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CHRISTCHURCH

By Email

Dear Alan

REVIEW OF PROPOSED CHRISTCHURCH CITY PLAN – COMMERCIAL CHAPTER

1. MY APPROACH

Thank you for the opportunity to review the draft commercial chapter of the Proposed City Plan. In addition to the background given by yourself and Brigitte de Ronde during our recent teleconference I drawn upon documents provided by Mark Stevenson, other documents and background context on the Council website, and related planning documents. This has included:

- The draft plan structure.
- The draft “Strategic Directions” chapter.
- The draft “Commercial” chapter itself.
- The associated draft Section 32 document.
- Draft versions of the proposed zoning maps online.
- The economic analysis completed by Property Economics Ltd (November 2013).
- The submission provided by the Property Council (28 March 2014).

To ensure my advice is in context, I have also re-familiarised myself with the Central City Recovery Plan (“CCRP”) and relevant sections of the Regional Policy Statement (“RPS”) and Land Use Recovery Plan (“LURP”). My advice is set out under the broad headings below:

- Section 2: “The structure and approach of the chapter”.
- Section 3: “Specific content and drafting matters”.
- Section 4: “The market responsiveness of specific provisions”.
- Section 5: “Summary recommendations”.

Sections 2 and 3 are directed at traditional plan development disciplines (structuring, drafting and addressing internal consistency etc.) whereas Section 4 comments on the *market responsiveness* of provisions. In coming to views in Section 4, I acknowledge the specialised retail economic role that Property Economics has had in assessing land demand and supply issues, and as agreed I have not sought to duplicate that role. Therefore my comments relate more to the individual provisions and whether these are likely to be “workable” in resource consent processes having regard to the earthquake rebuild context, contemporary development formats, and development economics.

I am also mindful of the fact that this is just one of a number of chapters, and that high-level decisions are likely to have been made about the plan structure. With this in mind I appreciate Council may not be able to respond to some of my suggestions on structural matters.

2. THE APPROACH AND STRUCTURE OF THE CHAPTER

Overall approach

The overall planning philosophy in the chapter is to concentrate commercial activity into a hierarchy of centres which provides sufficient development opportunity to meet the city’s demands over time. The centres hierarchy is promoted to place a framework around future growth that will provide investment certainty and certainty of outcomes. This approach is passed down from other planning documents, notably the RPS, and promoted in the Property Economics report, and in my view it forms a sound basis for commercial planning.

The primary challenge in executing this approach is striking the balance between controlling and enabling development activity. This challenge is probably best presented in the Strategic Directions chapter which alternately promotes the need to drive “development quality” and “simple provisions and reduce the need for resource consents”. My overall impression of the chapter is that it tends towards *controlling* rather than *enabling*. In my view a more enabling approach could be considered given the importance of catalysing private investment in the earthquake rebuild phase.

Objectives and policies

As a general point I note that the draft Section 32 report contains sound, well-articulated reasons for the approach taken. Whilst the existing objectives and policies section is not inconsistent with the Section 32 report it could benefit from some “beefing up” to reflect the strategic thinking that has occurred. Specifically, the following changes are recommended:

- More explicit references to the Strategic Directions chapter and how those directions are being implemented in the rules etc.
- More specific, detailed policies which set out the rationale for the individual zones and various rules and standards (some of which are highly nuanced and could benefit from specific scene setting).
- Changes to Objective 1 and / or Policy 1 (or alternatively explanatory text) to explain the role of the CCRP and its relationship to the City Plan – whilst this is a general matter it is also specifically relevant to the commercial chapter.

- Changes to Policy 1 to more clearly articulate the relationship of zones and centres – I note the excellent “Centre’s description and function” table nestled at the back of the document which provides better guidance to the uninitiated than the table included in Policy 1.

Use of enabling provisions

I believe there is an opportunity to utilise enabling mechanisms more broadly – permitted activity status, controlled activity status, and non-notification clauses. I note the intent of using permitted activity status broadly, but in some cases permitted standards are set at very low thresholds (see Section 4). Under normal circumstances I don’t promote the use of controlled activity rules, but given the earthquake rebuild context they could be worth reconsidering.

I also note that many restricted discretionary rules (for example RD1 in the Halswell West Commercial Local Zone) are subject to “general matters of discretion” which are broad ranging and undermine the principle of restricted discretion. Tightening up these matters of discretion to the issues Council is specifically concerned about would give greater focus to resource consent processes.

Structural matters

Turning to the structure of the chapter I note the move away from the three tiered system of standards in the Operative City Plan and see this as a positive step towards simplifying the plan. There are further opportunities to simplify the commercial chapter and reduce its significant volume (164 pages) which would add to its coherence and ease of use:

- There is a general approach of splitting rules, standards and matters of discretion (assessment matters) into separate sections; however, there are examples where they become mixed. Specifically I note:
 - The “activity specific standards” in the rule sections which must be read in addition to the standards located in the separate standards sections.
 - Local area “matters of discretion” which are located immediately behind the local area rules and standards when the more general “matters of discretion” are located right at the back of the document.

The effect of these approaches is to clutter the rule section and create confusion in the reader as to whether she / he has reviewed all the relevant provisions.

- In addition to general zones rule sections (e.g. Commercial Local Zone) there are also area specific rule sections (e.g. Commercial Local Zone – Wigram) but in some cases the local section has been added to ensure that only a very limited number of local area rules are addressed. Most notably this occurs in relation to the 100m² floorspace rule in Commercial Local Zones. This approach adds significant volume to the plan which could be avoided if local area rules were embedded into the general rules section.

- The generic “How to use rules” section is repeated at the front of each zone section and could be included just once at the very front of the chapter to reduce volume and repetition.

3. SPECIFIC CONTENT AND DRAFTING MATTERS

There are further opportunities to improve the coherence and consistency of the chapter and reduce its volume through drafting. Specific matters are as follows:

- There is some inconsistency in the terminology used across the chapter – for example in the matters of discretion sections the headings “design and appearance”, “urban design” and “visual amenity” are used alternatively despite addressing largely the same matters. A range of headings are also used to address retail floorspace and distributional issues. More consistent terminology would aid the reader’s comprehension and create stronger linkages between sections.
- The term “matters of discretion” is used alternately to refer to Council’s scope of discretion in the rule sections and in the separate “matters of discretion” sections where assessment criteria are listed. For the purposes of clarity I suggest an approach where the rules refer to “matters of discretion” and these are explicitly linked to “assessment criteria” at the back of the chapter. The matters of discretion and assessment criteria should have exactly the same headings (e.g. “urban design”) so that linkages between the two and the scope of Council’s discretion is clear to plan users.
- I note in the various Discretionary Activity rule sections (e.g. 15.5.2.4 for the Commercial Banks Peninsula Zone - Lyttelton) that there is a standard column stating that “The Council will consider any matters under s84 of the Act including...” followed a long list of matters of discretion. I make two points about this:
 - S84 is at other times replaced by S104 (inconsistently applied).
 - The listed matters of discretion add significant volume across the chapter and essentially establish that Council’s discretion is unlimited. I therefore suggest that Council apply a more succinct general statement to the effect that its discretion is unlimited.
- There are examples where related rules repeat one another. For example, Rule P1 (<100m²) and Rule RD1 (>100m² buildings) in the Commercial Local Zone are both descriptive rules when rule RD1 could be drafted in a simpler “catch all” manner. Whilst this may seem a minor point, when applied across various sections it does add volume to the plan.
- More generally, and for the same reasons, referencing numbers should be used to link rules to other rules etc., rather than fully repeat those other rules.
- Upper floorspace limits are used throughout the chapter to trigger resource consents for urban design, retail distribution and traffic generation reasons. In some cases the reason for the consent is not explicit and this is further made unclear by broad matters of discretion. For example, Rule 15.2.2.3 RD1 for buildings exceeding 250m² in the Commercial Core Zone refers the applicant to 15.8.1

“general matters of discretion” despite the rule being put in place for urban design reasons.

4. THE MARKET RESPONSIVENESS OF SPECIFIC PROVISIONS

Urban design (general)

I specifically note the stronger urban design emphasis of the proposed chapter and endorse the high-level assessment of its costs and benefits on p23 of the draft Section 32 report. Based on my experience, particularly in Wellington, a sound urban design framework can bring significant built environment benefits. These benefits need to be considered against development compliance costs (e.g. use of higher quality materials, requirements to configure developments differently etc.) and the often subjective nature of urban design matters, which if poorly managed can lead to stalemate scenarios. Given the earthquake rebuild context it is important that the introduction of a stronger urban design approach is complemented by focused assessment matters and assurances by Council (perhaps in the non-regulatory methods section) that it will take a pragmatic approach to assessing urban design consents.

Specific provisions

By definition all planning provisions “intervene in the market”, but in general terms I believe the provisions put forward set reasonable thresholds for resource consents, in-keeping with what I have observed in district plans elsewhere around New Zealand. However, there are some specific provisions which, I believe, need to be carefully considered and/or reviewed for their responsiveness to likely development proposals coming forward, and within the context of the earthquake rebuild. These are set out below.

- **Development plan requirements:** In Outline Development Plan (“ODP”) areas I note a general requirement to submit and have approved a “development plan” before individual activities and subdivision can be applied for – in the absence of an approved development plan these are non-complying activities. Whilst I am not fully aware of the background to all areas, and no doubt some have been subject to ongoing planning process, I caution against blanket application of this approach for the following reasons:
 - The approach introduces another resource consent layer which by definition complicates and lengthens the process for approving development.
 - In areas where the subject land and its ownership is fragmented, a development plan process may be a flawed due to an inability to control the activities of multiple parties.
 - ODPs themselves, allied to base rules requiring cognisance of surrounding development, can be effective in controlling the pattern of development.

Further, if the development plan rule is maintained I suggest the default rule for prior activities and subdivision be discretionary rather than non-complying. This would give greater flexibility in the instance of a desirable application coming forward before the approval of a development plan.

- **Urban design floorspace thresholds:** Throughout the chapter maximum building footprints are established to trigger the requirement for urban design consents (250m² in the Commercial Core Zone and Commercial Fringe Zone, and 100m² in various Commercial Local Zones). These thresholds apply broadly, covering most likely activities that will come forward (including retail and non-retail activities).

The rationale given in the Section 32 report is that a certain percentage of buildings should be captured by this rule to ensure improved outcomes across the city (for example on p82 50% is cited). This approach is at odds with the intention of reducing the number of consents stated in the Strategic Directions chapter, and introduces an element of risk to developers that may disincentivise development.

If this approach is to be pursued I suggest that the rules link to more succinct, focused matters of discretion. Alternatively, I suggest a performance based approach (i.e. specific urban design standards addressing issues like the percentage of glazing etc.) be adopted to give developers the opportunity to proceed with permitted developments and avoid the risk of a discretionary consent process.

- **Minimum ceiling height:** I note the 3.5m minimum floor to ceiling height for the ground and first floors of developments in the Commercial Core and Fringe Zones. Allied to maximum height limits these rules effectively set the number of storeys that any given development can achieve on a permitted basis. Failure to reconcile these rules may create a framework which does not recognise the development economics of different areas across the city, with the risk being an effective freeze on development sometimes known as “planning blight”.
- **Setbacks from “sensitive areas”:** The Commercial Core Zone rules require a 6m setback where a site adjoins a “sensitive area”. I do not hold a copy of the plan definitions but I assume sensitive areas include residential areas. Without derogating from the importance of effective management of zone boundaries 6m is a large setback which could sterilise smaller commercial parcels if rigidly applied. For this reason I suggest considering an approach which places greater weight on performance related controls (e.g. noise standards, avoiding windows on boundary facing walls etc.).
- **Area specific floorspace limits:** Throughout the chapter there are rules and standards limiting building floorspace for reasons related to urban design, retail distributional effects and traffic generation. In some locally specific areas these are very specific (for example the Commercial Core Zone – Belfast). I do not have the full background to these matters but simply note that such specific thresholds will need to be thoroughly justified in the Section 32 report.

5. SUMMARY RECOMMENDATIONS

Drawing on the individual points made in sections above, my recommendations are set out in summary form as follows:

- Generally, and in the context of the earthquake rebuild, reconsider the overall balance between controlling and enabling development – currently the balance is towards control.
- Specifically consider more relaxed permitted activity standards and broader use of controlled activity status and non-notification clauses to implement this approach.
- Make explicit reference to the Strategic Directions in the objectives and policies sections and how these are being implemented through the commercial provisions.
- Develop more specific, detailed policies which link to the zones and zone controls.
- Add a reference to the CCRP and how it relates to the City Plan – either in the objectives and policies section or as an up-front explanatory statement.
- Make changes to Policy 1 to more clearly identify the relationship of the centres and zones – consider promoting the “Centre’s description and function” table from the back of the chapter to assist with this.
- Add a “centre boundary” layer to the zoning maps to clearly identify centres within the centre hierarchy and how these relate to the various commercial zones that can fall within them.
- Merge the local area rule sections with their parent “general” rule sections to reduce volume and complexity in the chapter.
- Take a stricter approach to ordering rules, standards and matter of discretion – place activity standards in the general standards section and place all “matters of discretion” (i.e. assessment criteria) to the back of the chapter.
- Use the “How to use rules” section just once at the front of the chapter to reduce volume and repetition.
- Improve consistency of terminology across the chapter to improve coherence and legibility – particularly the headings.
- Make a distinction between “matters of discretion” and “assessment matters” but make sure the two are clearly linked through use of consistent headings.
- Remove the “matters of discretion” column for discretionary activity rules and replace with a simple statement about Council’s discretion being unlimited.
- Make broader use of referencing numbers to minimise repetitive language throughout the chapter.
- Ensure that the reason consent is required is made explicit – in some cases, particularly in relation to floorspace related rules, this is not clear.
- Make the matters of discretion for restricted discretionary rules more focused so that applicants are aware of Council’s decision making scope, and specifically remove use of 15.8.1 “general matters of discretion”. If there is a desire to keep this power I suggest consideration be given to using full discretionary status instead.
- Complement the introduction of new urban design provisions with focused matters of discretion / assessment criteria (see above) and an assurance, perhaps in the non-regulatory methods section, that council will take a pragmatic approach to urban

design consents. This could include reference to pre-application meetings and a consistent approach to applying provisions.

- Reconsider whether development plans are required – particularly where ODPs already incorporate a lot of detail. An alternative approach is to require developments in “general accordant” with the ODP.
- Reconsider the urban design floorspace thresholds and the overall “resource consent approach” to controlling design – this is potentially inconsistent with the Strategic Directions chapter and may knock developers confidence in the critical earthquake rebuild period.
- Ensure the minimum ceiling to floor height rules have been rationalised with the maximum building height to avoid planning blight – noting that land values and development economics vary around the City.
- Ensure the 6m “sensitive area” setback in the Commercial Core Zone is reasonable taking into account the number of small / narrow sites on the zone boundary and the need to balance the uses of commercial and sensitive activities.

I hope that you find the advice contained herein useful. I would be delighted to discuss it with you, and note that there is likely to be context and area specific information that will clarify some issues I have raised.

Yours sincerely



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