

**BEFORE THE INDEPENDENT HEARINGS COMMISSIONER APPOINTED BY
THE CHRISTCHURCH CITY COUNCIL**

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of an application for resource consent under section 88 of
the RMA by Cambridge 137 Limited for demolition of a
heritage building and construction of a hotel

APPLICANT Cambridge 137 Limited

LEGAL SUBMISSIONS ON BEHALF OF CAMBRIDGE 137 LIMITED

11 October 2024

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INTRODUCTION

- 1 These legal submissions are presented on behalf of Cambridge 137 Limited (**Applicant**) in support of its application to demolish Harley Chambers and build a new hotel building¹ (**Application**).
- 2 The Application represents an exciting opportunity to see one of the remaining and, sadly, derelict, reminders of the Canterbury Earthquakes demolished, and replaced with a four-star, 42m, 11 level, 200 room hotel, with hotel facilities including a café, bar and restaurant (and associated kitchen), and a fitness centre.
- 3 The Application site, at the corner of Cambridge Terrace and Worcester Chambers, is a landmark site in Christchurch. Overlooking the Ōtākaro Avon River, just down from the Convention Centre, and between the bustling Terraces and the Art Centre, it is a prime site for a hotel development.
- 4 Harley Chambers was, until very recently, a heritage listed building within the Christchurch District Plan (**District Plan**). However, as a result of the Christchurch City Council's (**Council**) intensification planning instrument process Plan Change 14 (**PC14**) to implement the National Policy Statement for Urban Development (**NPS-UD**), it is now a permitted activity to demolish the building.² Not only that, PC14 has materially altered the planning framework with respect to intensification within the Christchurch CBD (reflective of the requirements of the NPS-UD). These changes reflect a significant move away from the post-Earthquake planning framework which sought to limit height limits within the City Centre, and instead to focus on establishing well-functioning urban environments including realising as much development capacity as possible, to maximise the benefits of intensification.³
- 5 The Applicant has undertaken a considered approach to the design of the new proposed hotel, which is a more than worthy replacement. Its design and massing has paid homage to Harley Chambers but has also been sensitive of nearby heritage buildings, including both Worcester Chambers and the Canterbury Club. The proposed design accords with the intensification outcomes sought under the PC14 framework.

¹ In particular, the Application seeks resource consent for the demolition of a heritage building at 137 Cambridge Terrace. The Applicant also applies for the construction of a hotel building, with a maximum height of 42m and all associated activities and works.

² Subject to complying with Rule 6.1.6.1.1(P2) in relation to Construction noise.

³ NPS-UD (Policy 3(a))

- 6 It is a testament to the Applicant's careful approach to the design of the new building and the strong desire to see progress on this site, that neighbours on both sides of the building,⁴ along with the Canterbury Club directly across the road, have all provided written approval to the Application. Despite public notification of the Application, it has attracted just four submissions either wholly or partially opposed to the Application.
- 7 The issues in contention as between the Council's s 42A officer, Mr Blair, and the Applicant's planner, Mr Bonis, are narrow and it is notable that both planners have sought to work constructively within the evolving framework and to narrow matters of contention. Mr Blair considers that the resource consent can be granted, but considers that two setbacks on the Cambridge Terrace and northern elevations are required.
- 8 With respect, these recommendations fail to apply the amended City Centre planning framework as has emerged through PC14 and also lack an understanding of the 'real-world' nature of building multi-level development on sites such as this. Rather, the evidence for the Applicant is that the amendments sought by both Mr Blair, and the Council's urban designer, Ms Sakin, are both subjective and would deliver negligible urban design benefits and instead would represent significant costs in terms of structural engineering, weathertightness issues, reduced bedrooms, and imposing layout constraints, and may affect the potential commercial viability of the project.
- 9 No submitters have provided expert evidence in opposition to the Application. Construction issues raised in the submission made by Boffa Miskell has since been resolved as between the Applicant and submitter (and the Council). Further, Canterbury Chambers recently confirmed that they no longer oppose (in part) the Application and informally support the Application design.
- 10 The remainder of these legal submissions are structured as follows:
 - (a) An overview of the Application;
 - (b) The effect of the PC14 decisions on the Application and the wider planning context;
 - (c) The submissions; and
 - (d) The statutory framework, including:

⁴ Namely, Lane Neave and Worcester Chambers.

- (i) The key effects in dispute, being urban design and the proposed setbacks; and
- (ii) The relevant objectives and policies of the District Plan.

OVERVIEW OF THE APPLICATION AND CONTEXT

- 11 Mr Bonis' planning evidence on behalf of the Applicant provides a detailed summary of the background to the Application and the wider context of the site.⁵ This context, which is relevant in terms of the application of some of the key policies and assessment matters in contention between the Council and Applicant, is also addressed in Mr Clease's evidence.⁶
- 12 These matters are not repeated at this juncture, beyond reiterating the following:
 - (a) The 42m, 11 storey hotel development, is of a four-star standard hotel, the activity, massing and prominence of which accords with the role and function of the CBD as the pre-eminent commercial centre for the region.
 - (b) The 200 room hotel proposed in the Application, reflects the requirements for four-star standard accommodation in terms of feasibility and operational considerations.
 - (c) It is noted that Harley Chambers has, for a number of years, been identified by the Council as a "barrier site" and has been included on the Council's list of 'Dirty 30' buildings being those buildings identified as a barrier to the regeneration of the central city. This Application provides an opportunity to remove one of these barriers and assist in the regeneration of Christchurch and private investment in the City Centre.
 - (d) Whilst Harley Chambers is no longer a listed heritage building, the hotel's façade has been carefully designed to reference the Harley Chamber's façade thereby linking the two buildings.
 - (e) The design responds to the context, including the heritage listed Worcester Chambers and Canterbury Club and also the Ōtākaro Avon River corridor. In particular, the proposed hotel is set back from the neighbouring Worcester Chambers allowing the brickwork on the side of Worcester Chambers to be seen and provides

⁵ Mr Bonis, evidence in chief, paragraphs 35-42.

⁶ Mr Clease, evidence in chief, paragraphs 23-24.

“breathing room” for the historic building.⁷ The building has also been designed to ensure the Canterbury Club still maintains sunlight to its outdoor areas when these areas are most used and is sensitive to other nearby buildings.

- (f) The granting of resource consent would enable the much needed revitalisation of a derelict site that has provided no activity, viability or vitality in this important Central City location for over a decade.

- 13 Before addressing the activity status of the Application, and key matters arising from the statutory framework, we first address the effect of the PC14 decision on this Application.

The effect of PC14 on the Application and the planning context

- 14 PC14 was notified as an Intensification Planning Instrument (**IPI**) on 17 March 2023 in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and to give effect to the requirements of Policy 3 and Policy 4 of the NPS-UD.

- 15 Policy 3 and 4 of the NPS-UD encourage increasing the build height and intensification in urban centres. Relevantly these provide:

Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:

- (a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and

....

Policy 4: Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.

- 16 Both policies focus on the height of buildings to encourage intensification, with the ability to accommodate qualifying matters in certain circumstances, including in relation to historic heritage.
- 17 As Mr Lyttle and Mr Doig’s evidence explains, at the time Cambridge 137 Limited purchased the Application site in mid-2023, a submission seeking the de-listing of Harley Chambers had been made by the former owner’s of the site. Having taken a range of professional advice in relation to the state of the building, the Applicant determined that pursuing the de-listing as a successor to that submission would be an expedient way of having the then heritage status of the building

⁷ Mr Brown, evidence in chief, paragraph 24.

considered. A range of expert evidence was presented to the independent hearing panel tasked with making recommendations on PC14 in support of that submission for delisting.

- 18 In parallel to pursuing the PC14 submission, recognising that the PC14 process was ultimately outside of the Applicant's control, and given the desire to progress the hotel proposal, the Applicant adopted a dual process; also seeking resource consent to demolish the then heritage listed Harley Chambers, as well as building the new hotel development through this Application.
- 19 The independent hearing panel's recommendations on PC14 were released on 29 July 2024. They recommended the delisting of Harley Chambers, along with recommending a range of changes to planning provisions, including to Chapter 15 of the District Plan, which are relevant to this Application.
- 20 Given the positive recommendations, and that the PC14 process had essentially caught up with the consenting process, a decision was made to pause the resource consenting process, in order that a decision on the Application could be made following the Council's decisions on PC14.
- 21 On 18 September 2024 the Council decided to:
 - (a) accept the independent hearings panel's recommendations as they relate to the City Centre Zone in Chapter 15 of the District Plan; and
 - (b) de-list Harley Chambers (both heritage item and setting) from the District Plan.
- 22 The Council has since notified these decisions, and in accordance with the IPI process, these amendments are now operative.⁸

Effect of the PC14 changes

- 23 The effect of the changes made by the decisions on PC14 are two-fold.
- 24 Most notably, PC14 has delisted Harley Chambers as a Group 2 Heritage building. This means it no longer requires resource consent for demolition. Demolition is now a permitted activity.⁹

⁸ Clause 104, Schedule 1, RMA.

⁹ Provided NZS6803:1999 is met.

- 25 Secondly, PC14 has brought in a number of changes to the District Plan in terms of development within the City Centre Zone:
- (a) Mr Bonis describes the changes as a deliberately transformative change from the planning context post the Canterbury earthquakes.¹⁰
 - (b) The former 28m maximum height limit has been amended to provide a more enabling framework for higher buildings, particularly for street corner sites.
 - (c) Key policies have been amended to provide:
 - (i) For development of a significant scale and form in the core of District Centres;¹¹ and
 - (ii) The scale and form of development in centres shall.... increase the prominence of buildings on street corners.¹²
- 26 These changes represent a material shift in direction towards intensification of urban centres (reflecting the NPS-UD requirements) and enable large scale development within the City Centre Zone, particularly at street corners. For Christchurch, this is a shift from a recovery and regeneration mindset to a growth and provision of future needs mindset. This shift is timely given the substantial progress towards regeneration that has been achieved over the last decade.

Activity status

- 27 In light of the PC14 decisions, Mr Blair and Mr Bonis have addressed the application of the amended, and now operative, District Plan provisions against the proposal.
- 28 Both are in agreement that the demolition does not require resource consent.
- 29 In relation to the hotel, the aspects of the proposal that require resource consent are:
- (a) *Road wall height* – 15.11.1.4 breach of Rule 15.11.2.12 of the 21m road wall height limit for the 5.12m that extends beyond 30m from the street corner is a discretionary activity.

¹⁰ Mr Bonis, evidence in chief, paragraph 46.

¹¹ District Plan Policy 15.2.4.1(a).

¹² District Plan Policy 15.2.4.1(b).

- (b) *Sunlight and outlook (impacted by building height)* - 15.10.1.3(RD5) the elevation of the building fronting Cambridge Terrance does not meet the recession plane under rule 15.11.2.3 for 5.12m and therefore this is a restricted discretionary activity (the matters of discretion are set out in 15.14.3.17).
 - (c) *Building height* - 15.10.1.3(RD5) the building height does not meet rule 15.11.2.11 for the maximum height of the building base of 28m as the proposed building is 42m high¹³ the matters of discretion are set out in 15.14.3.1. Mr Bonis' evidence provides a detailed outline of the breach of this rule and the anticipated massing of built form which is relevant to the difference in opinion of Mr Bonis and Mr Blair.¹⁴
 - (d) *Natural hazards* - 5.4.1.5(RD2) the excavation will be greater than 0.6m and, therefore, is a restricted discretionary activity.
 - (e) *Construction noise* - 6.1.6.1.3(RD2) construction noise that does not comply with NZS6803:1999 is a restricted discretionary activity.
 - (f) *Waterway setback* - 6.6.4.3 (RD1/RD2) the northeast corner of the proposed building encroaches 1m into the 30m setback required to the Avon River, therefore this is a restricted discretionary activity.
 - (g) *Transport* – 7.4.3.1, 7.4.3.3, 7.4.3.5, 7.4.3.10, and 7.4.3.11 various parking, gradient, high trip, and vehicle access matters result in this being a restricted discretionary activity.
- 30 All of these are restricted discretionary activity rule breaches, except for the road wall height breach which deems the activity a discretionary activity. Although there is no activity status change in the context of the proposed hotel (from that as contained within the Application), the change in policy directive clearly encourages more intense development. This is a shift of critical relevance in terms of the difference in opinion of the Applicant and Council experts.
- 31 For completeness, it is also recorded that the proposal also requires resource consent under the National Environmental Standard for

¹³ Although as Mr Bonis explains it is arguable that this limit is met if the structure for the porte cochere is considered a building base.

¹⁴ Mr Bonis, evidence in chief, paragraphs 69 and 70.

Assessing and Managing Contaminants in Soil to Protect Human Health (NES) as a discretionary activity for the removal of the onsite fuel tank.¹⁵

32 The result is the entire Application is a discretionary activity.

What does the de-listing mean for the Application?

33 The Applicant has not formally amended the Application despite aspects of the Application no longer requiring consent (most notably demolition of Harley Chambers).

34 Mr Blair approaches the change in planning framework in terms of the de-listing as a change in the permitted baseline for the activity. To do this, Mr Blair has considered that the permitted baseline for the Application is that Harley Chambers can be demolished without the need for a resource consent and, therefore, any adverse effects on the environment arising from the demolition itself should be disregarded.

35 Although we agree with Mr Blair's conclusion, we arrive at this result in a different way, in that we do not consider it to be within the Commissioner's discretion to consider that the effects of demolition (beyond the groundworks triggered by the NES) or to impose conditions on the demolition components of the Application.

36 Section 88A of the Resource Management Act 1991 (RMA) sets out where an activity status is altered after a resource consent has been applied for but prior to it being decided. Case law has clarified if the activity status changes to make the rule more lenient, then the applicant also receives the benefit of that change.¹⁶ Section 88A acts as a shield for applicants, not a sword for the Council. This is because the purpose of s 88A is to protect the applicant and not the local authority.¹⁷

37 Whilst the activity status of the Application as a whole has not changed, the adoption of PC14 effectively changed the activity status for demolishing Harley Chambers from discretionary to permitted. Under s 88A of the RMA and the principles established through the case law about its application, the Applicant must receive the benefit of the activity status change. Therefore, the assessment of the application ought to be approached as though the demolition of Harley Chambers was always a permitted activity.

¹⁵ Mr Bonis, evidence in chief, paragraph 55.

¹⁶ *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 35, [2017] NZRMA 479.

¹⁷ At [82].

- 38 The Applicant's position also reflects case law regarding whether or not a permitted activity could attract a consent condition in a resource consent application. The High Court decisions in both *Marlborough District Council v Zindia Ltd*¹⁸ and *Haines House Haulage Northland Ltd v Whangarei District Council*¹⁹ make it clear that a local authority is not able, as of right, to grant a resource consent with conditions in respect of aspects of the consent which constitute permitted activities.
- 39 Given that the demolition is permitted, it flows that no resource consent conditions can be imposed on the permitted activity aspects of the Application. Again, this is a matter in agreement between the Applicant and Mr Blair who has accepted that conditions related to demolition, including in relation to heritage matters, cannot be imposed on the Applicant.
- 40 While conditions cannot be imposed on the demolition, the Applicant recognises the utility in certain matters associated with demolition being managed through a de-coupled set of conditions which address demolition separately from the construction activities.
- 41 As such, Mr Bonis' condition set includes a range of management plans that address matters associated with demolition. To the extent that these are proposed in Mr Bonis' conditions and relate to permitted demolition activities, these are offered on the basis of being *Augier* conditions agreed to by the Applicant under s 108AA(1)(a) of the RMA.

The planning context and the NPS-UD

- 42 As set out above, the introduction of the NPS-UD has resulted in a fundamental change in national direction regarding how urban centres are to be managed. Policy 3 in particular seeks 'building heights and density of urban form to realise as much development capacity as possible to maximise benefits of intensification'.
- 43 Not only that, the NPS-UD (and now the District Plan) also clearly recognise that intensification may also involve significant changes to an area, including in relation to the amenity values appreciated by some people.²⁰

¹⁸ *Marlborough District Council v Zindia Ltd* [2019] NZHC 2765, [2020] NZRMA 216 at [66].

¹⁹ *Haines House Haulage Northland Ltd v Whangarei District Council* [2020] NZHC 525 at [95].

²⁰ Policy 6 of the NPS-UD and Policy 15.2.6.3(a)(viii).

44 As Mr Clease writes in his evidence:²¹

Policy 6(b) recognises that the planned built form in District Plans (resulting from the implementation of the NPS-UD) may involve significant changes to an area, and that those changes may detract from the amenity values appreciated by some people but improve the amenity values appreciated by other people, communities, and future generations and are not, in themselves, an adverse effect.

45 The direction from the national government through the NPS-UD, and now expressed in the operative plan through PC14, encourages intensified development and prominence of street corners. In this context, it is submitted that intensified development through buildings, such as the one proposed in this Application, is to be encouraged.

SUBMISSIONS

46 Both Mr Blair and Mr Bonis have outlined the submissions made in relation to the Application in some detail. This detail is not repeated here other than to emphasise:

- (a) The vast majority of submissions are in favour of the Application. It is submitted there is clear support for the development of the site.
- (b) Through the submissions, even those in opposition, it is clear there is a general feeling that Harley Chambers is an eyesore and development of the site needs to occur.
- (c) Of the four submissions lodged either in full or partial opposition to the Application, one of those submitter's issues appear to have been resolved since the Applicant filed its evidence last week²² and the issues raised in the neutral submission of Boffa Miskell in relation to construction effects have also been resolved and will be further addressed by Mr Bonis when he gives his evidence.²³

47 The matters raised by the remaining submitters in opposition have been addressed comprehensively in the Applicant's evidence.

²¹ Mr Clease, evidence in chief, paragraph 30.

²² Mr Raymond has confirmed that in light of the changes brought about by PC14 in relation to height and the evidence of the various experts that the Canterbury Chambers no longer oppose (in part) the Application in relation to height and scale.

²³ Mr Dale's evidence provided in support of the submission made by Boffa Miskell, records further amendments to the construction conditions that have been proposed and adopted by the Applicant.

STATUTORY FRAMEWORK

- 48 The statutory framework applicable to the Application under s 104 of the RMA will be very familiar to the Commissioner.
- 49 The key matters for consideration include:
- (a) Any actual and potential effects on the environment; and
 - (b) The provisions of relevant planning documents, being: the District Plan, the Canterbury Regional Policy Statement, and the NPS-UD.

The effects on the environment

- 50 Before considering the effects in contention, there are three points of note in relation to the application of the statutory framework to this Application:
- (a) First, the effects on the owner and occupier of both Worcester Chambers and the Canterbury Club, and the occupier of Level 5 of the Lane Neave building, must be disregarded as all of these parties have provided written approval.²⁴
 - (b) Both Mr Blair and Mr Bonis are in agreement buildings up to 28m that meet built form standards form part of the permitted baseline and that it is appropriate to apply this permitted baseline to disregard effects associated with these permitted activities (along with the demolition of Harley Chambers to the extent necessary).²⁵
 - (c) The existing environment includes an existing derelict and vacant building with negative effects on amenity and vibrancy.
- 51 Finally, as Mr Bonis explains, whilst the anticipated built form is not strictly applicable in terms of the effects assessment, these matters are relevant in terms of the application of the policy framework for this application.

Matters in dispute in terms of the effects assessment

- 52 The s 42A report is generally supportive of the Application and recommends the Application to construct a hotel be granted (subject to conditions).
- 53 There remains one primary area of disagreement between the Applicant and the Council and two other areas which warrant mention. These are:

²⁴ Mr Bonis evidence in chief, paragraph 59.

²⁵ Mr Bonis evidence in chief, paragraph 60.

- (a) The setbacks proposed by Mr Blair in the upper floors of the building, specifically the 1.2m setback from the 7th level on the eastern side of the building (which the Council suggests could be used as a balcony) and the 5m setback from the 9th level of the building on the northern face (which the Council says cannot be used as a balcony). As detailed below, Mr Blair's recommendations differ from the Council's urban designer, Ms Sakin;
 - (b) Conditions related to construction noise and vibration; and
 - (c) Advice notes related to the recording and preservation of heritage features of Harley Chambers and the relocation of two park benches.
- 54 All of the other effects associated with the Application have been comprehensively addressed by Mr Bonis and are not repeated for the purposes of these legal submissions.

Architecture and setbacks

- 55 The primary area of disagreement between the Applicant and the Council is in relation to the setbacks proposed by the Council in the s 42A report.
- 56 The Council relies on the evidence of Ms Sakin Ekin, a Principal Advisor in urban design for the Council, who recommends a range of amendments to the Application including:
- (a) Shifting the bottom 3 floors west into the porte cochere area by an unspecified distance (but we have assumed approximately 3m). This enables the western wall of the tower to also be extended west in order to compensate for the rooms lost due to the tower above 28m being set back 4.2m from both the Worcester and Cambridge edges;
 - (b) Imposing a 4.2m setback above 28m on both the Worcester and Cambridge Terrace elevations;
 - (c) Imposing a 5m setback at 32m along the full width of the northern face of the building (this setback is framed as an alternative to the 4.2m setback set out above at (b)); and
 - (d) A further pedestrian entrance on Cambridge Terrace.
- 57 Despite these recommendations from Ms Ekin, Mr Blair's recommendation differs and includes:

- (a) A 1.2m setback from the 7th level on the eastern side of the building (which can be used as a balcony); and
- (b) A 5m setback from the 9th level of the building on the northern face (which cannot be used as a balcony).

- 58 It remains unclear why Mr Blair has adopted some of Ms Ekin's suggestions but has made a separate recommendation in relation to the 1.2m setback. It is acknowledged that Mr Blair has rejected some of Ms Sakin's recommendations on account of the functional and operational considerations.²⁶
- 59 The Applicant opposes the recommendations of both Ms Sakin and Mr Blair on the basis they have a significant impact of the structural engineering, flow, and functionality of the building and they do not achieve the "human scale" they are proposed to address. Further, it is submitted the application of the setbacks are inconsistent with the planning framework and shift in urban design considerations as a result of the NPS-UD and are not required to reflect the context of the surrounds.
- 60 Expert evidence filed by Mr Bonis (planning), Mr Cleese (urban design), and Mr Grant Armstrong (architecture) supports the Applicant's position. Commercial and corporate evidence has been filed by Mr Lyttle and Mr Doig.

Assessment of expert evidence

- 61 Given the competing urban design and planning evidence on these matters, the Commissioner will need decide which evidence they prefer. Whilst the weight to be given to any evidence, including expert evidence, is a matter for the decision maker, the following factors may guide a decision:²⁷
- (a) The extent of an expert's recent experience directly relevant to the specific matter in issue;
 - (b) The expert's independence in the present case;
 - (c) Evidence that the expert has reviewed all the relevant material or provisions, and that she or he has drawn attention to any relevant

²⁶ See Mr Bonis, evidence in chief, Figure 4, page 35 for a summary of the differences.

²⁷ See generally *Briggs v Christchurch City Council*, C45/2008, 24 April 2008 (EnvC), Environment Court Practice Note 2014, and *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66, about the role of expert evidence.

matters that have not been reviewed or any necessary research that has not been undertaken;

- (d) The extent of independent analysis or research, to support any conclusions reached in any statement of evidence, including clearly setting out the basis for why she or he does not agree with another expert's position, and the overall clarity of the reasoning provided;
- (e) Whether the evidence is presented in an objective impartial manner, appropriately making any necessary concessions or qualifications relative to the opinions reached by other experts, and drawing appropriate attention to aspects of the Proposal that might ameliorate issues about which they are concerned;
- (f) The consistency of the evidence both during the course of the hearing as well as between evidence given for the Application and evidence given or not given (as the case may be) for other projects or planning processes raising similar issues;
- (g) The absence of any unsupported assertions, and the absence of any flavour of advocacy in the language used; and
- (h) Whether the expert has read and confirmed that they have read and agree that they have complied with the Environment Court's code of conduct in preparing their evidence, and that they will continue to do so when presenting their evidence.

62 Essentially, the judgments suggest that the decision maker is to make a value judgment as to whose evidence is preferred. One way to look at this issue is, after hearing competing expert evidence, who does the decision maker feel persuaded is correct?

What the experts say

63 Mr Blair and Ms Sakin appear to propose the setbacks to assist the building fitting into the context of the site and surrounds and by reducing the mass of the building to provide for 'human scale' and reflect the character of the established (post earthwork) adjoining built form.

64 For the Applicant:

- (a) Mr Cleese and Mr Bonis addresses the context of the site and surrounds and why the proposal is in accordance with this, whilst also recognising the need to reflect the *anticipated scale* of development;

- (b) Mr Bonis and Mr Clease provide evidence that the increase in massing is consistent with the change in national policy direction under the NPS-UD;
- (c) Mr Clease provides evidence regarding how human scale is achieved in buildings and why setbacks in the top floors of a building are unlikely to have a significant impact on the sense of human scale, particularly where located on street corners;
- (d) Mr Armstrong provides evidence regarding the impact of the proposed setbacks on the architectural design, structure, servicing and flow of the building and the flow on impacts this will have on functionality based on standard industry requirements for hotel design; and
- (e) Mr Lyttle and Mr Doig provide evidence regarding the commercial impact of the proposed setbacks. Notably the setbacks would result in 24 rooms being lost whilst making it significantly more expensive and technically challenging to build, risking the commercial viability of the proposal as a whole.

Urban context

- 65 Ms Sakin and Mr Clease broadly agree what the current urban context is, although their views diverge about the degree to which new buildings need to perpetuate consistency.
- 66 Ms Sakin and Mr Clease agree there is a reasonable level of consistency of building heights and street wall presence on the western side of Cambridge Terrace (the eastern face of the proposed hotel will form part of this street wall). Further, Ms Sakin and Mr Clease agree that there is little consistency in the built form along Worcester Boulevard.
- 67 Therefore, the consideration becomes how the proposed building will impact the consistency of the street wall on Cambridge Terrace and the degree to which this is anchored in the planning framework and, therefore, whether it is important to maintain.
- 68 Mr Clease provides evidence that having a continuous built edge is most important to maintain the effect of continuity in a street wall. This means avoiding gaps in the street wall and minimising any low-rise buildings.²⁸

- 69 Mr Clease then goes on to note that urban design considerations shift when it comes to street corners:²⁹

Taller buildings, built out to the road edge for their full height on corners are promoted by the removal of the need for upper level setbacks. The enabled outcome is overtly one of promoting contrast, rather than consistency, with the different priorities sought for mid-block contexts. This change in streetscape priority from one of uniform heights and edges to increased massing on corners is one of the key design shifts enabled in PC14.

- 70 This is consistent with the policy introduced in the District Plan through PC14 to give prominence to street corners.³⁰
- 71 Ms Sakin on the other hand proposes the 5m setback along the boundary with the Lane Neave building to try and graduate the building heights from the other buildings on Cambridge Terrace to the full height of the proposed hotel.
- 72 Ms Sakin's view is not supported by the policy change brought through PC14 to give prominence to street corner sites and appears to seek to 'set aside' the District Plan provisions. It is submitted Mr Clease's assessment is to be preferred in this instance as Mr Clease engages with the urban context considerations in the new policy environment and is therefore better reflective of the national direction.

Building mass and human scale considerations

- 73 As set out above, the NPS-UD and its incorporation through PC14 has altered the policy framework for urban design. There is a clear directive to embrace higher urban mass through intensification. This approach is consistent with the proposed building which meets these policy directives.
- 74 It is submitted that the s42A recommendations for setbacks, to reduce the building's mass, is inconsistent with the update in policy directive and is reflective of the pre-PC14 position.
- 75 Further, the building's mass is unlikely to be appreciated from a street level. Mr Clease sets out in his evidence how members of the public engage with buildings at a street level. He notes that from a medium range (such as a block away) they form part of the city backdrop and are interrupted by the presence of other buildings.³¹

²⁹ Mr Clease, evidence in chief, paragraph 52.

³⁰ Policy 15.2.4.1 and 15.2.4.2.

³¹ Mr Clease, evidence in chief, paragraph 42.

- 76 At a short range, a pedestrian's exposure to a building is short, typically a 10-20 second experience as the pedestrian passes by. Therefore, engagement is typically limited to the lower floors and the façade.³²
- 77 Further, Mr Clease provides additional information by what is meant by 'human scale' in urban design. Mr Clease describes human scale as:³³
- A final scene-setting observation is in regard to what is meant by 'human scale' development. This term is defined in the District Plan to mean "incorporating dimensions that result in smaller built components and lower building heights, with attention to the human experience from eye level, relative to the physical size of a person". It is important to emphasise that human scale does not mean that buildings should be the same size as a person. Rather it is about buildings delivering a richness in detailing and design that avoids long, blank walls or overly repetitive treatments that are experienced at eye-level.
- 78 Mr Clease then goes on to explain there is little sense of height when standing next to a tall building. Therefore, a setback (or not) at 21, 28, or 32 metres makes little to no different to the viewer's sense of human scale. Rather, Mr Clease suggests maintaining a rich and detailed façade and a strong connection between the open plan bottom floor to ensure the building maintains a sense of human scale.
- 79 It is submitted Mr Clease's evidence is carefully considered, reflects the current policy position and national direction, and is consistent with lived experience as pedestrians in urban centres. It is submitted his evidence can be properly relied on by the Commissioner in determining what the actual effects of the buildings mass will have on human scale and further that the addition of setbacks in the upper floors of the building will have no meaningful impact on the public's experience of the building.

Functional considerations

- 80 The inclusion of the setbacks will also significantly impact on the functionality of the hotel building and risks the viability of the proposal. The hotel has been carefully designed with construction and structural efficiency and the various requirements of international operators in mind.
- 81 The functionality of the building does not appear to have been considered by Ms Sakin and the impact of the setbacks on functionality does not appear to have been considered by Mr Blair, but for the porte cochere area and his rejection of Ms Sakin's recommendation for another entrance on Cambridge Terrace.

³² Mr Clease, evidence in chief, paragraph 63.

³³ Mr Clease, evidence in chief, paragraph 65.

82 The impact of the setbacks on the functionality of the building are set out in detail in Mr Armstrong's evidence. In summary, the following impacts will follow from imposing setbacks on the building:

- (a) Structural support in the building will need to change to account for the changed structural load caused by the setbacks. This would add significant structural complexity and would result in reduced service zones and potentially reduced ceiling heights in some rooms, again limiting the functionality of the hotel.³⁴
- (b) The additional structural support required would mean the structural columns on the ground floor would need to be moved from the edge of the building inwards. This would affect the open plan design of the first floor which was designed to create a flow from outside to inside.³⁵
- (c) Delivery of the eastern setback would require scaffolding off the Cambridge Terrace footpath, something which is not required in the current design, creating a greater impact on the public in the construction phase.³⁶
- (d) The eastern setback requires the corner of the building to be redesigned to create an 'intersecting double curve' which is complex to construct and weatherproof and visually unsatisfying.³⁷
- (e) There are likely to be unintended wind consequences.³⁸
- (f) The addition of balconies would add complexities in weatherproofing and are not typical in inner city hotels as they are not utilised by guests. The effects are likely to be exacerbated by the fact the proposed setback and balcony faces the prevailing wind.³⁹
- (g) Hotel operators prefer a minimum of 20 hotel per floor to ensure operational efficiencies. The proposed setbacks would reduce the number of rooms by 4 rooms per floor that has the 1.2 m setback and a further 4 rooms per floor that has a 5m setback. This means a significant number of floors would have a room to floor ratio below industry standard. This will make the building less

³⁴ Mr Armstrong, evidence in chief, paragraph 68.

³⁵ Mr Armstrong, evidence in chief, paragraph 69.

³⁶ Mr Armstrong, evidence in chief, paragraph 71.

³⁷ Mr Armstrong, evidence in chief, paragraph 73.

³⁸ Mr Armstrong, evidence in chief, paragraphs 75 and 76.

³⁹ Mr Armstrong, evidence in chief, paragraphs 81 and 82.

appealing to prospective operators reducing its functionality and commerciality.⁴⁰

- (h) The required redesign of rooms, resulting from the setbacks, would affect the plumbing in the hotel as currently the floor layouts are repeated, allowing the plumbing services to be stacked and ensuring construction and functional efficiency.⁴¹
- (i) Finally, the reconfiguration of rooms, due to the setbacks, would reduce the efficiency of servicing the hotel thereby reducing the buildings appeal as a hotel to operators and affecting the functionality and commerciality.⁴²

83 The impacts of the setbacks are numerous and were not addressed or considered when the recommendation of imposing setbacks was advanced by the Council. However, it is submitted the required redesign of the building due to the setbacks creates significant and unintended issues.

84 It is submitted the Commissioner ought to consider the impact the setbacks will have on the overall functionality of the building when considering whether they ought to be imposed. In particular, counsel notes policy 15.2.4.2.b of the District Plan, cited by Mr Blair in his s 42A report, which requires the consideration of the functional and operational requirements of the building:

Recognise the scale, form and design of the anticipated built form within a site and the immediately surrounding area and the functional and operational requirements of activities.

Assessment of considerations

85 It is submitted when all of the above is considered, the evidence of the experts who have given evidence in support of the original proposed building mass ought to be preferred. In combination, they provide a comprehensive and clear assessment of all aspects and requirements of the design and properly consider various impacts of the setbacks.

86 It is acknowledged some people may have a visual preference for the setbacks. However, the opposite is equally true as other people will find the change in the corner curve necessitated by the 1.2 metre setback

⁴⁰ Mr Armstrong, evidence in chief, paragraph 40.

⁴¹ Mr Armstrong, evidence in chief, paragraph 79.

⁴² Mr Armstrong, evidence in chief, paragraph 80.

and the “cut out” of the corner of the building as seen from Worcester Boulevard caused by the 5m setback visually unsatisfying.

- 87 Even if some people have a visual preference for the setbacks, when all of the effects of the setbacks on the build are considered, it is submitted the originally proposed building, without the setbacks, provides a better balance between the scale, form, design, functional, and operational requirements of the building as required by Policy 15.2.4.2.b of the District Plan.

Additional Entrance

- 88 For completeness, we note that Ms Sakin proposes a second public entrance to the building on the Cambridge Terrace side of the building. Although Mr Blair considers there is some merit in having a second entrance to the building, he concludes it does not fit with the functional and operational requirements of the building.
- 89 Mr Blair’s assessment is consistent with the evidence of Mr Clease who considers in an ideal world there would be a pedestrian entrance on Cambridge Terrace to add visual interest to the building. However, given the size of the building and the required raised floor level to protect against the risk of flooding, a second entrance has functional implications which would negatively impact on the operation of the building.⁴³
- 90 Finally, Mr Armstrong elaborates on the functional and operational effects adding a second entrance would have on the building.⁴⁴ These effects include security, exposure of the inside of the building to the prevailing wind, and altering the floorplan which would negatively effect the flow of the restaurant.
- 91 It is submitted Mr Blair, Mr Clease, and Mr Armstrong’s consistent evidence and recommendation to avoid a second public entrance to the building is appropriate and properly reflects the balancing of form and functionality in the building.

Construction effects

- 92 Boffa Miskell, a submitter to this Application, originally filed a submission noting they supported the Application but sought additional conditions

⁴³ Mr Armstrong, evidence in chief, paragraph 73.

⁴⁴ Mr Armstrong, evidence in chief, paragraph 92.

surrounding the construction, specifically noise and vibration. The s 42A report agrees with this submission and suggests possible conditions.

- 93 Following the release of the s 42A report, the Applicant has continued to engage with Boffa Miskell to ensure an appropriate and satisfactory solution is reached for all parties. As indicated in the evidence filed by Mr Maurice Dale dated 9 October 2024, the parties have agreed on an appropriate set of conditions which properly addresses the concern raised.
- 94 The Applicant consents to the conditions, set out at Annexure A to Mr Dale's evidence, being imposed in relation to construction of the hotel. It is also understood these conditions are accepted by the Council. It is submitted that this resolves the construction issue.

Advice notes

- 95 The application of PC14 is discussed in detail above. In summary, the de-listing of Harley Chambers through PC14 means the demolition of the exiting Harley Chambers is a permitted activity.
- 96 As a permitted activity, conditions cannot be imposed on the demolition of the building, although the Applicant can volunteer what are known as 'Augier' conditions. This is acknowledged in the s 42A report.⁴⁵
- 97 In lieu of recommending heritage conditions be imposed on the Applicant in relation to salvage and recording, Mr Blair suggests an advice note be included for the Applicant, should they wish to record the heritage value of Harley Chambers, salvage and/or record features and materials from the building which retain historic value.
- 98 The Applicant agrees to this advice note being included.
- 99 Mr Blair also proposes an advice note in relation to the relocation of two park benches on account of the wind effects. While Mr Bonis does not agree with the need for such an advice note, this disagreement is inconsequential given it cannot be enforced in any event.

Objectives and policies

- 100 This application is for a discretionary activity, and the full gamut of objectives and policies must therefore be considered. Mr Bonis and Mr Blair have both provided a comprehensive analysis of the relevant

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Section 42A report paragraphs 46-54.

objectives and policies in terms of the District Plan, NPS-UD and Regional Policy Statement.

- 101 Again, there is limited utility in repeating all of the matters addressed in their evidence.
- 102 As Mr Bonis explains, the area of disagreement between Mr Blair and Mr Bonis concern the application of the Commercial objectives and policies in Chapter 15 of the District Plan (albeit that this is only insofar as Mr Blair makes a different urban design recommendation in relation to the elevations fronting Cambridge Terrace and the adjoining Lane Neave building).⁴⁶
- 103 In considering the differing conclusions of Mr Blair and Mr Bonis, it is important to take note of the series of Supreme Court decisions in *King Salmon*, *Port Otago*, and most recently *East-West Link*⁴⁷ and what those decisions tell us about applying policies in planning provisions:
- (a) While ‘avoid’ is a strong word, meaning not allow or prevent the occurrence of, “enable” and “recognise” policies can be as equally directive as those referring to “avoid”;
 - (b) Terms that have more flexibility in how they are implemented and are less prescriptive include: take into account, have regard to, consider, promote, encourage, as far as practicable, where practicable;
 - (c) Policies expressed in more directive terms will carry greater weight than those expressed in less directive terms;
 - (d) There may be instances where policies pull in different directions. This is likely to occur infrequently, and it may be that an apparent conflict between policies will dissolve if close attention is paid to their expression;
 - (e) In *Port Otago*, the Supreme Court promoted a “structured analysis” of conflicting directive policies. That requires consideration of all relevant factors in a structured way to decide whether, in the particular factual circumstances, resource consent should be granted; and

⁴⁶ Mr Bonis, evidence in chief, paragraph 157.

⁴⁷ *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26.

- (f) A determination of which policy prevails is only justified if conflict remains after close analysis is undertaken. The area of conflict should be kept as narrow as possible.
- 104 In the case of this Application, there are a range of directive policies that must be reconciled in reaching a decision on the Application and the matters in dispute. Again, Mr Bonis addresses this context in detail in his evidence and draws conclusions in relation to the objectives and policies as they relate to the contested elements, being:
- (a) Ms Sakin's request for a further pedestrian entrance on Cambridge Terrace; and
 - (b) The scale and form of the hotel building, including the requested setbacks.
- 105 In terms of these legal submissions, it is sufficient to emphasise that:
- (a) Objective 15.2.4 *recognises* the functional and operational requirements of activities and the existing built form;
 - (b) Policy 15.2.4.1 seeks that the scale and form of development *shall*:
 - (i) Reflect the context, character and anticipated scale of the zone and centre's function; and
 - (ii) Increase the prominence of buildings on street corners
 - (c) Policy 15.2.4.2(b) *recognises* the scale, form and design of the anticipated building form within a site and the immediately surrounding area and the functional and operational requirements of activities.
 - (d) Policy 15.2.6.3 *avoid* the impact of overly dominant buildings.
- 106 In relation to the setbacks in particular, Mr Bonis considers that the proposal sought by the Applicant does not represent any substantial tension in the relevant provisions noting that in relation to the need to avoid overly dominant buildings, that the design standards are set to manage and avoid these outcomes. He also draws the distinction between *dominant* buildings and *prominent* buildings.⁴⁸
- 107 In relation to the scale and form, his evidence draws more heavily on the *anticipated* form, noting that policy 15.2.4.1 does not constrain new

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Mr Bonis, evidence in chief, paragraph 160(b) (page 45).

development to confirm with existing scale and massing at a localised level.⁴⁹

- 108 For all of the reasons set out in both Mr Bonis and Mr Clease's evidence, it is submitted that the proposal sought by the Applicant is wholly consistent with the objectives and policies of the District Plan (and higher order NPS-UD and Regional Policy Statement directions).

Part 2 of the RMA

- 109 For completeness, and in light of all of the conclusions reached in the evidence for the Applicant, it is submitted that the proposal is consistent with Part 2 of the RMA.

CONDITIONS

- 110 Mr Bonis has set out a range of amendments to the conditions, principally to more clearly delineate those that are being offered in relation to demolition, and those that apply to construction of the hotel.
- 111 As noted above, the Applicant has proposed further amendments to the construction conditions to address matters raised by the Boffa Miskell submission. In making these amendments Mr Bonis has sought input from Mr James Boland, an acoustics and vibration expert at SLR consulting. Whilst Mr Boland has not produced a brief of evidence in support of the Application, he is available, should the Commissioner have any questions of a technical nature in relation to these conditions.

CONCLUSION

- 112 This Application represents a long-awaited opportunity to see the derelict Harley Chambers demolished and replaced with a landmark building on an important street corner within Christchurch.
- 113 The Applicant's case is that the setbacks recommended by Mr Blair would provide negligible urban design benefits, whilst resulting in a range of structural challenges, significant costs, weathertightness issues, a reduction of bedrooms, and layout constraints. These impacts, resulting from the setback, would affect the potential commercial viability of the project.
- 114 The expert evidence of the Applicant on these issues is considered, logical, and clear, and it should be preferred. In light of all of the expert

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Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency [2024] NZSC 26.

evidence before the Commissioner, the Applicant submits that there is no impediment to granting consent for the unamended proposal.

115 The following witnesses will be called in support of the case:⁵⁰

- (a) Mr Jonathan Lyttle and Mr Michael Doig (Corporate);
- (b) Mr Grant Armstrong (Architecture);
- (c) Mr Jonathan Clease (Urban Design);
- (d) Mr John Brown (Heritage, via AVL);
- (e) Mr Andrew Leckie (Transport); and
- (f) Mr Matt Bonis (Planning).

Dated this 10th day of October 2024



L de Latour | E Pairman
Counsel for Cambridge 137 Limited

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Noting Mr Jarred Pettersson has also provided evidence, but whose appearance has been excused.