

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 2-5, 8-12 and 15 December 2014, 7 January 2015

Date of decision: 26 February 2015

Hearing Panel: Hon Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Dr Philip Mitchell, Ms Sarah Dawson

DECISION 1

**STRATEGIC DIRECTIONS AND STRATEGIC OUTCOMES
(AND RELEVANT DEFINITIONS)**

Outcomes: Proposals changed as per Schedule 1

COUNSEL APPEARANCES

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Mr P Radich QC and Mr C Carranceja	The Crown
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Ms M Mehlhopt	Canterbury Regional Council
Mr R Bartlett QC	AMP Capital Investors Limited
Ms L Semple	Property Council of New Zealand Carter Group Limited Maurice R Carter Limited Maurice Carter Charitable Trust Oakvale Farm Limited Marriner Investments Limited Marriner No. 1 Limited Avonhead Mall Limited AMP Capital Palms Pty Limited TEL Property Nominees Limited Scentre (New Zealand) Limited
Ms J Crawford and Ms A Roberts	Foodstuffs South Island Limited Foodstuffs (South Island) Properties Limited
Ms J Appleyard	Christchurch International Airport Limited Lyttelton Port Company Limited Waterloo Park Limited
Mr G Cleary	Eros Clearwater Holdings Clearwater Land Holdings Limited
Mr A Beatson and Ms N Garvan	Transpower NZ Limited
Mr H van der Wal	Faulks Investments Limited
Mr M Christensen and Ms S Eveleigh	Memorial Avenue Investments Limited

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INTRODUCTION

[1] This decision (‘decision’) is the first in a series by the Independent Hearings Panel (‘Hearings Panel’/‘Panel’)¹ concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) (‘Replacement Plan’/‘Plan’). It concerns the following notified proposals for the Replacement Plan (together, called ‘Strategic Directions and Outcomes Proposals’):

- (a) Chapter 3 (‘Strategic Directions’),² and
- (b) Section 1.9 of Chapter 1 (‘Introduction’) and certain definitions of Chapter 2 (‘Definitions’).³

[2] This decision follows our hearing of submissions and evidence on the Strategic Directions and Outcomes Proposals. This was in accordance with the review process for the Replacement Plan that was instituted by the Government,⁴ following a request by Christchurch City Council (‘the Council’).

[3] Under this special process, the Council has been directed to review its existing district plans and formulate the Replacement Plan by preparing and notifying “Proposals”.⁵ This is being approached in two stages (‘Stage 1’, ‘Stage 2’).⁶ Stage 1 has been notified. Stage 2 has yet to be notified.⁷

[4] The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (‘the OIC’) specifies a deadline for our hearing and decisions on all notified Proposals, of 9 March 2016.⁸ In addition, our Terms of Reference direct us to make our decisions on certain matters (including Strategic Directions) by 28 February 2015.⁹

¹ The Panel members are Hon. Sir John Hansen (chairperson), Environment Judge John Hassan (deputy chairperson), Sarah Dawson, Dr Philip Mitchell, Jane Huria, John Sax.

² Throughout, ‘Strategic Directions’ refers to Chapter 3 of the Notified Version.

³ Consequential changes are also made to other parts of Chapter 1.

⁴ Under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, which was promulgated under s 71 of the Canterbury Earthquake Recovery Act 2011. The OIC modifies the Resource Management Act 1991 (RMA) and other legislation.

⁵ The existing district plan is in two parts – the Christchurch City Plan and the Banks Peninsula District Plan.

⁶ Also referred to on the planning maps as Phases 1 and 2.

⁷ We understand notification of Stage 2 will commence on 2 May 2015.

⁸ OIC, cl 12.

⁹ Our terms of reference, made under cl 9 of the OIC, are available at www.chchplan.ihp.govt.nz.

Effect of decision and rights of appeal

[5] Our decision¹⁰ is to make changes to the Council’s notified Strategic Directions and Outcomes Proposals (‘Notified Version’) set out in Schedule 1.

[6] We are required to serve this decision on the Council as soon as practicable. No later than five working days after the Council receives the decision, it must give public notice of it (and of the matters specified in the OIC) and serve that public notice on all submitters on the Strategic Directions and Outcomes Proposals.¹¹

[7] The following persons may appeal our decision to the High Court (within the 20 working day time limit specified in the OIC), but only on questions of law:

- (a) the Minister for Canterbury Earthquake Recovery and the Minister for the Environment, acting jointly;
- (b) the Council;
- (c) submitters on the Strategic Directions and/or Outcomes Proposals.

[8] The Strategic Directions and Outcomes Proposals (as changed by this decision) will be deemed to be approved by the Council on and from:

- (a) the date the appeal period expires (if there are no appeals); or
- (b) the date on which all appeals, including further appeals, relating to the Strategic Direction and Outcomes Proposals are determined.

[9] As soon as reasonably practicable after that deemed approval, the Council must make the Strategic Directions and Outcomes Proposals (as changed by this decision) operative as part of the Replacement District Plan.¹² That is done by giving public notice in the manner directed by the OIC.

¹⁰ Under cl 12(1)(b) of the OIC.

¹¹ The OIC also specifies other obligations on the Council in terms of making copies of the Decision available.

¹² OIC, cl 16.

Identification of parts of existing district plans to be replaced

[10] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced by the Strategic Directions and Outcomes Proposal. We return to this later.

[11] The reasons for our decision follow the Preliminary Matters section.

PRELIMINARY MATTERS

Conflicts of interest

[12] We posted notice of any potential conflicts of interest on the Independent Hearings Panel website on 17 December 2014.¹³ No submitter raised any issue in relation to this.

[13] Panel member John Sax recused himself from participating in the Strategic Directions and Outcomes Proposals, and took no part. That was in view of his business association with one of the submitters on the Strategic Directions and Outcomes Proposal, Waterloo Park Limited.¹⁴

[14] In the course of the hearing, on various occasions, submitters were known to members of the Panel. In some cases, that was through previous business associations. In other cases, it was through current or former personal associations. Those matters were recorded in the transcript, which was again available daily on the Hearings Panel's website. No issue was taken by any submitter.

Family bereavement disruption to Ms Huria's participation

[15] Sadly, after sitting as a Panel member during the first week of the hearing, Ms Jane Huria's further participation was disrupted by a family bereavement. It meant she did not sit for the balance of the hearing from 8 December 2015, with associated consequences for deliberation and decision-making. While the Panel felt the loss of Ms Huria's skills, and were saddened by her loss, we satisfied ourselves that remaining members were legally and

¹³ The website address is www.chchplan.ihp.govt.nz.

¹⁴ Waterloo Park Ltd (#920) and further submitter (FS#1277).

substantively able to continue. As the transcript records, the Chair invited counsel and submitters to raise any issues.¹⁵ None did. Ms Huria is not, therefore, a signatory to this decision. Following deliberations by the signatories, the decision is the signatories' unanimous view.

Issues with electronic database of submissions

[16] The Council supplied to the Hearings Panel hard copies of all submissions and further submissions. This was pursuant to the OIC.¹⁶

[17] In addition, the Council gave the Panel access to its electronic database. A reliable electronic database is important for a variety of purposes. In particular, it is needed in order to ensure all submitters are identified so that they are given notice of the relevant pre-hearing meetings and hearings. It is also a primary tool for ensuring that, in making each of its decisions, the Panel considers all relevant submissions and further submissions (including by those who do not seek to be heard).

[18] During pre-hearing meetings, significant problems were encountered with the accuracy and usability of the database. In particular, there were errors identified in its recording of submitters, and of the provisions each submission sought to change. The database was not designed to allow for a sufficient breakdown of individual relief points sought by particular submitters on specific provisions within proposals for the Replacement Plan.

[19] In response (and in accordance with the OIC),¹⁷ the Chair issued directions for the database to be improved so that it would break down each submission point against provisions of the Replacement Plan to the finest level that can be determined from the submission.¹⁸

[20] As an additional measure, we used the Council's original database to manually cross-check the specifics of submitter relief (whether or not heard).

¹⁵ Transcript, page 582, lines 3-10. At the request of the Chair, those attending the hearing on 8 December stood in silence as a mark of respect for Ms Huria in her time of loss.

¹⁶ OIC, Schedule 1, cl 9(2).

¹⁷ OIC, Schedule 1, cl 9(2) and Schedule 3, cls 8(1)(a) and 8(3).

¹⁸ Request and Directions to Christchurch City Council to Provide Data on Submissions, minute dated 5 December 2014.

[21] In addition to the manual cross-checking that was undertaken prior to the hearing, we arranged for a further manual cross-check to be undertaken after the close of the hearing. That further cross-check identified two further submissions that touched on matters of relevance to the Strategic Directions and Outcomes Proposals. One submission, by Lyttelton Harbour Business Association (#769), concerned temporary activities (also relevant to our separate decision on the temporary activities proposal). It was in broadly narrative terms, and sought an extension of the regime allowed for such activities. Given that the submission recorded a request to be heard, we arranged for the Secretariat to contact the submitter's representative, Ms Gilvray (of Harmans Lawyers) to enquire as to whether the submitter wished to put anything further to the Panel. Ms Gilvray initially asked that her client be able to file written information, but the submitter then elected not to do so.

[22] The other further submission identified was by Fox & Associates Limited (#1422). It opposed in full the submission by Mahaanui Kurataiao Limited (on behalf of Ngā Rūnanga and Te Rūnanga o Ngāi Tahu (#1145)). When contacted, Mr Fox indicated that he no longer sought to be heard, but asked to file some further information that he sought that the Panel consider. According to arrangements with the Secretariat, this further information was filed on 24 February 2015. We were satisfied that we did not need to hear further from the Council or any other party in reply to that information, and we confirm that we have considered it.

[23] In any event, we are satisfied that our decision properly addresses the substance of relief pursued by both of these submissions.

[24] The Council finally provided an updated database on 10 February 2015. Despite this, and the best efforts of the Panel and Secretariat, unfortunately there continue to be issues with its accuracy and functionality. Given those ongoing issues, the Secretariat has given notice of all pre-hearing meetings on our website, and all substantive hearings have been notified on our website and in the media.

REASONS

STATUTORY FRAMEWORK

[25] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.¹⁹

[26] It sets out what we must and may consider in making that decision.²⁰ It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.²¹ It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').²² The OIC also specifies additional matters for our consideration.

[27] Drawing, in particular, from submissions for the Council and the Crown/Canterbury Earthquake Recovery Authority ('CERA'), we summarise the statutory framework for our decision as follows:²³

- (a) We must hold a hearing on submissions, and make and report our decision. Our decision must provide reasons, including for accepting or rejecting submissions (although we are not required to address individual submissions). If a proposal to which our decision relates would replace any parts of the existing district plan, our decision must identify what it would replace. Our capacity to change a proposal is not limited by the scope of submissions made on the proposal. Rather, we can make any changes we determine appropriate. However, if we consider changes to a proposal are needed to deal with matters that are materially outside the scope of the notified proposal, we must direct the Council to prepare and notify a new proposal, and invite submissions on that new proposal.²⁴

¹⁹ OIC, cl 12(1).

²⁰ OIC, cl 14(1).

²¹ OIC, cl 5.

²² Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website.

²³ We have been guided also by *Long Bay-Okura Great Park Society v North Shore City Council A78/2008*, 16 July 2008, at [34].

²⁴ OIC, cls 12, 13(2), (4).

- (b) We must be satisfied that, as part of the Replacement Plan, the Strategic Directions and Outcomes provisions will assist the Council to carry out its functions for the purposes of giving effect to the RMA.²⁵ One function concerns achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the Christchurch district. That function is fulfilled by objectives, policies and methods established by the Replacement Plan. Another function that the Replacement Plan is to serve is the control (for specified purposes) of the effects of the use, development and protection of land.
- (c) We must exercise our role in the preparation of the Replacement Plan in accordance with the provisions of Part 2, RMA, and any applicable regulations.²⁶
- (d) We must be satisfied that the Replacement Plan will give effect to applicable National Policy Statements, the New Zealand Coastal Policy Statement 2010 ('NZCPS') and the Canterbury Regional Policy Statement 2013 ('CRPS') (and any applicable national environmental standards).²⁷
- (e) We must be satisfied that the Replacement Plan will meet the RMA's specified requirements for alignment with other RMA policy and planning instruments, as we summarise in the table at [42] below.
- (f) We must give consideration (in the manner directed by the RMA and/or the OIC) to various statutory documents, as we summarise in the table at [43] below.
- (g) We must have regard to the Council's report on the Notified Version entitled 'Section 32 Strategic Directions Chapter' and undertake (and have regard to) a further evaluation under s 32AA, RMA of the matters that s 32, RMA specifies. We must report on that further evaluation in this decision.²⁸
- (h) We must be satisfied that applicable provisions of Strategic Directions and Outcomes meet their statutory purposes, namely:²⁹

²⁵ RMA, ss 74(1) and 31.

²⁶ RMA, s 74.

²⁷ RMA, s 75(3).

²⁸ OIC, cl 14(4)(a); RMA, s 32AA(1)(d)(ii).

²⁹ RMA, ss 75(1), 76.

- (i) objectives for the Christchurch district;
- (ii) policies that achieve and implement Replacement Plan objectives; and,
- (iii) rules, if any, that achieve Replacement Plan objectives and implement Replacement Plan policies.

[28] Finally, when considering a proposal, we have some capacity to reconsider a previous decision we have made on another proposal. This is in circumstances where we find that would be necessary or desirable to ensure that the Replacement Plan is coherent and consistent.³⁰ As for this decision, the significance is that there is some potential for us to later decide to reconsider provisions of the Strategic Directions and Outcomes Proposals in Schedule 1. That could occur in light of what we may come to hear and consider in later stages of our inquiry into the Replacement Plan.

Submissions considered and heard on the Strategic Directions and/or Outcomes Proposals

[29] We have considered all submissions and further submissions received in relation to the Strategic Directions and/or Outcomes Proposals. Schedule 2 lists witnesses who gave evidence for various parties, and submitter representatives.³¹

Issues raised by submissions

[30] In making our decision, we have carefully considered the submissions made, the evidence presented, and matters required to be addressed in the superior planning documents and statutory provisions.

[31] A number of submitters who elected to be heard also elected to present a joint or aligned case (for instance, by relying on common expert evidence). For example, several land developers and retail interests joined forces, or aligned themselves, with the Property Council New Zealand case.³² Another cluster concerned CERA and the various Crown departments

³⁰ OIC, cls 13(5) and (6).

³¹ Counsel appearances are recorded on page 2.

³² Maurice R Carter (#377), Marriner Investments Ltd (#378), Avonhead Mall Ltd (#379), Marriner Investments № 1 Ltd (#380), Oakvale Farm Ltd (#381), Maurice Carter Charitable Trust (#385), Carter Group Ltd (#386), Property Council New Zealand (#595), Bunnings Ltd (#725), AMP Capital Palms Pty Ltd (#814), TEL Property Nominees Ltd (#816), Kiwi Property Trust and Kiwi Property Holdings (#761), and Progressive Enterprises Ltd (#790).

and agencies, and a range of infrastructure providers (some of whom called evidence and made submissions in their individual capacities).³³

[32] We heard from some submitters who presented targeted expert and other evidence as to specific issues arising from the Strategic Directions and Outcomes Proposals that affected them.³⁴

[33] The Panel found those approaches helped the efficient conduct of the hearing and the crystallisation of some issues.

[34] A range of submitters spoke to the main points of their submissions. Some of these also called lay evidence on behalf of the submitter. These included various Community Boards, residents' associations and special interest groups³⁵ within the Christchurch community.³⁶ These submitters assisted us to understand the various perspectives they have through their engagement in different communities, or on particular community issues, throughout the City.³⁷ The Community Boards were generally in support of the Notified Version and the Council's case. So was the Canterbury Regional Council ('ECan').³⁸

[35] Several submitters, including many who elected not to be heard, made simple submissions in support for, or opposition to, the Notified Version. While we do not identify those submissions individually in this decision, we have considered them. Similarly, we have not recorded all submissions made on specific matters our decision addresses. Our recorded reasons pertain to our decision to:

- (a) Accept in part those submissions that simply supported the Notified Version,
- (b) Accept in part or decline those various submissions that sought specific relief on particular matters; and
- (c) Decline in full those submissions that sought full rejection of the Notified Version.

³³ Christchurch International Airport Ltd (#863), Lyttelton Port Company Ltd (#915), Transpower NZ Ltd (#832), Orion New Zealand Ltd (FS#1339), The Crown (#495), Liquigas (#794), Mobil Oil NZ, Z Energy Ltd and BP Oil NZ Ltd (#723), Spark (#363), Chorus New Zealand Ltd (#364).

³⁴ For example, Gelita NZ (#1014), Eros/Clearwater (#730), Kiwi Property Trust (#761), Canterbury Aggregate Producers Group (#886), AMP Capital Investors (NZ) Ltd (#1187), Faulks Investments Limited (#32), Isaac Conservation and Wildlife Trust (#704), Chorus NZ Ltd (#364) and Spark (#363), Transpower New Zealand (#832), Liquigas (#794), Mobil Oil NZ, Z Energy Ltd and BP Oil NZ Ltd (#723) and Peterborough Village Incorporated Society (FS#1228).

³⁵ For example, Styx Living Laboratory Trust (#1193).

³⁶ That information was helpful in conjunction with the statements of evidence of Dr Natalie Jackson, Michelle Mitchell and Ian Mitchell.

³⁷ For example, Lyttelton/Mt Herbert Community Board (#762) concerning the port.

³⁸ Canterbury Regional Council (#342), who presented legal submissions.

[36] We are mindful that the ultimate purpose of our decision is to contribute to the staged formulation of the Replacement Plan. Our reasoning needs to be clear and easily able to be understood – especially in terms of how it bears on the development of the Replacement Plan – by both lay submitters and resource management professionals. Therefore, we have structured our reasoning according to the various themes and matters addressed by the Strategic Directions and Outcomes Proposals.

[37] A common structure for a plan review decision is to commence reasoning with an identification of issues, including as raised by submissions. On this occasion, we have adapted that approach by assessing a number of matters raised by submissions in the context of our required s 32AA, RMA further evaluation of the Proposals. That is because our further evaluation has had to be substantial on this occasion.³⁹

[38] There were a number of submitters who sought site-specific or other specific relief on topics or issues that were beyond the intentions of the Strategic Directions and Outcomes Proposals.⁴⁰ In some cases, that relief may be more suited to other proposals of Stage 1 or 2 of the Replacement Plan review.

Statutory documents and our obligations in regard to them

Matters as to alignment of the Replacement Plan with other statutory documents

[39] District plans are part of a hierarchy of RMA policy and planning instruments. The RMA prescribes certain consequences for how district plans are to align with other instruments. Other statutory instruments can be made under the CER Act. There was no material dispute amongst parties as to what are the relevant RMA and CER Act instruments for our consideration.

[40] Most notable amongst the CER Act instruments are “recovery plans”. There are two currently in existence. The Christchurch Central Recovery Plan (‘CCRP’) applies within the “four avenues”. The other is the Land Use Recovery Plan (known as the ‘LURP’).⁴¹

³⁹ For reasons we explain later.

⁴⁰ By way of example, several submitters raised issues concerning climate change and sea level rise risks, sustainable transport and sustainable residential building practices, use of reserves, provision for recreational facilities and other public assets, and alternative urban design for residential communities.

⁴¹ We were also informed that preparation of a Lyttelton Port Recovery Plan is underway, but that we cannot give it weight as it has not yet been Gazetted (Council opening submissions, 6.22). That position was not disputed by any party, and we agree with it.

[41] Through the LURP, Chapter 6 was inserted into the CRPS. The LURP also directed changes to the existing district plan.

[42] Part of our task is to be satisfied that the Replacement Plan will meet the RMA’s and the CER Act’s requirements in terms of its alignment with these instruments. Drawing from the Council’s opening submissions,⁴² we summarise our understanding of the alignment requirements, as follows:

Statutory document	Alignment requirement for Replacement Plan	Comment
New Zealand Coastal Policy Statement 2010 (NZCPS)	Give effect to	“Give effect to” means to implement according to the applicable policy statement’s intentions ⁴³
National Policy Statements (particularly, the National Policy Statement on Electricity Transmission (NPSET))		
Canterbury Regional Policy Statement (CRPS)		
Regional Coastal Environment Plan	Not be inconsistent with	This is usefully tested by asking: <ul style="list-style-type: none"> • Are the provisions of the Strategic Directions and Outcomes Proposals compatible with the provisions of these higher order documents? • Do the provisions alter the essential nature or character of what the higher order/recovery documents allow or provide for?⁴⁴
Canterbury Land and Water Regional Plan		
Recovery Strategy		
Christchurch Central Recovery Plan (CCRP)		
Land Use Recovery Plan (LURP)		

⁴² Council opening submissions, 6.26.

⁴³ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, (2014) 17 ELRNZ 442, at [80], and at [152]-[154]. The Council’s summary “comment” on this alignment requirement did not include the rider “according to the applicable policy statement’s intentions”, but instead included the rider “and is a strong directive”. Our intention is to reflect the importance of reading the applicable directives in higher order statutory instruments according to their true intention. Doing so does not involve any misreading of *King Salmon*. Later in our reasons, we explain why we found that the Council erred in this area in its s 32 evaluation and in its formulation of some of the proposed provisions.

⁴⁴ The Council drew from *Re Canterbury Cricket Association* [2013] NZEnvC 184, [51]-[52] for the first of these questions, and *Norwest Community Action Group Inc v Transpower New Zealand EnvC A113/01*, 29 October 2001, paras [55]-[56] for the second question. We agree, they are valid and useful tests and we have applied them.

Mandatory consideration matters

[43] In addition, we must consider various statutory documents. Again, drawing from the Council’s opening submissions, we summarise our obligations as follows:

Statutory document	Our consideration obligation	Comment
Specified management plans and strategies prepared under other legislation ⁴⁵	Have regard to	Give genuine attention and thought to the matter ⁴⁶
Selwyn and Waimakariri district plans	Have regard to the extent to which there is a need for consistency	As above
Mahaanui Iwi Management Plan	Take into account	We must address the matter and record we have done so in our decision; but weight is a matter for our judgment in light of the evidence ⁴⁷
OIC Statement of Expectations	Have particular regard to	Give genuine attention and thought to the matter, on a footing that the legislation has specified it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion ⁴⁸

Part 2 and RMA purpose

[44] The Council’s opening submissions noted, and we agree, that we have an overarching obligation to be satisfied that the Strategic Directions and Outcomes Proposals, as part of the Replacement Plan:

- (a) Achieve the purpose of the RMA;⁴⁹ and

⁴⁵ The Canterbury Regional Land Transport Strategy, Greater Christchurch Transport Statement, Greater Christchurch Urban Development Strategy, Canterbury Water Management Strategy.

⁴⁶ *NZ Fishing Industry Assn Inc v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at pp 17, 24, 30 and also the Environment Court decision in *Marlborough Ridge Ltd v Marlborough District Council* (1997) 3 ELRNZ 483 and *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394, at [70] (albeit a resource consent decision, as to s 104).

⁴⁷ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [42].

⁴⁸ The Council opening submissions refer us to *Marlborough District v Southern Ocean Seafoods Ltd* [1995] NZRMA, noting this is a resource consent decision. However, we accept the substance of the Council’s interpretation as valid.

⁴⁹ RMA, s 72.

- (b) Are prepared in accordance with Part 2 of the RMA (in the sense of “in a manner corresponding to”).⁵⁰

[45] It is of course true that the directives have subtly different meanings.⁵¹ However, we do not consider those meanings to have any substantive consequence for our evaluation of the various statutory documents in making this decision. Despite the number of statutory documents to consider, we found our task in doing so is relatively straightforward. For the most part, no fine judgments were called for as to how they inter-related.⁵²

[46] There were, however, some matters of contention concerning the application and interpretation of these statutory documents.

The influence of the OIC Statement of Expectations

[47] One matter of contention concerned the influence of the OIC Statement of Expectations in Schedule 4 to the OIC. The Council’s opening submissions made something of the directive to “have particular regard” to it, arguing that this put this document “near the bottom of the hierarchy”. That was in support of the Council’s submission in opening concerning paragraphs (a) and (i) of Schedule 4 to the OIC. The Council submitted:⁵³

Amongst other things, the Ministers’ expectations include that there will be a significant reduction in the reliance on resource consent process, notification requirements and number/type of development and design controls in the pRDP. The relevance of these three expectations to the Strategic Directions Proposal is arguably limited, as the Proposal does not include any rules. We will however return to the “process policy” sought by the Property Council later in these submissions.

[48] The Council initially opposed the recommendation (by Mr Bonis, on behalf of Property Council New Zealand) that we include a policy as to efficiency of process in Strategic Directions. That was despite the express emphasis on this matter in the OIC Statement of Expectations. The Council’s position was that Strategic Directions should be confined to the environmental outcomes that were sought to be achieved.⁵⁴ As such, the Council then

⁵⁰ RMA, s 74(1).

⁵¹ See the authorities referred to at n 43 and following.

⁵² The Council also submitted that our ultimate obligation is to be satisfied that the outcome we deliver in our Decision “meets the s 32 tests and achieves the purpose of the RMA”: Council opening submissions, 7.1. We do not entirely agree with that, and set out how we interpret s 32, RMA at [63]-[70] of this Decision.

⁵³ Council opening submissions, 6.25.

⁵⁴ Council opening submissions, 7.12, with reference to the evidence-in-chief of Mr Eman.

submitted that a “process policy” “has no proper role or function” in that it would not add anything and potentially cut across provisions of the RMA and the OIC.⁵⁵

[49] To be fair, the Council reflected on that position. Following further planning expert conferencing,⁵⁶ which endorsed the inclusion of such a policy, the Council submitted (in closing) that the OIC Statement of Expectations “is a notable difference from the usual RMA process and considerations”.⁵⁷ It accepted the need to have particular regard to the OIC Statement of Expectations and that this “could result in incorporation of the concept of process efficiencies in a process policy”.⁵⁸ The Council noted its concern that care was needed in drafting the policy so that it “does not create issues” for the Council’s implementation of the Replacement Plan (i.e. when it becomes operative and people start applying for consents under it). The Council sought that any provision be framed to be confined to ‘drafting guidance’ (i.e. for development of other proposals) rather than also having any ongoing substantive effect on the operation and administration of the Plan.⁵⁹

[50] We do not accept that a “process” provision should be so confined, and give our reasons for that later in this decision. At this stage, however, we concentrate on the concession by the Council that the OIC Statement of Expectations is a notable difference from the usual RMA process and considerations.

[51] When we asked Mr Eman whether “there was any elevated reason to focus on process efficiency and cost issues in the context of post-earthquakes Christchurch”, he answered “Yes, I think it is critically important”.⁶⁰ He also observed that, in addition to the process efficiency dimension, the impacts of the earthquakes were such that the Plan “needs to provide more opportunities for things to happen”.⁶¹

[52] We heard evidence from a number of independent experts (particularly those called by the Crown) substantiating those observations by Mr Eman. That evidence was essentially unchallenged. It included evidence as to the importance of private sector investment

⁵⁵ Council opening submissions, 7.12.

⁵⁶ The Panel records its thanks to Environment Commissioner John Mills and to Mark Chrisp for their facilitation of expert witness conferencing prior to and during the hearing.

⁵⁷ Council closing submissions, 7.3.

⁵⁸ Council closing submissions, 7.3.

⁵⁹ Council closing submissions, 7.3-7.6.

⁶⁰ Transcript, page 362, lines 8-16.

⁶¹ Transcript, page 364, lines 16-18.

(including, in particular, attracting new investment) for recovery of the Central City.⁶² It included evidence about land and housing supply and demand pressures that have been aggravated by the earthquakes and their social wellbeing consequences (including for housing affordability and for sectors of the community with particular social needs).⁶³ It was backed by the evaluation we heard from Mr Michael Copeland (an economist), who helped us to see how these matters relate to process inefficiency and uncertainty.⁶⁴ We accept his evidence on this matter.

[53] The evidence demonstrated the unsoundness of Council’s initial submission that the emphasis on these matters in the OIC Statement of Expectations was of “limited relevance” to what should be included in Strategic Directions as to processes.

[54] We have also weighed the significance of the consensus that was achieved amongst all planning experts through further expert conferencing we directed towards the close of the hearing. Those experts (including Mr Eman) all supported inclusion of a process policy in Strategic Directions (and explicit reference being made to the OIC Statement of Expectations in this chapter of the Replacement Plan). That conferencing was in accordance with the Code of Conduct for Expert Witnesses, and we are satisfied that the consensus is supported by the evidence.

[55] In light of the evidence, we acknowledge as sound Mr Eman’s concession that process efficiency and cost are critical resource management issues in the context of post-earthquakes Christchurch.

[56] We also reject the Council’s initial submission that the OIC Statement of Expectations is “near the bottom of the hierarchy”, in the sense that our obligation is to have “particular regard” to it. We find that submission difficult to reconcile with the Council’s own interpretation of “particular regard” as requiring a decision-maker to recognise the matter as “something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion”. In that sense, the phrase gives more direction to us than “take into account”, as it touches on our responsibility in weighing competing mandatory considerations.

⁶² For example, the evidence of Benesia Smith [7.2], Don Miskell, especially [7.1]-[8.8], Dr Timothy Denne.

⁶³ For example, the evidence of Dr Natalie Jackson and Michelle Mitchell.

⁶⁴ Transcript, page 457, lines 6-28 and in Copeland (Lyttelton Port Company, 25 November 2014, paras 20-26). Mr Copeland also gave evidence on behalf of Ngāi Tahu Property Ltd (#806) and Transpower (#832).

[57] In any case, our task in weighing the various statutory documents, including the OIC Statement of Expectations, is evaluative. We should undertake that evaluation in light of the evidence. That evidence demonstrates that, if the intended purpose of Strategic Directions is to be fulfilled in the formulation of the Replacement Plan, it needs to include properly-directed process provisions. We see those provisions as validly able to be directed to drafting of the Replacement Plan proposals. That is in the sense that the Strategic Directions chapter, once approved, will be operative. However, we disagree with the Council's submission that the provisions should be confined to giving drafting direction. Rather, as part of a chapter that will have primacy within the Plan, we see these provisions as fulfilling an important ongoing role within the design of the Plan (and in regard to its ongoing implementation and interpretation).

[58] We explain our reasoning for the different drafting approach we have taken to that collectively recommended by the planning experts, in dealing with these matters in our section 32AA evaluation.

Giving effect to the CRPS

[59] A second issue concerned how the Council interpreted the substance of the requirement for the Replacement Plan to give effect to the CRPS. We return to that matter in addressing the Council's s 32 Report and its related evidence.

Requirements of s 23 CER Act for Replacement Plan to be not inconsistent with the LURP

[60] While less contentious, we heard submissions on the meaning of "not inconsistent with", as used in s 23 of the CER Act. The *Shorter Oxford English Dictionary* defines "inconsistent" as "incompatible" and "not in keeping with".⁶⁵ Hence, in terms of its natural meaning, "not inconsistent with" has a corresponding meaning. The Council's opening submissions referred to *Canterbury Cricket Association Incorporated*.⁶⁶ That case treated the phrase as allowing for judgment to be exercised of the scale or degree of variance allowable in the particular circumstances. We agree that this is a helpful expression of the intention of s 23.

[61] Even when the Replacement Plan is dealing with the same subject matter as provisions of the LURP, the Replacement Plan is not required to treat that subject matter in precisely the

⁶⁵ *Shorter Oxford English Dictionary* (6th ed, Oxford University Press, Oxford 2007) at 1356.

⁶⁶ Above n 42.

same way. "Not inconsistent with" is a phrase that gives reasonable allowance for interpretation, and judgment as to how it should be applied in context.

[62] We are satisfied that our decision is in keeping with the LURP.

The required "s 32" and "s 32AA" RMA evaluations

[63] The OIC requires the Council to prepare "an evaluation report" on each draft proposal in accordance with section 32 of the RMA. We must have regard to that report in making our decision.⁶⁷

[64] We must also⁶⁸ "undertake, and have particular regard to, a further evaluation of the proposal" in accordance with s 32AA, RMA.⁶⁹ We do so in our deliberation for this decision.

[65] Our reporting of that further evaluation in this decision must be "in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with" s 32AA.⁷⁰

[66] Our further evaluation is required "only for any changes that have been made to, or are proposed for, the proposal since the Council's evaluation report for the proposal was completed".⁷¹ However, as our decision makes significant changes to the Notified Version, our further evaluation is extensive.

[67] Our further evaluation must address the specific requirements of s 32:

- (a) It must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal (s 32(1)(c)). That expectation directs us as to the substantive quality and thoroughness of our evaluation on particular matters.⁷²
- (b) For "objectives" of a proposal (meaning, in this case, the specified objectives of the particular proposal in issue), the evaluation report has to examine whether these

⁶⁷ OIC, cl 14(1)(a) and Schedule 1, cl 2.

⁶⁸ OIC, Schedule 1, cl 2.

⁶⁹ OIC, cl 14(4).

⁷⁰ RMA, s 32AA(1)(a)-(d).

⁷¹ RMA, s 32AA(1).

⁷² Likewise, that was required of the Council.

are “the most appropriate way to achieve” the RMA’s purpose (s 32(1)(a)). There was no material contention amongst parties as to the meaning of “most appropriate” in this context. For convenience, we draw from the Council’s submissions in opening.⁷³ “Appropriate” is a word that implies informed discretion and value judgment, much akin to “suitable”.⁷⁴ For instance, it allows ample room for the Council to report that it considers one approach “appropriate” and for us to take an entirely different view, on the basis of the accepted evidence and other information we have received.

- (c) In the case of objectives, there is no explicit requirement to undertake a comparative assessment (by contrast to the position in regard to policies). However, the word “most” suggests that it is at least good practice to do so where reasonably practicable alternative approaches to objectives can achieve the RMA’s purpose.
- (d) For policies, the examination is as to whether the policies “are the most appropriate way to achieve the objectives” (s 32(1)(b)). The relationship back to the Proposal’s objectives can be understood in the sense that the statutory purpose of policies is “to implement the objectives” (s 75(1)). The requirements for an evaluation of policies is comparatively more prescriptive. The report is to (i) identify other reasonably practicable options for achieving the objectives, (ii) assess the efficiency and effectiveness of the provisions in achieving the objectives, and (iii) summarise the reasons for deciding on the provisions. By its nature, however, the exercise is one of evaluation. That is, as with the evaluation of objectives, the exercise implies the exercise of informed value judgment. It allows ample room for the Council to report that it considers one approach “appropriate” and for us to take an entirely different view, on the basis of the evidence and other information we have received.

[68] As a further indication of the discretionary nature of these evaluative duties, s 32A specifies that a challenge to an objective, policy, rule or method on the grounds that s 32 or

⁷³ Council opening submissions, 6.26.

⁷⁴ *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC) at [45].

32AA has not been complied with “may be made only in a submission” under specified RMA sections.

[69] That helps to show the true substantive purpose and value of s 32 and 32AA evaluative reports. Where a report demonstrates a proportionate thoroughness in how the proposal has been formulated (according to the measures prescribed in s 32), that assists in fostering confidence in the quality and soundness of the work to which it relates. The converse is also true.

[70] We have set out that understanding of the requirements of these sections in some detail, as we next set out some strong criticisms of the Notified Version, in both conceptual and drafting terms.

The Council’s s 32 RMA report

[71] The Council’s s 32 report is entitled “Section 32 Strategic Directions Chapter” (‘Report’/‘s 32 Report’). This was notified “alongside the Strategic Directions Proposal”.⁷⁵

[72] The OIC directed the Council to “undertake a full review of the operative provisions of the existing district plans” and to develop a replacement plan by preparing and notifying proposals.⁷⁶

[73] Section 1 of the Report explains that the Council found that it needed to refocus the objectives and policies of the currently operative Christchurch District Plan. That was so as to assist with Canterbury’s post-earthquakes recovery, identify opportunities, reflect the direction of changing legislation and statutory documents such as the LURP and the CRPS, and to respond to other changed circumstances.

[74] The section gives an overview of what the Council identified as resource management issues and opportunities for the district:

- (a) “Providing for the different needs of the community” describes required provision for “housing, commerce and industry, rural activities, community facilities, and

⁷⁵ Eman evidence-in-chief, 7.1.

⁷⁶ OIC, cl 6.

public open space and infrastructure”. It notes the effects on these issues of the Canterbury earthquakes, changing demographic and economic conditions, and the need to foster certainty and a strong long-term foundation, and to ensure the efficient and properly targeted use of public funds for infrastructure and other community needs;

- (b) “Effective functioning of the transport system” describes the disruptive influence on this of the Canterbury earthquakes, in terms of direct damage caused and changed travel patterns;
- (c) “Improving the quality of the urban environment” refers to the “unique opportunity” the rebuild provides for this (and the associated challenge of capitalising on this opportunity while meeting immediate needs for a timely recovery);
- (d) “Protecting our key resources” recognises the need to manage impacts of activities and development on such specified resources and the opportunity for strengthened recognition of values of significance to tangata whenua; and
- (e) “Addressing the consequences of natural hazards” acknowledges the district’s vulnerability to flooding, tsunamis, earthquakes, slope instability, erosion, and climate change, and the importance of understanding these risks and ensuring they are managed to acceptable levels.

[75] Insofar as the identified issues go, we accept them as valid for Strategic Directions to address. However, neither the Report nor the evidence called by the Council demonstrated the Council to have undertaken any substantive analysis of the issues and how they should inform Strategic Directions. As matters transpired, it was the Crown/CERA who called related, substantive and independent evidence on these matters.

[76] The Report also records that the Council had evaluated that there was a place for a Strategic Directions chapter in the Replacement Plan. It describes this role as being to provide the “strategic context” for the district plan and “the overarching direction” for other chapters

“through high-level objectives and policies for the district as a whole”. It also refers to it as setting “an overall pattern of land use for Christchurch”.⁷⁷

[77] The importance of having such an overarching chapter within the design of the Replacement Plan was not a matter that was the subject of any material challenge in submissions. Indeed, in light of evidence we heard, we consider the primacy of Strategic Directions warrants specific further reinforcement in its expression.

[78] The Report⁷⁸ indicates that the value and role of a Strategic Directions chapter in the Replacement Plan warranted a proportionate treatment of the issues it addressed. Section 3 of the Report, entitled “Scale and Significance Evaluation”, states that:

The issues covered in this chapter are generally significant, both in terms of scale and timing. This is particularly so following the earthquakes, although it is also important to ensure that in providing for immediate recovery needs the long term attractiveness, vitality and sustainability of the district is not compromised.

[79] Despite that, however, the Report demonstrates a disappointing lack of rigour and thoroughness in its testing of its proposed objectives and policies by reference to what s 32 specifies.

[80] Section 4 of the Report presents a tabular summary of the Council’s evaluation of proposed objectives. For each of the proposed objectives, there is an explanation of how it is regarded as being “equivalent to” specified provisions of the CRPS (and, in some cases, the LURP). This is in each case followed by a repeat of the following statement:

Consideration was given as to whether alternative objectives would more appropriately achieve the purpose of the Act, taking into account circumstances within the district. No district issues have been identified that make any other objective more appropriate.

[81] Mr Murray (the economist called by the Property Council New Zealand) observed that the Report does not examine the extent to which the objectives proposed in the Notified Version achieve the RMA’s purpose or whether they are most appropriate.⁷⁹

⁷⁷ Mr Theelan also explained to us that was the intended purpose of this chapter: Theelan evidence-in-chief, 6.1, 6.2.

⁷⁸ The Report does not indicate who authored it. However, in cross-examination Mr Eman explained that he was the author of “[T]he principles of it with contributions from other people” (transcript, page 340, line 42).

⁷⁹ Evidence of Keiran O’Neill Murray on behalf of Property Council New Zealand, 2.1.

[82] We do not go that far. We find that the Report does identify resource management issues and opportunities that pertain to achieving the RMA’s purpose. However, we find the quality of its evaluation of this to be poor. The evaluation of objectives is as to their effectiveness and appropriateness in achieving the RMA’s purpose. That underlines the important role that objectives are intended to fulfil within a Plan. That is particularly so for objectives within Strategic Directions, given the pivotal role that this chapter is intended to have within the design of the Replacement Plan.

[83] Section 5 of the Report presents a similar summary of the Council’s evaluation of proposed policies. For most of these, the very brief evaluations commence with an explanation of how the particular policy is regarded as being “equivalent to” particular CRPS policies. In most cases, this is followed by repetition of the following statement:

Consideration was given as to whether alternative policies would more appropriately achieve the objectives, taking into account efficiency and effectiveness in the circumstances of the district. No district issues have been identified that make any other policy more appropriate.

[84] Mr Murray observed that the Report fails to assess whether proposed policies will achieve proposed objectives, and fails to test reasonably practicable alternatives according to the requirements of s 32.

[85] Again, we do not go quite that far. Rather, we consider the Report complies with the statutory requirements of s 32, but it does so poorly.

[86] It would appear that the Council took this cursory approach because it was assumed that the CRPS (and, to some extent, the LURP) severely directed (and, perhaps, curtailed) what Strategic Directions could address, and what it could say.

[87] For instance, the above statement as to the importance of Strategic Directions, in the “Scale and Significance Evaluation” part of the Report is followed by this qualification:

However, the critical element in the above considerations for most of the issues is the high degree to which the options are predetermined by higher order statutory documents, particularly at the strategic level of this chapter.

[88] That same theme is repeated throughout the tabular evaluations in sections 4 and 5. It was also confirmed by Mr Eman’s evidence-in-chief (at 6.8):

... Given the statutory requirements to either give effect to these documents, or not be inconsistent with them, the options that can be considered for most of the objectives and policies in the Strategic Directions Proposal are very limited. Many of the objectives and policies proposed are largely prescribed by higher order documents.

[89] In making that assumption, we consider that the Council significantly misinterpreted relevant provisions of the CRPS and the LURP.⁸⁰ Specifically, we find that the CRPS and the LURP were materially compatible with the OIC Statement of Expectations. All of these higher order documents left the Council ample capacity to determine how best they should be addressed, in the context of what the Strategic Directions chapter was intended to achieve within the Replacement Plan.

[90] We find the Council's error of interpretation resulted in poor evaluation, and that in turn resulted in a Notified Version that was wordy and vague and, in many respects, ineffective in addressing the identified resource management issues.

[91] Mr Theelan's answers to our questions showed he was not well-informed of the evaluation that had been undertaken in preparation of the Notified Version. We were surprised by that, given he had the "final say" on the choices made in the Notified Version before it went to the Council.⁸¹ That points to a lack of quality control. This would appear to have also directly contributed to the serious shortcomings of the Notified Version.

[92] In effect, little hearing time was taken up on the question of what Strategic Directions should address by way of resource management issues. Indeed, while a number of submissions expressed degrees of opposition to the Notified Proposal, the evidence called often expressed support for, or only confined difference with, the Council about these things. The gaps (such as in regard to the lack of process efficiency provisions) were significant, but relatively confined. Instead, much of the hearing was taken up dealing with significant differences between the Council and various submitters on how Strategic Directions was structured, and deficiencies and concerns as to the misdirection and confusion in its provisions.

[93] Pre-hearing meetings signalled that these matters of structure and misdirection in the provisions were likely to be a dominant focus. Despite expert witness caucusing, however,

⁸⁰ See our analysis under 'Statutory documents and our obligations in regard to them', above.

⁸¹ For instance, the Crown/CERA opening legal submissions at para 10; Progressive Enterprises Ltd opening legal submissions at paras 8-10.

little progress towards alignment was achieved (other than in the case of the infrastructure provisions) prior to the hearing.

[94] The Council commenced its case at the hearing by offering several changes to the Notified Version (albeit on the basis that it did not consider this warranted any revision to its s 32 Report).⁸² This was, in large part, in response to issues raised by submissions. However, the Crown/CERA and Property Council New Zealand produced complete rewrites.⁸³

[95] Yet, ultimately, the planning experts who participated in further expert witness conferencing (towards the end of the hearing) produced a new version of Strategic Directions that reflected a very large degree of consensus ('the Planning Experts' Joint Version').⁸⁴

[96] That chronology serves to reinforce the inadequacies in the quality of the Council's processes for the formulation of the Notified Version. Lack of rigour and attention to the detail in the thinking as to what ought to be addressed in this pivotally important chapter resulted in misdirection and confusion in the substance of what was presented.

Section 32AA RMA further evaluation and findings

[97] We are required to undertake our re-evaluation on the changes that our decision makes to the Notified Version (and to other changes that have been proposed since the Council's s 32 Report).⁸⁵

[98] Although we were required to carry out this evaluation, the limitations of the Council's own report, the infelicitous drafting (Chapter 3), the lack of clarity in mixing policies and objectives, and a lack of rigour in the Planning Experts' Joint Version (admittedly, prepared under extreme time constraints) have compelled us to the view that we need to undertake a more extensive s 32AA evaluation than would be normally the case.

⁸² Eman evidence in chief, 7.1.

⁸³ Exhibit 1 (Timms) and evidence of Mr M Bonis.

⁸⁴ Attachment 1, Agreed Matters and Changes to Chapter 3 – Strategic Directions provided in a report to the Panel on 22 December 2014. It is noted that this version recorded confined differences of opinion on some aspects.

⁸⁵ RMA, s 32AA(1)(a).

What function should Strategic Directions serve relative to other parts of the Replacement Plan?

[99] We have determined that Strategic Directions should provide overarching direction for the Replacement Plan, and have primacy. To codify that, we consider that this should be reflected in a specific “Interpretation” provision.

[100] Our intention is that this provision make explicit that objectives and policies in all other chapters are to be expressed and achieved in a manner consistent with the objectives in Strategic Directions (subject, of course, to the RMA’s requirements). Our reference to “are to be expressed” reflects the fact that Strategic Directions will become operative, once approved. As such, it should influence the formation of all other chapters of the Replacement Plan as well as having enduring influence going forward as part of the Replacement Plan.

[101] By contrast, the Planning Experts’ Joint Version recommended that it be explicit that no hierarchy was intended as between the objectives (and proposed policies) of Strategic Directions and those of other chapters of the Replacement Plan. Rather, the planners’ joint recommendation was that the provisions should be read as a whole, alongside each other.

[102] We observe that the Planning Experts’ Joint Version significantly softened the Council’s initially-proposed approach. In particular, as we have explained, the Council’s s 32 Report explained that Strategic Directions was to provide the “strategic context” for the Plan, and the “overarching direction” for other chapters “through high level objectives and policies for the district as a whole”, and to set “an overall pattern of land use for Christchurch”.

[103] The weight of evidence we heard overwhelmingly satisfies us that the most appropriate approach is for the objectives of Strategic Directions to be explicitly given primacy. As that evidence was essentially unchallenged, it is not necessary for us to recite it in detail. We simply note that we were satisfied that the expert opinions we heard substantiated for us that the various priorities addressed through the objectives we have determined for inclusion in Strategic Directions warrant such primacy.

[104] By contrast, the planners’ joint recommendation as to this point was not supported by the weight of accepted evidence. The Planning Experts Conferencing Statements do not help to explain the logic behind it. We wonder whether the planners may have been concerned that a

hierarchical relationship could have given rise to legal uncertainty as to whether any policies in Strategic Directions could have any primacy over objectives in other chapters. Our decision to confine Strategic Directions to objectives overcomes any such legal difficulty (as we discuss later).

[105] In a comparative sense, on this matter our approach is closer to the Council’s originally Notified Version. We are satisfied that, by strengthening the primacy of the Strategic Directions objectives, we will better assist to ensure that the objectives of the Replacement Plan (including in Strategic Directions) achieve the RMA’s purpose. In particular, that is because the provisions that we have included will help ensure that the Plan is interpreted and implemented according to the direction this chapter is intended to provide. That is as to both sustainable management outcomes and processes, for Christchurch’s recovery and long-term future success.

What are the sustainable management matters that Strategic Directions should address?

Strategic Directions should identify and address district-wide sustainable management priorities

[106] It was not a matter of contention, and we are satisfied, that Strategic Directions should be designed to identify and give overarching direction on district-wide sustainable management priorities. That purpose fits well with the requirement in s 75, RMA, that a district plan state “the objectives for the district” which the Plan’s policies and rules will be designed to implement (and the Plan’s other objectives be consistent with).

[107] However, to qualify as a priority, the matter must be strategically important for achieving integrated management and for ensuring the RMA’s purpose is achieved, and/or to give effect to relevant national policy statements, the NZCPS and the CRPS.

Evaluation of key differences in the identification of sustainable management priorities

[108] The amendments we have decided to make to the Notified Version are extensive. On matters of substance (rather than drafting style), key differences from the Notified Version and other versions (particularly, the Planning Experts’ Joint Version) are as follows:

- (a) We have strengthened the direction (through various objectives) to enable, encourage and stimulate investment to expedite recovery and assist long-term economic and employment growth. We have done this by including dedicated objectives that express outcomes on these matters, in regard to the district as a whole, business and economic prosperity generally, the Central City, and commercial and industrial activities (in particular, Objectives 3.3.1, 3.3.5, 3.3.8, 3.3.10).
- (b) By contrast to the Notified Version, we have partnered these outcome objectives with one that targets efficient processes and clarity of language. This partnering objective picks up on those aspects of the OIC Statement of Expectation. In this respect, our decision is more closely aligned to the Planning Experts' Joint Version (although it recommended a dedicated policy, rather than an objective).
- (c) We have not included objectives on a range of matters that were part of the Notified Version and a smaller number of matters that were part of the Planning Experts' Joint Version, for the reasons we set out shortly.

Enabling, encouraging and stimulating investment to expedite recovery and assist long-term growth

[109] The evidence we heard and accept demonstrated the correctness of Mr Eman's concession during questioning,⁸⁶ that the challenges facing Christchurch in post-earthquake recovery "marks Christchurch out as an exception from the pack" of other large cities in New Zealand.⁸⁷ In an overall sense, we consider that the OIC Statement of Expectations, the LURP and the CRPS (especially Chapter 6) effectively ask for a new sort of plan to meet the unique circumstances of Christchurch. This was accepted by Mr Eman.⁸⁸ On the basis of that evidence, we are satisfied that is called for.

[110] Unchallenged independent expert evidence from the Crown/CERA demonstrated, for example, the very significant scale of investment needed from private sector investors (\$30

⁸⁶ By way of example, the evidence of Benesia Smith, Don Miskell, Dr Timothy Denne, Dr Natalie Jackson, Michelle Mitchell, Ian Mitchell and Robert Rouse.

⁸⁷ Transcript, page 362, lines 18-23.

⁸⁸ Transcript, page 370, lines 10-17.

billion, or 75 per cent of the total spend) to secure a successful recovery.⁸⁹ It also explained how a very significant proportion of this needed to come from new investment that is attracted into the city. A small number of local investors have committed insurance and other funds to rebuilding in the central city. That demonstrates the loyalty of that investment community, but it will not itself be sufficient.

[111] The weight of that accepted evidence also satisfied us that there is a need to go significantly further than the Notified Version in regard to enablement of investment. Given the primacy of Strategic Directions within the Replacement Plan, its objectives need to give clear encouragement to existing and new investment. That is in the sense of giving stimulus to it (which then needs to be backed by related objectives, policies and rules within relevant Plan chapters).

[112] It appeared to us that the Council's view was that other submitters were placing recovery ahead of long-term needs. Others submitted the reverse. The evidence satisfies us that expediting recovery is readily compatible with enabling Christchurch's long-term needs to be met and opportunities to be realised. These matters are not competing. We have framed the objectives accordingly.

[113] The accepted evidence also supported Mr Eman's acknowledgement (in response to Judge Hassan's question) that there is an "elevated reason to focus on process efficiency and cost issues in the context of post-earthquakes' Christchurch", and his emphasis that this was "critically important".⁹⁰ In particular, we find as a fact this is a matter that goes to the heart of providing the right investment climate to enable recovery and sustain long-term growth. That is especially in terms of how the costs, delays and uncertainties of RMA administration can have impact upon investment decisions.

[114] In addition, we find the approach we have taken is a more appropriate response to the statutory directives we must apply concerning the higher order statutory documents.

[115] We acknowledge that the CRPS does not include any relevant objectives or policies as to process efficiency. However, nothing in the CRPS (specifically or by implication) directs

⁸⁹ Evidence in chief, Philip Nevell, paras 7.1 and 7.2.

⁹⁰ Transcript, page 362, lines 8-16.

against including objectives on this matter in Strategic Directions. As such, we are in a position to respond to the OIC Statement of Expectations on this matter and still give effect to the CRPS.

[116] Again, the objectives in Strategic Directions will have primacy and should be backed by relevant objectives, policies and rules in the other chapters of the Plan.

[117] The Council made clear that it did not seek to argue that it would be ultra vires the RMA to include what it termed “process” provisions in Strategic Directions.⁹¹ In its closing submissions, the Council correctly pointed out the fact that any such provision could not validly override what the RMA prescribed, for instance on resource consent notification (in ss 95-95G). We accept that is a given. However, we are also mindful that nothing in the RMA precludes a plan from including objectives and/or policies (or, for that matter, rules) pertaining to matters of process, including as to notification. Indeed, we go further and say that a properly-framed plan should have objectives and policies that relate to rules governing matters of process. We raised with Mr Winchester the example of notification. Section 95A prohibits public notification of a consent application if a rule precludes it. Alongside that, s 75 describes a relationship between rules and policies (i.e. that the plan must state “rules (if any) to implement the policies”) and between policies and objectives (i.e. that the policies are to implement the objectives). Similarly, s 76(1) allows for the inclusion of rules in a district plan “for the purpose of” (in part) “achieving the objectives and policies of the plan”. The relationship of rules (including as to notification) and objectives is also reinforced in s 32, in the sense that an evaluation must examine whether provisions (including rules) are the most appropriate way “to achieve the objectives” (s 32(1)).

[118] Mr Winchester submitted that the RMA did not legally preclude a plan from having objectives and policies on plan administration. What was important was that the drafting of such provisions did not overlap or intrude into the specific statutory tests as to notification.⁹² He said that came back to drafting and (in the case of notification) how much recourse one is able to have to objectives and policies to guide the assessment of effects for the purposes of notification. However, he noted that having objectives and policies as to matters of notification “may be quite helpful”.⁹³ We agree.

⁹¹ Transcript, page 1231, lines 22-29.

⁹² Transcript, page 1232, lines 7-26.

⁹³ Transcript, page 1233, lines 20-26.

[119] Ultimately, part of what we must be satisfied of is that Strategic Directions will assist the Council to carry out its functions “in order to achieve the purpose of the Act”. We are satisfied that a properly-directed objective as to process efficiency and clarity of language will be of such assistance to the Council in achieving the RMA’s purpose. Specifically, it will include in the Plan a clear direction as to how the Plan should be administered. “Sustainable management”, in this regard, does not direct that environmental outcomes are to be treated in isolation from processes. “Management” is a word connoting process, amongst other things.

[120] We understand, from answers Mr Eman and Mr Winchester gave, that the Council view against including process-related provisions in Strategic Directions was that it was unnecessary (notwithstanding this, Mr Eman agreed in expert conferencing that it should be included).⁹⁴ Mr Winchester characterised this as being a “management view” (albeit not Mr Eman’s final view as an independent expert).⁹⁵

[121] We disagree with the Council’s position on this. On the contrary, we find it a necessary component of Strategic Directions, given the primacy that the chapter is designed to have within the Replacement Plan. The essential consensus reflected in the Planning Experts’ Joint Version supports the principle of this approach. Nothing we heard from representations by submitters indicated it would not be appropriate. The evidence (particularly from independent experts called by the Crown and by other submitters) satisfies us that the inclusion of a process-directed objective and related provisions in the Replacement Plan offers significant benefit and no material costs (assuming those provisions are well drafted and directed). These provisions are able to materially assist opportunities for economic growth and employment. That is because they will make explicit, for all plan readers and administrators, an overarching objective for process efficiency under the Replacement Plan.

Objectives v objectives and policies

[122] The Notified Version included an array of policies, in addition to its proposed objectives. Similarly, that was the case for the Planning Experts’ Joint Version. We have departed from both by not including any policies in Strategic Directions.

⁹⁴ Transcript, page 357 lines 25 – 31; page 1235, lines 18 - 37

⁹⁵ Transcript, page 1235, lines 30 – 37.

[123] We have reached that decision primarily in view of the primacy we find Strategic Directions should have within the Replacement Plan. It also provides greater clarity and certainty.

[124] Relevant to that, the RMA provides for a hierarchical relationship between objectives, policies and rules within a plan. Section 75(1) requires that plans state “the objectives for the district”, policies to “implement the objectives”, and rules “to implement the policies”. That hierarchical relationship is also reflected in ss 32 and 32AA. That is in the sense that the evaluation of objectives is as to whether they are “the most appropriate way to achieve the purpose of the Act” and the evaluation of other provisions is as to whether they are “the most appropriate way to achieve the objectives”.

[125] It is important to avoid any undermining of the primacy of Strategic Directions within the Replacement Plan. Were Strategic Directions to have included policies, that could have opened up uncertainty as to their relative primacy over objectives that come to be included in other chapters of the Plan. While the risk may have been reduced by how such policies and other chapter objectives were drafted, we consider it undesirable to leave any residual interpretation risk alive. We reach that view having particular regard to the OIC Statement of Expectations.

[126] In any case, where we examined the substance of each of the proposed policies in both the Notified Version and the Planning Experts’ Joint Version, we were satisfied that the most appropriate approach in each case was to leave relevant matters expressed as objectives, but allow for consideration of appropriate other provisions on the matters addressed, in relevant chapters in due course.

[127] Our decision provides that, within Strategic Directions, Objectives 3.3.1 and 3.3.2 have relative primacy. That is on the basis that all other objectives within Chapter 3 are to be expressed and achieved in a manner consistent with those objectives.

[128] Neither the Notified Version nor the Planning Experts’ Joint Version provided for that internal hierarchy.

[129] Our design of this internal hierarchical relationship within Strategic Directions sits with the wider design by which Strategic Directions has primacy within the Replacement Plan as a whole. In testing this approach during the hearing, we referred to it as a “family tree” regime. An alternative analogy is with the apex of a pyramid. It bears some similarity with the hierarchical place of s 5 within Part 2, in provisions that have an overarching influence within the RMA.

[130] The evidence overwhelmingly satisfied us that the paired themes within Objectives 3.3.1 and 3.3.2 should have such primacy within this hierarchical structure. In particular, that evidence satisfied us that, in order to achieve the purpose of the RMA:

- (a) The expedited recovery and future enhancement of Christchurch as a dynamic, prosperous and internationally-competitive city was the overarching outcome that the Replacement Plan should serve for the district; and
- (b) That outcome objective needed to be accompanied by one focussed on process efficiency and clarity of language, framed to reflect what the Statement of Expectations identifies on these matters.

Matters we have not included that were in either the Notified Version or the Planning Experts' Joint Version

[131] There are a number of matters included in the notified and subsequent versions of the Strategic Directions chapter that are not included in our decision.

[132] We heard insufficient evidence on some matters to make a decision at this time. We determined that other matters did not, by nature, qualify to be included in Strategic Directions (although some such matters could be appropriately addressed elsewhere in the plan).

[133] Those matters on which we considered the evidence insufficient were (non-exclusively):

- (a) The relationship of out-of-centre versus centre development, and the relationship of both with the central city. The evidence satisfies us as to the importance of maintaining a centres-based approach to urban growth, form and design. However,

it was too broad to determine finer questions, for instance as between consolidation or intensification at centres and as to what could be allowed for out-of-centres;

- (b) Rural matters;
- (c) Water quality (including freshwater features and values) and the coastal environment (to the extent that these are territorial authority functions);
- (d) Specific reference to avoiding urbanisation before infrastructure is in place.

[134] We are informed these topics will be traversed substantially in later proposals. We consider that all of these matters potentially have a strategic component that would make them eligible for provision in Strategic Directions. While Strategic Directions was not identified as being “in part”, Mr Winchester and Mr Radich QC conceded that further work may be required to address matters such as these in the chapter at a later date. We elaborate further on specific matters that have been retained later in this decision.

[135] It was apparent to us that the Strategic Directions chapter was also used as a “catch-all” for various other matters that may have wider-ranging impact across the plan, but which we found were not strategic in nature. The matters we excluded on this basis (although they were not culled out in the Planning Experts’ Joint Version) were (non-exclusively):

- (a) Development of Māori reserves;
- (b) General amenity, health and safety and nuisance effects;
- (c) Protection of people from contaminated land and hazardous substances;
- (d) Reduced levels of service for transport during recovery;
- (e) Rural-residential activity.

[136] We have determined that those are better placed within individual later chapters, so as to not derogate from the role Strategic Directions is intended for.

[137] We expect that the Council will consider how best to address these matters in relevant chapters. We note the structure of the Plan as it stands means that there is no “catch-all”

location for objectives and policies that span across the Plan (unless it is intended that Chapter 6 be adapted for this purpose), and as a result (in its current format) repetition appears to be inevitable. The Council may wish to address this at the appropriate time.

Specific topics

The influence of higher order documents

[138] The higher order documents (especially the CRPS, the LURP and the OIC Statement of Expectations) have significant influence in shaping Strategic Directions. That influence includes the priority they give to several resource management matters.

[139] However, even in the case of the CRPS and the LURP, that influence is not so directive as to predetermine or proscribe the substantive content of Strategic Directions provisions. The substance of direction given by higher order documents varies. On some topics (for instance as to urban growth and form and housing capacity and choice), the direction is relatively prescriptive. In other cases, the directions given allow for greater discretion. In those cases, the evidence has been relatively more important in informing us as to how we are best to give effect to those directions.

[140] We now set out our reasoning and evaluation of the provisions in Schedule 1 against other options on specific matters.

Proposal 1 changes

[141] As shown in Schedule 1, our decision deletes section 1.9 of Chapter 1 (Introduction). In substance, section 1.9 is outdated as a consequence of our decision concerning Strategic Directions. In any case, we agree with Mr Eman (and other planning experts) that it serves no valid resource management purpose. As part of a section of Chapter 1 entitled ‘Strategic Outcomes form the District Plan’, it cuts across the role intended by Strategic Directions. Yet it does not contain objectives, policies or other provisions that would assist the administration of the plan.

[142] In addition, as Schedule 1 shows, our decision makes consequential amendment to parts of Section 5 (the Relationship between the District Plan and other Resource Management

Planning documents). As this is a simple consequential change to non-contentious narrative, we are satisfied there is no need to direct the Council to prepare and notify a new Proposal 1 or call for submissions.

Proposal 3 changes (and related definitions)

[143] Our decision changes Proposal 3 by deleting its content and substituting the provisions in Schedule 1 in its place.

Section 3.1 – Introduction

[144] Section 3.1 comprises a new introductory chapter that better reflects the analysis set out above, in regard to the unique circumstances facing Christchurch.

Section 3.2 – Context

[145] We have retained a modified s 3.2 (Context). The modifications we have made draw from the Notified Version and amendments recommended in the various versions attached to planning evidence.⁹⁶ In addition, we have made amendments to improve precision and succinctness.⁹⁷

[146] We have deleted ss 3.4 (Key Issues and Opportunities) and 3.5 (Strategic Directions for the District). Following pre-hearing mediation, several parties agreed with the Council that s 3.4 could be deleted (or moved to Chapter 1) and that s 3.5 could be deleted. Removal of those provisions from Chapter 3 improves the conciseness and clarity of direction provided by this chapter.

Section 3.3 - Objectives

[147] We have already set out our evaluation and reasoning in regard to these changes.

⁹⁶ Particularly from Mr Timms, for the Crown.

⁹⁷ The Notified Version did not include s 3.3.

Interpretation

[148] As discussed previously, we have determined that Strategic Directions should have primacy over other chapters of the Plan, and that within Strategic Directions, Objectives 3.3.1 and 3.3.2 should have primacy over other objectives.

[149] We have included the Interpretation provision for those reasons.

Objective 3.3.1 - Enabling recovery and facilitating the future enhancement of the district

[150] We have already addressed why we consider Objective 3.3.1 should have an overarching place in the hierarchy of objectives of Strategic Directions and why it should be expressed in terms that encourage and stimulate new investment.

[151] The Notified Version reflected this to an extent in its reference to “a dynamic and internationally competitive city”. However, we found that message to have been somewhat lost in translation in the Planning Experts’ Joint Version (which referred instead to laying “a solid foundation”).

[152] We have noted that the evidence (primarily from the Crown/CERA) demonstrated the importance of having an overarching objective as to expedited recovery and future enhancement of Christchurch as a dynamic, prosperous and internationally competitive city. We determined that the objective ought to make explicit certain ingredients for that. Specifically, on the evidence, we are satisfied those are:

- (a) Meeting the community’s immediate and longer term needs for housing, economic development, community facilities, infrastructure and transport, and social and cultural wellbeing; and
- (b) Fostering investment certainty.

[153] However, the evidence we heard (and various submitter representations)⁹⁸ also demonstrated the importance of recognising, in such an objective, other important qualities and values of the City. Our explicit reference to social and cultural wellbeing partly reflects this need for balance. So too does our explicit reference to sustaining “the important qualities and values of the natural environment”.

[154] We expect that greater definition of those other values will be secured in the development of other Replacement Plan provisions.

[155] We are satisfied that Objective 3.3.1 is the most appropriate (amongst the various options considered) for achieving the RMA’s purpose.

Objective 3.3.2 – Clarity of language and process efficiency

[156] We have already set out our evaluation and reasoning in regard to these changes.

Objective 3.3.3 - Ngāi Tahu Manawhenua

[157] As with the Notified Version, we have included a specific objective. By contrast, we have not included associated policies.

[158] The evidence called on behalf of Te Rūnanga o Ngāi Tahu and Ngā Rūnanga (#1145) was essentially uncontested (‘Ngāi Tahu Version’).⁹⁹ The final version of the provisions they proposed was agreed by the Crown and not opposed by the Council. That gives the Ngāi Tahu Version (including its proposed set of policies) significantly more weight than the Notified Version.

⁹⁸ For example, evidence of Hugh Nicholson and Adam Scott Blair for the Council; Tā Mark Solomon for Te Rūnanga o Ngāi Tahu, Ngā Rūnanga and Ngāi Tahu Property Ltd and George Tikao for Ngā Rūnanga and Te Rūnanga o Ngāi Tahu; Ms Lucas for Peterborough Village Inc Society (#228).

⁹⁹ Evidence of Tā Mark Solomon, Shaun Te Marino and Matthew Lenihan, George Takao and, ultimately, Lynda Murchison. We have considered the further submission in opposition by Fox & Associates Ltd (#1422) and the further information provided by that submitter. That further submission and the associated representations Mr Fox made in his email do not persuade us against including Objective 3.3.3. In particular, we are not persuaded that Part 2 of the RMA and the relationship that Te Rūnanga o Ngāi Tahu and Ngā Rūnanga have with the Council would obviate the role of such an objective. As for the other issues raised in the further submission (for example, as to the costs, delays and risks for developers), these may be further considered in due course, together with the submission by Te Rūnanga o Ngāi Tahu and Ngā Rūnanga, on other relevant proposals for the Replacement Plan.

[159] However, in the final analysis, we must be satisfied that all provisions we decide to include in Strategic Directions fit with the design intentions of this chapter. On that basis, we have decided against having policies included in conjunction with Objective 3.3.3. We have also determined that Objective 3.3.3 should be comparatively simple and less specific in its drafting so that it fits with the purposes of the Strategic Directions chapter.

[160] We anticipate that further targeted provisions, including to give effect to the CRPS, would be appropriate for inclusion in relevant other chapters of the Replacement Plan. We expect that this will involve a review of the related commentary in Chapter 1. We note that the Ngāi Tahu Version also proposed that we replace Section 3 (Manawhenua) of Chapter 1. As this section was not included in the Notified Version, we needed to be satisfied that it was appropriate to change it as a consequential change, at this time. In the final analysis, we were not satisfied that we should do so as part of this decision. We will, in due course, consider and decide upon the substance of that chapter, in light of the evidence and submissions we hear in that context.

[161] In the meantime, we are satisfied that our decision gives effect to the CRPS insofar as it can be addressed at this time. Specifically we refer to the CRPS's directives as to:

- (a) provision for the relationship of Ngāi Tahu Manawhenua with their ancestral lands, water, sites, wāhi tapu and other taonga (4.3.15);
- (b) methods for protection of those matters, including in resource consent processes (4.3.16, 4.3.18); and
- (c) the appointment of tāngata whenua commissioners on resource consent hearing panels and during plan development processes (4.3.19).

[162] We expect, however, that we will need to consider these CRPS directives further in the context of hearing and considering Chapter 1 and other relevant chapters in due course.

[163] We are satisfied that including Objective 3.3.3 in Strategic Directions is the most appropriate way to achieve the purpose of the RMA, within the context of Strategic Directions.

Specifically, as an objective with primacy (within a scheme of related objectives, policies, rules and other methods in other chapters):

- (i) Objective 3.3.3 will assist Ngāi Tahu as kaitiaki (s 7(a)) and hence assist to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (s 6(e)).
- (ii) It will bring direct focus on Treaty principles (s 8), including matters of active protection and rangatiratanga.
- (iii) It will give further expression to Treaty principles in referring to Ngāi Tahu Manawhenua's active participation in resource management decision-making and their aspirations to participate in the revitalisation of Ōtautahi (Christchurch City).
- (iv) It will allow for the proper further expression of related objectives, policies, rules (and other methods) in relevant other chapters of the Replacement Plan. In that regard, it is more appropriate than either the Notified Version or the Ngāi Tahu Version.

Objective 3.3.4 - Housing capacity and choice

[164] The final round of planners' expert conferencing served to demonstrate that the Notified Version was insufficiently clear and directive on the very important subject of housing capacity and choice.

[165] The evidence, particularly from the Crown's independent experts, provided a sound foundation for preferring the Planning Experts' Joint Version over the Notified Version. In particular, that evidence crystallised the very significant pressures that have been put on housing demand, supply and affordability. That evidence explained that those pressures are in large part from the enormous damage resulting from the earthquakes. In addition, it explained that pressures have also arisen from changing demographics. The evidence demonstrated there was a consequential need for the Plan to allow for additional housing capacity (23,700

dwellings between 2012 and 2028) and additional housing opportunities (including types, densities, locations, affordability, social housing and papakāinga).

[166] The Crown’s independent experts explained how these present and growing problems were adversely affecting social wellbeing.¹⁰⁰ We also heard from Dr Alistair Humphrey on behalf of the Canterbury District Health Board (‘CDHB’).¹⁰¹ He spoke about the specific impacts that were occurring (in terms of housing unaffordability) as to the ability of those suffering mental health issues to reintegrate.¹⁰² In addition, Mr McMahon of the Spreydon/Heathcote Community Board¹⁰³ explained his personal experience of young people having to be accommodated in substandard hostel-type accommodation because rental properties were no longer affordable.¹⁰⁴

[167] In an overall sense, that demonstrated relevant provisions of the Notified Version would fail to promote sustainable management. In particular, its Policy 3.6.1.2 referred vaguely and inconsistently to notions of “housing affordability” and “opportunities for affordable housing development... sufficient to meet demand”. Without properly defining an objective or goal, the Notified Version did not provide any helpful measure of the problem or ability to monitor whether the problem was being resolved (through the administration of related Plan provisions, for example).

[168] By comparison, the Planning Experts’ Joint Version was much clearer. In one recommended policy, it specified the measurable end of creating sufficient capacity to accommodate 23,700 additional dwellings in the period 2012 to 2028. It also clarified the means as “through a combination of residential intensification, brownfield and greenfield development”. In another recommended policy, it addressed the matter of choice (a “range of housing opportunities including a choice in housing types, densities, locations and that enable affordable, community and social housing to meet the diverse needs of Christchurch residents”). Both proposed provisions were well supported by the accepted evidence and submissions heard.¹⁰⁵

¹⁰⁰ In particular, the evidence of Michelle Mitchell.

¹⁰¹ Dr Humphrey appeared as a public health physician representing the CDHB (transcript, page 1020, lines 41-44).

¹⁰² Transcript, page 1025, lines 20-44; page 1026, lines 1-18.

¹⁰³ Spreydon/Heathcote Community Board (#899).

¹⁰⁴ Transcript, page 1005, lines 43-46; page 1006, lines 1-16.

¹⁰⁵ For example, the evidence of Adam Scott Blair for the Council, and Dr Natalie Jackson and Michelle Mitchell for the Crown.

[169] For those reasons, we find that the Planning Experts' Joint Version would achieve the RMA's purpose.

[170] For the reasons we have given, our decision departs from the Planning Experts' Joint Version by having objectives and no associated policies. More substantively, it refers directly to "an additional 23,700 dwellings" (as opposed to "capacity for" these). That change is made to provide a sharpened objective more readily able to be monitored. Specifically, it recognises the required solution to this sustainable management problem in Christchurch is the availability of actual physical dwellings. Zoning capacity alone will not solve the problem. A Plan cannot, of course, get houses built. However, the policies and rules (and their sound administration) can help facilitate and stimulate this necessary solution. The objectives are, in part, intended to serve as a measuring point for the formulation of related policies and rules, and monitoring of their effectiveness over time. The explicit primacy we give to the objectives will also inform the drafting of objectives in other chapters.

[171] Our decision on this is made mindful of the care and attention that will be needed during the development of the plan (especially of its policies, rules and methods) to ensure the right incentives, stimulation and regulation is delivered to best meet this sustainable management priority for Christchurch.

Objective 3.3.5 - Business and economic prosperity

[172] The Notified Version included reference to this matter in its objective (3.6.1) as to the recovery and long-term future of the district. Its focus was on having diverse opportunities for business to establish and prosper. The Planning Experts' Joint Version also proposed a dedicated objective, linked to concepts of wellbeing and resilience.

[173] We are satisfied, on the evidence, that the Notified Version was sound in its approach of linking business and economic prosperity to Christchurch's recovery. In particular, we heard from various witnesses about the importance, to recovery, of securing substantial new investment and the significant challenges that are presented in doing so. We also accept that the objective should refer to the relationship between business and economic prosperity and community wellbeing and resilience.

[174] On the basis of the evidence, we consider that the objective should explicitly identify these matters as being of “critical importance”. We have deliberately chosen those words, as they give due emphasis to the relative importance of this matter. In the equation of post-earthquakes Christchurch, it is at the heart of enabling the Christchurch community to provide for its wellbeing.

[175] Therefore, we have included Objective 3.3.5. For the reasons stated, we are satisfied that it is the most appropriate for achieving the RMA’s purpose.

Objective 3.3.6 – Natural hazards

[176] In the context of post-earthquakes Christchurch, there is a clear logic to having Strategic Directions address natural hazards.¹⁰⁶ Also, as can be expected, this is a matter on which the CRPS (as amended by the LURP) gives detailed direction. In addition, Action 42 of the LURP directs the Council, in reviewing its district plan, to provide for protection of people from risks in ‘High Hazard Areas’ (as defined in the CRPS) and other risks from natural hazards.

[177] However, a number of issues arose concerning how natural hazards should best be addressed. The primary difficulty was in how best to give effect to detailed directions in the CRPS, in the context of Strategic Directions. Related to that, the expert evidence called was understandably high-level.¹⁰⁷

[178] Through the course of the hearing, we were offered several, quite differently expressed, versions of a natural hazards objective. The Notified Version (proposed Objective 3.6.5) as follows:

The risk to people, property and infrastructure from natural hazards is avoided or reduced to acceptable levels.

[179] In opening, the Council proposed that the wording be changed to:

The risk to people, property ~~and infrastructure~~ and the environment from natural hazards is avoided or reduced ~~to acceptable levels~~.

¹⁰⁶ As can also be expected, the Replacement Plan includes a dedicated chapter on natural hazards (Chapter 5).

¹⁰⁷ Our hearing of the Natural Hazards proposal will commence on 2 March 2015.

[180] The Planning Experts' Joint Version proposed that the objective be changed from a focus on risk avoidance to one of overall risk reduction and improved resilience:

A land use pattern where the overall risk of natural hazards to people, property and infrastructure is reduced to acceptable levels, resilience is improved and risk is not transferred to significant natural areas.

[181] The Joint Version's reference to avoiding transfer of risk to "significant natural areas" was made subject to a rider that the words "significant natural areas" needed to be revisited once Chapter 5 and the natural areas chapters were considered.

[182] The Council offered a further revision in its closing submissions:

The risk from natural hazards to people, property, infrastructure, and aspects of the natural environment ~~from natural hazards~~ is avoided or reduced, or where this is not practicable, minimised.

[183] The Council submitted that a risk avoidance construct was vital given the higher order documents (specifically the CRPS and Action 42 of the LURP) and the circumstances in Christchurch following the earthquakes¹⁰⁸. However, the Council acknowledged that it was valid to recognise that avoidance may not be practicable in all circumstances (for example, in regard to critical infrastructure where there is no practicable alternative location).

Responding to the CRPS and the LURP

[184] The CRPS specifies four objectives (11.2.1 to 11.2.4) and nine associated policies (11.3.1 to 11.3.9) in its dedicated natural hazards chapter (in addition to Christchurch-specific provisions in Chapter 6). The objectives contain various complexities and nuances that make it difficult to frame a suitably comprehensive response in Strategic Directions. For example:

- (i) Objective 11.2.1, although entitled "Avoid new subdivision, use and development that increases risks associated with natural hazards", refers in its detail to mitigation where avoidance is not possible. Objective 11.2.1 does not explicitly set any benchmark for avoidance, such as "to acceptable levels". However, its associated explanatory text adds certain qualifiers. For instance, it explains that "in lower risk areas and where development may be otherwise appropriate in high hazard risk areas (where avoidance is not

¹⁰⁸ Council closing submissions, para 8.4.

possible), mitigation measures may provide alternative means of achieving the overall objective”.

- (ii) Objective 11.2.2 (entitled “Adverse effects from hazard mitigation are avoided or mitigated”) broadly targets adverse effects on people, property, infrastructure and the environment. That broad coverage is reinforced by the associated explanatory text (and, hence, is to be interpreted as broadly as the RMA provides). The text does not seek to narrow what is intended by the word “environment”. Further, it elaborates that the objective extends to adverse effects on “other values that contribute to the well-being of people and the community, including cultural well-being”.

[185] Associated policies are expressed to a level of detail that, in a practical sense, is best addressed when considering the details of specific objectives, policies and rules of Chapter 5.

[186] It is the Replacement Plan as a whole, including Chapter 5 which we have yet to consider, that must give effect to the CRPS and that we must ensure is not inconsistent with the LURP. What Strategic Directions says is clearly an important overarching part of this. However, we find that both the CRPS (including Chapters 6 and 11) and Action 42 of the LURP allow for sensible exercise of discretionary judgement in how that is best achieved. In exercising that judgment, we have sought to be guided by relevant expert opinion.

[187] Of the various submitters on Objective 3.6.5 of the Notified Version, only CERA/the Crown called an expert with relevant scientific expertise, namely Dr Kelvin Berryman.

[188] Dr Berryman is undoubtedly well qualified to assist, in view of his independent expertise in the specialities of earthquake geology and natural hazards. However, his brief was (understandably) limited to a broad conceptual risk management level at this stage. Even so, we appreciated the further assistance he gave us in answer to questions.

[189] CERA/the Crown did not oppose what the Council proposed as modifications to Objective 3.6.5. However, Dr Berryman was cautious in his view as to the merits of what the Council proposed in its opening submissions. Key aspects of his opinion were:

- (a) There are significant uncertainties and limitations in the data pertaining to most, if not all, natural hazards and associated risks in Christchurch.¹⁰⁹ The natural hazard constraints affecting Christchurch include earthquakes and related events (e.g. tsunami, river flood, rockfall, landslide), severe weather and compounding hazards (e.g. sea level rise from climate change and exacerbated storm surge, accelerated erosion and inundation, and further earthquake activity damaging stop banks and resulting in flood events exacerbated through liquefaction damage).¹¹⁰
- (b) The Plan needs to address *compounding risk over the planning horizon* (our emphasis), and to establish acceptable risk criteria for the impacts of foreseeable natural hazard events that are possible in Christchurch. Only after the hazards have been characterised and the acceptable risk criteria have been developed (with associated community engagement) can land use planning controls offer appropriate mitigation.¹¹¹ The Plan needs to define “acceptable risks”. There is a need for a framework within which acceptable levels of future economic losses can be assessed and then appropriate planning interventions considered should the economic loss be deemed unacceptable.¹¹²
- (c) His support for the addition of “and the environment” to the objective was qualified for his stated reason, namely “To what extent society should control some elements of the natural environment to protect other elements of the natural environment is a value judgment”.¹¹³
- (d) Similarly, his willingness to agree to the removal of “acceptable levels” from the objective was qualified on the basis that what is deleted is picked up elsewhere so that the objective can be achieved.¹¹⁴

[190] Drawing from Dr Berryman’s opinion, we consider the objective which the Council offered in closing is more appropriate than the Planning Experts’ Joint Version in two key

¹⁰⁹ Berryman, 3.5.

¹¹⁰ Berryman, 7.1.

¹¹¹ Berryman, 9.4.

¹¹² Berryman, 4.4.

¹¹³ Berryman, 8.4.

¹¹⁴ Berryman, 8.5.

respects. Those are in its recognition of the importance of avoidance of unacceptable risk, and the need for the Plan to define acceptable risk.

[191] However, we find that all versions proposed to us are weak in how they respond to the CRPS on these matters.

[192] In addition, while both the Planning Experts' Joint Version and the Council's final position in closing both recommended referring to risks to the natural environment (as well as to people, property and infrastructure), we do not consider there is a sufficient basis for expanding on the Notified Version of Strategic Directions in this way.

[193] We note that the CRPS does not direct that the objective be expanded in this way.¹¹⁵

[194] Ms Carter explained that the Council's position (that the words "and the environment" be added) stemmed from a submission from Tonkin & Taylor.¹¹⁶ That submission was to the effect that the RMA's definition of "natural hazards" refers to other aspects of the environment, not just people and communities.¹¹⁷

[195] However, the fact that the RMA defines "natural hazard" as encompassing an occurrence that adversely affects or may adversely affect "other aspects of the environment" does not mean that provision for natural hazards in Strategic Directions must or should do likewise.

[196] As Dr Berryman put it, the extent to which society should control some elements of the natural environment to protect other elements of it is a societal value judgment question. On the limited evidence we have so far received, we are not satisfied that the benefits of including in a natural hazards provision reference to "aspects of the natural environment" is appropriate. Nor do we find it appropriate to follow the Planning Experts' Joint Version by adding "and risk is not transferred to significant natural areas".

[197] In each case, those additional words would involve making untested trade-offs as to the use, development and protection of resources (including private property). On the limited

¹¹⁵ Objective 11.2.2 of the CRPS is, instead, directed to the adverse effects of natural hazard mitigation on the environment (and other matters).

¹¹⁶ Submitter #970.

¹¹⁷ Transcript, page 312, 25-29.

evidence we have received to date, we cannot determine (for Part 2 and s 32AA RMA purposes), what the costs and benefits of those trade-offs would be.

[198] Hence, we have framed Objective 3.3.6 on the following basis:

- (a) Paragraph (a) is specific to new subdivision, use and development. In that regard, it responds to Objective 11.2.1 of the CRPS. It provides a two-tiered approach, in its subparagraphs (i) and (ii). The first tier is to avoid new subdivision, use and development in areas where risks to people, property and infrastructure “are assessed as being unacceptable”. Its second tier provides that new subdivision, use and development is to be undertaken in a manner that ensures natural hazard risks to people, property and infrastructure “are appropriately mitigated”. Deliberately, this paragraph is confined to new subdivision, use and development and does not extend to encompass risk to the wider environment. Also, in those respects, we find that this drafting better gives effect to the CRPS, notably Objective 11.2.1 of it.
- (b) Paragraph (b) provides a qualification to the application of paragraph (a), for new strategic infrastructure. It allows for such infrastructure to be located in areas where risks to people, property and other infrastructure are assessed as unacceptable, provided two prerequisites are met. The first is that there must be no reasonable alternative. The second is that the infrastructure must be designed to maintain, as far as practicable, its integrity and form during natural hazards. We are satisfied, on the basis of the uncontested evidence we received from infrastructure providers, that this exception was important. We note that it also responds to Policy 11.3.4 of the CRPS as to “critical infrastructure”.
- (c) We have decided against extending the objective to encompass either “aspects of the natural environment” or “and risk is not transferred to significant natural areas” for the reasons we have stated.
- (d) We have added the following rider:

The requirement for further or alternative strategic direction in respect of "Natural hazards" will be reconsidered by the Panel as part of considering the Chapter 5 Proposal.

[199] That rider acknowledges the limited evidence we have so far received, and our capacity (under the OIC) to revisit proposals on which we have made decisions.

[200] We are satisfied that our framing of Objective 3.3.6 better and more accurately gives effect to the CRPS than any of the alternative options put to us. As such, we are also satisfied that it is the most appropriate for achieving the RMA's purpose.

Objective 3.3.7 – Urban growth, form and design

[201] Objective 3.3.7 replaces several provisions of the Notified Version:

- (a) Proposed Objective 3.6.2 on “development form and function”, and its related policies on accessible development (3.6.2.1), greenfield urban land supply (3.6.2.2), urban consolidation (3.6.2.3), timing of urban development (3.6.2.4), and community focal points (3.6.2.7);¹¹⁸ and,
- (b) Policies 3.6.1.1 on existing and new greenfield urban land, and 3.6.1.5 on development design and quality.¹¹⁹

[202] The Planning Experts' Joint Version was quite differently structured from the Notified Version in regard to its equivalent provisions. Specifically, it proposed:

- (a) An objective on “urban growth and form” and related policies on urban consolidation, timing of urban development, brownfield redevelopment, accessible development (amongst others).
- (b) An objective on “quality urban environment” and related policies, including as to “development design and quality”.

[203] We have already noted why we have determined that Strategic Directions should not encompass policies. That has informed our approach to the development of Objective 3.3.7.

¹¹⁸ Policy 3.6.2.5 on education activities is partially replaced by Objective 3.3.11, with the rural policy aspects deleted for the reasons we give on that matter; Policy 3.6.2.6 on rural-residential is deleted and not replaced for the reasons we give on that matter; and Policy 3.6.2.8 on infrastructure is replaced by Objective 3.3.12.

¹¹⁹ Policy 3.6.1.2 on housing affordability is replaced by Objective 3.3.4 (on housing capacity and choice), Policy 3.6.1.3 on business development by Objective 3.3.5 (on business and economic prosperity) and Objective 3.3.10 (commercial and industrial activities), Policy 3.6.1.4 (on temporary recovery activities) by Objective 3.3.15 on the same topic.

We record, however, that we have not simply elected to delete anything called a policy in either the Notified Version or the Planning Experts' Joint Version. Rather, we have examined the substance of all provisions and, where appropriate, carried into Objective 3.3.7 all the relevant matters from those provisions.

Good urban design

[204] That Strategic Directions should make provision for good urban design was not a matter of significant dispute. On the evidence we have received, we are satisfied that good urban design is an essential ingredient not only in the recovery but also in providing for the long-term future of Christchurch.

[205] However, it is important that such provision is properly targeted to each relevant zone and subject-specific context. Otherwise, there is a high risk that significant costs will be imposed that are not justified by the environmental benefits that could be realised. We understand that the Council had envisaged targeted urban design control. Mr Winchester explained that the targeting would be to matters such as the Central City, development of Centres, and some categories of multi-unit development in residential areas.¹²⁰

[206] To better reflect that intention, Mr Eman's opening proposition was for the Notified Version policy to include the qualifier "recognising that different issues will be relevant to different areas depending on their environment and function...".¹²¹ The Crown/CERA initially opposed the specific nature of the Council's proposed policy. By comparison, Property Council New Zealand sought relatively less change from the Notified Version. A number of submitters (for instance, various community boards) supported the Council's Notified Version. Finally, the Planning Experts' Joint Version recommended a wording that was closely similar to Mr Eman's modified version (but with slightly different qualifying words).

[207] We understand that a common thread in the various drafting approaches that were promoted to us was a concern to ensure that the Replacement Plan gave effect to the CRPS, as is required by the RMA. However, for the reasons we have given, we are satisfied that we have considerably greater capacity than has been assumed to ensure Strategic Directions reflects a proper overarching direction on the subject of urban design given in the CRPS. That includes

¹²⁰ Transcript, page 1226, lines 5-35.

¹²¹ Eman rebuttal, 27 November 2014, Attachment A, page 33.

Policy 6.3.2. That policy is prescriptive in the sense that it specifies seven subparagraphs as “the principles of good urban design” and supplements these by incorporating by reference “those of the NZ Urban Design Protocol 2005”. Significantly, however, it qualifies that prescription. One qualifier it states is “to the extent appropriate”. A further qualifier is that the policy is targeted to “business development, residential development (including rural residential development and the establishment of public space”. Other provisions of the CRPS also give direction on urban design, in various ways. Our Objective 3.3.7 is framed to both acknowledge the overarching importance of a high quality urban environment and to give overarching direction that will allow for targeted urban design direction in specifically identified contexts, through relevant other chapters.

[208] In addition to the specific targets that Mr Winchester identified (Central City, development of centres, some categories of multi-unit development), we envisage good urban design could also be targeted to the protection of areas of demonstrated special and valued character. We include a paragraph (b) to address that.¹²²

[209] Fundamentally, we consider that targeted intervention is the best way of ensuring the costs of urban design intervention do not exceed its benefits and that “sustainable management” is promoted. Because our Objective 3.3.7 would better allow for that targeting than any other provisions on urban design that were proposed, we are satisfied that it is better in giving effect to the CRPS and is most appropriate for achieving the RMA’s purpose.

Urban growth and form

[210] This is one important example of where we have carefully tested to ensure Objective 3.3.7 captures all relevant dimensions of policies it replaces. In particular, we have been mindful of the relatively prescriptive directions given on these matters by the CRPS, especially in Chapter 6, as is acknowledged in our specific reference to applicable CRPS-directed outcomes.

[211] For those reasons, we are satisfied that Objective 3.3.7 is the most appropriate for achieving the RMA’s purpose.

¹²² We note that paragraph (b) draws to an extent from Objective 3.6.4(a)(iii) of the Notified Version (concerning “natural and cultural environment”).

Objective 3.3.8 - Revitalising the Central City

[212] The Notified Version recognised the importance of Central City revitalisation, but not as a discrete priority in its own right. The Council’s proposed Objective 3.6.2 as to development form and function made reference to the restoration and enhancement of the role of the Central City. This theme was also reflected in the Council’s proposed Policy 3.6.2.7 (as to community focal points).

[213] Similarly, the Planning Experts’ Joint Version recognised elements of this approach in its proposed policy on community focal points. Separately, it added into a policy on “business development” a provision as to restoring, reinforcing and enhancing the role of the Central City. However, in questioning during closing submissions, counsel for the Crown/CERA acknowledged this addition to that policy was misplaced.¹²³

[214] Mr Bartlett QC, counsel for AMP Capital Investors (NZ) Ltd, sounded caution about imposing any bias in favour of Central City retail activity, in terms of the risks and costs associated with such planning intervention. His submission was supported by Mr Fraser Colgrave, an economist. In part, that submission and evidence questioned the validity of Mr Tim Heath’s independent evidence, for the Council, in support of what the Notified Version described as commitment to the “primacy” of the Central City “alongside a network of complementary suburban and town centres”.¹²⁴

[215] We note that the CCRP explains that it has not adopted what the draft had proposed (namely to restrict development outside the Central City to protect the Central City as a consolidated business hub). The CCRP explains that restriction of suburban development was not “necessary or desirable” for achieving the aspirations of the CCRP including as to continued investment in the Central City.¹²⁵

[216] Mr Nevell, on behalf of the Crown/CERA, gave evidence that revitalisation of the Central City is by no means assured, at least in the absence of effective direction. In particular, that evidence explained to us the very large scale of investment needed and the very large extent that it was dependent upon the private sector, particularly from new investors. That emphasised

¹²³ Transcript, page 1208, lines 3-14.

¹²⁴ Tim Heath is an independent expert on retail distribution.

¹²⁵ CCRP, page 105.

for us the very high importance of including in Strategic Directions (and in related Plan Chapters) provisions that will effectively encourage and stimulate Central City investment. We also heard about the important ingredients for a successful revitalisation. Importantly, revitalisation is not to put back what was the pre-earthquake CBD. That has been and gone, and something new is required. Those new ingredients are likely to include offices (of different grades) and public sector projects. However, such investment will not be sufficient. Substantial new residential investment is also sought (the CCRP refers to between 12,000 and 24,000 living in the central city).¹²⁶ In addition to the much-diminished existing retail presence, it is anticipated that the return of office activities and the introduction of new residential activity will help stimulate further retail presence.

[217] Mr Humphry Rolleston gave us some interesting insights. In his representation, he spoke about some of the challenges in securing sufficient interest in residential redevelopment, and also about the possible value of encouraging new tertiary education investment in the Central City. While an oral representation, Mr Rolleston's views helped to reinforce the requirements for a successful Central City revitalisation.

[218] In the final analysis, on the weight of evidence, we find it necessary and appropriate for the Replacement Plan to include provisions to promote and help secure successful recovery and revitalisation of the Central City. In that sense, we find it appropriate for the Plan to convey a preference to those ends. The fact that the Central City has been chosen, on behalf of the community, as the jewel in the crown makes that choice as the primary community focal point appropriate and valid. However, we find the weight of evidence also supports a preference being expressed in favour of Central City revitalisation, in Objective 3.3.8.

[219] We acknowledge that the evidence we have received so far is limited. As such, we consider it appropriate to frame the objective in terms of broad principle only. How that is then reflected in objectives, policies and rules of particular chapters will be a matter for our later consideration. In light of the limited evidence we have received and accepted, we consider that Objective 3.3.8 (as a dedicated provision) is more appropriate for achieving the RMA's purpose in regard to the Central City (as compared to the more dispersed treatment given in both the Notified Version and the Planning Experts' Joint Version).

¹²⁶ Miskell, para 7.5.

Objective 3.3.9 - Natural and cultural environment

[220] The CRPS includes various provisions as to the natural and cultural environment. These include objectives and policies and other provisions on fresh water, the coastal environment, ecosystems and indigenous biodiversity, beds of rivers and lakes and riparian zones, landscape, historic heritage and other matters.

[221] In addition, s 6 of the RMA (on matters of national importance), includes protection and preservation directives as to the natural character of the coastal environment (s 6(a)), outstanding natural features and landscapes (s 6(b)), areas of significant indigenous vegetation and significant habitats of indigenous fauna (s 6(c)), public access to and along the coastal marine area, lakes and rivers (s 6 (d)), and the protection of historic heritage (s 6(f)). Alongside that, s 7 directs that particular regard be given to a range of related topics, including the maintenance and enhancement of amenity values and of the quality of the environment (s 7(c), (f)), and the intrinsic values of ecosystems (s 7(d)).

[222] All of that provides ample direction that these matters ought to be addressed in Strategic Directions. Nor was that a matter of serious challenge in any evidence called by any submitter.

[223] On the other hand, the evidence we received on this matter was very limited. On that basis, we have determined to include Objective 3.3.9. In doing so, given those limitations, we have added the following rider:

The requirement for further or alternative strategic direction to be provided in respect of the “Natural and cultural environment” will be reconsidered by the Panel as part of its further hearing of relevant proposals.

[224] We emphasise that we expect to receive detailed expert evidence on this topic from relevant disciplines (not simply planning evidence), such as can assist us to ensure properly targeted provision in the Replacement Plan, including in the expression of any Strategic Direction objective(s). We see that as very important, given the use, development and protection trade-offs that can be associated with such provisions. Those trade-offs can impact on both private property rights and at a wider community scale.

Objective 3.3.10 - Commercial and industrial activities

[225] The Notified Version did not include any specific provision to acknowledge the importance of the recovery of commercial and industrial activities for the expedited recovery and long-term economic and employment growth of Christchurch.

[226] The Planning Experts' Joint Version did so, proposing the following:

Ensure the recovery of commercial and industrial activities in a way that promotes an expedited recovery and long term economic and employment growth through enabling rebuilding of existing business areas, revitalising of centres, and provision in greenfield areas.

[227] We are satisfied that this consensus position was well supported by the independent expert evidence we heard. That evidence satisfied us as to the importance of recognising the link between the recovery of commercial and industrial activities, and Christchurch's recovery and its long-term economic and employment growth.

[228] The Planning Experts' Joint Version recommended the inclusion of a policy, rather than an objective. We have already set out our reasons for why we have confined Strategic Directions to objectives.

[229] However, we found little adjustment was needed to express this provision as an objective. We have used subparagraphs to improve clarity. We find the words "promotes an expedited recovery and...", as used in the Planning Experts' Joint Version, do not give sufficient clarity of purpose. Hence, we have liberated the proper verb in "expedites the recovery and...". We find "ensure that" misplaced, as that is beyond the scope of what can be delivered through plan provisions. However, we consider active stimulation ought to be expressed in the objective. That is in the sense that we see this is an area where plan methods will extend beyond regulatory ones to proactive initiatives and incentives to secure the confidence of investors to invest.

Objective 3.3.11 - Community facilities and education activities

[230] Again, we found the Planning Experts' Joint Version was well-supported on the evidence. It served to demonstrate that the Notified Version would not have given helpful direction on these matters. For those reasons, we find that the Planning Experts' Joint Version would achieve the RMA's purpose. However, we consider Objective 3.3.11 will better do so.

We have explained why we consider an objective is more appropriate for this purpose. In addition, we have tightened the provision by referring to “expedited” rather than “timely” and expanded its coverage to the establishment of new facilities, in addition to the “recovery” of facilities. We have also clarified aspects of drafting.

[231] For those reasons, we are satisfied that Objective 3.3.11 is the most appropriate for achieving the RMA’s purpose.

Objective 3.3.12 – Infrastructure (and related definitions)

[232] On the topic of infrastructure, facilitated expert witness caucusing saw a large degree of consensus being achieved prior to commencement of the hearing, as between the Council and infrastructure providers. That significant consensus was as to both the form and the content of proposed infrastructure provisions for Strategic Directions (and related definitions). That consensus was reflected in the substance of changes proposed by Mr Eman, for the Council.¹²⁷ Ultimately, that consensus led to the development of a more refined set of proposed provisions set out in the Planning Experts’ Joint Version. That version reveals very confined differences of opinion amongst those experts. Helpfully, that version also records sources of foundation evidence for the changes proposed. As such, we are satisfied that the experts’ joint recommendations for change are well supported on the evidence.

[233] However, we have not overlooked issues that various submitters have raised on the substance of these proposed provisions despite that large degree of consensus. In particular:

- (a) Eros Clearwater Holdings Limited and Eros Land Holdings Limited (‘Eros/Clearwater’) presented evidence and made submissions about whether an exception should be accorded to the Clearwater land, from what Strategic Directions provided for in respect to avoidance of noise sensitive activities within the 50dBA Ldn noise contour for Christchurch International Airport Limited. On behalf of Eros/Clearwater, Mr Cleary’s closing submissions raised issues with aspects of the Planning Experts’ Joint Version. Christchurch International Airport Limited (‘CIAL’) expressed other concerns.

¹²⁷ Eman rebuttal, Attachment A.

- (b) CIAL sought specific provision as to the management of bird strike risk for aircraft using the Airport.
- (c) Gelita sought that we expand the application of reverse sensitivity provisions beyond strategic infrastructure to also encompass activities such as heavy industry.¹²⁸
- (d) Transpower sought various changes to the provisions to give better effect to the National Policy Statement on Electricity Transmission (‘NPSET’).

[234] In addition, we must be satisfied that the provisions we decide upon properly give effect to NPSET and the CRPS. The CRPS has specific relevance to the consideration of issues in relation to noise and Christchurch International Airport.

Exemption for the Clearwater land

Planning Experts’ Joint Version

[235] The Planning Experts’ Joint Version proposed the following exemption within its applicable policy (2(c)(iii)) as to avoiding noise sensitive activities within the 50dBA Ldn noise contour for Christchurch International Airport:

... except... the limited extent of activities authorised within the Open Space 3D (Clearwater Zone).

[236] However, the Version recorded disagreement between Mr Phillips (planning expert for Eros/Clearwater), Mr Bonis (planning expert for CIAL) and Mr Eman “as to the extent to which ‘authorised’ is needed or more specific definition is required in this policy”. It also observed that this was a matter that may be resolved in Stage 2, when considering provisions for Clearwater.

Submissions for CIAL

[237] In her closing submissions for CIAL, Ms Appleyard cautioned that the wording of proposed Policy 2(c)(iii) of the Planning Experts’ Joint Version was loose and (depending on

¹²⁸ Gelita NZ Ltd (#1014).

how it was read) may not give proper effect to the CRPS. On that basis, CIAL proposed that it be amended by the addition of a definition of “authorised” to mean:

The scale of building development in the Open Space 3D (Clearwater) Zone shall not exceed... that authorised under Variation 93 to the Operative Christchurch City Plan.

Closing submissions for Eros/Clearwater

[238] Mr Cleary submitted that we should confirm proposed Policy 2(c)(iii), as worded in the Planning Experts’ Joint Version. However, he said that was premised on certain assumptions as to how its references to “limited extent” and “authorised” would be treated:

- (a) One assumption was that the meaning and practical effect of those words could be the subject of evidence and submissions in Stage 2 of the Replacement Plan enquiry process. On this, he pointed out that Eros/Clearwater were opposed to any strict reading of these words such as would limit them to only mean permitted activities.
- (b) A related assumption was that the agreement reached by the planning experts indicated that they were of the opinion that their proposed Policy 2(c)(iii) would give effect to Policy 6.3.5(4) of the CRPS. CIAL’s closing submissions recorded a different position on this point.

How we interpret Policy 6.3.5(4) CRPS

[239] Relevantly, Policy 6.3.5(4) of the CRPS says:

Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by... Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50 dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 64).

[240] We note that Policy 6.3.5(4) concerns only “new development”. On a purposive reading, we are satisfied that this would not catch any permitted activity under the Open Space 3D (Clearwater) Zone of the existing district plan. In addition, we consider that it would not catch activities that were authorised by resource consent on the date the policy came into effect (i.e. on 6 December 2013), provided the resource consent can still be exercised. We consider our

purposive reading¹²⁹ of “new development” appropriate in the sense we consider it unlikely that the drafting intention was to remove any such existing lawful right to develop.

[241] That leads us to the relevant aspects of Objective 3.3.12(b) of this decision, and our evaluation of it against other options.

[242] CIAL proposed that the Planning Experts’ Joint Version of the exception (to the avoidance of noise sensitive activities within the noise contour) be amended by adding a definition of “authorised”. This definition was confined to the “scale of building development” and to what was “authorised under Variation 93” of the existing district plan.

[243] Insofar as it goes, we consider that CIAL proposal is generally in keeping with the intentions of the CRPS. However, we find it falls short in not explicitly providing an exception for the ability to exercise a resource consent secured before 6 December 2013 (and that remains in effect). We recognise that the evidence we heard from Eros/Clearwater did not detail any specific resource consents that were in effect (but not exercised). Rather, their focus was on plan provisions. However, we consider that the exception allowed for by this provision should encompass reference to existing resource consents for completeness. In addition, we consider it clearer to refer to the actual name of the zone (“Open Space 3D (Clearwater) Zone”) rather than to Variation 93.

[244] We have worded Objective 3.3.12 relevantly as follows:

Strategic infrastructure, including its role and function, is protected by avoiding adverse effects from incompatible activities, including reverse sensitivity effects, by, amongst other things... avoiding noise sensitive activities within the 50 dBA Ldn noise contour for Christchurch International Airport, except... for permitted activities within the Open Space 3D (Clearwater) Zone of the Christchurch City Plan or activities authorised by resource consent granted on or before 6 December 2013.

[245] Counsel did not seek that we revisit what the Planning Experts’ Joint Version proposed for the first bullet point (as to the meaning of “existing”). As such, we are presently satisfied that Objective 3.3.12(b) gives sufficient effect to the CRPS. However, we record that we have capacity to revisit this question (in terms of the OIC) if that is called for at Stage 2 of our enquiry.

¹²⁹ *Powell v Dunedin City Council* [2004] 3 NZLR 721 at [35] (CA).

[246] We have already covered off our reasons for confining Strategic Directions to objectives. For the reasons stated, we consider that the quoted part of Objective 3.3.12(b) in this decision properly gives effect to the CRPS. We are satisfied, on the basis of the weight of evidence, that this preference in favour of protection of the Airport is the most appropriate for achieving the RMA's purpose. We heard about the strategic importance of the Airport from Mr Boswell (General Manager Strategy and Sustainability) and Mr Osborne (an economist). We acknowledge that the CIAL evidence on these matters was relatively confined; but it was uncontested. On that basis, we accept it for present purposes. We are satisfied, in light of that evidence, that reverse sensitivity protection for the Airport is warranted. We acknowledge that such protection involves a trade-off, in the sense of limiting development opportunity at Clearwater. However, we consider that trade-off accords with Part 2, RMA. Specifically, that is on the basis of the relative scale of economic and social wellbeing importance of the Airport, both for Christchurch and nationally. In any case, in determining how to best make that trade-off, we must give effect to the CRPS. We find that the CRPS is relatively prescriptive and directive in that respect.

[247] Mr Cleary also submitted that the Council was precluded from acting inconsistently with the LURP in the preparation of the Replacement Plan. As we have noted, we accept that we are also subject to that directive. Mr Cleary went on to submit, "To the extent that there might be any tension between the Clearwater Exemption and a single policy within the RPS, it is clear that the decision-makers were comfortable in holding any such (asserted) tension was acceptable".¹³⁰

[248] To the extent that Mr Cleary was suggesting that this was a basis for allowing for a Clearwater exemption at odds with giving effect to the CRPS, we disagree. Rather, we find it invalid to seek to read back the obligation to give effect to the CRPS in that way.

[249] We have set out our interpretation of the CRPS. We have done so, mindful that its policy 6.3.5(4) is one part of a document to be read as a whole. However, we find nothing elsewhere in the CRPS to take away from its plain meaning and effect. As such, we are not in a position to deny any aspect of our statutory obligation to give effect to the CRPS by reading that obligation down in light of the LURP. To the extent that Eros/Clearwater consider that the

¹³⁰ Eros/Clearwater closing submissions, 4.12.

CRPS ought to have been differently framed, that is not something we can deliver any relief about.

[250] Mr Cleary made submissions (with reference to Mr Phillips' evidence) as to the high amenity values of Clearwater, and as to the value of non-complaint mechanisms for avoiding noise risks. Whether or not that is so, it does not overcome the requirement to give effect to the CRPS. On the same basis, we did not find helpful Mr Cleary's submissions as to whether the Council (allegedly supported by CIAL) have acted inconsistently (in regard to "Plan Change 84") with their current positions or as to whether Mr Bonis had given inconsistent evidence on that matter. Those submissions are not directed to what is relevant for our present purposes. They did not influence how we weighed Mr Bonis's evidence.

[251] Mr Cleary asked for a change to the Plan's definition of "sensitive activities" so as to ensure exemption for short term stays in guest accommodation. We have decided against doing so at this time, given that we have not received sufficient evidence and the definition serves wider purposes beyond Strategic Directions. These matters could be relevant to consideration of later chapters.

Management of bird strike risks for the Airport

[252] There was no provision for the management of bird strike risks in the Notified Version. CIAL sought such provision in its submission, and this was further addressed in the evidence of Mr Boswell and Mr Bonis. The Planning Experts' Joint Version did not make provision for it, recording:

Bird strike clause not agreed, particularly in the context of "avoid". Preference for "manage" and may sit better in phase 2 chapter 6 and in subdivision chapter? Policy 2 is likely to address bird strike at a generic level via avoiding adverse effects.

[253] CIAL sought, through Mr Bonis, policy provision to "Ensure the threat of bird strike to Christchurch International Airport operations is minimised when considering plan changes, resource consents or any other development through the management of Bird Strike Risk Activities".¹³¹ Those Activities were proposed to be defined to encompass a very wide range of matters, namely "Within 13 kilometres of [the] ... Airport includes, but is not limited to, the creation, design and management of water features, stormwater management systems, the

¹³¹ Bonis, para 69.

establishment of refuse dumps, landfills, sewage treatment and disposal, pig farming, fish processing, cattle feed lots, wildlife refuges, abattoirs and freezing works, and any other activities that have the potential to attract dangerous bird species.”¹³²

[254] The evidence we heard on this topic was thin. Mr Boswell referred to CIAL’s responsibility for managing this risk. He asserted bird strike risk was “a key threat” to the safe operation of the Airport, noting that “a single strike will have catastrophic effects.” He did not elaborate further.¹³³

[255] Neither Mr Bonis nor Mr Boswell could elucidate as to how the list of bird strike risk activities was derived. We were given little assistance on how this corresponded to the environment of the Airport (for instance in terms of its proximity to the Waimakariri River, and to water features at Clearwater). When we asked, we were given little assistance as to the number of land owners giving rise to this risk.

[256] It seems to us CIAL’s proposal covers such a wide geographic area it would encompass most of metropolitan Christchurch and large swathes of rural land.

[257] Mr Bonis readily conceded to the lack of any adequate cost-benefit analysis, for our s 32AA evaluation purposes. He acknowledged, also, the importance of proper engagement with affected landowners. As such, Mr Bonis proposed that only light-handed treatment was appropriate, in terms of what (if anything) should be included in Strategic Directions at this time.¹³⁴

[258] We accept, as a starting proposition, that bird strike risk is likely to be a real risk for the Airport. We accept as valid Mr Boswell’s evidence that a single strike may have catastrophic consequences, but record that Mr Boswell did not elaborate on the nature of those consequences, nor of the risk profile. However, we accept that the effects are potentially catastrophic.

[259] Given that “effect”, under the RMA, extends to a potential effect of low probability but high potential impact, we accept that bird strike qualifies for consideration. Given it could

¹³² Bonis, para 78.

¹³³ Boswell, para 40; transcript page 1052, lines 38-41.

¹³⁴ Transcript, page 1090, lines 35-47.

affect airport operations, we accept at this stage that it qualifies for inclusion in Strategic Directions.

[260] We carefully considered whether, even so, this matter should be left aside for Stage 2 consideration. On balance, we have decided to include provision at this time to the following effect (subject to a rider):

...managing the risk of bird strike to aircraft using Christchurch International Airport.

[261] We have included the following rider in a footnote:

The requirement for alternative strategic direction in respect of Objectives 3.3.12(b)(iii) and (iv) will be reconsidered by the Panel as part of its further hearing of relevant proposals.

[262] We record that we will need substantial further evidence on this topic, at Stage 2. Specifically, in order to define appropriate management consequences (including as to whether these are to be confined to non-regulatory ones, and/or include any measures affecting or restricting land use, and/or requiring effects assessment to be undertaken on specified applications in specified areas).

[263] On balance, we find that inclusion of that provision within the objective, together with that rider, is the most appropriate option for achieving the purpose of the RMA. That is in the sense that it provides some acknowledgement of the need to manage this issue, pending further consideration of the nature of that management.

Gelita gelatine factory

[264] Gelita (NZ) Ltd ('Gelita')¹³⁵ has a gelatine factory on a 3.14 hectare site in Woolston, zoned for heavy industry. The factory has been in existence there since 1855. We learned from Mr Monk (Gelita's General Manager) that its Woolston factory is New Zealand's sole producer of gelatine products, both edible and commercial. Over 70 per cent of its product is exported, and it has a 90 per cent share of the New Zealand market for edible product. However, Mr Monk explained that, in more recent years, odour discharge has been an issue. He explained this was in part due to aging plant, but has been exacerbated by earthquake damage. He explained that this has given rise to a "reverse sensitivity" problem, as a result of

¹³⁵ Submitter #1014.

new land use activities (mixed use residential and retail) coming to be established in close proximity to the factory. He commented that this has led to opposition to Gelita’s air discharge consent application, with these new businesses having expectations of a higher level of amenity than has been enjoyed in the area in the past. He spoke about the risks this posed for his company’s viability. He also addressed us on the wider strategic economic implications of failing to give proper direction about avoiding the potential conflicts that can result between activities when non-industrial activity moves into an industrial zone.

[265] We agree that controlling the location of incompatible activities to minimise conflict is of sufficient strategic importance to warrant provision in Strategic Directions. We do not know much of the background to Gelita’s particular position, but we consider Mr Monk’s point concerning the strategic consequences of mismanagement of this issue to be well made.

[266] Further, we do not have enough evidence to adjudge how influential air odour issues are in giving rise to activity conflict in the area.

[267] However, we do not consider that this should be addressed by expanding the application of a reverse sensitivity regime beyond strategic infrastructure. Specifically, on the evidence, we acknowledge Gelita is a significant local employer and contributes to the economy. However, the evidence does not persuade us that Gelita is of sufficient scale or significance to be a beneficiary of reverse sensitivity protection at the expense of other potential activities. As such, we consider Gelita’s issues are best addressed by a separate objective (3.3.14, which we address below), and in later specific chapters.

[268] On the evidence, we find that the Planning Experts’ Joint Version was sound in its recommendation that reverse sensitivity provisions, in Strategic Directions, should be confined to defined “strategic infrastructure” (as later defined). On consideration of the accepted evidence, we do not accept that Gelita qualifies for inclusion.

Definition of “reverse sensitivity”

[269] “Reverse sensitivity” is defined in Chapter 2 of the Replacement Plan:

... means the effect on existing activities from the introduction of new activities into the same environment, where the new activities may raise concerns or complaints regarding the effects of existing activities which could lead to restrictions being placed on the existing activities.

[270] Gelita asked that this definition be amended by striking out the words “into the same environment”.¹³⁶ Gelita’s planning expert, Mr Bligh, supported this change on the basis that he considered decision-makers would come to equate “environment” with “zone”, which he considered an overly-narrow construct.

[271] We do not think it likely that decision-makers would equate “environment” with “zone”, in view of the purpose of the definition. Inherently, the provision is dealing with the risks of conflicts occurring between activities, within a proximate area of influence. How narrow or broad that area is will depend on context, including the scale and impacts of the incumbent activity. It could be a narrow circle of immediate neighbours, or much broader. As such, we consider that “environment” is a more flexible word than “zone” and should, in any case, be retained. However, the need for such flexibility does serve to highlight the importance of precision in defining what activities can benefit from reverse sensitivity protection.

[272] While the definition is a little clumsy, we consider it satisfactory at this stage, for the purposes for which it is intended within Strategic Directions.

Transpower National Grid and NPSET

Definition of “strategic infrastructure”

[273] By the conclusion of the hearing there was a considerable degree of consensus as to what constituted “strategic infrastructure”. We have considered the precise wording carefully, and have made minor amendments to improve certainty and clarity. We have also included a definition of “national grid”, as requested by Transpower.

NPSET

[274] To an extent, we are given direction on how to provide for the national grid by the NPSET, to which the Replacement Plan must give effect. Its Policy 10 is:

In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.

¹³⁶ Evidence of Kevin Bligh, 2.4.

[275] NPSET also has a Policy 11 in regard to buffering, as follows:

Local authorities must consult with the operator of the national grid, to identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent. To assist local authorities to identify these corridors, they may request the operator of the national grid to provide local authorities with its medium to long-term plans for the alteration or upgrading of each affected section of the national grid (so as to facilitate the long-term strategic planning of the grid).

[276] The Notified Version did not include any policy for buffer corridors specifically. However, it included an objective on “amenity, health and safety” to the effect that “sensitive activities are not established near lawfully established activities that generate noise, odour and other adverse effects”. The Planning Experts’ Joint Version provided for a concept of buffering, as follows:

Ensuring... strategic infrastructure, including its role and function, is provided for and is protected by avoiding adverse effects, including reverse sensitivity effects from incompatible activities.

[277] In its submissions, Transpower sought such provision, as a foundation for the detail to follow in subsequent chapters. Mr Beatson submitted that this is a key component to facilitate the long-term strategic planning of the Grid.

[278] We are satisfied that Objective 3.3.12 gives proper effect to NPSET (and is better than both the Notified Version and the Planning Experts’ Joint Version in doing so). Specifically:

- (i) paragraph (a) acknowledges the benefits of infrastructure;
- (ii) paragraph (b) makes provision for “reverse sensitivity” protection for strategic infrastructure (including the national grid); and
- (iii) paragraph (b)(ii) provides explicitly for buffer corridors.

Giving effect to NPSET in the context of Strategic Directions being confined to objectives

[279] For the reasons we have stated, we have determined that Strategic Directions should be confined to objectives. That has had some consequences for the scale of response we have made to some policies of NPSET, as compared to the Planning Experts’ Joint Version. Specifically, that Version included a policy:

Minimise significant adverse effects from all infrastructure, recognising that for strategic infrastructure the constraints imposed by the technical and operational requirements can limit the extent to which it is feasible to minimise such effects.

[280] We recognise that this proposed policy responds, in part, to NPSET (particularly, its Policy 3). This is reflected, to some extent, in Objective 3.3.12(c). However, beyond that we consider the better place to consider the framing of policies on infrastructure is in considering the relevant later chapters of the Replacement Plan.

Overall evaluation of Objective 3.3.12

[281] We are satisfied that Objective 3.3.12 is the most appropriate for achieving the purpose of the Act, in regard to the matters it addresses. We have set out our reasons for reaching that finding on the various specific matters raised by submitters. For those reasons, we find Objective 3.3.12 more appropriate for achieving the purpose of the Act than any of the various alternative approaches put to us.

[282] We have been mindful that having reverse sensitivity provisions in Strategic Directions involves picking winners. Specifically, by according protection to one activity from others, those other activities bear a cost in terms of restriction and constraint on development opportunity.

[283] It is important that such provisions are properly targeted, in terms of what is most appropriate for achieving the purpose of the Act. On the accepted evidence, we are satisfied that Objective 3.3.12 is properly targeted. In particular, that is in terms of how strategic infrastructure is defined, how specific aspects of protection are described for certain identified strategic infrastructure, and in the fact that the requirements of paragraph (b)(iii) and (iv) will be reconsidered as part of hearing of relevant other proposals for the Replacement Plan.

[284] For all of those reasons, we have determined that Objective 3.3.12, as framed by this decision (and the associated definitions), will give effect to the CRPS and NPSET and is the most appropriate to give effect to the RMA's purpose. To the extent that we have not explicitly covered all matters of content within the objective, that is because those matters are non-contentious or are matters of drafting style.

Objective 3.3.13 - Emergency services and public safety

[285] The Notified Version included objectives on natural hazards (3.6.5) and amenity, health and safety (3.6.6), but did not make specific provision for emergency services. The Planning Experts' Joint Version did so, in the context of its proposed policies as to public safety and accessible development. The public safety policy was to "Ensure that provision is made for emergency service access and firefighting capability". The accessible development policy was, relevantly, "Locate and design development and activities, including the transport network, so as to... provide adequate and efficient access for emergency service vehicles".

[286] We are satisfied that the tenor of that joint planning experts' recommendation was well supported on the evidence we heard from Mr Alan Merry, Manager Strategic Redevelopment for the NZ Fire Service. That evidence was unchallenged, and we accept it.

[287] The critical importance of having an effective emergency services regime is imbedded in the memories of the many who suffered the trauma of the Christchurch earthquakes. The challenge ahead is to ensure that effectiveness going forward, in the wake of the damage wrought by those events. That includes a need to rebuild, and in many cases, relocate all of the six "career" fire stations in Christchurch and repair many others for the volunteer service. Reconfiguration is needed so that station locations are optimal for the communities they serve, in particular so that Commission-set response times will be at least met, if not exceeded.¹³⁷ It also requires necessary access to properties and adequate fire-fighting water supplies.¹³⁸ Mr Merry also sought reference to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008. More appropriately, this should be considered in later hearings as to other proposals.

[288] Therefore, we have determined that we should include a specific objective on the topic of emergency services and public safety, addressing each of the elements identified by Mr Merry as required. We have framed it to capture the substance of what is recommended in the Planning Experts' Joint Version, but expressed as an objective. That anticipates that it will be reflected in associated Plan policies and rules, in relevant chapters of the Plan.

¹³⁷ Evidence of Alan Dermot Merry, section 4.

¹³⁸ Merry, 4.7.

[289] We are satisfied that Objective 3.3.13 is the most appropriate for achieving the RMA’s purpose.

Objective 3.3.14 - Incompatible activities

[290] We refer to our earlier discussion on the Gelita submission.

[291] The Notified Version made somewhat vague reference to the topic of managing incompatible activities. In its proposed objective on form and function (3.6.2), it referred to an “integrated pattern of development and well-functioning urban form” that, amongst a range of other things, “provides certainty about where development can occur”. In addition, as noted, it included provision in its objective on “amenity, health and safety” that “sensitive activities are not established near lawfully established activities that generate noise, odour and other adverse effects”.

[292] The Planning Experts’ Joint Version recognised the issue. It made specific provision in the context of addressing the redevelopment of brownfield sites. It also proposed a policy to “Control the location of activities so as to minimise conflicts between incompatible activities, and avoid conflicts where there may be significant adverse environmental effects on the health, safety and amenity of people and communities”.

[293] Similar to that jointly-recommended approach, we consider it appropriate to have a specific objective on this matter. We consider that the approach is warranted, especially in light of the evidence from Gelita.

[294] The earthquakes have caused significant flux and change in land use patterns, including in the relocation of activities. The position is likely to remain fluid for some time. That makes it important to manage the risks associated with incompatible activities. This involves managing the location of activities to minimise potential conflict. It also involves avoiding conflicts where there is a potential for long-term significant adverse health, safety and amenity consequences for people and communities.

[295] At such a scale, managing those impacts is important to achieving the RMA’s purpose. We see zoning as the primary suitable means for doing so. We have framed Objective 3.3.14

accordingly. We are satisfied that it is the most appropriate option for achieving the RMA’s purpose.

Objective 3.3.15 - Temporary recovery activities

[296] It was not a matter of dispute that Strategic Directions needed to provide a regime for temporary recovery activities.¹³⁹ These recognise the reality of the disruption that the earthquakes have caused in terms of dislocation, and an associated need for tolerance of this for a period sufficient to allow for “normal” operations to resume. However, given that significant impacts can arise from such tolerance, it is important to be satisfied that the boundaries of tolerance are clearly defined by what the demands of recovery require and are reasonable.

[297] There are two categories of such activities:

- (a) Temporary construction and related activity for recovery (e.g. infrastructure recovery), whose impacts can be wide-ranging and felt at a community scale;
- (b) Temporarily-displaced activities (e.g. for households or businesses, or to allow for continuation of community facilities), whose impacts are comparatively localised but can still be significant.

[298] The Notified Version and the Planning Experts’ Joint Version each proposed a specific policy on temporary recovery activities. A substantive difference between them was that the Planning Experts’ Joint Version made extended provision for temporary construction and related activities to 30 April 2022 (the Notified Version, in its proposed Policy 3.6.1.4, narrowing this to 30 April 2018, with a requirement for activities to then relocate into appropriately-zoned areas).

[299] Given that the Planning Experts’ Joint Version was founded on the evidence heard, and represents a substantial degree of consensus, we consider it more appropriate than the Notified Version as our starting position for achieving the RMA’s purpose. Our following evaluation is on that basis.

¹³⁹ OIC Statement of Expectations (f) and (g).

[300] For the reasons we have already set out, we have determined that Strategic Directions should be confined to objectives.

[301] Aside from that, the substance of Objective 3.3.15 of this decision differs from the policy recommended by the Planning Experts' Joint Version in the following essential respects:

- (a) As noted above, the Planning Experts' Joint Version proposed the following wording: "permitting temporary construction and related activities until 22 April 2022". This is subject to the rider: "Agreed this date may change subject to decisions in relation to Hearing 2 – Temporary Activities". It included a similar rider concerning the specified date in that part of its proposed policy, reading (relevantly): "providing for additional housing and accommodation opportunities, business, services and community facilities... taking into account... the ability and/or practicality for the activity to be discontinued by 30 April 2018". We have decided that, as an objective, 3.3.15 should not specify dates for either matter (rather, this is better addressed in relevant rules). In respect of temporary activities, we pick up on two intentions in the Planning Experts' Joint Version. In addition to enabling a range of permitted activities, we make reference to: "providing for an additional transitional period" for the consideration of temporary construction and related and displaced activities. We note we have deliberately widened this to "temporary construction and related activities". That is so as to pick up associated infrastructure relocation or other related activities.
- (b) We have made various changes to align the objective more closely to the relevant wording of paragraphs (f) and (g) of the OIC Statement of Expectations. A range of temporary and construction activities will be "permitted",¹⁴⁰ and beyond this there will be a "transitional period" where further consideration can be given to their continuation.¹⁴¹
- (c) We have incorporated into this objective some additional matters covered by the Planning Experts' Joint Version. Those were its policies as to infrastructure recovery and aggregate. That is simply for clarity. However, for aggregate, we

¹⁴⁰ OIC, Statement of Expectations (f).

¹⁴¹ OIC, Statement of Expectations (g).

note that we have used the words “the importance”, rather than “the necessity”, deliberately. That was in view of the evidence before us, including from the aggregates sector. That satisfied us that this was an important matter in the recovery, but not such as to be inherently overriding, bearing in mind that aggregate extraction has adverse effects. We expect further evidence on these matters as the Replacement Plan inquiries continue. In addition, we have expanded the provision to specifically refer to concrete manufacturing. That was in light of the unchallenged evidence we heard as to fact that this should be included.¹⁴²

[302] The question of the duration of such temporary activity provision was raised by some submitters.

[303] The extended regime recommended by the Planning Experts’ Joint Version was consistent with what some submitters sought (for example, Lyttelton Harbour Business Association and Project Lyttelton).¹⁴³

[304] Mr English (in his capacity as a representative of the Ilam and Upper Riccarton Residents’ Association Inc (‘the Residents’ Association’))¹⁴⁴ spoke to the Residents’ Association’s sense of aggravation concerning the impacts of displaced Canterbury University activities on residents in that locality. He referred, in particular, to traffic inconvenience in the locality. His Residents’ Association was opposed to any extension to the discontinuance date specified in the Notified Version (i.e. 30 April 2018).

[305] We do not accept Mr English’s submission, as we are satisfied that all of the accepted evidence supports the recommendation of the Planning Experts’ Joint Version. Specifically, the substance of what he raised concerning the University was not such as to warrant the relief the Residents’ Association pursued. Indeed, such relief would be undermining of what needs to be secured for wider community wellbeing.

[306] The information we have received (in the context of the Temporary Activities hearing) indicates to us that there should be provision in the Replacement Plan for a cascading consent

¹⁴² Transcript, page 816, line 41; page 723, lines 21-23 and 31-46.

¹⁴³ Lyttelton Harbour Business Association (#769), Project Lyttelton (#1143).

¹⁴⁴ Submitter #738.

process over time. That will be a matter that we will cover in the decision we issue on that topic. In the meantime, we are satisfied that Objective 3.3.15 of this decision will properly accord with such an approach, and is the most appropriate option for achieving the purpose of the Act.

Our decision concerning the provisions

[307] We are satisfied that, individually and collectively, the objectives in Schedule 1 are the most appropriate way to achieve the purpose of the RMA. Specifically, they properly target the resource management issues that we are satisfied have been sufficiently and comprehensively identified for inclusion in Strategic Directions.

Identifying the parts of the operative plans to be replaced

[308] When making this decision, we are required to identify those parts of the existing district plans that are to be replaced.¹⁴⁵

[309] That obligation mirrors that which the Council had in notifying proposals for the Replacement Plan.¹⁴⁶ To that end, the Council included, with the Stage 1 proposals, tables identifying those provisions in the operative plan to be replaced.

[310] For this decision, we have considered those parts of the table relevant to Chapters 1 and 3. However, because Strategic Directions is now confined to objectives, we do not identify any objectives, policies or methods (including rules) of the existing plans that are appropriately replaced at this time.

[311] While there are corresponding objectives in both the operative Banks Peninsula District Plan and the Christchurch City Plan, there are associated policies and methods that implement those objectives that will remain in force until such time as they are replaced (by later proposals). As such, it would not be appropriate to delete any of those objectives at this time.

¹⁴⁵ OIC, cl 13(3).

¹⁴⁶ OIC, cl 6(1)(b).

[312] The provisions in Schedule 1, once approved, will become operative provisions of the Replacement Plan. As such, they will become critical considerations in the formulation of the balance of the Replacement Plan (in terms of s 75, as *operative* objectives).

[313] Schedule 3 identifies some provisions of the existing district plans that it would be appropriate to delete or replace. One is an overall objective for Christchurch. There are no other objectives, policies or methods (including rules). By this decision, these provisions are replaced by the content of s 3.2 Context and s 3.3 Objectives. Our reasons are set out in the right-hand column in the table in Schedule 3.

Overall evaluation and conclusions

[314] In light of the submissions and evidence we have considered, and for the reasons we have set out, we are satisfied that:

- (a) We have exercised our function, in making this decision, in accordance with the provisions of Part 2, RMA (there are no applicable regulations).
- (b) As part of the Replacement Plan, the Strategic Directions and Outcomes in Schedule 1 to this decision will:
 - (i) accord with and assist the Council to carry out its statutory functions for the purposes of giving effect to the RMA;
 - (ii) give effect to NPSET, the NZCPS and the CRPS (to the extent relevant);
 - (iii) duly align with other RMA policy and planning instruments, the land use recovery plans and the OIC (including the Statement of Expectations).
- (c) As part of the Replacement Plan, the objectives we have included in Strategic Directions (individually and collectively) are for the district and will achieve the purpose of the RMA.

[315] We record that those objectives are intended to have the primacy that is expressed, in relation to other provisions of the Replacement Plan (including policies and rules that will

implement them). We urge the Council to bear that in mind in regard to other proposals that we will come to consider during this enquiry. We also urge the Council to be mindful of the importance of coherence and consistency in drafting the provisions of other proposals. We specifically note that Objective 3.3.2, as an objective for the Replacement Plan, should also be considered in the drafting of all other proposals.

[316] Finally, in view of the requirement of our Terms of Reference that we deliver this decision at this early stage, we intend to keep under continuing review the question of whether any aspect of it should be revisited in light of what we come to consider in later stages of our inquiry into the Replacement Plan.

Letter from the Mayor of Christchurch received on 16 December 2014

[317] We record that, on 16 December 2014, after the close of the hearing, we received a letter from the Mayor of Christchurch on behalf of the elected Council. A copy has been posted on our website. As can be seen from the website, the letter correctly acknowledges the point that the Panel must only have regard to the submissions and evidence before us, rather than be influenced in any sense by the views the letter expresses. The letter then sets out some matters of background and expresses various concerns and aspirations that the Mayor and elected members have for the city and its communities. We acknowledge the Mayor's and Councillors' concerns and aspirations. Indeed, some of them were the subject of submissions and evidence. However we make no other comment on the letter other than to record that we took no account of it in our deliberations and it had no influence on our findings and decision.

Dated 26 February 2015

For the Hearings Panel:

Hon Sir John Hansen
Chair

Environment Judge John Hassan
Deputy Chair

Ms Sarah Dawson
Panel Member

Dr Philip Mitchell
Panel Member

SCHEDULE 1

Changes that the decision makes to the Proposals

Change Proposal 1 by:

- (a) **Deleting Section 9 - Strategic Outcomes of the District Plan, from Chapter 1 - Introduction**

and

- (b) **Deleting Section 5 - The relationship between the District Plan and other Resource Management Planning Documents, from Chapter 1 – Introduction, and substituting the following in its place:**

5 The relationship between District Plans and other Resource Management Planning Documents

District Plans form part of a group of planning and policy documents from all levels of government that together are required to achieve integrated management of natural and physical resources.

At a national level, the Resource Management Act 1991 provides for:

- i. **National Policy Statements** which set out objectives and policies for resource management matters of national significance that are relevant to achieving the purpose of the Act. Such statements guide subsequent decision-making under the Act at the national, regional and district levels.

The preparation of a **New Zealand Coastal Policy Statement** by the Minister of Conservation is mandatory, but other national policy statements, which must be approved by the Minister for the Environment, are optional (for example the National Policy Statement for Freshwater Management, the National Policy Statement for Renewable Electricity Generation and the National Policy Statement on Electricity Transmission). The District Plan must give effect to National Policy Statements.

- ii. **National Environmental Standards** which are regulations that apply nationally to the use, development and protection of natural and physical resources and which prescribe technical standards, methods or other requirements for implementing the standards in a consistent manner. National standards generally override existing provisions in plans that have a lower standard. Conversely, if a District Plan has a standard that is stricter than a national standard then that plan standard prevails.

At a regional level, the Act provides for:

- i. A **Regional Policy Statement** required to be prepared by each regional council. These statements enable regional councils to provide broad direction and a framework for resource management within their regions. A regional policy statement must give effect to all national policy statements. The District Plan must give effect to the Canterbury Regional Policy Statement.
- ii. **Regional Plans** to be prepared by a regional council. These plans focus on particular issues or areas and assist regional councils to carry out their functions under the Act. A regional council must prepare a regional coastal plan (applying below mean

high water springs) but other regional plans are optional (subject to any directions in a national policy statement). Regional plans must give effect to national policy statements and regional policy statements. They must also not be inconsistent with water conservation orders and other regional plans for the region. The District Plan must not be inconsistent with regional plans.

Change Proposal 2 by:**Amending the definitions in Chapter 2 Definitions as follows:**

Insertions shown as Underlined

Deletions shown with Strikethrough

Development - delete the definition**Strategic infrastructure** – amend the definition as follows:**Strategic infrastructure**

means those necessary infrastructure facilities, services and installations which are of greater than local importance, and ~~ean~~includes infrastructure that is nationally significant. ~~The following are examples of strategic infrastructure:~~

Explanatory note

The following are non-exclusive examples of strategic infrastructure:

- (a) strategic transport networks;
- (b) Christchurch International Airport;
- (c) Lyttelton Port of Christchurch;
- (d) bulk fuel supply and storage infrastructure including terminals, wharf lines and pipelines;
- (e) defence facilities;
- (f) strategic telecommunication and radiocommunication facilities;
- (g) the ~~electricity transmission network~~National Grid; and
- (h) ~~other strategic network utilities~~public water supply, wastewater and stormwater networks and associated facilities.

Strategic transport networks – amend the definition as follows:**Strategic transport networks**

means:

- (a) the strategic road network;
- (b) the rail network;
- (c) the region's core public passenger transport operations and significant regional transport hubs (including freight hubs) such as Christchurch International Airport and Lyttelton Port of Christchurch; and
- (d) the strategic cycle network of major cycle routes.

National Grid – add the following Definition:**National Grid**

means the national grid as defined in the National Policy Statement on Electricity Transmission 2008.

Change Proposal 3 by:**Deleting the following Sections of Chapter 3 Strategic Directions:****3.1 Introduction****3.2 Context****3.3 Strategic Outcomes from the District Plan (*Transferred to Introduction Chapter*)****3.4 Key Issues and opportunities****3.5 Strategic directions for the district****3.6 Objectives and policies****3.7 Linkages**

and

Substituting the following in their place:**3.1 Introduction**

1. This Chapter:
 - a) Provides the overarching direction for the District Plan, including for developing the other chapters within the Plan, and for its subsequent implementation and interpretation; and
 - b) Has primacy over the objectives and policies in the other chapters of the Plan, which must be consistent with the objectives in this Chapter.
2. This Chapter recognises and sets the statutory planning context for the other chapters of the Plan, in order that they:
 - a) Clearly articulate how decisions about resource use and values will be made in order to minimise:
 - (i) reliance on resource consent processes; and
 - (ii) the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and
 - (iii) the requirements for notification and written approval;
 - (b) Set objectives and policies that clearly state the outcomes that are intended for the Christchurch district;
 - (c) Recognise and provide for the relationships of Ngāi Tahu Manawhenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, have particular regard to their role as kaitiaki and take into account the principles of the Treaty of Waitangi;
 - (d) Provide for the effective functioning of the urban environment of the Christchurch district, reflecting the changes resulting from the Canterbury earthquakes, including changes to population, land suitability, infrastructure, and transport;
 - (e) Facilitate an increase in the supply of housing, including by:
 - (i) confirming the immediate residential intensification changes included in the Land Use Recovery Plan; and
 - (ii) ensuring that the District Plan has capacity to accommodate up to 23,700 additional dwellings by 2028 (as compared with the number of households in the 2012 post-earthquake period); and

- (iii) addressing further intensification opportunities, in line with the Land Use Recovery Plan principle of supporting the Central City and Key Activity Centres; and
 - (iv) having regard to constraints on environmental and infrastructure capacity, particularly with regard to natural hazards; and
 - (v) providing for a wide range of housing types and locations;
- (f) Ensure sufficient and suitable development capacity and land for commercial, industrial, and residential activities;
 - (g) Provide for a range of temporary and construction activities as permitted activities, recognising the temporary and localised nature of the effects of those activities;
 - (h) Provide, as appropriate, for transitional provisions for the future of temporary activities established under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 after that order expires;
 - (i) Set a clear direction on the use and development of land for the purpose of avoiding or mitigating natural hazards; and
 - (j) Use clear, concise language so that the Plan is easy to understand and use.
3. The Council must commence a review of the provisions of an operative district plan within 10 years of the provisions having last been reviewed or changed, meaning that this Plan is likely to have a life of not less than 10 years. Whilst certain parts of the district's built environment will have been re-established and aspects of peoples' lives will have returned to normal within that timeframe, the district as a whole will still be in a state of recovery. In this Plan, therefore, the term "recovery" is intended to span the entire ten year timeframe, and in so doing facilitate the return to normality as quickly as possible, while also creating a strong platform for the longer term future of the district.
 4. Focussing as it does on Strategic Directions, this Chapter provides a series of high-level objectives for the district, and leaves the articulation of activity-specific and location-specific objectives and policies to the subsequent chapters of the Plan. However, the objectives and policies in the other chapters of the Plan must be consistent with the objectives in this Chapter.
 5. Within this Chapter, Objectives 3.2.1 and 3.2.2 have primacy, meaning that the remaining objectives must be expressed and achieved in a manner consistent with Objectives 3.2.1 and 3.2.2. The other objectives in this Chapter are to be read as a whole and no statutory hierarchy applies.
 6. In all other Chapters of the Plan, the objectives and policies must be expressed and achieved in a manner consistent with the objectives in this Chapter.

3.2 Context

3.2.1 Impact of the Canterbury earthquakes

The earthquakes of 2010 and 2011 devastated Christchurch, resulting in the death of 185 people, many serious injuries and widespread damage to, and destruction of, thousands of homes and businesses, including most of the Central City, and much of the city's infrastructure.

Christchurch people were significantly affected by the earthquakes. The pattern of damage was uneven, with some areas, such as the Central City and the east, devastated. A substantial number of people have lived, and continue to live, in substandard accommodation for extended periods.

Population levels fluctuated — there was an initial net loss of people from the city, followed by net population growth as the city's rebuild got underway. Households, particularly in the Central City and the east, relocated to the north and west of the city and to Waimakariri and Selwyn Districts. Many people had to leave their established communities. In some cases, people had to live further from their jobs or attempt to find new employment. The composition of communities changed. Many households, particularly those with children, moved out of Christchurch. There was also an influx of new people to the city to assist with the rebuild.

More than 7,000 of the most significantly affected residential properties were purchased by the Government and the housing removed. The total number of badly damaged homes in Christchurch was considerably higher, with an estimated 10,000-15,000 houses rendered uninhabitable. Social and affordable housing were disproportionately represented in the housing stock lost. As a consequence, the housing shortfall needs to be replaced as a matter of urgency, in addition to providing for ongoing growth and changes in housing demand.

The earthquakes also had a disastrous impact on commercial and industrial activity, interrupting the operation of many businesses and forcing others to relocate temporarily or permanently, or close. Over 50,000 workers were displaced from the Central City. There was a redistribution of business activity, particularly from the eastern and central city, to the north and west. Travel patterns for both people and freight changed substantially.

There was considerable damage to public infrastructure, including roads, bridges and underground services. Many of the district's community facilities were lost or damaged. The district lost many of its heritage features, and considerable damage was caused to natural and cultural values, particularly associated with waterways.

3.2.2 A city in transition

The earthquake rebuild is estimated as a \$40 billion investment in greater Christchurch, on top of business-as-usual development activity. This includes a \$4 billion cost to repair infrastructure, and the repair or replacement of more than 130,000 residential properties.

The effects of the earthquakes will be felt for many years and the shape of urban Christchurch will continue to change during the recovery period, particularly over the next 10 to 15 years. Further movement of people and households is likely as homes are repaired, new development is undertaken, and demographic changes occur as Christchurch evolves. As the rebuild proceeds, many businesses will need to relocate again and many are likely to move into the Central City as it recovers as the city's thriving heart.

The tourism sector remains seriously affected. Many businesses and community organisations continue to operate from temporary premises.

The District Plan must respond to the evolving needs of the community to enable rebuilding, recovery and future growth. Considering the scale of damage and rebuild, decisions made through the District Plan will have a significant, long-term influence on the city, its urban form and how the city functions. It will also influence how the city addresses the risks from future earthquakes and other natural hazards.

There is an unprecedented opportunity for this District Plan to expedite the efficient recovery and future for Christchurch as a dynamic and internationally competitive city, which meets the community's immediate and longer-term needs.

3.2.3 Ngāi Tahu Manawhenua

Prior to European settlement of Nga Pakihi Whakatekateka o Waitaha (Canterbury Plains) and Te Pataka o Rakaihautu (Banks Peninsula), Ngāi Tahu maintained numerous permanent and temporary settlements among, and gathered resources from, the network of springs, waterways, swamps, coastline, grasslands and lowland podocarp forests in the area. These

associations remain important to Ngāi Tahu and are key to its ongoing cultural identity and wellbeing.

Following the signing of the Treaty of Waitangi, the Crown purchased traditional Ngāi Tahu lands through a series of deeds, including Kemp's Deed under which the largest land sale, the 1848 Canterbury Purchase, took place. One of the conditions of sale was that Ngāi Tahu communities would continue to have adequate areas of land to occupy on a permanent and seasonal basis to provide for their present and ongoing needs, including access to the natural resources they had hunted and gathered for generations.

While certain areas were gazetted as Māori reserves, many of the Crown's guarantees were not upheld. As a result, Ngāi Tahu whānui have become alienated from the land that should have been set aside for them to live on. The Ngāi Tahu Claims Settlement Act 1998 records the Crown's apology to Ngāi Tahu and gives effect to the settlement of Ngāi Tahu's claims.

As described in Chapter 1, six papatipu Rūnanga are the organisations which represent Manawhenua within Christchurch District - Ngāi Tūāhuriri Rūnanga, Te Hapū o Ngāti Wheke Rūnanga (Rāpaki), Te Rūnanga o Koukourāata, Ōnuku Rūnanga, Wairewa Rūnanga, and Te Taumutu Rūnanga.

Ngāi Tahu Manawhenua's role as kaitiaki (guardian) is fundamental to their relationship with the environment. This is readily understood in relation to the protection of natural resources, such as water and biodiversity, and access to and protection of sites and areas of historic and cultural significance. Ngāi Tahu Manawhenua's interests in the rebuild and future development of Ōtautahi and its surroundings are much broader. They encompass a significant role and interest in the rebuilding and ongoing development of the city and the ability of Ngāi Tahu Manawhenua to provide for their economic and social wellbeing through access to affordable housing, appropriate education and community facilities, and economic opportunities.

Ngāi Tahu Manawhenua see an unprecedented opportunity to rediscover and incorporate Ngāi Tahu heritage alongside that of colonial Christchurch in the rebuild and future development of Ōtautahi and its surroundings, as well as to enhance the social, economic, cultural and environmental wellbeing of greater Christchurch.

3.2.4 Longer-term population change

Whilst there is uncertainty about the rate of recovery and growth, on current projections Christchurch will need to accommodate and provide services for a population that is still expected to grow by approximately 130,000 people by 2041. The demographic composition of the district is also projected to change significantly during the next 30 years. Like the rest of New Zealand, the district's population is ageing. The proportion of those aged 65 years and over will increase, nearly doubling in number by 2031.

Population growth, ageing and increasing cultural diversity will result in demands for additional housing (with a range of housing types and locations), commercial facilities and services, and infrastructure (such as transport), as well as changing the demand for community services and their delivery (for example, recreation activities).

The policy decisions already made and to be made over the next few years by central and local government (including through this District Plan), together with decisions by all other participants in the recovery, will influence the city's population growth, and its demographic and socio-economic composition.

3.2.5 Supporting recovery and the city's future

It is critical to ensure that the recovery of Christchurch is expedited. The District Plan plays an important role by providing certainty about where and how development will occur, and

making integrated provision for the community's immediate and longer term needs for housing, business, infrastructure and community facilities. It is essential that the District Plan clearly and actively supports the rebuilding of Christchurch and its social, economic, cultural and environmental recovery, at the same time as providing for the long-term sustainability of the city and the wellbeing of its residents.

3.3 Objectives

Interpretation

For the purposes of preparing, changing, interpreting and implementing this District Plan:

- (a) All other objectives within this Chapter are to be expressed and achieved in a manner consistent with Objectives 3.3.1 and 3.3.2; and
- (b) The objectives and policies in all other Chapters of the District Plan are to be expressed and achieved in a manner consistent with the objectives in this Chapter.

3.3.1 Objective - Enabling recovery and facilitating the future enhancement of the district

The expedited recovery and future enhancement of Christchurch as a dynamic, prosperous and internationally competitive city, in a manner that:

- (a) Meets the community's immediate and longer term needs for housing, economic development, community facilities, infrastructure, transport, and social and cultural wellbeing; and
- (b) Fosters investment certainty; and
- (c) Sustains the important qualities and values of the natural environment.

3.3.2 Objective - Clarity of language and efficiency

The District Plan, through its preparation, change, interpretation and implementation:

- (a) Minimises:
 - (i) transaction costs and reliance on resource consent processes; and
 - (ii) the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and
 - (iii) the requirements for notification and written approval; and
- (b) Sets objectives and policies that clearly state the outcomes intended; and
- (c) Uses clear, concise language so that the District Plan is easy to understand and use.

3.3.3 Objective - Ngāi Tahu Manawhenua

A strong and enduring relationship between the Council and Ngāi Tahu Manawhenua in the recovery and future development of Ōtautahi (Christchurch City) and the greater Christchurch district, so that:

- (a) Ngāi Tahu Manawhenua are able to actively participate in decision-making; and
- (b) Ngāi Tahu Manawhenua's aspirations to actively participate in the revitalisation of Ōtautahi are recognised; and
- (c) Ngāi Tahu Manawhenua's culture and identity are incorporated into, and reflected in, the recovery and development of Ōtautahi; and

- (d) Ngāi Tahu Manawhenua’s historic and contemporary connections, and cultural and spiritual values, associated with the land, water and other taonga of the district are recognised and provided for; and
- (e) Ngāi Tahu Manawhenua can retain, and where appropriate enhance, access to sites of cultural significance.
- (f) Ngāi Tahu Manawhenua are able to exercise kaitiakitanga.

3.3.4 Objective - Housing capacity and choice

- (a) For the period 2012 to 2028, an additional 23,700 dwellings are enabled through a combination of residential intensification, brownfield and greenfield development; and
- (b) There is a range of housing opportunities available to meet the diverse and changing population and housing needs of Christchurch residents, including:
 - (i) a choice in housing types, densities and locations; and
 - (ii) affordable, community and social housing and papakāinga.

3.3.5 Objective – Business and economic prosperity

The critical importance of business and economic prosperity to Christchurch’s recovery and to community wellbeing and resilience is recognised and a range of opportunities provided for business activities to establish and prosper.

3.3.6 Objective - Natural hazards

[The requirement for further or alternative strategic direction in respect of “Natural hazards” will be reconsidered by the Panel as part of considering the Chapter 5 Proposal.]

- (a) New subdivision, use and development, shall:
 - (i) be avoided in areas where the risks of natural hazards to people, property and infrastructure are assessed as being unacceptable; and
 - (ii) otherwise be undertaken in a manner that ensures the risks of natural hazards to people, property and infrastructure are appropriately mitigated;
- (b) Except that new strategic infrastructure may be located in areas where the risks of natural hazards to people, property and other infrastructure are assessed as being unacceptable, provided that:
 - (i) there is no reasonable alternative; and
 - (ii) the strategic infrastructure has been designed to maintain, as far as practicable, its integrity and form during natural hazard events.

3.3.7 Objective - Urban growth, form and design

A well-integrated pattern of development and infrastructure, a consolidated urban form, and a high quality urban environment that:

- (a) Is attractive to residents, business and visitors; and
- (b) Has its areas of special character and amenity value identified and their specifically recognised values appropriately managed; and
- (c) Provides for urban activities only:
 - (i) within the existing urban areas; and

- (ii) on greenfield land on the periphery of Christchurch’s urban area identified in accordance with the Greenfield Priority Areas in the Canterbury Regional Policy Statement Chapter 6, Map A; and
- (d) Increases the housing development opportunities in the urban area to meet the intensification targets specified in the Canterbury Regional Policy Statement, Chapter 6, Objective 6.2.2 (1); particularly:
 - (i) in and around the Central City, Key Activity Centres (as identified in the Canterbury Regional Policy Statement), larger neighbourhood centres, and nodes of core public transport routes; and
 - (ii) in those parts of Residential Greenfield Priority Areas identified in Map A, Chapter 6 of the Canterbury Regional Policy Statement; and
 - (iii) in suitable brownfield areas; and
- (e) Maintains and enhances the Central City, Key Activity Centres and Neighbourhood Centres as community focal points; and
- (f) Identifies opportunities for, and supports, the redevelopment of brownfield sites for residential, business or mixed use activities; and
- (g) Promotes the re-use and re-development of buildings and land; and
- (h) Improves overall accessibility and connectivity for people, transport (including opportunities for walking, cycling and public transport) and services; and
- (i) Promotes the safe, efficient and effective provision and use of infrastructure, including the optimisation of the use of existing infrastructure; and
- (j) Co-ordinates the nature, timing and sequencing of new development with the funding, implementation and operation of necessary transport and other infrastructure.

3.3.8 Objective – Revitalising the Central City

- (a) The Central City is revitalised as the primary community focal point for the people of Christchurch; and
- (b) The amenity values, function and viability of the Central City are enhanced through private and public sector investment.

3.3.9 Objective – Natural and cultural environment

[The requirement for further or alternative strategic direction to be provided in respect of the “Natural and cultural environment” will be reconsidered by the Panel as part of its further hearing of relevant proposals.]

A natural and cultural environment where:

- (a) People have access to a high quality network of public open space and recreation opportunities, including areas of natural character and natural landscape; and
- (b) Important natural resources are identified and their specifically recognised values are appropriately managed, including:
 - (i) outstanding natural features and landscapes, including the Waimakariri River, Lake Ellesmere/Te Waihora, and parts of the Port Hills/Nga Kohatu Whakarakaraka o Tamatea Pokai Whenua and Banks Peninsula/Te Pātaka o Rakaihautu; and
 - (ii) the natural character of the coastal environment, wetlands, lakes and rivers,

- springs/puna, lagoons/hapua and their margins; and
- (iii) indigenous ecosystems, particularly those supporting significant indigenous vegetation and significant habitats supporting indigenous fauna, and/or supporting Ngāi Tahu Manawhenua cultural and spiritual values; and
 - (iv) the mauri and life-supporting capacity of ecosystems and resources; and
- (c) Objects, structures, places, water/wai, landscapes and areas that are historically important, or of cultural or spiritual importance to Ngāi Tahu Manawhenua, are identified and appropriately managed.

3.3.10 Objective - Commercial and industrial activities

The recovery and stimulation of commercial and industrial activities in a way that expedites recovery and long-term economic and employment growth through:

- (a) Enabling rebuilding of existing business areas, revitalising of centres, and provision in greenfield areas; and
- (b) Ensuring sufficient and suitable land development capacity.

3.3.11 Objective – Community facilities and education activities

- (a) The expedited recovery and establishment of community facilities and education activities in existing and planned urban areas to meet the needs of the community; and
- (b) The co-location and shared use of facilities between different groups is encouraged.

3.3.12 Objective – Infrastructure

[The requirement for alternative strategic direction in respect of Objectives 3.3.12 (b) (iii) and (iv) will be reconsidered by the Panel as part of its further hearing of relevant proposals.]

- (a) The social, economic, environmental and cultural benefits of infrastructure, including strategic infrastructure, are recognised and provided for, and its safe, efficient and effective development, upgrade, maintenance and operation is enabled; and
- (b) Strategic infrastructure, including its role and function, is protected by avoiding adverse effects from incompatible activities, including reverse sensitivity effects, by, amongst other things:
 - (i) avoiding noise sensitive activities within the Lyttelton Port Influences Overlay area; and
 - (ii) managing activities to avoid adverse effects on the National Grid, including by identifying a buffer corridor within which sensitive activities will generally not be provided for; and
 - (iii) avoiding noise sensitive activities within the 50dBA Ldn noise contour for Christchurch International Airport, except:
 - within an existing residentially zoned urban area; or
 - within a Residential Greenfield Priority Area identified in the Canterbury Regional Policy Statement Chapter 6, Map A; or
 - for permitted activities within the Open Space 3D (Clearwater) Zone of the

Christchurch City Plan, or activities authorised by a resource consent granted on or before 6 December 2013; and

- (iv) managing the risk of bird strike to aircraft using Christchurch International Airport; and
- (c) The adverse effects of infrastructure on the surrounding environment are managed, having regard to the economic benefits and technical and operational needs of infrastructure.

3.3.13 Objective – Emergency services and public safety

Recovery of, and provision for, comprehensive emergency services throughout the city, including for their necessary access to properties and the water required for firefighting.

3.3.14 Objective - Incompatible activities

- (a) The location of activities is controlled, primarily by zoning, to minimise conflicts between incompatible activities; and
- (b) Conflicts between incompatible activities are avoided where there may be significant adverse effects on the health, safety and amenity of people and communities.

3.3.15 Objective - Temporary recovery activities

Temporary construction and related activities (including infrastructure recovery), and temporarily displaced activities, as a consequence of the Canterbury earthquakes are enabled by:

- (a) Permitting a range of temporary construction and related activities and housing, accommodation, business, services and community facilities, recognising the temporary and localised nature of such activities, and the need to manage any significant adverse effects; and
- (b) Providing an additional transitional period for consideration of temporary construction and related activities and temporarily displaced activities, taking into account:
 - (i) the need for the activity to remain for a longer period; and
 - (ii) the effects on the surrounding community and environment; and
 - (iii) any implications for the recovery of those areas of the district where the activity is anticipated to be located; and
- (c) Accommodating the adverse effects associated with the recovery of transport and infrastructure networks recognising:
 - (i) the temporary and localised nature of the effects of these activities; and
 - (ii) the long-term benefits to community wellbeing; and
 - (iii) the need to manage and reduce adverse effects; and
- (d) Recognising the importance of aggregate extraction, associated processing (including concrete manufacturing) and transportation of extracted and processed product to support recovery.

SCHEDULE 2**Provisions of operative district plans to be replaced or deleted by the proposed Strategic Directions and Introduction (in part) decision**

Operative provision to be replaced or deleted	Reason
Christchurch City Plan	
Volume 1 – Introduction to the Statement of Issues (part) Chapter 3 – The issues for Christchurch	Replaced by Chapter 3, s 3.2 Context
Volume 2 – The statement of objectives, policies and issues (in part) Section 1 Planning for a sustainable Christchurch	Replaced by Chapter 3 Strategic Directions as a whole
Banks Peninsula District Plan	
Vision Statement	Replaced by Chapter 3 Strategic Directions as a whole

SCHEDULE 3**Table of persons heard**

Submitter Name	Number	Person	Expertise or Role if Witness
Christchurch City Council	310	M Theelan	Planning Overview
		H Nicholson	Urban Design
		R Osborne	Transport
		D Falconer	Transport
		P Osborne	Economics
		T Heath	Retail/Centres
		M Stevenson	Commercial /Industrial
		S Blair	Residential
		J Carter	Natural Hazards
		P Eman	Planning
		R Rickerby	Marketing and plan usability
Mahaanui Kurataiao Ltd & Te Rūnanga o Ngāi Tahu	1145 FS1448	Tā Mark Solomon ¹⁴⁷	Ngāi Tahu overview
		G Tikao	Cultural Issues
		T Lenihan	Cultural Issues
		L Murchison	Planning
		T Sewell	Cultural issues
Ngāi Tahu Property	840 FS1375	T Sewell	Cultural Issues
		M Copeland	Economist
		J Jones/D Chrystal	Planning

¹⁴⁷ Tā Mark Solomon was not required to attend.

Submitter Name	Number	Person	Expertise or Role if Witness
Crown	495 FS1347	D Miskell	Central City Recovery
		J Richards	Transport
		T Denne	Economics
		M Ogg	Commercial and Industrial Activity
		R Rouse	Horizontal Infrastructure
		I Mitchell	Housing
		B Smith	Government response to earthquake recovery
		D Hobern	Educational Infrastructure
		A Merry	NZ Fire Service Infrastructure
		A MacLeod	New Zealand Fire Service and New Zealand Transport Agency
		M Mitchell	Social and Cultural
		K Berryman	Natural Hazards
		S Timms	Planning
J McDonald	Industry Representative		
N Jackson	Demographics		
Property Council	595 FS1294	K Murray	Economics
		M Bonis	Planning
		J Jones/D Chrystal	Planning
Styx Living Laboratory Trust	1193	J Glennie	Planning

Submitter Name	Number	Person	Expertise or Role if Witness
Carter Group Limited	386/FS1355	J Phillips	Planning
Maurice R Carter Limited	377/FS1316		
Maurice Carter Charitable Trust	385		
Oakvale Farm Limited	381/FS1253		
Marriner Investments Limited	378		
Marriner Investments No. 1 Limited	380/FS1256		
Avonhead Mall Limited	379/FS1417		
AMP Capital Palms Pty Limited	814/FS1308		
TEL Property Nominees Limited	816/FS1325		
Scentre (New Zealand) Limited	742/FS1270		
AMP Capital Investors NZ Ltd	1187 FS1335	D Cosgrove	Company Representative
		F Colgrave	Economist
		P Harte	Planning
Bunnings Ltd	725/FS1367	D Chrystal	Planning
Kiwi Property Trust	761/FS1352		
Progressive Enterprises	790/FS1450		
Gelita	1014	G Monk	Company Representative
		K Bligh	Planning
Faulks Investments Ltd	799 FS1363	T Faulks	Company Representative
		C Pyewell	Company Representative
		M Brown	Planning
Isaac Conservation and Wildlife Trust	704 FS1357	K Seaton	Planning
Canterbury Aggregate Producers Group	886 FS1334	R English	Economics
		T Ensor	Planning
Chorus NZ	364	M McCallum-Clark	Planning
Spark NZ	363		

Submitter Name	Number	Person	Expertise or Role if Witness
Transpower	832	R Noble	Company Representative
		M Copeland	Economics
		A MacLeod	Planning
Liquigas	774 FS 1333	J Clease	Planning
Mobil Oil, Z Energy Ltd and BP Oil Ltd	723 FS1295	Mr C Taylor	Company evidence
		D Le Marquand	Planning
		C Taylor	Business
Eros Clearwater Holdings Ltd	730 FS1314	J Phillips	Planning
Ilam and Upper Riccarton Residents Association	738	P Harding	
		R English	
Peterborough Village Incorporated Society	1228	D Lucas	Landscape
Avonhead Community Group	1018	M Thomas/C Paris	
Hagley/Ferrymead Community Board	803	S Templeton	
Riccarton/Wigram Community Board	254	M Mora	
Spreydon/Heathcote Community Board	889	P McMahon	
Lyttelton/Mt Herbert Community Board	762	P Smith	
Burwood/Pegasus Community Board	375	L Stewart	
Canterbury District Health Board	648	A Stevenson & S Brinsdon	
		A Humphrey	Public health
H Rolleston	906	H Rolleston	

Submitter Name	Number	Person	Expertise or Role if Witness
R Broughton	820	R Broughton	
H Broughton	592	H Broughton	
B Hutchinson	1040	B Hutchinson	
Christchurch International Airport Limited	863 FS1359	R Boswell	Company Representative
		P Osborne	Economist
		M Bonis	Planning
Lyttelton Port Company Ltd	915 FS1444	P Davie	Chief Executive
		M Copeland	Economist
		M Bonis	Planning
Waterloo Park	920 FS1277	J Clease	Planning
Panel Witness		M Crisp	Planning