BEFORE THE HEARINGS COMMISSIONER
FOR SELWYN DISTRICT COUNCIL

UNDER	the Resource Management Act 1991
AND	
IN THE MATTER	of Private Plan Change 68 to the Operative Selwyn District Plan by ***Urban Holdings Ltd, Suburban Estates Ltd, Cairnbrae Developments Ltd***

SUMMARY STATEMENT OF EVIDENCE OF NICK WILLIAMSON

for submitters:

0012 - Dave & Julie Sommerfield
0025 - Jen & Greg Tod
0030 - Sarah & Adam Pollard
0032 - Trevor Holder & Kate Mayne
0035 - Fiona & David Lees
0037 - Bernard & Andrea Parsonage
0040 - Nettles & Brian Lamont
0041 - Helen & Roger Urquhart

Dated: 24 March 2022

INTRODUCTION

1. Good morning, Commissioner. My name is Nick Williamson. I represent 8 opposing submitters who own land in the immediate vicinity of PC68 and provide expert planning evidence in support of their submissions.

2. Firstly, I wish to thank you for being responsive to my sudden inability to attend the hearing last Tuesday, and for taking an adaptive approach to fit the hearing timetable around the Covid-19 public health orders that beset my household last Sunday afternoon.

3. Having now had the opportunity with a clear mind to read the circulated summary statements of evidence and hear the questions and answers during the recorded sessions from Days 1 and 2 of the Hearing, I have a good understanding of the current state of proceedings.

4. For today's session, I intend to provide a response to the evidence presented and questions arising over Days 1 and 2 of the hearing. This will focus on the resource management system, and the framework within which this plan change is being considered. I will offer my opinions as to merits of the proposal, having regard to the provisions and mechanisms proposed to address the resulting effects on the environment, and its conformity with higher order planning instruments. Each of the submitters will then speak to their specific concerns individually. As residents, business owners, and members of the Prebbleton community, they can offer you valuable insights into the character of the local environment, and the extent to which this will be altered if PC68 was to proceed.

THE PROBLEM DEFINITION

5. PC68 seeks to make a change to the Operative Selwyn District Plan ("OSDP"). The OSDP was made fully operative on 3 May 2016. The RMA (s79) requires councils to commence a review the provisions of an operative district plan where they have not been the subject of a proposed plan, a review, or a change by the Council during the previous 10 years.

6. A review of the OSDP began in 2015, which in accordance with s79(6) of the RMA, culminated in the publicly notification of the Proposed Selwyn District Plan ("PSDP") on 5 October 2020. The PSDP is a separate and distinct planning document from the OSDP (as defined by ss43AAC & 43AA of the RMA respectively). PC68 requests changes to the OSDP provisions, and despite some suggestions to the contrary, PC68 will not 'merge' with the PSDP presently under consideration. Instead, upon its completion of the RMA 1st Schedule process, the PSDP will supersede and *replace* the OSDP, including any changes to it, such as PC68.

7. The applicants' counsel submits (in paragraph 5.13) that the OSDP does not give effect to the NPS-UD. This is hardly surprising, as it significantly pre-dates the NPS-UD. The council has commenced a full review of the

district plan, which requires the Council to give effect to higher order planning instruments, including the NPS-UD. Since the notification of the PSDP in October 2020, the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act came into effect on 21 December 2021 ("the RMA (Enabling) legislation"), which has prompted the Council to initiate a Variation to the PSDP presently under consideration. [Refer "the Variation Report"].

TWO BITES AT THE CHERRY … OR AN EXTRA CHERRY ON THE SIDE?

8. From the moment I was first approached by the submitters to help them navigate this hearing process, I found this plan change to be highly irregular. Although the applicants' counsel brushed away my observations, you yourself said on Day 1 that the process seems unusual as it gives 'two bites at the cherry'. Counsel for the applicant said, "it's a complex situation we're currently faced with" and his expert planning witness said, "it's very odd and unusual", admitting she found it 'confusing'.

9. Having had nearly 30 years' experience administering the RMA Schedule 1 plan formulation process, it is my observation that this complex confusing situation has arisen from this attempt to side-step the district plan review process presently underway, by using the NPS-UD to expedite the rezoning of the subject land.

10. In my initial reading of the PC68 application, my first question was "why did the applicants' not request the proposed rezoning through a submission to the PSDP?" I understand from some oblique references made in the PC68 materials so far that they may have done, but no decisions have yet been made on those submissions. My clients who have been following the PSDP process more closely than I, tell me that a rezoning request was made for this land, but the Council's s42A report recommends that it be rejected.

11. My second question was "why, given the degree to which the PSDP had advanced, did the Council not modify and adopt the plan change request so that it could be properly considered within the more up to date policy settings?"

12. There is no ability to privately request a change to a proposed district plan. The 'responsive' approach would have been for the Council to 'adopt' the plan change application, then prepare a 'variation' to the PSDP that replicates the PC68 request. Only in that way can the zone changes sought by PC68 be incorporated into the PSDP (which is the answer to the question you put to the applicants' counsel on Day 1).

13. In previous local government district planning roles, I have used this approach several times. In considering whether to adopt the plan change, the report to Council's 28 July 2021 meeting said:

> Council should only consider adoption if the change has a strategic benefit, a substantial community benefit, a cost element which might require negotiations to occur between the council and the applicant, or involves a complex issue or a number of landowners that would benefit from Council coordinating the plan change process.

> The plan change is geographically contained and does not present any significant strategic matters that would necessitate Council taking over the plan change at this point in the process. The merit of the plan change is a matter that is best considered at the substantive hearing stage, with the potential that other matters may be raised by other interested parties through the submission process.
>
> Adopting the request would result in Council having to fund the remainder of the process, thereby relinquishing the ability to recover costs from the plan change proponent.

14. Given that PC68 purportedly relates to strategically significant land, is 'significant' in terms of scale relative to the community of Prebbleton, does have cost (of infrastructure) elements that require negotiation of developer agreements with the Council, and involves complex issues and a number of landowners, I think the Council made a wrong call. To suggest that Council would have to fund the remainder of the process and relinquish the ability to recover costs from the plan change proponent is a feeble excuse. A simple developer agreement that specifies that the proponent will fund the plan change process through to completion solves that issue.

15. But those decisions have already been made, and with them, opportunities have been lost. One such opportunity that comes from a Council initiated plan change (or variation) is that it has immediate effect from the date of public notification. Not necessarily the rules (except where the Act allows them to), but more importantly the objectives, policies, and the zones, insofar as they are a spatial representation of where the policies are to be applied. Private plan change requests on the other hand, have no legal effect until the date the Council notifies its decision on submissions under Clause 10.

16. The applicants' counsel and team of experts maintain that the OSDP does not give effect to the NPS-UD (Policy 8 in particular), and that PC68 is required to rectify this. But that is not what Policy 8 requires. It does not refer to district plans at all – be they operative or proposed. It in fact says:

> **Policy 8:** Local authority 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 RMA planning documents; or
> (b) out-of-sequence with planned land release

17. This policy refers to "local authority decisions". The related objective uses the exact same phrase:

> **Objective 6:** Local authority decisions on urban development that affect urban environments are:
> (a) integrated with infrastructure planning and funding decisions; and
> (b) strategic over the medium term and long term; and
> (c) responsive, particularly in relation to proposals that would supply significant development capacity.

18. The local authority decisions to 'modify' (Clause 24) and 'adopt' (Clause 25) are the most fundamental responsive actions that can be taken in relation to plan changes. Having already lost this opportunity, the Council has now resolved to effectively suspend the final determination of PC68 until the Council initiated variation to the PSDP has advanced through the public hearing process to incorporate the RMA Amendment Act 2021.

19. Clearly though, Mr Commissioner, you can only consider the matter before you on its merits, and decisions already made in the past are outside of your control for the purposes of the current proceedings. The purpose of me raising these matters is to illustrate what it means for 'local authority decisions' to be 'responsive' (or not) for the purposes of the NPS-UD.

RESPONSIVE PLANNING

20. It is a common misconception that District Plans must expressly articulate how the Council's functions under the Act (s31) are being achieved and demonstrate how regard has been had to the (s74) matters to be considered when preparing a district plan or change. In truth, the *only* mandatory contents of district plans (s75) are objectives, policies, and rules (if any).

> **75 Contents of district plans**
> (1) A district plan must state—
> (a) the objectives for the district; and
> (b) the policies to implement the objectives; and
> (c) the rules (if any) to implement the policies.

21. In terms of district plan content, the only other mandatory aspects of s75 are the things the district plan "must give effect to" (s75(3)) and the things a district plan "must not be inconsistent with" (s75(4)). There are a *lot* of considerations that Councils must have to meet their functions and duties under the Act. Many of those take the form of processes (such as s32 cost benefit evaluations) or behaviours (such as being agreeable to s73(2A) joint application, and (in s21 duty to avoid delays) acting promptly and reasonably).

22. In directing local government decision making to be 'responsive' the NPS-UD requires Councils to demonstrate a behaviour. One way a council can be responsive to plan changes is to adopt and advance them as council led, as I have already described. Another way is to decide to deal with the request as if it were an application for a resource consent (Clause 25(3)). I have personally used that process twice while at Manukau City Council after receiving private plan change applications of merit to develop land in a way other than the district plan intended during a period when Manukau City was the fasted growing population in NZ.

23. To be 'responsive' in behaviour is the equivalent of being adaptive (or 'agile') in terms of process. I have some considerable practical experience in responsive local government decision making using 'agile' project management techniques. In 2014 as District Plan Team Leader at Whangārei District Council I undertook a full review of the district plan for the suburb of Kamo (an urban environment larger than Prebbleton). Using a collaborative planning 'design sprint' process, we drafted a complete suite of objectives, policies, rules, and associated zones alongside (and in consultation with) the community over 5 working days. It took less than nine months for this plan review to advance from a blank page, through the statutory hearings process, to a full operative district plan. That project was examined as a best practice case study by multiple agencies including MfE, DIA, MBIE, NZ Treasury, and the NSW Department of Planning & Environment.

24. My point is, that Policy 8 of the NPS-UD does not direct that the OSDP provides for additional development capacity. The argument that the OSDP itself does not 'give effect to' the NPS-UD is based on a false premise and is simply wrong in my view.

THE SUBDIVISION PROCESS

25. Several of the applicants' team seem unsure if my concerns regarding over-reliance on the subdivision consenting process are supported by my practical experience. As it happens, the RMA and LGA processes apply to all territorial authorities in the country. The issues arising from rapid population growth in peri-urban areas is not unique to Selwyn or even Canterbury. It is not a new issue that has never been experienced anywhere before now.

26. As I said in my statement of experience, the subdivision consenting and compliance process is a specialist area of mine. I was also a member of the Auckland Councils' Development Contributions Working Party that was responsible for drafting the Development Contributions that were ultimately included in the LGA, so I have a better understanding of those provisions than most.

27. It is the 'expectation' of the applicants' experts that the unresolved questions regarding infrastructure adequacy, upgrade requirements, and funding methods can be dealt with at the subdivision stage. The applicants' engineer acknowledges that infrastructure upgrading will be required, including downstream works, some of which is subject to regional consenting processes. But these requirements, particularly where prerequisites to title release, cannot be lawfully imposed as conditions of subdivision consent where they require the approval of, or actions to be undertaken by, a third party beyond the application site.

28. The applicants' experts also gloss over the fact that there will be multiple subdivision applications with multiple stages over multiple years. Take the existing Living Z zones around Rolleston for example. In Figure 1 below (and attached at a larger scale) the title issue date for land parcels in the Living Z zone are colourised from oldest (light yellow) to newest (dark purple):

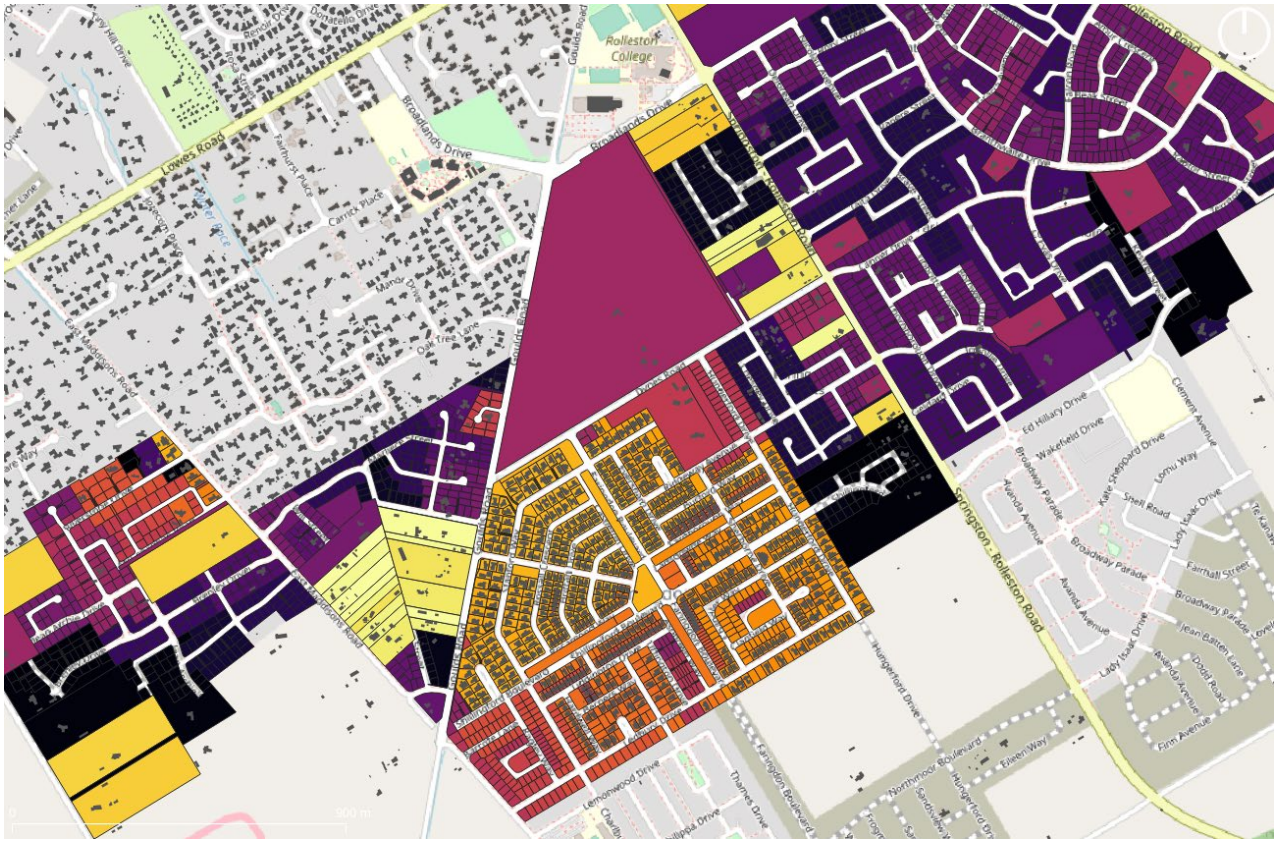

Figure 1 - Living Z title issue date

29. In the case of Prebbleton, the 142 lot subdivision immediately to the east of PC68 (refer Figure 2 below) was completed over three stages with between August 2015 and December 2016. That development was carried out in accordance with the ODP for the Prebbleton Living Z zone in Appendix 42 of the OSDP, which incorporates the wider strategic community outcomes expressed in the Prebbleton Structure Plan. That ODP was introduced into the OSDP by the Council via the Land Use Recovery Plan approved by the Minister for Canterbury Earthquake Recovery and was gazetted on 6 December 2013[1].

30. This goes to show, that even when using emergency powers to accelerate rezoning, it takes upwards of three years for new titles to be released, let alone dwellings completed ready for occupation. In the case of Prebbleton Living Zone Area D, the most recently completed stage received title in April 2021 – nearly eight years after being zoned for development.

[1] https://www.selwyn.govt.nz/__data/assets/pdf_file/0017/124730/Combinedfor-Printing.pdf

Figure 2 – Living Z areas, Prebbleton

31. The NPS-UD defines "short term" as 1-3 years, and as you have heard from the applicants' experts, PC68 does nothing to address housing supply in the short-term supply. At *best* this land could contribute to the medium term, but to commit the land to a low-density urban land development pattern separately from RPS and PSDP reviews currently under way does nothing but compromise future growth options.

URBAN FORM & RM (ENABLING) LEGISLATION

32. The applicants' counsel describes the proposal as providing a variety of medium and low-density allotments at a minimum density of 12 households per hectare. The applicants' urban designer says this "higher than the recommended density" in the OSDP Township objectives and policies is considered appropriate for Prebbleton to meet the objectives of the NSP-UD and Policy 4.2.10 of the OSDP. In response to questions, the applicants' economist confirmed that he has "not seen any evidence that people want medium density development in Selwyn. The market demand is not there in that location". If this was true, I would not expect to see the rows of attached and duplex units on sites as small as 225m^2 along Farington Boulevard in Rolleston. (Visible on Figure 1).

33. I sense that the applicants' economist, urban designer, and planner have differing impressions of what constitutes 'medium density' - the various forms it can take and many ways in which it comes about. The

economist confirms that he has not considered the impact of the new medium density residential standards ("MDRS"). He thought that the MDRS provisions would only apply in 'development scenarios', but some high-density development may come into play in new areas. He conceded that he is "not across the planning process details" but that it can take several years between a plan change and houses being built so we should "just get on with it".

34. The applicants' planner said the RMA (Enabling) legislation came into effect after she prepared her evidence. She said this "added another dimension to consideration of density in residential zones", concluding "there is probably little point in refining the current Living Z rules for this greenfield site as it will soon be subject to a variation under this new legislation". In subsequent paragraphs the planner seemed to be unaware of the implications or relevance of the MDR standards and found it "difficult to understand why the MDR provisions have been raised as an issue".

35. In fact, the implications are relatively simple. If the PC68 area is to receive a zoning of Living Z, it will become a 'relevant residential zone' for the purposes of the MDRS. Unless it is subject to 'qualifying matters' that results in its exclusion from the Intensification Planning Instrument ("IPI") Council is required to prepare (via its variation to the PSDP), the RMA (Enabling) legislation will apply to all existing and future sites within the PC68 area.

36. The *consequence* of this, will be that any person purchasing lots in the future subdivision will be able to construct up to three dwellings on each site. Those experts that are of the view that this is unlikely to occur have not been paying attention. Ever since development was booming in Auckland 25 years ago, it has been common practice for speculative builders to purchase two adjacent vacant sites in new subdivisions and building three dwellings across them. The usual approach was to obtain buildings consents for the three resulting dwellings to achieve significant gain in land value before titles were even issued. This of course has knock-on implications in terms of the infrastructure design capacity and levels of service.

37. This practice has continued until present day, with the very same business model being used extensively by Kāinga Ora (Housing NZ) to maximise its development potential. It operates on a development uplift ratio of 3:1. That is, it aims to provide three dwellings on every site it holds – it sells one on the open market to fund the development while it retains the other two – one for permanent occupation and one to earn a market rental. To assume that the purchasers will *not* take up the option of building a home + income (rental unit) on these newly created sites would be naïve to the realities of speculative property development and investment.

STRATEGIC PLANNING

38. We have heard from the Canterbury Regional Council ("EC") and Christchurch City Council ("CCC") that Plan Change 1 to the Canterbury Regional Policy Statement ("CRPS") did contemplate the 2020 version of the NPS-UD. We have also heard that the Selwyn District Council ("SDC") did not seek to extend the urban limits of Prebbleton to include the PC68 area. The SDC is formulating a variation to the PSDP which is to be notified before 20 August this year as required by the RMA (Enabling) legislation to give effect to the NPS-UD.

39. To approve PC68 in its present form, isolated from the future growth and intensification policy framework presently under development, directly undermines the objectives of the OSDP and higher order planning documents. I remain of the view that the outcomes sought by the current Resource Management policy framework would be better served if PC68 is declined.

NE WILLIAMSON

27 March 2022