

**BEFORE INDEPENDENT HEARINGS PANEL APPOINTED BY THE  
WELLINGTON CITY COUNCIL**

**UNDER** the Resource Management Act 1991 (**RMA**)

**IN THE MATTER** of the Wellington City Proposed District Plan

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**LEGAL SUBMISSIONS ON BEHALF OF SOUTHERN CROSS HEALTHCARE  
LIMITED (SUBMITTER 380)**

**HEARING 7 – SPECIAL PURPOSE ZONE**

**DATED 15 MARCH 2024**

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## MAY IT PLEASE THE PANEL

### INTRODUCTION

1. Southern Cross Healthcare Limited (**Southern Cross**) owns and operates Southern Cross Wellington Hospital at 90-111 Hanson Street, Newtown, Wellington which was established in 1992. Southern Cross also owns the site at 82 to 88 Hanson Street which it acquired to enable the expansion of the existing hospital (**Hanson Street Hospital**).
2. The Hanson Street Hospital (including the development land) is currently located in the Inner Residential zone under the Operative Plan and is proposed to be rezoned Special Purpose - Hospital zone (**SPH zone**) under the Wellington City Proposed District Plan (**Proposed Plan**). The rezoning of the site is supported by the Council Officer's Section 42A report.
3. Southern Cross has filed both a primary submission and a further submission on the Proposed Plan. Southern Cross largely supports the Proposed Plan and sought some specific amendments to the SPH zone provisions.
4. For context, the Operative and Proposed Plan planning maps for the Hanson Street Hospital are **attached** as **Appendix A** and **B**. We also note that the Wellington City Council's recommendation on the residential zones support further intensification in proximity to the Hanson Street Hospital, with a permitted height of 22m. A map showing the Council's recommendations to Minister Bishop is **attached** as **Appendix C**.
5. These legal submissions will:
  - (a) provide background to Southern Cross;
  - (b) explain why the Proposed Plan must give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**); and
  - (c) confirm Southern Cross' support for provisions that give effect to the NPS-UD and recognise the importance of hospitals and explain why other provisions of the SPH zone require amendment to more appropriately provide for hospitals as essential social infrastructure.

6. In addition to these legal submissions, Mr Paul, General Manager of Property and Development at Southern Cross, has provided a statement of corporate evidence to describe the role and importance of Southern Cross hospitals in New Zealand's healthcare system, including the regional role of the Hanson Street Hospital, and the functional and operational needs of hospitals that should be recognised in the provisions of the Proposed Plan.

## **BACKGROUND TO SOUTHERN CROSS AND ITS ROLE PROVIDING CRITICAL HEALTHCARE SERVICES IN NEW ZEALAND**

7. Southern Cross has the largest network of private hospitals and procedure centres in New Zealand. Southern Cross' hospitals support the public health system by providing for elective surgery, while public hospitals are more focused on acute surgical needs. As our population increases and ages the demand on elective surgery continues to increase. The Southern Cross hospitals are essential social infrastructure which have an important role of supporting the public health sector to meet the growing and unmet demand for health and wellbeing services. Elective surgery is a critical part of our healthcare system as it reduces stress, morbidity, enables function, increases quality of life, and allows people to return to work. In Wellington, the Hanson Street Hospital provides this role and function for Wellington City and the Greater Wellington Region.
8. Southern Cross has made significant investment into the Hanson Street Hospital to meet ongoing demands for healthcare services. In response to an increasing demand for services, Southern Cross has committed to the next stage of development in the expansion of the hospital on 82 - 88 Hanson Street. Resource consent has been granted for the expansion of the current hospital onto these sites, to enable new consulting suites, located close to hospital theatres and patients in recovery.
9. It is necessary and appropriate to recognise the role and function of the Hanson Street Hospital, in the Proposed Plan.

**THE AMENDMENTS SOUGHT BY SOUTHERN CROSS ARE REQUIRED TO GIVE EFFECT TO THE NPS-UD WHICH RECOGNISES THE IMPORTANCE OF SOCIAL INFRASTRUCTURE, INCLUDING HEALTHCARE FACILITIES**

10. The NPS-UD provides clear and directive objectives and policies to ensure towns and cities are well-functioning urban environments and have sufficient development capacity to meet the changing needs of diverse communities.
11. Section 74(1)(ea) of the Resource Management Act 1991 (**RMA**) requires a territorial authority to change its district plan ‘in accordance with’ a national policy statement. In addition, but separate to this, s 75(3)(a) requires that a district plan must ‘give effect to’ any national policy statement including the NPS-UD.
12. To “give effect to” a national policy statement is a high legal standard. The Supreme Court recognised in *King Salmon* that “give effect to” means “implement” and is a strong direction and is intended to constrain decision-makers.<sup>1</sup> The High Court has explained that in the context of a private plan change the Court was required to consider whether the proposed change would give effect to all the provisions of the NPS-UD.<sup>2</sup>
13. The objectives and policies of the NPS-UD are broader than just enabling residential development. The NPS-UD supports more intensive housing development within urban areas along with the businesses and community services that are required to support them.
14. Social facilities are critical for New Zealand to provide for the health and wellbeing of our current and aging population. These facilities are needed in appropriate locations to support the increase in residential development enabled by the NPS-UD. They are an important part of a well-functioning urban environment, and it is important that the Proposed Plan appropriately provides for them.

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<sup>1</sup> *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593 (**King Salmon**) at [77] and [91]. Accessible here: <https://www.courtsofnz.govt.nz/assets/cases/2014/sc-82-2013-eds-v-king-salmon-civil-appeal.pdf>.

<sup>2</sup> *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948, at [88].

15. In the context of hospitals, to give effect to the NPS-UD when making decisions on the Proposed Plan, the Council is required to:
- (a) Contribute to well-functioning urban environments that enable all people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, now and into the future.<sup>3</sup>
  - (b) Enable more people to live in, and more businesses and community services to be located in, areas of an urban environment near a centre zone, well-serviced by existing or planned public transport, and/or where there is a high demand for housing or business land in the area.<sup>4</sup>
  - (c) Enable businesses to be located in certain areas of urban environments, including where there is high demand for business land.<sup>5</sup> Southern Cross is in the business of providing healthcare services. The Special Purpose Hospital zones are 'business land' to the extent that they allow for business use. The NPS-UD also seeks to provide at least sufficient development capacity to meet expected demand for business land over the short, medium and long term.<sup>6</sup>
  - (d) Provide at least sufficient development capacity to meet expected demand for business land over the short term, medium term, and long term.<sup>7</sup>
  - (e) Social infrastructure, such as schools and healthcare facilities, are recognised as additional infrastructure.<sup>8</sup> Local authorities must be satisfied that the additional infrastructure to service the development capacity is likely to be available, including social infrastructure, such as schools and healthcare facilities.<sup>9</sup>

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<sup>3</sup> NPS-UD, Objective 1 and Policy 1.

<sup>4</sup> NPS-UD, Objective 3.

<sup>5</sup> Objective 3 of the NPS-UD.

<sup>6</sup> Policy 2 of the NPS-UD.

<sup>7</sup> NPS-UD, Policy 2.

<sup>8</sup> Interpretation 1.4 of the NPS-UD.

<sup>9</sup> NPS-UD, clause 3.5(1).

16. Enabling the intensification, development, and expansion of essential social infrastructure, including healthcare facilities such as hospitals, is a key requirement to effectively implementing the NPS-UD.

**TO GIVE EFFECT TO THE NPS-UD, THE SPH ZONE IS REQUIRED TO PROVIDE FOR SOCIAL INFRASTRUCTURE TO SUPPORT AND SERVICE DEVELOPMENT CAPACITY**

17. Southern Cross supports the application of the SPH zone to Hanson Street Hospital because this zone more appropriately recognises the functional and operational needs of hospital developments and is enabling of their operation (and expansion), consistent with the NPS-UD.
18. Southern Cross also supports proposed amendments to the SPH zone provisions that clearly recognise and identify hospital facilities as essential social infrastructure and enable hospital activities and development.
19. In its submission Southern Cross supports the retention of Objective HOSZ-01 (Purpose) as notified. The purpose of the SPH zone recognises the Southern Cross Hospital Wellington as a regionally significant hospital and that the zone is to provide for its ongoing operation, function and development to support the economic, health and social well-being.
20. Southern Cross also supports the retention of the following objectives, policies and standards as notified because they appropriately recognise and provide for hospitals in the SPH zone:
- (a) Policies HOSZ-P1 (Enabled activities), P2 (Potentially incompatible activities), P4 (Urban form, quality and amenity), P5 (Resilience);
  - (b) Rules, HOSZ-R1 (Hospital activities), R3 (Maintenance and repair of buildings and structures, R4 (Demolition or removal of buildings and structures); and
  - (c) Standards HOSZ-S1 (Maximum height of buildings and structures) and S2 (Height in relation to boundary).

21. Southern Cross considers it necessary to make some minor changes to the following SPH zone provisions to give effect to the NPS-UD and otherwise recognise the functional and operational needs of private hospitals.
- (a) *Objective HOSZ-O3 (Evolving demands, service and technological changes)*: This objective is designed to recognise the evolving healthcare needs of the community. However, it only refers to health care facilities, which are separately defined from hospital activities. In our submission, this Objective needs to be amended to recognise that both hospitals and healthcare facilities need to provide choice to their patients, staff and visitors. Additionally, the language of HOSZ-O3(2) must clarify that a greater choice of open space for patients, staff and visitors, may be appropriate for the Wellington Regional Hospital, as distinct from smaller or private hospitals. These amendments are supported in the Section 42A Report, however I note that the first change has not been carried through to the mark up of the SPH zone provisions.
- (b) *Objective HOSZ-O4 (Managing adverse effects)*: Southern Cross sought amendments to this objective and supports the amendments proposed in the Section 42A report.<sup>10</sup> Specifically, these amendments delete a reference requiring the assessment of adverse effects *within* the SPH zone. It is appropriate to require this assessment at interfaces with the zone, and within the Wellington Regional Hospital due to the scale of the site, but not within the smaller scale SPH zone sites such as the Hanson Street Hospital as this would constrain development opportunities. The amendment proposed in the Section 42A Report to delete the requirement to consider effects on “key pedestrian streets” is also supported.
- (c) *Rule HOSZ-R5 (Additions and alterations to buildings and structures) and Rule HOSZ-R6 (Construction of new buildings and structures)*: Southern Cross seeks an amendment to rules HOSZ-R5 and R6 to remove a reference to the Centres and Mixed-Use Design Guide as a matter of discretion.<sup>11</sup> Otherwise, it elevates the guides to the status of

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<sup>10</sup> Submission point 380.49.

<sup>11</sup> Submission point 380.63 and 380.68.

a standard. The Centres and Mixed-Use Design Guide was drafted to apply to the City Centre, Metropolitan Centres, Local Centres, Neighbourhood Centres and Mixed-Use zones. It was not drafted to recognise the distinct functional and operational needs of hospitals and is therefore not an appropriate standard in this zone. These amendments are supported in the Section 42A report.

22. However, the Council Officer has now suggested an addition to HOSZ-P4 (Urban form, quality and amenity), to indicate that, at a policy level, hospitals should “fulfil the intent” of the Centres and Mixed-Use Design Guide. This is vague and uncertain and does not recognise the operational and functional needs that drive hospital design as explained in Mr Paul’s evidence. Southern Cross does not support this addition to the policy. It is considered that the matters already listed in the policy provide appropriate direction to urban form, quality and amenity outcomes.
23. In its submission Southern Cross supported the wide definition of ‘Hospital Activities’ but also sought an amendment to rule HOSZ-R2, to enable ‘all other activities’ that support the functions of hospitals, to be considered as restricted discretionary activities.<sup>12</sup> Southern Cross has noted the Council Officers concern in the Section 42A Report that this will create an inconsistent approach in the Proposed Plan. Southern Cross confirms that it accepts this position provided that the definition of ‘Hospital Activities’ is retained as notified, as this definition is broad and provides scope for a range of activities to occur as permitted activities.
24. Overall, Southern Cross supports the approach taken in the Section 42A Report in relation to these provisions raised in its submission.
25. Southern Cross also supports the amendments made to the SPH zone provisions in response to the submissions of Te Rūnanga o Toa Rangatira (**Toa Rangatira**)<sup>13</sup> and Taranaki Whānui ki te Upoko o te Ika (**Taranaki Whānui**)<sup>14</sup> because triggers for partnership and engagement with Taranaki

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<sup>12</sup> Submission point 380.56.

<sup>13</sup> Submission number 488.

<sup>14</sup> Submission number 389.

Whanau and mana whenua should only apply to the Wellington Regional Hospital rather than hospitals that are privately operated.

26. It is noted that the permitted height of the Hanson Street Hospital at 21m is now slightly out of step with the Council Committee's recommendation and permitted height on adjoining residential sites of 22m. If there is scope, it would be appropriate to increase the height of the SPH zone to be at least 22m.

### **CONCLUSION**

27. Southern Cross seek that its submission and the relief sought, as I have explained, is supported by the Commissioners.

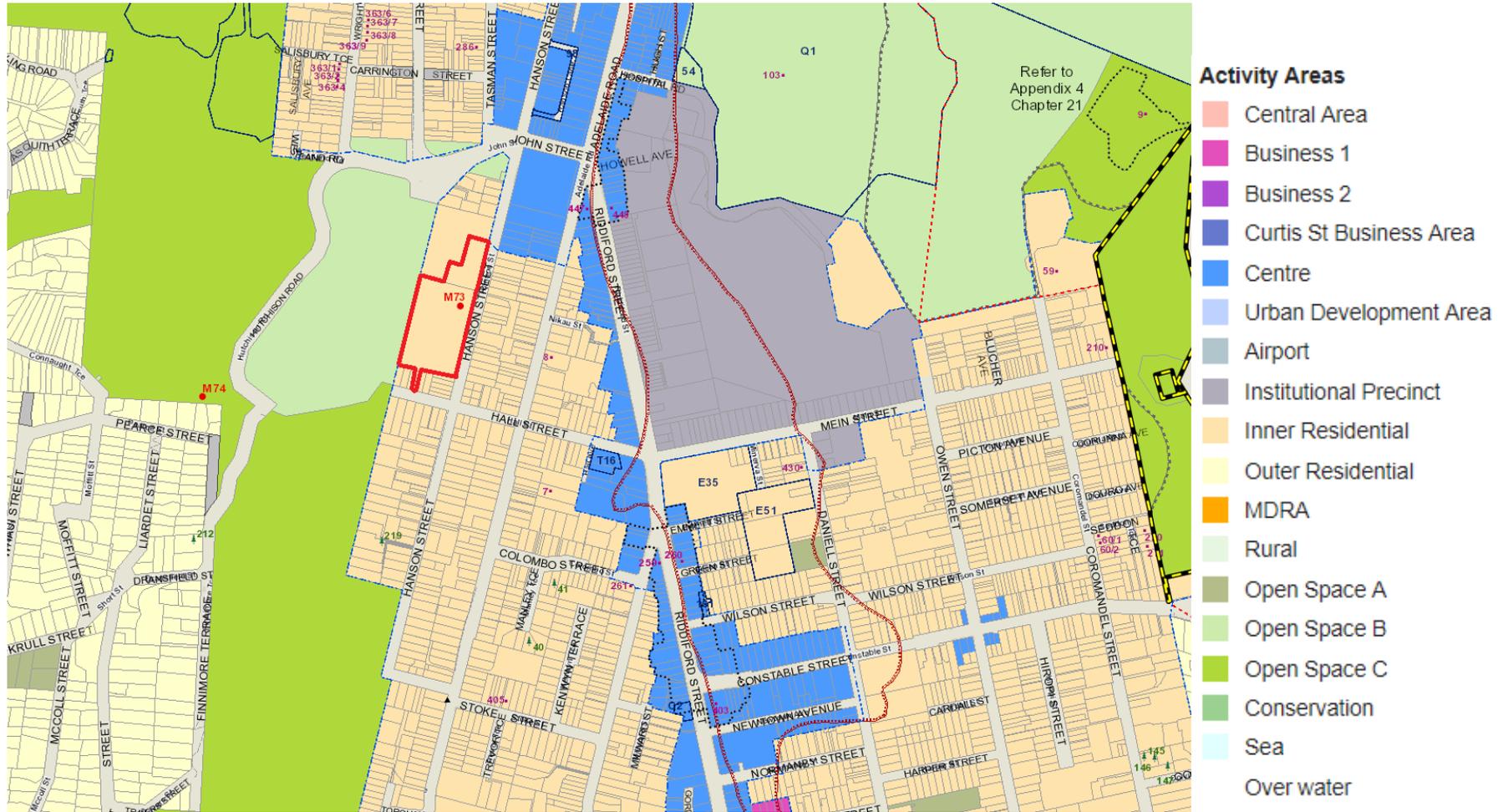
**DATED** at Auckland this 15<sup>th</sup> March 2024



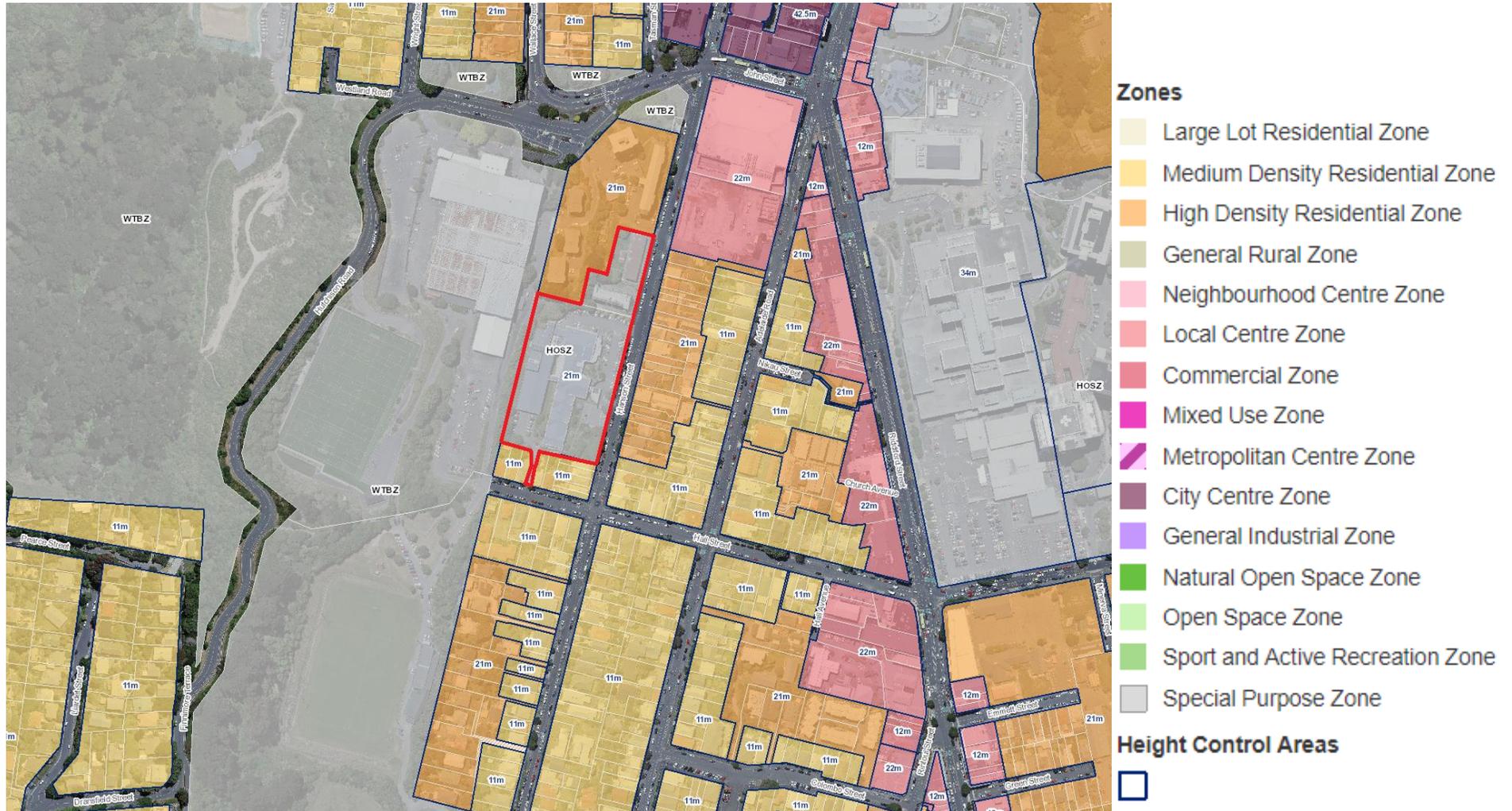
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**Bianca Tree**  
Counsel for Southern Cross  
Healthcare Limited

### Appendix A – OPERATIVE PLANNING MAPS



### Appendix B - PROPOSED PLANNING MAPS



### Appendix C – AMENDMENTS OF THE WELLINGTON CITY COUNCIL ENVIRONMENT AND INFRASTRUCTURE COMMITTEE

