

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER AT
SELWYN**

IN THE MATTER OF

Clause 21 of the First Schedule of the
Resource Management Act 1991
(Plan Change 67)

IN THE MATTER OF

GW WILFIELD LIMITED
(Applicant)

SYNOPSIS OF OPENING LEGAL SUBMISSIONS

Dated: 14 September 2021

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MAY IT PLEASE THE COMMISSIONER

1 INTRODUCTION

- 1.1 These submissions are made on behalf of GW Wilfield Limited (the **Applicant**) in support of its request to rezone approximately 33.4 ha of land from Rural Inner Plains to Living West Melton South under the operative Selwyn District Plan (**PC67** or the **Proposal**).
- 1.2 The Proposal would enable the extension of an existing residential neighbourhood in West Melton to the south of State Highway 73, known as Wilfield.
- 1.3 Wilfield currently comprises approximately 190 low density residential lots, all of which are now sold and, if approved, PC67 would contribute an additional 130 additional lots of similar density.
- 1.4 The objectives of this Proposal are straightforward. As you will hear shortly, the market for available land for housing in the urban area of Selwyn is highly constrained, leading to a reduction in competition and consequential acute price escalation. The Proposal aims to add significantly to the development capacity in West Melton and in the urban area of the Selwyn district to alleviate some of that pressure.
- 1.5 Its second core objective is to provide the capacity in a manner which will support the urban areas of Selwyn and West Melton in particular in realising the outcomes envisaged for them in the relevant Resource Management Act 1991 (**RMA** or **Act**) documents, including the National Policy Statement on Urban Development (**NPSUD**) and the Canterbury Regional Policy Statement (**CRPS**).
- 1.6 It is the combined opinion of the Applicant's experts that these objectives are achieved through PC67. In particular, PC67 will:
 - (a) support a more consolidated urban form for West Melton, with improved connectivity to the centre of the township;¹

¹ Statement of evidence of Nicole Lauenstein, at [4.1] – [4.2]; Statement of evidence of David Compton-Moen at [5.8].

- (b) enable much needed residential development at an appropriate density for maintaining the predominant character of West Melton²;
 - (c) contribute to West Melton and the wider urban areas of Selwyn as a well-functioning urban environment including through:
 - (i) the provision of housing in an area which can be readily supported with the necessary infrastructure;³
 - (ii) the provision of good accessibility between housing, community services and spaces;⁴
 - (iii) supporting the competitive operation of land and development markets;⁵ and
 - (iv) supporting reductions in greenhouse gas emissions through various initiatives.⁶
 - (d) avoid generating unacceptable losses of versatile soils, or unmanageable adverse effects on flood hazard.⁷
- 1.7 For her part, drawing on these conclusions, it is Ms Seaton's opinion that granting PC67 is the most appropriate way to achieve the purpose of the Act.⁸
- 1.8 In view of these findings, the Applicant is requesting that you, on behalf of Selwyn District Council, utilise a purpose-built pathway in the NPSUD to approve this Proposal in order that it might realise those objectives for the benefit of the people and communities of the Selwyn district.

Evidence to be presented

- 1.9 In support of its request, the Applicant has provided evidence from:
- (a) Mr Hamish Wheelans (Corporate);

² Statement of evidence of David Compton-Moen, at [7.5]; Statement of evidence of Nicole Lauenstein, at [4.5].

³ Statement of evidence of Andy Hall, at [2.1] – [2.3].

⁴ Statement of evidence of Andrew Metherall, at [8.10] – [8.15].

⁵ Statement of evidence of Fraser Colegrave, at [5.14].

⁶ Statement of evidence of Hamish Wheelans, at [6.3] – [6.8].

⁷ Statement of evidence of Victor Mthamo, at [2.3] and [2.5].

⁸ Statement of evidence of Kim Seaton, at [7.45].

- (b) Mr Gary Sellars (Real Estate);
- (c) Mr Fraser Colegrave (Economics);
- (d) Mr David Compton-Moen (Landscape and Urban Design);
- (e) Ms Nicole Lauenstein (Urban design);
- (f) Mr Victor Mthamo (Flooding and Versatile Soils);
- (g) Mr Andrew Hall (Infrastructure);
- (h) Mr Andrew Metherall (Transport); and
- (i) Ms Kim Seaton (Planning).

2 OVERVIEW OF THE PROPOSAL

2.1 A detailed description of PC67 is set out in the application documents and in the Council Officer's section 42A report (**Officer's Report**). In summary, the key features are:

- (a) The proposed rezoning of 33.4ha of land in West Melton from Rural Inner Plains to Living WM South to enable the delivery of approximately 130 residential lots.
- (b) The provision of an Outline Development Plan (**ODP**) which will direct that development, and which shows (among other matters) primary and secondary roading routes and pedestrian/cycle linkages, neighbourhood parks, and landscaping requirements. The proposed ODP is attached to the evidence of Ms Seaton, and has been integrated with the existing ODP for the balance of the Living WM South zone.

2.2 Following the receipt of submissions and the Officer's Report, the Applicant has also made some further refinements to the Proposal to respond to matters raised. This has resulted in:

- (a) amendments to the proposed ODP text to ensure that the provision for future public transport is factored into the internal road layout;
- (b) amendments to the ODP to improve pedestrian and cycle linkages in the southern portion of the ODP area;

- (c) an amendment to Rule 12.1.57A, to specify that a cycle/pedestrian path must be constructed on Weedons Ross Road; and
- (d) the addition of a new rule 12.1.3.56A, which will require development enabled by this Proposal to contribute to a reduction in greenhouse gas emissions, and improved infrastructure resilience and efficiency.

3 LEGAL FRAMEWORK

3.1 Sections 31 – 32 and 72 – 76 of the RMA provide the core framework against which you must assess this Plan Change request. Those considerations, as summarised by the Environment Court⁹, are set out in full in **Appendix A** of my submissions, but in short, they require any change to:

- (a) be designed to accord with, and assist Selwyn District Council to carry out its functions, so as to achieve the purpose of the Act.¹⁰
- (b) to *give effect* to any national direction and the operative regional policy statement.¹¹

3.2 Your evaluation of the objectives, policies, methods and rules proposed through this Plan Change must therefore be principally focussed on the extent to which the objectives of the Proposal and its provisions are the most appropriate way to achieve the purpose of the Act.¹² In considering any proposed rules, you must also have regard to the actual and potential effects of the activities authorised by those rules on the environment.¹³

4 ASSESSMENT OF PC67 AGAINST THE LEGAL FRAMEWORK

4.1 To support your assessment of PC67, Ms Seaton, for the Applicant, has prepared a detailed section 32 analysis which was included in the original application, and has been updated in her evidence to address the changes subsequently made. On her assessment and drawing on the

⁹ [2014] NZEnvC 55 at [17]; adopted in respect the consideration of AUP provisions in *Cabra Rural Developments Limited v Auckland Council* [2018] NZEnvC 90 at [279].

¹⁰ Resource Management Act 1991, sections 31, 72 and 74.

¹¹ Resource Management Act 1991, section 75(3).

¹² Resource Management Act 1991, sections 74(1) and 32(1)(a) – (b).

¹³ Resource Management Act 1991, section 76(3).

conclusions of the Applicant's other experts, she finds the statutory tests to be met by the updated Proposal.

4.2 Ms White for the Council ultimately reaches a different overall conclusion, but nevertheless find areas of agreement between herself and Ms Seaton, namely that:

- (a) It is not reasonable to expect that the West Melton township will remain static in terms of growth or change, and the current capacity of the township's community facilities do not constitute an impediment to PC67.¹⁴
- (b) There is no need for any mitigation beyond what is proposed to manage the interface between the proposed new urban/rural boundary.¹⁵
- (c) The Proposal will be able to be appropriately serviced¹⁶, and there are no geotechnical or contaminated land matters which preclude it from being approved.¹⁷
- (d) The additional traffic resulting from the Proposal can be accommodated in the area, and the location of the proposed intersection with Weedons Ross Road is appropriate.¹⁸
- (e) The Proposal generally accords with the functions of territorial authorities, as set out in section 31 of the RMA. In particular, the ODP will provide an appropriate method for Council to manage potential effects and demonstrates an integrated approach.¹⁹
- (f) The Proposal is consistent with the outcomes sought in the Canterbury Land and Water Plan, the Canterbury Air Regional Plan and the Mahaanui Iwi Management Plan. With the exception of the provisions relating to a compact, consolidated urban form and alternative transport modes (which Ms White finds are not met), the Proposal is consistent with the outcomes sought in the operative Selwyn District Plan.²⁰

¹⁴ Officer's Report, at [47].

¹⁵ Officer's Report, at [51].

¹⁶ Officer's Report, at [73] and [74].

¹⁷ Officer's Report, at [78].

¹⁸ Officer's Report, at [37] and [40].

¹⁹ Officer's Report, at [82].

²⁰ Officer's Report, at [109] – [110], [117].

- 4.3 Notwithstanding her findings on these matters, Ms White ultimately concludes in her Report that the Proposal is not the most appropriate way to achieve the purpose of the Act. That view is shared by some submitters, including the Christchurch City Council and the Canterbury Regional Council.
- 4.4 The balance of these legal submissions therefore address the key areas of disagreement between the Applicant, and Ms White and submitters, and responds to the key perceived hurdles to you approving this Plan Change.
- 4.5 Those matters principally relate to the National Policy Statement on Urban Development (**NPSUD**) (and Policy 8, specifically), and the extent to which it provides a pathway for this Plan Change to be approved.
- 4.6 Of course, the reason for Policy 8's central focus in this case is because the PC67 land falls outside of the areas identified for development in Map A of the Canterbury Regional Policy Statement (**CRPS**). There is no dispute that the provisions of the CRPS are clear that, in such cases, development is to be avoided unless explicitly provided for elsewhere in the CRPS, which this Proposal is not.²¹
- 4.7 As such, unless an alternative pathway is available, you could not approve this Plan Change without falling foul of the requirement for the Selwyn District Plan to give effect to the development pattern established by Map A and the CRPS.
- 4.8 For the reasons set out below, it is my submission that the NPSUD does provide that alternative pathway, and that, in light of its clear direction and its place in the hierarchy of RMA documents, it provides a process via which PC67 can be approved.

National Policy Statement on Urban Development

- 4.9 The NPSUD became operative on 20 August 2020, replacing the former National Policy Statement on Urban Development Capacity 2016 (**NPSUDC**).

²¹ Refer Canterbury Regional Policy Statement, objective 6.2.1(3), policy 6.3.1(4), objective 6.2.2(4).

4.10 Prepared a mere four years after the NPSUDC, the NPSUD was intended to respond differently to its predecessor in order to better enable development of well-functioning cities that reflect the diversity, and meet the needs, of current and future generations.²² Like the NPSUDC, the Government sought to deliver a Policy Statement which recognised the value of having well-integrated and coordinated growth areas. In that regard, the NPSUD contains strong directions for local authorities around the provision of “at least sufficient development capacity” over the short, medium and long terms, and preparing future development strategies which identify (among other matters) how that local authority intends to achieve that outcome.²³

4.11 Critically, and in my submission, relevantly to these proceedings, in preparing the NPSUD the Government also recognised that:

...urban areas are dynamic and complex systems that are continually changing in response to wider economic and social change. As much as cities need to anticipate and plan for growth, they must also remain open to change and be responsive to demand...

One challenge with the current planning system is that it is not responsive enough to changing circumstances or opportunities. Existing urban boundaries or planned land release sequences are sometimes defended to encourage a particular urban settlement pattern, or to manage infrastructure costs. The proposed NPSUD is seeking to support the Urban Growth Agenda’s objective to provide a system that is more open and responsive to new urban development opportunities in areas where they are most needed.²⁴

4.12 Put another way, the Government recognised that the directions around enabling development capacity through planning, while necessary, had not been sufficient on their own to address some of our most acute urban challenges. Another “tool” was required in the NPSUD – one which gave local authorities the opportunity to be agile and responsive to

²² Ministry for the Environment, (2019) *Planning Successful Cities: A discussion document on a proposed National Policy Statement on Urban Development*, Wellington: Ministry for the Environment, page 7.

²³ National Policy Statement on Urban Development 2020, objective 3, policy 2, subpart 4.

²⁴ Ministry for the Environment, (2019) *Planning Successful Cities: A discussion document on a proposed National Policy Statement on Urban Development*, Wellington: Ministry for the Environment, pages 38 and 39.

development proposals that, while unanticipated by, or out-of-sequence with, existing plans or strategies, would nevertheless support the wider objectives of the NPSUD (especially the provision of housing and business capacity, and contributing to well-functioning urban environments).

4.13 By requiring such proposals to support those outcomes, the Government could ensure that the “tool” would still complement local authority initiatives around planning for growth, but allow the flexibility and responsiveness necessary to reflect the reality/complexity of development in our urban areas.²⁵

4.14 That “tool”, of course, is the direction in the NPSUD (provided through objective 6 and policy 8 specifically) that *“local authorities decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

- (a) *unanticipated by the RMA documents; or*
- (b) *out-of-sequence with planned land release.”*²⁶

4.15 Put simply, Policy 8 re-opens the door that fixed urban growth or infrastructure boundaries had previously slammed shut.

4.16 To give effect to this direction, the NPSUD requires that, as a minimum²⁷, local authorities have particular regard to the development capacity provided by a plan change if it would contribute to a well-functioning urban environment, is well connected to transport corridors, and meets any applicable “significance” criteria identified in the relevant regional policy statement.²⁸

4.17 For the reasons I will shortly summarise, it is the evidence of the Applicant’s experts that all of the requirements of Policy 8 (and clause 3.8) are satisfied by PC67. If you agree, then the NPSUD not only

²⁵ Refer Ministry for the Environment. (2020). *National Policy Statement on Urban Development 2020, Understanding and implementing the responsive planning policies*, Ministry for the Environment: Wellington, page 3.

²⁶ National Policy Statement on Urban Development 2020, objective 6, policy 8.

²⁷ Note National Policy Statement on Urban Development 2020, clause 3.1(1), which states “this part sets out a “non-exhaustive list of things that local authorities must do to give effect to the objectives and policies of this NPS, but nothing in this part limits the general obligation under the Act to give effect to those objectives and policies.”

²⁸ National Policy Statement on Urban Development 2020, clause 3.8.

provides a pathway for you to consider this Proposal, it requires that, in reaching your decision on whether to approve it, you must, have “particular regard” to the development capacity it will provide;²⁹ that is to say, you must recognise this particular matter as important to the overall decision, and therefore consider and carefully weigh it in coming to any conclusion.³⁰

4.18 Within that context, I now turn to consider the component parts of an application under this NPSUD pathway.

Local authority decision affecting an urban environment

4.19 “Urban environment” is defined in the NPSUD as being “any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that is or is intended to be (emphasis added):

- (a) predominately urban in character; and
- (b) part of a housing and labour market of at least 10,000 people.

4.20 While not necessarily a decision the NPSUD asks it to make, the Greater Christchurch Partnership has determined that *“for the application of the NPS-UD, the “urban environment” is considered to explicitly relate to”* the area broadly shown as the greater Christchurch area in Map A of the CRPS.³¹

4.21 That is not however a determination that you are required to accept to the exclusion of all others. To do so, in my submission, would unnecessarily (and potentially unlawfully) limit the intended scope of the NPSUD, because in addition to “greater Christchurch”, the definition of “urban environment” would also capture the urban part of the Selwyn district (i.e. West Melton, Lincoln, Rolleston, Springson, Tai Tapu and Prebbleton).³²

4.22 In my submission, there is nothing in the NPSUD to exclude such an interpretation. The matter before you is an application to the Selwyn

²⁹ National Policy Statement on Urban Development 2020, clause 3.8.

³⁰ *Marlborough District Council v Southern Ocean Seafoods Ltd* [1995] NZRMA 220 & 336 (PT) at 12.

³¹ See for example, Ben Baird, Selwyn District Council, *Memorandum: Growth Planning in Selwyn District*, 19 August 2021, [14]; Statement of evidence of Keith Tallentire, at [57].

³² Refer Ben Baird, Selwyn District Council, *Memorandum: Growth Planning in Selwyn District*, 19 August 2021, [5].

District Council in respect of a change to the Selwyn District Plan. The decision in question is a decision of the Selwyn District Council as the local authority. It is not a decision of the Greater Christchurch Partnership.

- 4.23 That said, the PC67 land falls within both greater Christchurch and the urban part of the Selwyn district, and as such your decision on whether to approve it is one which affects an “urban environment”. The first threshold of the Policy 8 test is therefore met.

Adding significantly to development capacity

- 4.24 Critically in this instance, while the decision in question must affect an “urban environment”, neither Policy 8 nor implementing clause 3.8 of the NPSUD requires that the significance of the development capacity is to be assessed relative to any particular urban environment setting. These provisions do not, in other words, require the Applicant to demonstrate that PC67 will contribute significantly to development capacity in the context of greater Christchurch overall, or even to the urban area of the Selwyn district; nor do they preclude the use of West Melton as a context against which that “significance” could be assessed.
- 4.25 Rather, as Ms Seaton notes in her evidence, the opportunity to determine “significance” is given to the regional council³³ (with little or no constraint on how that determination is to be made) or in the absence of that direction/criteria, to a decision-maker on a plan change.
- 4.26 The Canterbury Regional Council has not yet promulgated a policy on significance for the CRPS although such work is apparently underway³⁴. I do not understand that work to be publicly available however Mr Tallentire’s evidence suggests some criteria to which we are not yet privy is extant and has apparently already influenced decisions on which plan changes the regional council considers to have significance and which they do not.³⁵
- 4.27 In my submission the Regional Council’s view on this matter carries little weight in the absence of a policy in the CRPS. Rather the determination of significance falls to the Selwyn District Council as the decision maker

³³ National Policy Statement on Urban Development 2020, Clause 3.8(3).

³⁴ Statement of evidence of Keith Tallentire, at [33].

³⁵ Tallentire evidence, at [65].

on a plan change. The determination of significance is therefore yours and yours alone in this instance.

4.28 In anticipation of this circumstance, the Ministry for the Environment has issued guidance to support decision-makers in that assessment. It includes consideration of:

- (a) Significance of scale and location.
- (b) Fulfilling identified demand.
- (c) Timing of the development (i.e. can it actually be delivered ahead of planned land release).
- (d) Availability of infrastructure.³⁶

4.29 These considerations are largely similar to those identified by Ms Seaton as matters which would usefully inform any assessment of significance.³⁷

4.30 Importantly, what neither the NPSUD nor the Ministry guidance require is that this "significance" assessment is only undertaken in relation to significance to the "urban environment" as a whole however that is defined.

4.31 It may well be, as it is with PC67, that the proposal adds significantly to the development capacity as a percentage of a whole urban environment (in this case, the urban area of the Selwyn district). But neither the objective nor the policy nor the supporting implementation clause require that specific metric to be demonstrated by the plan change, and more specifically, nor do they preclude assessment in relation to smaller areas within that "urban environment" or indeed as against a specific typology rather than a spatial area.

4.32 On that matter, I therefore disagree with the Council Officer (and submitters) that there is any inconsistency in confirming that PC67 would add significantly to the development capacity in West Melton while at the same time identifying greater Christchurch (or any other area) as the "urban environment" which is being affected by the decision. For

³⁶ Refer Ministry for the Environment. (2020). *National Policy Statement on Urban Development 2020, Understanding and implementing the responsive planning policies*, Ministry for the Environment: Wellington, pages 5 - 6.

³⁷ Seaton evidence, at [7.15].

the reasons set out above, there is nothing within the NPSUD which precludes such an approach (and I note that, in her report, the Council Officer ultimately agrees).³⁸

- 4.33 The first issue at hand, then, remains whether residential lots enabled by PC67 would “add significantly to development capacity”, taking into account the criteria addressed above (provided in the absence of any regional policy statement criteria) and as set out in the evidence of Ms Seaton. For the reasons that follow, it is the evidence of the Applicant’s experts – and Mr Colegrave and Mr Sellars in particular – that it would:

There is not enough land available for housing to meet demand in the Selwyn district over the short, medium or long term.

- 4.34 Mr Colegrave has carefully reviewed the capacity analysis undertaken by Selwyn District Council and the Greater Christchurch Partnership in response to the directions within the NPSUDC, and updated in July 2021 to respond to the NPSUD. For the reasons set out in his evidence,³⁹ Mr Colegrave considers that that analysis has “*understated likely future demand [for housing]*” and has “*grossly overstated*” estimates of feasible capacity.⁴⁰ It is his opinion that as a result, “*the forecast shortfall in capacity in [that analysis] is likely to occur far sooner than expected*”.⁴¹

- 4.35 Mr Colegrave, however, goes further in his assessment, noting that while feasible capacity is one metric, it does not equate to market supply. In his evidence, Mr Colegrave lists a range of reasons why feasible capacity may not necessarily form part of market supply, particularly over the short and medium term. When those reasons are taken into account, it follows, according to Mr Colegrave, that actual market supply will “*only ever be a modest proportion of feasible capacity*”. Reliance, then, on “just enough” feasible capacity to meet demand “*will invariably lead to significant and prolonged market shortages*”.⁴²

³⁸ Refer Officer’s Report, at [95] – “In my view, this [clause 3.8(2)] ultimately allows for the extent of the significance of the capacity to be considered in not only the context of West Melton, but also the Selwyn District and Greater Christchurch context”.

³⁹ Colegrave evidence, at section 4.

⁴⁰ Colegrave evidence, at [4.36].

⁴¹ Ibid.

⁴² Colegrave evidence, at [4.39].

- 4.36 Applying those factors to “feasible capacity” in the Selwyn district, Mr Colegrave identifies “*significant shortfalls*” in available land for housing in the short, medium and long term.⁴³
- 4.37 Against that context, Mr Colegrave considers that the additional supply of approximately 130 lots by PC67 represents a “significant contribution”, increasing the likely short-term district supply on its own by 5.3%, and the medium term supply by 3%. Put another way, 130 additional lots would contribute 9% to making up the identified short term district supply shortfall.
- 4.38 Despite the absence of economic evidence to support his position, and not having been involved in the preparation of the 2021 Housing and Business Capacity Assessment (**HBC**),⁴⁴ Mr Tallentire disagrees with the careful assessment of Mr Colegrave, determining that the HBC is fit for purpose, that the future urban development areas (**FUDA’s**) provide medium term capacity (despite the NPSUD definition of FUDA’s placing them firmly in the long term capacity bracket), and that the experience of Mr Colegrave as a qualified economist and the guidance of the Ministry can be disregarded with respect to using the appropriate developer margins.
- 4.39 In that context I commend the evidence of Mr Colegrave to you in preference to that of Mr Tallentire. Moreover, I draw to your attention clause 3.8 of the NPSUD which requires local authorities, when making decisions on changes to plans which affect the development of urban areas to use “evidence”, including but clearly not exclusively, the information in the HBC. That evidence is, in my submission, before you in the analysis undertaken by Mr Colegrave.

There are virtually no residential sections of comparable size available in the urban areas of Selwyn and West Melton

- 4.40 The significance of the development capacity provided by PC67 becomes stark when assessed against the market for low density residential dwellings in the urban areas of Selwyn, and in the market of West Melton generally.

⁴³ Colegrave evidence, at Table 3.

⁴⁴ Tallentire evidence, at [79].

- 4.41 For his part, Mr Sellars has undertaken a careful analysis of the land and housing markets in West Melton, Prebbleton and Rolleston. On his assessment, there are virtually no residential sections of similar size as those proposed through PC67 currently available for purchase in these areas. Across the board, PC67, if approved, would on its own provide an 82% increase in identified existing residential capacity in West Melton and Prebbleton.⁴⁵ In terms of West Melton specifically, both Mr Sellars and Mr Colegrave identify that there are no vacant sections of any size currently available for residential development. That is confirmed by Mr Wheelans in his evidence.
- 4.42 These findings are clearly cause for concern in terms of compliance with the requirements of the NPSUD. However, in real terms, they reflect a market which is described by Mr Sellars as “dysfunctional”, with significant consequences in terms of price escalation (which, as illustrated in the evidence of Mr Sellars, is substantially more acute in Rolleston and West Melton as compared to Christchurch city).⁴⁶ In my submission, this is exactly the sort of circumstance which the NPSUD provides an opportunity for local authorities to alleviate via Policy 8.
- 4.43 In view of this analysis, there can, in my submission, be little doubt as to the significance of any additional housing capacity – let alone 130 residential lots – in relieving some of the pressure that the market is currently under. For her part, Ms Seaton agrees, finding that whether it is assessed against the Selwyn district or West Melton specifically, the addition of 130 lots by PC67 would add significantly to development capacity.

The capacity enabled by PC67 is serviceable, and can be delivered at pace by the Applicant

- 4.44 The proposed infrastructure requirements of the Proposal are described in the evidence of Mr Hall and Mr Wheelans on behalf of the Applicant, and in the memorandum of Mr Bishop on behalf of Selwyn District Council. In short, while some infrastructure upgrades will likely be required to service the development enabled by PC67, these can be readily achieved. For his part, Mr Wheelans has confirmed in his

⁴⁵ Colegrave evidence, at [5.12].

⁴⁶ Statement of evidence of Gary Sellars, at [3.21] – [3.22], [3.33].

evidence that the Applicant will have funding in place to adequately cover the cost of those upgrades, where required.

4.45 More broadly, Mr Wheelans' evidence outlines the track record of his companies in undertaking residential development in the greater Christchurch area. In recent years, those companies have created in excess of 2700 residential sections to meet the increasing demand, including in West Melton particularly. The Applicant, in short, has both the experience and the resourcing to deliver residential development at speed, when given that opportunity. In this instance, PC67 is, for the Applicant, the logical extension of an existing residential community in Wilfield, albeit with a greater focus on a reduced carbon footprint. With those existing service connections largely in place, the Applicant anticipates that, subject to approval of this plan change, it could deliver the first group of residential lots to market by this time next year.

4.46 In my submission, given the urgency created by the supply shortages as outlined in Mr Colegrave's evidence, Mr Wheelans' commitment (and proven track record) in this regard further increases the significance of the development capacity enabled by PC67.

4.47 Overall, when assessed against the guidance provided by the Ministry for the Environment, it is, in my submission, clear that PC67 will add significantly to development capacity.

Well-functioning urban environment

4.48 To qualify under Policy 8, a plan change must do more than simply "add significantly to development capacity" though, it must also "contribute to well-functioning urban environments" and be "well-connected along transport corridors".⁴⁷

4.49 The NPSUD definition of "well-functioning urban environments" is set out in full at para 7.24 of Ms Seaton's evidence, but in short, it contemplates "urban environments" that (relevantly):

- (a) have or enable a variety of housing;

⁴⁷ National Policy Statement on Urban Development 2020, Policy 8, clause 3.8(2)(b).

- (b) have good accessibility between housing, jobs, community and open spaces, including by way of public or active transport;
- (c) support, and limit as much as possible the adverse impacts on, the competitive operation of land and development markets; and
- (d) support reductions in greenhouse gas emissions, and are resilient to the likely current and future effects of climate change.

4.50 As Ms White notes, these criteria must all be met for an “urban environment” to be “well-functioning” in the manner envisaged by the NPSUD.⁴⁸ However, neither Policy 1 nor Policy 8 require these criteria to be delivered through a single development. Rather, the focus of the inquiry is the extent to which the development will “contribute” to those outcomes for the “urban environment”. As discussed, in this instance, that environment is not West Melton because it does not yet meet the applicable definition in the NPSUD. It is instead the urban areas of the Selwyn district, and/or greater Christchurch.

4.51 In that context, Ms White and Ms Seaton agree that PC67 will contribute to achieving the criteria (a) above. There are however differences in the position between the Applicant’s experts and the Council Officer (and submitters) in relation to the remaining criteria which I now turn to address.

Good accessibility and connectivity along transport corridors⁴⁹

4.52 In their assessments of (b) above on behalf of the Council, both Mr Nicholson and Ms White highlight the lack of public transport servicing the PC67 area. For his part, Mr Nicholson also disagrees with the Applicant’s assertion that the area is located within a walkable catchment of the “facilities located in the town centre of West Melton”.⁵⁰

4.53 On the issue of public transport, the Applicant acknowledges that, like most of the urban areas in the Selwyn district, the PC67 site is not well serviced. That is however a matter over which the Applicant has little control, and as discussed below, it is not, in my submission, an issue which should be fatal to your decision. The Applicant has nevertheless

⁴⁸ Officer’s Report, at [90].

⁴⁹ National Policy Statement on Urban Development 2020, clause 3.8(2).

⁵⁰ Officer’s Report, at [95].

proposed an amendment to the PC67 provisions to ensure that the future roading layout will not preclude the Proposal from being serviced by public transport if and when that is provided.⁵¹ Further, as Mr Smith notes, catchment size is one of the key matters informing the identification (and funding) of new public transport routes and/or better servicing of the Selwyn district more generally.⁵² The Applicant hopes that the additional housing provided by PC67 will make some contribution in that regard.

4.54 As Ms Seaton identifies, public and active transport are only two methods of accessibility within the definition of a “well-functioning urban environment” under the NPSUD.⁵³ Further, as I have set out, the NPSUD does not require that accessibility via all methods is to be delivered through one development. On the topic of public transport in particular, the NPSUD appears to specifically contemplate that not all areas within an urban environment will be able to be serviced by existing or planned transport, but that that should not prevent development where there is high demand for housing in those areas.⁵⁴

4.55 Instead, the primary requirements with Policy 1 and clause 3.8 are for:

- (a) urban environments to have good accessibility between housing, jobs and community spaces, including by way of those methods; and
- (b) the development capacity enabled by “policy 8 plan changes” to be well-connected along transport corridors.

4.56 These matters have been assessed by Mr Metherall from a transport perspective, and, where applicable, by Mr Compton Moen and Ms Lauenstein in terms of urban design/form. As a result of those assessments, in addition to the provision for future public transport, amendments have been proposed to the ODP and accompanying rules package to provide for enhanced walking and cycling connections within and to/from the PC67 area.⁵⁵ With these changes in place, these experts consider that PC67 will support good accessibility (including via walking)

⁵¹ Seaton evidence, at [5.6]

⁵² Smith, D. (2021). *Transport Comments on Plan Change 67 to the Selwyn District Plan*, 18 August 2021, at [55].

⁵³ Seaton evidence, at [7.27].

⁵⁴ Refer National Policy Statement on Urban Development 2020, Objective 3, and policy 3(d).

⁵⁵ Seaton evidence, at [3.4].

in the manner envisaged under the Policy 1.⁵⁶ This will be further enhanced with the changes proposed by Waka Kotahi to the SH73 intersection.

4.57 In terms of connectivity along transport corridors, Mr Metherall and Ms Seaton highlight PC67's proximity to the existing arterial and State Highway road networks which readily connect the Proposal to the likes of Rolleston and Christchurch city.⁵⁷ As set out above, both Mr Metherall and Mr Smith for the Council consider that the additional traffic movements resulting from PC67 can be readily (and safely) accommodated within the existing transport network.

4.58 For her part, Ms Seaton has accepted the evidence of the Applicant's other experts on these matters, and has concluded that PC67 will comply with these requirements.

Supporting reductions in greenhouse gas emissions and increased climate resilience

4.59 Ms White considers that this criteria cannot be met by PC67 on the basis that *"it will introduce additional households into an area that is dependent on private vehicle movements"*.⁵⁸ That concern is shared by some submitters including Christchurch City Council and the Canterbury Regional Council.

4.60 As noted above, the Applicant acknowledges that the PC67 area is not currently well serviced by public transport. In that regard, until those links are provided, it agrees that households within the Proposal will likely depend on private vehicle movements for wider travel. For the following reasons however, I do not consider that that matter should be the overriding determinant in your assessment of this matter:

(a) West Melton is already an established residential area, in which most, if not all, of the households will depend on private vehicle movements. As the Council Officer accepts, that is unlikely to change unless and until there is sufficient population in West

⁵⁶ Compton-Moen evidence, at [6.9]; Lauenstein evidence, at [5.2], [5.7] and [5.8], Metherall evidence, at [8.13].

⁵⁷ Metherall evidence, at 8.13; Seaton evidence, at 7.27.

⁵⁸ Officer's Report, at [91].

Melton to support an improved public transport service.⁵⁹ That outcome will only be achieved through the release of additional residential lots, which, as described above, would also assist in addressing the current housing supply shortages. As an immediate extension to the existing residential area of West Melton, PC67 is the appropriate location to accommodate that additional population required, if the public transport service to West Melton is ever to be improved. In that regard, as already noted, the Applicant has proposed an amendment to the PC67 provisions to ensure that servicing by future public transport is not precluded in the roading layout.

- (b) As Mr Colegrave notes, economic and employment activity within Rolleston in particular is increasing in large part as result of the growing residential population available to support it.⁶⁰ As such, while at least in the short term, most households within PC67 will still travel to Christchurch regularly, the growth of that economic and employment activity (supported by an increasing residential population) will likely reduce reliance on, and therefore (emissions generating) visits to, the city.⁶¹
- (c) The Applicant has proposed a number of sustainability measures (to be secured as part of PC67) to support a reduction in emissions resulting from, and improved resilience through, the Proposal. These are described in detail in the evidence of Mr Wheelans and Ms Seaton, and include the requirement for solar panels, rainwater harvesting tanks, and compliance with environmental design standards for housing. Unlike the issue of private vehicle movements and public transport, these initiatives are within the control of the Applicant and, in my submission, illustrate a genuine commitment on behalf of the Applicant to supporting the outcomes envisaged for well-functioning environments under the NPSUD.

Summation on NPSUD

4.61 For the reasons I have outlined, it is my submission that you are, as a result of Policy 8, entitled to assess this Proposal on its merits,

⁵⁹ Officer's Report, at [42].

⁶⁰ Colegrave evidence, at [5.33].

⁶¹ Colegrave evidence, at [5.34].

notwithstanding (and in fact because) it is not in a location anticipated for development within the CRPS.

- 4.62 It is clear on the evidence before you that PC67 will add significantly to development capacity in West Melton and the Selwyn district generally, particularly given the supply shortages and market pressure that these areas are currently experiencing. It is also the evidence of the Applicant's experts that the Proposal is well connected along transport corridors and will contribute to well-functioning urban environments as that phrase is defined in the NPSUD. In my submission the statutory tests of the higher order document are therefore met.
 - 4.63 On the evidence provided, it seems the regional and city councils would have you read the NPSUD more narrowly in order to constrain its application. In my submission, and on any close review of the NPSUD, this would be an incorrect approach.
 - 4.64 The clear intention of the NPSUD is to enable a range of opportunities to address our pressing urban challenges. It could have been written narrowly to provide a small window of opportunity to respond to very specific instances and/or in very specific ways (i.e. through spatial planning alone). It is not. It is written expansively in order that local authorities can be responsive to changing circumstances and opportunities, and to address constraints on housing supply where they arise.
-
- 1.1 While it does not "fit" with the plan the Canterbury Regional Council and Christchurch City Council and its partners have for urban growth in greater Christchurch, frankly that is the point. As can be seen from the lack of sections and the rampant price escalation being experienced, the planning framework currently in place simply has not kept up. That is why Policy 8 was needed and why it should be utilised.
 - 1.2 As outlined by Mr Tallentire in his evidence, it would seem Christchurch City Council and Environment Canterbury would urge the District Council to defer decisions on plan changes until the Greater Christchurch 2050 strategy is released next year to inform a review of the CRPS in 2024. Such a review might optimistically be complete in 2028, to be followed by a plan review in Selwyn in 2030 which might then provide the necessary capacity in 2032 or beyond. While that might be their

preference, in my submission that is not what the NPSUD provides for and it not the most appropriate way to give effect to its provisions or the purpose of the Act.

1.3 As described above, Policy 8 is intended to provide a pathway through the complex and time consuming plan making our RMA system has become known for. That pathway, is in my submission, available to you in respect to this Proposal and as the decision-maker you must be responsive to it.

4.65 As Ms White recognises in her Report, “getting through the gate” of Policy 8 is not a “trump card” for your assessment of this Proposal. It does however require that as part of your overall assessment, you pay “particular regard to” the development capacity enabled by the Proposal. As discussed further below, your finding with respect to PC67’s contribution to a “well-functioning urban environment” is also, in my submission, significant in terms of your obligation to give effect to the NPSUD through your decision.

Other Considerations

Relevant RMA documents

4.66 Drawing on the evidence of the Applicant’s other experts, Ms Seaton has undertaken a detailed assessment of the extent to which PC67 would give effect to the aspirations of the NPSUD, as expressed in its objectives and policies. For the reasons set out in her evidence, she concludes that it does. As you are aware, the NPSUD sits atop the hierarchy of documents prepared under the RMA. Because it was released after all of the subsidiary operative Canterbury RMA documents, those documents cannot be presumed (and are, in fact, unlikely) to have given effect to it.

4.67 On that matter, I note Mr Tallentire’s comments regarding Change 1 to the CRPS and the assessment that was undertaken of that Change against the NPSUD. Putting aside the significant issues with the modelling that underpinned Change 1 (as described in Mr Colegrave’s evidence), the focus of that Change was on achieving compliance with the specific directions in the NPSUDC on the provision of housing and business capacity, not on the provisions of that document or the NPSUD

as a whole. Change 1 did not, in other words, effect the implementation of the NPSUD within the CRPS, as acknowledged by Canterbury Regional Council itself in its report to the Minister:

*Change [1] does not purport to, and nor it is required to, give full effect to the NPS-UD as it is has not been practicable for Environment Canterbury to fully implement the NPS-UD within the scope of this change being progressed through the streamlined planning process and within the timeframes available.*⁶²

4.68 As such, it remains that until the provisions of the CRPS and the operative Selwyn District Plan are formally reviewed against all aspects of the NPSUD, case law directs you to assess the provisions of those subsidiary documents in its light, and to weigh those provisions accordingly.⁶³

4.69 Turning then to the CRPS, which you are required to give effect to in your decision:

- (a) Both Ms Seaton and Ms White acknowledge that PC67 is not in an area anticipated by the CRPS for development, but agree that that is not fatal if the requirements of Policy 8, NPSUD are made out, as they are in this case. They also agree that PC67 is consistent with the policy directions relating to integration between development and infrastructure.
- (b) The primary areas of disagreement between the experts for the Applicant and the Council are whether the Proposal will support the consolidation and intensification of the urban form of West Melton (objective 6.2.2(5)) and whether, *where possible*, it would support an increased uptake of active and public transport, and provide opportunities for modal choice (policy 6.3.4). Both the Council Officer and Mr Tallentire have also highlighted potential tensions with provisions in the CRPS relating to versatile soils.

⁶² Report to the Minister for the Environment on Proposed Change 1 to Chapter 6 of the CRPS, March 2021, at [62].

⁶³ Refer *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139 at [44] - [47]; *Thumb Point Station Ltd v Auckland City Council* [2015] NZHC 1035 (HC) at [31]; *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [85] - [90].

- 4.70 I have already addressed you on matters relating to active and public transport, and assessments of the Proposal against the policy requirements are included in the evidence of Mr Metherall, Mr Compton Moen, Ms Lauenstein and Ms Seaton. While Ms Seaton acknowledges the tensions with policy 6.3.4 relating to the availability of public transport, ultimately she does not consider that the Proposal is inconsistent with it. She applies the same reasoning with respect to the similar Objective B2.1.13 in the operative Selwyn District Plan.⁶⁴
- 4.71 In terms of supporting a consolidated urban form, in their evidence both Mr Compton Moen and Ms Lauenstein have carefully set out why, in their opinion, the Proposal is not only “not inconsistent” with this outcome (and the similar outcome sought in Objective B3.4.4 in the operative Selwyn District Plan), but why, in fact, it is an important contribution to ensuring that that outcome is achieved for West Melton. Their evidence in this regard is, in my submission, compelling, and is strengthened by the support that the Proposal receives from the provisions within the NPSUD, especially in terms of its contribution to the urban areas of the Selwyn district as a “well-functioning urban environment”.
- 4.72 As set out in the evidence of Mr Mthamo, the PC67 area contains soils which would, as a result of their Land Use Capability (**LUC**) classification, fall within the definition of “versatile soils” under the CRPS and the operative Selwyn District Plan.⁶⁵ The relevant provisions within those documents recognise the importance of versatile soils, with a direction in Policy B1.1.8 of the District Plan to avoid rezoning land with those soils for development if the land is appropriate for other activities, and there are other areas adjoining the township which are appropriate for development and which do not contain those soils.⁶⁶
- 4.73 In that context, the Applicant commissioned Mr Mthamo to undertake a detailed assessment of the PC67 soils and their productivity to establish whether that direction could be met in this instance. His findings are set out in detail in his evidence, but in short, Mr Mthamo identified that:

⁶⁴ Seaton evidence, at [7.44(f)].

⁶⁵ Mthamo evidence, at [4.5].

⁶⁶ Refer CRPS, Policy 5.3.12 which seeks to maintain versatile soils that contribute to Canterbury’s overall rural productive economy, and Policy B1.1.8 of the Selwyn District Plan.

- (a) The LUC classifications of the PC67 area misrepresent the actual productive value of that land (and the soils).⁶⁷
- (b) When site specific factors are applied, it is apparent the versatility and productivity of the soils would be severely constrained as a result of limited water availability for irrigation, limitations on nutrient application, and various other operational constraints including land area and reverse sensitivity matters.⁶⁸
- (c) To the extent that any productive value remains in the PC67 soils, the loss of that value and versatility is insignificant in the context of the Selwyn district and the Canterbury region.⁶⁹

4.74 Ms Seaton has considered Mr Mthamo's conclusions on these matters as part of her assessment of the Proposal against the CRPS and Selwyn District Plan provisions relating to versatile soils. As part of that assessment, she rightly identifies (as does the Council Officer) that the proposed National Policy Statement on Highly Productive Land has no legal bearing on your decision.⁷⁰ Mr Seaton goes on to find that while there is some tension with Policy B1.1.8, the actual productive value of the soils is such that the Proposal is not contrary to the policy.⁷¹

4.75 Overall, Ms Seaton has reviewed and accepted the advice of the Applicant's other experts, and has determined that the Proposal would implement the aspirations of the NPSUD, and the CRPS and the operative Selwyn District Plan (as read through the "lens" of the NPSUD).⁷² In my submission, her conclusion and the evidence on which it is founded is robust, and should be accepted.

Actual and potential effects

4.76 The RMA specifically directs that, in making a rule, territorial authorities (or in this case, you) are to have regard to the actual or potential effect on the environment of the activities (relevant to that rule), including, in particular, any adverse effect. I would also note that controlling such

⁶⁷ Mthamo evidence, at [6.6].

⁶⁸ Mthamo evidence, at [4.3] – [4.31].

⁶⁹ Mthamo evidence, at [5.7].

⁷⁰ Seaton evidence, at [5.5]; Officer's Report, at [59].

⁷¹ Seaton evidence, at [5.19].

⁷² Seaton evidence, at [7.35], [7.42], [7.47].

effects is one of the specific functions of a territorial authority under the RMA.

4.77 An assessment of the actual and potential effects of the activities provided for through PC67 was included in the original Plan Change request. In her evidence, Ms Seaton has summarised and, where applicable, updated that assessment to reflect the changes made to the Proposal, and to respond to any issues raised by submitters and/or the Council Officer. Where relevant, these issues have also been addressed in the evidence of the Applicant's other experts.

4.78 Overall, it is Ms Seaton's position, supported by the Applicant's other experts, that the PC67 provisions (including the ODP) will ensure that any actual and potential effects of the Proposal can be managed appropriately. For her part, Ms White for the Council agrees.⁷³

Summary

4.79 Taking all of these matters into account, it is, in my submission, clear that:

- (a) PC67 will support Selwyn District Council in carrying out its functions under the RMA, specifically in terms of:
 - (i) achieving integrated management and control of effects, and in having a district plan which achieves the matters set out in sections 74(1) and 75;
 - (ii) ensuring that there is sufficient housing capacity to meet the expected demands of the district. In this regard, I would again highlight the evidence of Mr Colegrave which identifies serious issues with the data that has underpinned the Council's attempts to comply with this requirement to date. As borne out by Mr Sellar's analysis, additional housing capacity is sorely needed now, and in the medium and long term. PC67 will assist the Council in providing that, as part of its functions.

⁷³ Officer's Report, at [82].

- (b) PC67 will accord with the provisions of Part 2. Ms Seaton has provided a specific assessment of PC67 against sections 5 - 8 in the original Plan Change request (which is also summarised in her evidence). In her opinion, those matters (where relevant) are satisfied through the Proposal. Taking into account the directions of the Court on the role of higher order RMA documents⁷⁴, this conclusion is, in my submission, strengthened by the Proposal's alignment with the aspirations of the NPSUD.
- (c) In terms of the requirements of section 32, for the reasons set out by Ms Seaton, the objectives of PC67 are the most appropriate way to achieve the purpose of the RMA, and the provisions of the Proposal, and in particular the use of the existing Living WM South (with some amendments, including those recommended by the Council Officer) are the most appropriate way to achieve those objectives.

5 CONCLUSION

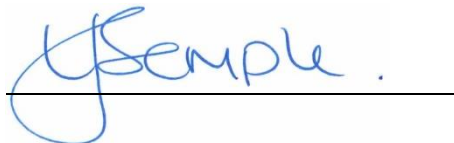
- 5.1 The combined evidence of the Applicant's witnesses confirm PC67 to be an excellent development proposal that will sensibly and logically add to the urban form of West Melton as a township in itself, and in this way contribute to the well-functioning urban environment of the Selwyn district.
- 5.2 Moreover it adds a type of housing stock to the district which it simply does not have available currently. In this way and overall, it adds significant development capacity to a housing market that is in the words of Mr Sellars "dysfunctional" with the price escalations that result.
- 5.3 It can be effectively and efficiently developed utilising existing infrastructure or planned upgrades. It includes initiatives to support the reduction of greenhouse gas emissions. It connects to existing transport networks which can safely and efficiently absorb the additional load. It moves West Melton closer to the critical mass needed for public transport and makes provision for that to be accommodated when it

⁷⁴ Refer *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139 at [44] - [47]; *Thumb Point Station Ltd v Auckland City Council* [2015] NZHC 1035 (HC); *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [11], [85] - [90].

occurs. It offers walking and cycling options, including through accelerating the connection to Rolleston.

- 5.4 Put simply, but for a line on a map in a Regional Policy Statement, it would be an appropriate location for new residential development.
- 5.5 It is not what Environment Canterbury or Christchurch City Council expected, but isn't that the very point of Policy 8? To allow a robust assessment of a proposal that is unanticipated, but would otherwise be appropriate.
- 5.6 It surely cannot be the position of any party to these proceedings that price increases of up to 100% in a single year are acceptable. PC67 provides some contribution to reversing that unacceptable outcome. It does, in other words, exactly what the NPSUD hopes for, and in my submission, it is the responsibility of this Council to be responsive to that need by granting this Proposal.

DATED this 14th day of September 2021



L J Semple

Counsel for the Applicant

APPENDIX A – LEGAL FRAMEWORK

The generally accepted guidance for considering a plan change is set out in *Colonial Vineyard v Marlborough District Council*.⁷⁵ In summary, a plan change must be determined having regard to the requirements of sections 31, 32 and 72 – 76 of the RMA. Therefore the following will need to be considered:

General requirements

- (a) A district plan change should be designed to accord with –and assist the territorial authority to carry out – its functions so as to achieve the purpose of the Act.⁷⁶
- (b) A district plan change must *give effect* to any national policy statement, national planning standard and operative regional policy statement.⁷⁷

Objectives

- (c) Each proposed objective in a district plan change is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.⁷⁸

Policies, methods and rules

- (d) The policies are to *implement* the objectives, and the rules are to *implement* the policies.⁷⁹
- (e) Each proposed policy or method is to be examined, *having regard to its efficiency and effectiveness*, as to whether it is the most appropriate method for achieving the objectives of the district plan by:⁸⁰
 - (i) identifying other reasonably practicable options for achieving the objectives; and

⁷⁵ [2014] NZEnvC 55 at [17]; adopted in respect the consideration of AUP provisions in *Cabra Rural Developments Limited v Auckland Council* [2018] NZEnvC 90 at [279].

⁷⁶ Resource Management Act 1991, sections 31, 72 and 74.

⁷⁷ Resource Management Act 1991, section 75(3).

⁷⁸ Resource Management Act 1991, sections 74(1) and 32(1)(a).

⁷⁹ Resource Management Act 1991, section 75(1)(b) and (c).

⁸⁰ Resource Management Act 1991, section 32(1)(b).

- (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions.
- (f) In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment⁸¹

⁸¹ Resource Management Act 1991, section 76(3)