Section 74(1) and section 32(3)(a) of the Act.

<sup>146</sup> Section 75(1)(b) and (c) of the Act (also section 76(1)).

<sup>147</sup> Section 32(3)(b) of the Act.

<sup>148</sup> Section 32(4) of the Act.

that greater prohibition or restriction is justified in the circumstances<sup>149</sup>.

#### **D. Rules**

11. In making a rule the territorial authority must **have regard** to the actual or potential effect of activities on the environment <sup>150</sup>.
12. Rules have the force of regulations <sup>151</sup>.
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive <sup>152</sup> than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land <sup>153</sup>.
15. There must be no blanket rules about felling of trees <sup>154</sup> in any urban environment <sup>155</sup>.

#### **E. Other statutes:**

16. Finally territorial authorities may be required to comply with other statutes.

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<sup>149</sup> Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.

<sup>150</sup> Section 76(3) of the Act.

<sup>151</sup> Section 76(2) Act.

<sup>152</sup> Section 76(2A) RMA.

<sup>153</sup> Section 76(5) RMA as added by section 47 Resource Management Amendment Act and amended in 2009.

<sup>154</sup> Section 76(4A) RMA as added by section 47 Resource Management Amendment Act and amended in 2009.

<sup>155</sup> Section 76(4B) RMA – this “Remuera rule” was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.