

**BEFORE THE SELWYN DISTRICT COUNCIL
HEARING BEFORE INDEPENDENT COMMISSIONER**

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of a request by Urban
Holdings Ltd, Suburban
Estates Ltd and Cairnbrae
Developments Ltd for a plan
change (Private Plan
Change 68) under the First
Schedule to the Resource
Management Act 1991

**LEGAL SUBMISSIONS FOR CHRISTCHURCH CITY COUNCIL AND
CANTERBURY REGIONAL COUNCIL**

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1. INTRODUCTION

- 1.1** These legal submissions are made on behalf of Christchurch City Council (**Council or CCC**) and Canterbury Regional Council (**CRC**) in relation to Private Plan Change 68 (**PC68**) to the Selwyn District Plan (**SDP**), which has been requested by Urban Holdings Ltd, Suburban Estates Ltd and Cairnbrae Developments Ltd (**USC**).
- 1.2** CCC and CRC have both submitted in opposition to PC68, and raise a number of common issues. For this reason a joint case is being presented, with evidence presented by Mr Marcus Langman dated 16 March 2022.
- 1.3** The CCC and CRC case raises two central concerns, being that:
- (a) the request does not qualify for consideration under the ‘responsive planning framework’ under the National Policy Statement on Urban Development 2020 (**NPS-UD**); and
 - (b) PC68 is either inconsistent with or contrary to a number of important policy directions in the Canterbury Regional Policy Statement (**CRPS**).
- 1.4** This request, and others that have been recently heard by Selwyn District Council (**SDC**), rely on largely the same interpretation of the NPS-UD and CRPS. That is, that the avoidance direction in the CRPS can be overcome by Policy 8 of the NPS-UD. In advancing this argument, the Applicant has submitted that more weight should be placed on the NPS-UD (and Policy 8 in particular) as the newest and “higher ranking” planning document.
- 1.5** Although CCC and CRC acknowledge that the NPS-UD is the higher order document, it is submitted that this is not a situation where the NPS-UD should be interpreted as having primacy / taking precedence over the CRPS. Instead, it is submitted that the NPS-UD and CRPS can and should be read and applied together, with the CRPS allowed to adopt a policy approach that recognises and responds to its sub-regional context.

- 1.6 If the Applicant's interpretation was preferred, and "high demand in the Selwyn district"¹ demanded the approval of plan changes in reliance on Policy 8, that would be failing to reconcile and apply the NPS-UD as a whole, alongside the balance of the statutory framework. It would also fail to accord with the relevant urban growth strategy established by the CRPS, and recently updated by Change 1.
- 1.7 Allowing departures of this nature from existing strategic infrastructure and spatial planning decision-making is why CCC and CRC are taking this request (and others) seriously. Spatial planning is a core part of their respective statutory functions, and allowing continual greenfield expansion could ultimately undermine the intensification outcome that the Chapter 6 framework was originally devised to achieve.
- 1.8 In summary, it is submitted that:
- (a) there is no sound legal interpretation that requires the 'responsive planning framework' to be given greater weight, or precedence, over a CRPS framework that engages with fundamentally the same subject matter as the NPS-UD;
 - (b) the statutory requirement to "give effect" to the CRPS (which is relevant for the statutory decision to be made here) engages the avoid framework established by Chapter 6 of the CRPS, with all lower order plan change decisions required to conform with that direction; and
 - (c) the outcome that CCC and CRC are supporting here is submitted to not be at odds with the intensification themes present in the NPS-UD, CRPS and now the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**RM Amendment Act**). If anything, the legislation and higher order policy documents collectively support limiting opportunities for speculative greenfield expansion, in order to make better use of available capacity within brownfield areas and achieve meaningful intensification and the benefits that derive from that.

2. PC68 AND WHY IT MATTERS TO CCC AND CRC

1 Oral submission by the Applicant, 21 March 2022.

- 2.1 Without traversing the relief sought in detail, the effect of rezoning this area would be to allow the Living Z zoning to extend across land that is not identified for urban development on Map A of the CRPS. As a result, the PC68 proposal engages, and conflicts, with specific urban growth provisions contained in Chapter 6 of the CRPS.

The relevance of Change 1

- 2.2 Mr Langman, planning witness for CCC and CRC,² outlines in his evidence the recent Change 1 amendments to Chapter 6 of the CRPS. To assist, a link to the relevant documentation surrounding Change 1 is available online at: www.ecan.govt.nz/you-region/plans-strategies-and-bylaws/canterbury-regional-policy-statement/change-chapter-6/

- 2.3 In summary:

- (a) Change 1 sought to build on existing strategic growth planning by the Greater Christchurch Partnership (**GCP**), and implement agreed actions contained in Our Space. In particular, it was intended to achieve the requirement in the NPS-UD for local authorities to ensure that there was sufficient development capacity to meet expected demand for housing and business land over the medium and long term.³
- (b) Through Change 1, several new Future Development Areas (**FDAs**) were identified, and associated new policy provisions were inserted to enable land within these areas to be rezoned by SDC (or others) if required to meet medium term housing needs.⁴
- (c) Change 1 was supported by an evaluation, completed by CRC, which (relevantly) assessed the extent to which it would give effect to the NPS-UD 2020 and the RMA. It is accepted that Change 1 only partially gave effect to the NPS-UD requirements, but it did not seek to give effect to all such requirements. The end result of the Change 1 process was that the Minister agreed the changes would give effect to the NPS-UD.⁵

2 Paragraphs [56] - [63].

3 At [63].

4 At [58].

5 At [56] – [57].

- 2.4** The end result is that there has been a recent change to the CRPS (post the NPS-UD), specifically developed to provide requisite levels of development capacity across certain temporal periods.
- 2.5** CRC was at all times live to the requirement to give effect to the NPS-UD, and noted as much in its report to the Minister:

Environment Canterbury must give effect to (i.e. implement) both the NPS-UD (which came into force in July 2020) and the NPS-FM (which came into force on 7 September 2020).⁶

- 2.6** There was specific discussion in the CRC report which addressed the Chapter 6 / Map A framework, and the NPS-UD, refer **Appendix A**. The accompanying section 32 evaluation report (Appendix 3) and legal and statutory framework (Appendix 5), both available online, consistently refer to giving effect to the NPS-UD.
- 2.7** The Minister did not impugn the existing policy approach taken by the CRPS to the management of urban growth at a Greater Christchurch level (one such direction being to avoid unplanned expansion into surrounding rural areas). This remains a key part of the relevant statutory framework,⁷ and it is the risk of this aspect being overlooked or ignored which is of key concern to CCC and CRC.
- 2.8** The Applicant's evidence acknowledges that the proposal is inconsistent with the requirement to avoid urban development outside of Map A of Chapter 6, but states that this is not fatal to PC68 as Map A is now out of date.⁸ In reliance on the evidence of Mr Langman, and the above submissions, it is submitted that this planning opinion cannot reasonably be supported. Change 1 to the CRPS amended Map A to identify FDAs in only July 2021⁹, which can hardly be said to be outdated.

3. RELEVANT STATUTORY FRAMEWORK / STATUTORY INTERPRETATION PRINCIPLES

- 3.1** We have reviewed the legal submissions prepared by counsel the Applicant and generally rely on paragraphs 3.1 to 4.7.

⁶ At paragraph 91.

⁷ The recent recommendation by Commissioner Caldwell for PC73 found that the CRPS avoidance framework, and the reasons underlying it, remain relevant now.

⁸ Ms Harte, at [8.12].

⁹ Mr Langman, at [58].

3.2 There are relevant issues emerging from the higher order planning documents, which includes the NPS-UD and CRPS. These issues have been identified in Mr Langman's evidence, and must be considered and evaluated as part of the decision-making exercise.

3.3 In order to assist the Commissioner, we highlight several additional matters.

The layering and effect of planning documents

3.4 As recognised by the Supreme Court in *King Salmon*,¹⁰ the cascade of planning documents under the RMA are intended to give effect to section 5 and Part 2 of the Resource Management Act 1991 (**RMA**). They do this by giving:¹¹ (emphasis added)

... substance to its [*the RMAs*] purpose by identifying objectives, policies, methods and rules **with increasing particularity both as to substantive content and locality**.

3.5 In applying that cascade in this instance, it is accepted that the NPS-UD provides high level direction,¹² but submitted that the CRPS provides more particularised regional (and, in particular, sub-regional) direction in relation to similar matters, as well a number of other important policy matters. These other matters (ie. non-urban growth related) are needed to give effect to other NPS', and the other statutory requirements of Part 2 of the RMA. As a consequence, the CRPS is by nature a more wide-ranging policy document, and must be read as a whole when assessing plan change requests of this nature.

3.6 Section 75(3) of the RMA requires that a district plan 'must give effect to' any NPS and any regional policy statement. *King Salmon* has settled the law in relation to this term, by confirming:

"Give effect to" simply means "implement". On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it. As

¹⁰ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38.

¹¹ At [30].

¹² As anticipated by s45, RMA.

the Environment Court said in *Clevedon Cares Inc v Manukau City Council*:

[51] The phrase “give effect to” is a strong direction. This is understandably so for two reasons:

- [a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and
- [b] The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.

3.7 The Supreme Court went on to note that, while the requirement (to give effect) is a strong directive, it is context dependent:¹³

...The implementation of such a directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

3.8 In this instance, and as outlined in the planning evidence for CCC and CRC, there are a number of relevant policy directions in both the NPS-UD, and the CRPS, that vary in terms of their expression. This is relevant when seeking to reconcile planning documents, with the nature and expression of the provisions being significant.

Doctrine of implied repeal

3.9 The Applicant’s submissions refer in passing to this doctrine, but it is not clear whether they are submitting that it should be revoked in this instance.

3.10 For completeness, it is submitted that this doctrine should not be invoked in this case, as the two provisions at issue – which are alleged to be in tension with each other – serve a different statutory function. To explain:

- (a) Policy 8 of the NPS-UD serves as an administrative pathway, by ‘opening the gate’ for plan changes, and then allowing them to be

13 At [80].

- considered on their merits and against the relevant statutory framework (of which the NPS-UD and CRPS form a part); and
- (b) Objective 6.2.1 of the CRPS provides substantive policy direction in relation to the matter of urban growth in a sub-regional context.

3.11 As a result, it is submitted that the doctrine of implied repeal cannot, and should not, be invoked. It cannot be said that it is necessary for one to fall away, in favour of the other, as the two can work in tandem. What is really at issue here is the end consequence for plan changes that are requested in the knowledge of their conflict with the CRPS, which we come to below.

4. THE RELATIONSHIP BETWEEN THE NPS-UD AND CRPS

4.1 Without traversing the discussion in the Applicant's submissions at length, the NPS-UD contains a number of objectives and policies, all of which are intended to operate together. While the concept of delivering a well-functioning urban environment appears in multiple places, the NPS-UD cannot be said to have one single overarching purpose. Instead, the NPS-UD (when read as a whole) provides direction on a number of different components relating to urban development.

4.2 The 'responsive planning framework' is one component of the NPS-UD, and is established by Objective 6 and Policy 8. As we have noted above, this framework provides an administrative pathway for the consideration of out of sequence plan changes,¹⁴ subject to the satisfaction of certain criteria. These criteria include that the plan change:

- (a) would contribute to a well-functioning urban environment; and
- (b) is well-connected along transport corridors; and
- (c) meets the criteria set and included in a regional policy statement, that determine what plan changes will be treated as adding significantly to development capacity.

4.3 As explained in Mr Langman's evidence, CRC has not yet included these criteria in the CRPS.¹⁵ As a consequence, PC68 needs to be considered against other potentially relevant factors, including those discussed in the

¹⁴ RMA, s43AA defines "change" as one either proposed by a local authority under clause 2, or requested under clause 21, of Schedule 1.

¹⁵ Evidence of Mr Langman for CCC and CRC, at [84], [90].

non-binding Guidance published by the Ministry for the Environment,¹⁶ and the relevant objectives and policies concerning urban growth in both the NPS-UD and CRPS.

4.4 While the 'significant development capacity' criterion is unique to the responsive planning framework, the other criteria set out in clause 3.8(2) engage with the requirement that urban environments are well-functioning and well-served.¹⁷ These criteria overlap with other NPS-UD objectives and policies (including Objective 6) which indicates that – although the responsive planning framework provides a pathway - it remains part of the wider coherent scheme of the NPS-UD.

4.5 There are several reasons why CCC and CRC support this interpretation:

- (a) First, there is nothing expressly stated in the NPS-UD that gives Policy 8 any elevated significance over any other objective or policy. To that extent, CCC and CRC do not accept that this component of the NPS-UD should or could take primacy over any other aspect of the NPS-UD, or indeed over the CRPS framework in relation to urban growth. Put another way, there is nothing in the NPS-UD or Policy 8 that demands exceptions or legitimate departures from any other restrictive policy provisions.
- (b) Second, the parent objective for Policy 8 - Objective 6 - puts three different matters on an equal footing, all of which have to be satisfied (refer the conjunctive use of "and"). The implication of this is that the responsive planning framework cannot be treated as a pathway isolated from the remainder of the NPS-UD (for that to be the case, it is submitted that this would need to be expressly stated in the NPS-UD). Instead, local authority decisions affecting urban environments are required in all cases to remain integrated with longer-term infrastructure decisions, and to be strategic across the medium and long term, even when out-of-sequence proposals are being considered.
- (c) Third, there is nothing stated (either expressly or implicitly) in the NPS-UD to suggest that the responsive planning framework

¹⁶ Understanding and implementing the responsive planning policies:
<https://www.mfe.govt.nz/sites/default/files/media/Towns%20and%20cities/Understanding-and-implementing-responsive-planning-policies.pdf>;
Responsive Planning Fact Sheet:
<https://www.mfe.govt.nz/sites/default/files/media/Towns%20and%20cities/Responsive-Planning-Factsheet.pdf>.

¹⁷ NPS-UD, Objective 1, 3, 6 and 8; Policy 1, 5, 6 and 10.

provides, is enabling of, or directs, innate flexibility for urban development, or that it amounts to a stand-alone substantive test for unanticipated development. Instead, it may be considered entirely appropriate – as a means of achieving Objective 6 in a sub-regional context – to develop and implement a restrictive framework that enables growth or provides for responsiveness in certain areas, and restricts growth in others.

- (d) While the appropriateness of such a framework will depend on the facts and circumstances at hand, it is submitted that for Greater Christchurch it could be found to be an entirely valid approach to give effect to the NPS-UD.¹⁸ In addition, there is nothing in the NPS-UD which precludes such an outcome, which is what the Applicant (and other plan change requesters) are contending.
- (e) Finally, if precedence were given to being “responsive” (on development capacity grounds alone), without engaging the other criteria, the end result would be a proliferation of ad hoc (and potentially insignificant and speculative) developments being granted. This could result in urban growth that is not properly integrated, and inconsistent, with existing growth strategies, which would be at odds with the NPS-UD when interpreted as a whole.

4.6 The case for the Applicant is that “rigidly” applying the avoidance direction in the CRPS and preventing local authorities from acting in accordance with the NPS-UD would be out of step with that document. The Applicant says that avoiding “sincere consideration of such a plan change as PC68 on its merits would fundamentally go against the purpose of the NPS-UD”.¹⁹

4.7 In response, we observe that there is no provision or purpose statement in the NPS-UD that directs the *enablement* of development through plan changes or any other processes. Instead, the NPS-UD (and Policy 8) relies on the standard Schedule 1 process to evaluate and decide any plan changes, which engages all relevant RMA matters and the relevant statutory framework.

4.8 In addition, it is *not* our submission that any plan change request that conflict with the CRPS avoidance framework should not be considered.

¹⁸ The overall objective of the NPS-UD is to ensure that urban environments are well-functioning and that they meet the changing needs of communities, as per Objective 1.

¹⁹ Submissions, at 6.10.

- 4.9** CRC and CCC accept that the processing of these plan changes appears at face value to be consistent with the intention of the responsive planning framework. However, neither Policy 8 nor the balance of the NPS-UD give rise to any presumption of approval, or support for any trumping of other statutory planning instruments.
- 4.10** Instead, decision-makers are required to consider requests against all aspects of the relevant statutory framework, the language used in relevant provisions, and make a reasoned statutory decision. If the eventual recommendation is approval here, it will be in the knowledge that the SDP will end up non-compliant with the CRPS (and therefore section 75(3) of the RMA).

The term “responsive”

- 4.11** The term “responsive” is important, and is a matter of contention between the parties.
- 4.12** The Applicant has suggested that responsiveness demands that requests are considered on their merit, and that they cannot be rejected simply because they are inconsistent with the strategic framework.²⁰ It is a significant concern to CCC and CRC that the responsive planning framework is being pitched as a positive or enabling mechanism for urgent urban growth, when it is essentially devoid of any detailed substantive policy direction.
- 4.13** If being “responsive” in terms of the NPS-UD created an exception over the CRPS in all cases, there is a real prospect of a failure to recognise and properly manage certain resource matters, and depart in a material way from pre-existing strategic planning decisions. An example of this with in Objective 6.2.1(7), which provides direction to ‘maintain the character and amenity of rural areas and settlements’. This aspect is not recognised in the NPS-UD at all, but remains a relevant RMA consideration for local authorities managing the rural land resource.
- 4.14** The Applicant has submitted that Policy 8 will be totalling meaningless for Greater Christchurch if the CRPS avoidance framework is respected. The

²⁰ Applicant's submissions, at 6.18.

submission will only hold water if the term “responsive” is considered a proxy for a substantive direction to *approve* plan changes, but that is not what it says. It is possible to be responsive in other ways, including by collaborating with other local authorities and seeking to change the CRPS.

- 4.15** It is submitted that there should be nothing confronting about suggesting that developers work with local authorities to investigate additional development opportunities. While it may not always achieve the immediate release of land, given the spatial planning matters at issue, this option is not unreasonable. Here, this is what CCC and CRC say should occur, through collaboration and a companion request to change the CRPS, which is what the statutory framework requires until such time as the CRPS is amended (if that is the case).
- 4.16** On this point, the responsive planning framework criteria will (when introduced) play a critical role in evaluating plan change requests against Policy 8. These criteria have not yet been included in the CRPS, and that factor is of benefit to the Applicant (and the other requesters) who have sought to take advantage of the lack of any context driven criteria. The reason we say this is that when the criteria are included, they will act to distinguish ad hoc / speculative plan changes from those that will actually deliver significant development capacity. These criteria must be context driven, and there is a real prospect that they could be expressed in firm, directive or even hard edge terms.
- 4.17** The decision-maker here is being tasked with pre-empting what those criteria will say, in both strategic planning terms and on the merits, which is unfortunate timing. However, there is no “failure” on behalf of CRC, as there was no date stated by which criteria were to be included, and there are important strategic aspects to the criteria which deserve close and careful attention – as well as collaboration between the relevant GCP members.
- 4.18** Finally, and again in response to the suggestion that the CCC and CRC interpretation renders Policy 8 “meaningless”, we note that the FDAs brought in by Change 1 provide for flexibility and responsiveness in areas that are not live zoned for urban development. Outside of those areas, there is of course a restriction on urban development, but within the FDAs there is an ability to be responsive to plan change requests.

5. ASSESSING PC68 ON ITS MERITS: DOES PC68 SATISFY THE RESPONSIVE PLANNING FRAMEWORK, AND MEASURE UP AGAINST THE CRPS?

5.1 Mr Langman has prepared and filed evidence on behalf of CCC and CRC which addresses the statutory framework, the relationship between the CRPS and NPS-UD, and the plan provisions of relevance to PC68.

5.2 Mr Langman raises concerns with the interpretation advanced by the Applicant's evidence, and prefers an interpretation which does not result in an undermining of the CRPS avoid framework.

5.3 Overall, Mr Langman is not satisfied that PC68 will satisfy the criteria for the responsive planning framework, and considers that it is inconsistent with relevant CRPS objectives and policies and should be declined.

5.4 For completeness, and to correct the oral submission made by counsel for the Applicant, Mr Langman has accepted that PC68 would provide significant development capacity in terms of the "quantum" of dwellings, but he does not accept that it satisfies that criteria when considered in its wider context.

6. PRECEDENT / CUMULATIVE EFFECTS

6.1 If the primary relief sought by PC68 is approved, it is submitted that this could create a significant and important legal (and potential planning) precedent.

6.2 From a planning perspective, there is Environment Court authority, in *Canterbury Fields*,²¹ that the issue of cumulative effects is better addressed or considered in terms of whether a plan change would implement the policies and objectives of the relevant planning instruments, rather than on the merits of a plan change.

6.3 Here, there is a live question as to whether there are constraints associated with the request (namely three waters), and policies (in the CRPS) that seek to ensure that development is "co-ordinated" with infrastructure and that it

21 [2011] NZEnvC 199.

does not occur until the necessary infrastructure is in place. It is in this context that Mr Langman has raised cumulative effects as a concern.

- 6.4** From a legal perspective, there remain other plan change requests in train that engage the same NPS-UD and CRPS tension. There is clearly appetite for residential development outside the areas anticipated by the CRPS, and while each plan change request will turn on its merits, if the relevant planning provisions are interpreted and applied in a manner that disregards the CRPS avoidance framework, this could develop into a legal precedent as there would be no principled basis to resist further proposals for similar development (in Selwyn, or other districts).

7. SCOPE FOR OTHER SUBMITTERS TO REZONE ADJACENT LAND

- 7.1** A number of other submitters on PC68 have sought that their land on the periphery of the PC68 site also be included in the rezoning proposal, through either primary or alternative relief. The Applicant is neutral in relation to those submissions.
- 7.2** For the same reasons as outlined in these legal submissions, and Mr Langman's evidence, CCC and CRC submit that these submissions should be rejected. The requests are similarly opportunistic, speculative, were made knowing the tension with the CRPS, and have not been supported by sufficient evidence to warrant approval in any case.

8. CONCLUSION

- 8.1** The Commissioner is obliged to assess this request against the relevant statutory tests.
- 8.2** Section 75(3) of the RMA requires both the CRPS and NPS-UD to be given effect to by a district plan. This statutory exercise, when correctly applied and undertaken, will not involve a contest between the NPS-UD and CRPS, and giving preference to one over the other.
- 8.3** Chapter 6 provides a relevant, tested and directive urban growth strategy that aligns with existing strategic planning decisions at a sub-regional level. It also responds to the multitude of RMA issues relevant to urban growth within

Greater Christchurch, including the recent Our Space work by the CRPS. Giving effect to Chapter 6 of the CRPS demands that PC68 cannot be granted. There is no flexibility to decide otherwise without failing to give effect to the CRPS.

- 8.4** It is submitted that this outcome would be entirely consistent with an interpretation of the NPS-UD as a whole, in accordance with well-established legal principles.
- 8.5** While this Applicant (and others) is taking the opportunity to argue that the CRPS framework must be softened because of the NPS-UD, these arguments are being made by developers who know that they cannot satisfy the CRPS avoid framework. In any case, the Applicant has elected to take on this challenge, and ultimately bears that risk.
- 8.6** It is clearly an easier option for these developers to advance a change to the lower order district plan, instead of facing up to the CRPS at the outset. This bottom-up planning approach runs counter to the hierarchy of planning documents under the RMA, and is not supported by any express direction in the NPS-UD that other aspects of the statutory framework can be superseded by the responsive planning provisions. While the plan change process has been a feature of the RMA since its inception, the process to change a regional policy statement is also well-known and cannot simply be ignored.
- 8.7** In terms of options, it is submitted that a contingent approval of PC68 pending resolution of a later, consequential change to the CRPS is neither legally available, nor would it be an appropriate option.
- 8.8** Adopting that approach would involve an approval that is meaningless until a separate statutory decision is made by another local authority (CRC), with no certainty that PC68 could ever be implemented. It would also create a significant degree of uncertainty and confusion in that:
- (a) it would create a perception that development of PC68 is appropriate, in circumstances where that development relies on a separate statutory process being completed;
 - (b) it would result in unnecessary and undesirable uncertainty for the community, landowner and SDC;

- (c) it would fail to satisfy section 75(3) of the RMA; and
- (d) it could be taken as support for a legal interpretation that elevates a procedural pathway in the NPS-UD into a merits test, and in a manner which prevails over a clear, directive approach to strategic urban growth and infrastructure for Greater Christchurch.

8.9 The only other option available would be to recommend to SDC that it request a change to the CRPS, but as noted above, that will not provide any substantive outcome as it relies on a statutory decision by SDC that is not within the scope of clause 10 of Schedule 1.

DATED this 22nd day of March 2022



M G Wakefield

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Appendix A – Relevant discussion from the CRC report to the Minister for Change 1

2. Sufficiency and flexibilities with the Proposed Change

Introduction

122. As outlined in the Section 32 Report the purpose of the Proposed Change is to give effect to Policy 2 and Clause 3.7 of the NPS-UD and provide some flexibility for Selwyn and Waimakariri District Councils to rezone land through district planning processes to ensure sufficient development capacity is enabled to meet housing demands. Some submissions question whether the Proposed Change goes far enough in this regard.

Submissions and analysis

123. In relation to sufficiency, a number of submitters consider the FDAs provided for through the Proposed Change do not enable enough developable land to become available and are not sufficient to satisfy market demand. No new evidence is provided in the submissions to substantiate these submission points. Other submissions cite the wording of Policy 2 of the NPS-UD which requires local authorities to provide “at least” sufficient development capacity to meet expected demand. These submitters consider more land should be released for development due to uncertainties of demand over time and reported inaccuracies in the capacity assessment undertaken to support Our Space 2018-2048.
124. In undertaking the Proposed Change Environment Canterbury has reviewed and accepted the findings of the capacity assessment that informed Our Space 2018-2048. The capacity assessment methodology and draft report were independently peer reviewed by relevant experts and withstood challenge through the Our Space 2018-2048 hearings process. This assessment of future demand for housing and business land incorporated a range of conservative assumptions to ensure demand was not underestimated. Periodic review is also necessary to incorporate any new data and remain up-to-date. The next capacity assessment under the NPS-UD is scheduled to be completed later in 2021 and can consider changes in population and employment projections, any further post-earthquake trends

and importantly the impacts of the COVID-19 pandemic on anticipated housing and business land demand. This plan-monitor-manage cycle is recognised good practice evidenced-based decision-making and can inform any future changes to be incorporated within the full review of the CRPS. In the absence of evidence to the contrary we are satisfied that the current capacity assessment is sufficiently robust to guide the planning response and quantum of additional development capacity promoted through this Proposed Change.

125. When considering submissions seeking more generous provision of FDAs, with reference to the “at least” wording in the NPS-UD, we are cognisant of the functions of regional councils under section 30 of the RMA. In particular, these include Section 30(ba) being the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region; and (gb) the strategic integration of infrastructure with land use through objectives, policies and methods.
126. These functions necessitate a policy approach that strikes a balance between the need to enable development capacity to meet demand and support choice and competitiveness in housing and business land markets and the need to ensure development is appropriately integrated with the efficient and effective provision of infrastructure. Calls in submissions to “open up a plentiful supply of future development land” or ensure there is “ample feasible development capacity” are considered inappropriate and less likely to achieve the wider NPS-UD objective to establish a well-functioning urban environment, nor the overarching purpose of the RMA to promote the sustainable management of natural and physical resources.
127. A number of submitters also seek greater flexibility within the Chapter 6 policy framework.
128. Urban Estates’ submission seeks to enable a ‘merits based’ assessment of applications for rezoning outside of the areas identified on Map A.
129. Eliot Sinclair similarly seeks more flexibility, including for the provision of rural residential development, noting that opportunities for this type of development could be impacted if areas identified in rural residential development

strategies are developed under the more urban zonings currently being promoted through private plan changes. The submission further notes that areas of land identified as GPAs and FDAs, particularly around Rangiora and Kaiapoi, have significant hazard constraints, and the density these areas are expected to provide may not be readily achievable.

130. Related relief is sought by other submitters who oppose what they perceive as a “fixed non contestable rural/urban boundary” on Map A. These submitters view this constraint as contrary to the NPS-UD ‘responsive planning approach’.
131. Chapter 6 provides important planning certainty to landowners, developers and the wider community regarding future urban growth in Greater Christchurch. We consider this remains a key aspect of strategic planning in the sub-region and enables infrastructure providers to efficiently and effectively plan and programme infrastructure investment. We consider that the merits of land outside of the FDAs promoted through the Proposed Change are best considered as part of a comprehensive strategic planning exercise rather than individual and ad-hoc assessments. Environment Canterbury is currently collaborating with the territorial authorities and other organisations comprising the Greater Christchurch Partnership to scope and programme such a strategic planning exercise.
132. We are familiar with the responsive planning policies of the NPS-UD referenced by submitters. NPS-UD Policy 8 and Part 3, subpart 2, clause 3.8 requires local authorities to have particular regard to unanticipated or out-of-sequence development proposals that would add significantly to development capacity. Environment Canterbury is currently formulating criteria in response to clause 3.8(3) to determine what plan changes are considered significant in a Greater Christchurch and Canterbury context, to be advanced through a separate RMA process. The Greater Christchurch Partnership is considering the significance criteria in the first half of the 2021 calendar year.
133. When notified and subsequently adopted in the CRPS these provisions will clarify how NPS-UD Policy 8 will be interpreted at a regional level and determine what changes might be required to existing policy provisions, including those in Chapter 6. In the meantime, we recognise that the NPS-UD is a higher order document under the RMA and decision makers assessing

plan changes will need to consider the implications of such national direction alongside the policies contained in Chapter 6. Environment Canterbury has prioritised implementation of the Proposed Change to promote FDAs that have been signalled for urban growth for some time and align with the investment programmes of councils and other infrastructure providers as this is considered the most appropriate mechanism to address any potential shortfall in development capacity. We do not consider that any amendments are required in response to submissions that consider there to be insufficient flexibility and a fixed and non-contestable rural/urban boundary, as work is underway to progressively implement the new national direction set out through the NPS-UD. This includes changes to the district plans, the completion of a new capacity assessment and future development strategy, and the CRPS review.

Recommendations

134. No changes are recommended to the Proposed Change in response to submissions on this key theme.