

IN THE MATTER OF the Resource Management Act 1991

A N D

***IN THE MATTER OF a request by Urban Holdings Limited,
Suburban Estates Limited and Cairnbrae
Developments Limited to change the
Selwyn District Plan under Clause 21 of
the First Schedule of the Resource
Management Act 1991 (Proposed Plan
Change 68)***

***REPORT AND RECOMMENDATIONS OF A C HUGHES-JOHNSON QC
TO THE SELWYN DISTRICT COUNCIL***

DATED 23 JUNE 2022

ABBREVIATIONS TABLE

CCC	Christchurch City Council
CRC	Canterbury Regional Council / Environment Canterbury
CRPS	Canterbury Regional Policy Statement
<i>The DISTRICT</i>	Selwyn District
FDA	Future Urban Development Area
GCP	Greater Christchurch Partnership
HBA	Housing and Business Development Capacity Assessment
HCA 2021	Greater Christchurch Housing Development Capacity Assessment 30 July 2021
IMP	Mahaanui Iwi Management Plan
ITA	Prebbleton Private Plan Change (Integrated Transportation Assessment)
LUC	Land Use Capability
LTP	Long term plan – 2021-2031
MfE	Ministry for the Environment
NPS-UDC	National Policy Statement on Urban Development Capacity 2015
NPS-UD	National Policy Statement on Urban Development 2020
ODP	Outline Development Plan
<i>Our Space</i>	Our Space 2018-2048: Greater Christchurch Settlement Pattern Update Whakahāngai O Te Hōrapa Nohanga
PC (No)	Private Plan Change (No)
<i>Proposed SDP</i>	Proposed Selwyn District Plan
PIB	Projected Infrastructure Boundary
<i>Pines WWTP</i>	Pines Wastewater Treatment Plant
<i>Proposed NPS-HPL</i>	Proposed National Statement for Highly Productive Land
RMA	Resource Management Act 1991
<i>Enabling Act</i>	Resource Management (Enabling Housing Supply and Other Matters) Enabling Act 2021
RRS 2014	Rural Residential Strategy 2014
SDC	Selwyn District Council
SDP	Operative Selwyn District Plan
<i>2010 Structure Plan</i>	Structure Plan / Prebbleton Structure Plan (The Future of Prebbleton) February 2010
UDS	Urban Development Strategy
<i>Waka Kotahi</i>	Waka Kotahi NZ Transport Agency

PARAGRAPH NO.	CONTENTS	PAGE
1	INTRODUCTION	6
	<i>My appointment</i>	6
	<i>Proposed Change 68</i>	6
	<i>The setting of PC68</i>	7
	<i>The ODP</i>	7
	<i>PC68 acceptance, notification and Submission process</i>	8
2	PROCEDURAL ASPECTS	8
	<i>First minute</i>	8
	<i>Second minute</i>	9
	<i>The hearing</i>	9
	<i>Appearances</i>	9
	<i>Applicant</i>	10
	<i>Submitters</i>	10
	<i>Third minute</i>	11
	<i>Site visit</i>	11
	<i>Fourth minute</i>	12
	<i>The statutory framework</i>	12
3	STATUTORY FRAMEWORK	13
	<i>The requirements for approval</i>	13
	<i>The matter of applying the legal principles</i>	15
4	ASSESSMENT OF ACTUAL OR POTENTIAL EFFECTS ON THE ENVIRONMENT	15
	INTRODUCTORY COMMENTS	15
	TRANSPORTATION	17
	<i>Introduction</i>	17
	<i>Transport/submissions</i>	17
	<i>Transport / applicant's evidence</i>	20
	<i>The evidence of submitters in relation to transportation matters</i>	29
	<i>S42A Report / transportation</i>	34
	<i>Mr Smith / response to s42A Report</i>	37
	<i>Mr Mathew Ross Collins (Selwyn District Council)</i>	42
	<i>Transport effects / my assessment and findings</i>	48
	GREENHOUSE GAS EMISSIONS	52
	<i>Evidence on behalf of the applicant</i>	52
	<i>Evidence of submitters</i>	53
	<i>Greenhouse gas emissions / my consideration and findings</i>	56
	INFRASTRUCTURE SERVICING (WATER/WASTEWATER/STORMWATER)	57
	<i>The evidence of the applicant</i>	57
	<i>The evidence of submitters</i>	60
	<i>Infrastructure / consideration and findings</i>	68
	SOIL PRODUCTIVITY / VERSATILE SOILS	70
	<i>Introduction</i>	70
	<i>The evidence</i>	70
	<i>Versatile soils /productive land issues / my consideration and findings</i>	74
	URBAN DESIGN AND LANDSCAPE	76
	<i>Evidence for the applicant</i>	76
	<i>Urban design and landscape / the evidence of submitters</i>	82
	<i>Section 42A Report of Jonathan Clease</i>	84
	<i>Urban design and landscape / my conclusions and findings</i>	86
	REVERSE SENSITIVITY	89
	<i>Introduction</i>	89
	<i>The submitters</i>	89

	<i>Submissions and evidence on behalf of the applicants</i>	93
	<i>Jonathan Clease / s42A Report</i>	95
	<i>Reverse sensitivity / my consideration and findings</i>	96
	GROUND CONDITIONS	98
	<i>Geotechnical hazards / natural hazards</i>	98
	<i>Soil contamination</i>	99
	<i>Ground conditions / my consideration and findings</i>	100
	NIGHT SKY DARKNESS	100
	<i>The effect of development on night sky darkness</i>	100
	<i>Night sky darkness / my consideration and findings</i>	101
5	THE INCLUSION OF THE LEES PROPERTY	101
	<i>Background</i>	101
	<i>The Lees property / my consideration and findings</i>	102
6	INCLUSION OF ADDITIONAL LAND	103
	BACKGROUND	103
	PROCEDURAL ANALYSIS / LEGAL PRINCIPLES HAVING APPLICATION	103
	<i>The bipartite test</i>	103
	<i>Consequential amendments</i>	108
	SHANDS / TRENTS ROAD CORNER	110
	<i>Mr S J Shamy</i>	110
	<i>Mr S J Shamy / the corner block / my consideration</i>	113
	THE TRENTS ROAD GAP	118
	<i>Properties making up "the Trents Road gap"</i>	118
	<i>Trents Road gap / my consideration</i>	121
	HAMPTONS ROAD LOTS / 743 SHANDS ROAD AND 184 HAMPTONS ROAD	125
	<i>The setting / background matters</i>	125
	<i>The Hamptons Road lots / my consideration</i>	126
	169 AND 171 HAMPTONS ROAD	127
	<i>The further Hamptons Road lots</i>	127
	<i>The further Hamptons Road lots / my consideration</i>	127
7	STATUTORY FRAMEWORK / ANALYSIS	128
	INTRODUCTION	128
	LAND USE RECOVERY PLAN	129
	OUR SPACE AND THE NATIONAL POLICY STATEMENT – URBAN DEVELOPMENT CAPACITY	130
	NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020	131
	<i>The issue of relationship with CRPS</i>	131
	<i>The CRPS / key objectives and policies</i>	132
	<i>Selwyn District Plan / key objectives and policies</i>	133
	<i>NPS-UD / key objectives and policies</i>	133
	<i>The relationship issue / submissions on behalf of the applicant</i>	135
	<i>Submissions on behalf of CCC and CRC</i>	143
	<i>The submissions in reply of the applicant</i>	148
	<i>Relationship between the NPS-UD and CRPS / my consideration and findings</i>	151
8	STATUTORY DOCUMENTS / ASSESSMENT	159
	INTRODUCTION	159
	SECTION 31 OF THE RMA	159
	PART 2 OF THE RMA	160

	<i>Introduction</i>	160
	<i>Part 2 / evidence of Patricia Harte</i>	161
	<i>Part 2 / my consideration and findings</i>	161
	<i>NPS-UD</i>	162
	<i>Introduction</i>	162
	<i>The term “responsive”</i>	163
	<i>Significant development capacity</i>	164
	<i>Contributing to a well-functioning urban environment</i>	174
	<i>Strategic over the medium term and long term</i>	182
	CANTERBURY REGIONAL POLICY STATEMENT	186
	<i>Introduction</i>	186
	<i>Change 1 to the CRPS / historical analysis</i>	186
	<i>S42A Report</i>	192
	<i>Canterbury Regional Policy Statement / my consideration and findings</i>	193
	CANTERBURY LAND AND WATER REGIONAL PLAN AND CANTERBURY AIR REGIONAL PLAN	194
	NATIONAL POLICY STATEMENT FOR FRESH WATER MANAGEMENT 2020 AND NATIONAL ENVIRONMENTAL STANDARD FOR FRESHWATER	194
	NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH	195
	MAHAANUI IWI MANAGEMENT PLAN	195
	CONSISTENCY WITH THE PLANS OF ADJACENT TERRITORIAL AUTHORITIES	196
9	ANALYSIS UNDER S32 OF THE RMA AND ASSOCIATED MATTERS	196
	<i>Introduction</i>	196
	<i>Objectives and policies of the SDP</i>	197
	<i>Proposed Selwyn District Plan</i>	200
	<i>Whether the provisions of PC68 are the most appropriate way to achieve the objectives / examination of options</i>	201
	<i>Part 2 matters</i>	206
	<i>Evidence based decision making</i>	207
	<i>Section 32AA</i>	208
10	OUTLINE DEVELOPMENT PLAN	209
	<i>Introduction</i>	209
	<i>Evidence / submissions on the ODP</i>	210
11	OVERALL ASSESSMENT AND FINDINGS	214
	<i>Discussion</i>	214
	<i>Recommendation</i>	214

1. ***INTRODUCTION***

My appointment

- 1.1 In December 2021 I was appointed by the Selwyn District Council ("the Council") as a commissioner to hear evidence and submissions and to make a recommendation to the Council in relation to a request by Urban Holdings Limited, Suburban Estates Limited and Cairnbrae Developments Limited ("the applicant") ("the Request") to change the Selwyn District Plan under Clause 21 of the First Schedule of the Resource Management Act 1991 ("the RMA") ("PC68" variously "PC68" or "the proposed change").

Proposed Plan Change 68

- 1.2 PC68 seeks to amend the operative Selwyn District Plan ("SDP") by re-zoning certain land lying between Trents Road, Shands Road, Hamptons Road and the Sterling Park subdivision in Prebbleton from Inner Plains to Living Z.
- 1.3 The Request relating to PC68 seeks to insert a new Outline Development Plan ("ODP") in Appendix 19 of Volume 1 *Townships* relating to the land which is sought to be re-zoned.
- 1.4 The ODP identifies primary and secondary roads, low and medium density areas, public space, external road connections and cycle/pedestrian routes.
- 1.5 The land to be re-zoned contains 13 separate properties with a combined site area of 67.5047 ha. This land occupies approximately two thirds of the block bounded by Trents Road, Shands Road and Hamptons Road. The block extends from the western edge of the Sterling Park subdivision on Springs Road through to Shands Road. Two blocks of land have not been included because the owners of the individual properties within these blocks have chosen not to be part of the request for re-zoning. One of these blocks is on the north-west corner of Shands Road and Trents Road and has a combined area of 9.5 ha. The second block is a series of five identical properties

fronting onto Trents Road and adjoining Sterling Park. The combined area of this second block is 10.1 ha ¹.

The setting of PC68

- 1.6 Prebbleton Township is located to the northeast of the site. The land opposite to the site north of Trents Road is dominated by rural residential style development with many lots having an area ranging between 5000 m² and 1.2 ha. This area contains the Kingcraft Drive "Existing Development Area" ("EDA") which has 40 properties all of which have substantial dwellings and curtilage. Access to the EDA is via Trents Road and Blakes Road but there is no connection through the block ².
- 1.7 The eastern end of the land on the north side of Trents Road is fully developed for residential purposes including the Cairnbrae and Waratah Park subdivisions. These developments extend north through to, and over, Blakes Road. Immediately adjoining the eastern edge of the site is the Sterling Park residential development which has approximately 215 allotments, the majority of which are built on. This development, which has Living Z zoning, is accessed from Hamptons, Springs and Trents Roads and is set around the Prebbleton Nature Park developed from a former quarry. To the south and west across Hamptons and Shands Roads are larger farming blocks with scattered houses ³.

The ODP

- 1.8 In the Request it is noted that the re-zoning will provide an opportunity to develop residential allotments with a density of 12 per hectare access from Trents and Hamptons Roads. The ODP text commits to achieving a minimum of 12 households per hectare. It also commits to additional medium density development to be provided for through the subdivision consent processes.
- 1.9 The majority of the ODP area is allocated for low density (average of 650 m², minimum allotment size of 550 m²) residential sections. Medium-density residential development areas are identified in proximity to reserve areas. These can be achieved either as small lot

¹ See paragraph 2.1 of the Request

² See paragraph 2.2 of the Request

³ See paragraph 2.2 of the Request

developments (average lot of 500 m² and a minimum of 400 m²) or as a comprehensive medium development which involves a joint consent for buildings and subdivision ⁴. The eastern portion of the site is anticipated to be developed first due to having to connect to the existing sewer main in this area.

- 1.10 The estimated yield from the area the subject of the plan change is 820 lots based on the Living Z density rules and the roading and servicing layout specified in the ODP for this land. If the properties which are not within the current plan change area are included (excluding larger lots fronting Shands Road) the area is estimated at 1040 lots ⁵.

PC68 acceptance, notification and submission process

- 1.11 PC68 was accepted for public notification at the meeting of the Council held on 28 July 2021 (under Clause 25(2)(b)) of the First Schedule of the RMA). PC 68 was publicly notified on 15 September 2021. A total of 42 submissions were received which were then summarised and publicly notified for further submissions with the period for further submissions closing on 15 December 2021. Four further submissions were received by that date. No late submissions were received.
- 1.12 Three submissions were unambiguously in support. The balance of the submissions were either opposed to PC68 in its entirety, or willing to contemplate a change of zoning if the minimum lot sizes were significantly increased to Living 3/5000 m+ minimums ⁶.

2. *PROCEDURAL ASPECTS*

First minute

- 2.1 At the time of my appointment I gave careful consideration to the question of whether by reason of my association with any of the parties, I was precluded from acting as a commissioner by reason of the perception of an actual or potential conflict of interest. In my minute dated 25 February 2022 I commented upon this matter in

⁴ See paragraph 2.2 of the evidence of Patricia Harte

⁵ See paragraph 3.1 of the Request

⁶ See paragraph 39 et seq of the report of Johnathan Cleese under s42A of the Act

paragraph 3 of that minute. I refer to that minute but will not repeat what was said other than to note that at paragraph 3.4 I stated ...

I do not regard my association with any of the submitters or officers of the applicants as giving rise to an actual or potential conflict of interest but it is proper that the parties interested in the request should be made aware of my position.

- 2.2 The parties were given an opportunity to comment but no party did so. Accordingly I have proceeded to hear and determine this matter.
- 2.3 In the first minute I gave directions as to the expected course of the anticipated hearing, directed the circulation of the planning report on behalf of the Council and made other directions as to the lodging and circulation of evidence. In the event no issue arose in relation to the implementation of my directions.

Second minute

- 2.4 On 2 March 2022 I issued a second minute, as the applicant had requested an extension of time to provide evidence having regard to an oversight in the attachment of appendices to the officer's report on behalf of the Council. I record that for reasons set out in the minute, I directed that there should be a brief extension of time for the applicants to provide evidence, having given the parties an opportunity to make submissions in relation to the intended amended direction. No submissions were received and accordingly the direction came into force and was implemented by the receipt and circulation of the relevant evidence.

The hearing

- 2.5 I conducted a hearing of PC68 at the Tai Tapu Community Centre commencing on 21 March 2022 and the day following, 22 March 2022. Because certain witnesses were unavailable due to complications with Covid, the hearing was adjourned until 9am on 28 March 2022 with the hearing of submissions and evidence being completed by the end of that day.

Appearances

- 2.6 I recorded the following appearances at the hearing: -

Applicant

- (i) Mr Gerard Cleary, counsel for the applicant;
- (ii) Mr Gary Russell Sellars, giving evidence as a registered valuer;
- (iii) Mr Fraser Colegrave, giving evidence in relation to economics;
- (iv) Mr Andy Hall, giving evidence in relation to infrastructure;
- (v) Mr Victor Mkurutsi Mthamo, giving evidence in relation to versatile soils;
- (vi) Mr David John Robert Smith, giving evidence in relation to traffic/transport matters;
- (vii) Mr David Compton-Moen, giving evidence in relation to urban design;
- (viii) Ms Patricia Harte, giving planning evidence

Submitters

- (i) Ms Alanya Limmer, counsel for Mr Shamy
- (ii) Mr Simon Shamy;
- (iii) Mr Frank Chen;
- (iv) Mr Xiaojiang Chen, the owner of the property at 330 Trents Road;
- (v) Murray Fletcher, the owner of the property at 9 Hida Place;
- (vi) Mr Nick Williamson (representing eight opposing submitters);
- (vii) Mr David Somerfield, who together with his wife is the owner of the property at 382 Trents Road;
- (viii) Mr Greg Tod, on behalf of himself and his wife being owners of a business which operates from a property at 349 Trents Road;
- (ix) Mr Adam Roger Pollard, on behalf of himself and his wife, being residents and the owners of a landscaping business at 681 Shands Road;
- (x) Mr David and Ms Fiona Lees, being the owners of a property at 374 Trents Road;
- (xi) Ms Nettles Lamont, being the co-owner of a property at 1/333 Trents Road;

- (xii) Ms Helen Urquhart, speaking on her own behalf and that of her husband and being the owners of a property at 335 Trents Road.

Christchurch City Council and Canterbury Regional Council

- (i) Mr Mike Wakefield, counsel on behalf of both Councils;
- (ii) Mr Marcus Langman, who gave planning evidence on behalf of both Councils.

Selwyn District Council

- (i) Mr Murray Russell England, addressing water supply, wastewater system and stormwater network;
- (ii) Mr Mathew Ross Collins, giving evidence in relation to transport matters;
- (iii) Mr Johnathan Clease, providing a report under s42A of the RMA and giving planning evidence.

Third minute

- 2.7 After the conclusion of the hearing, on 31 March 2022 I issued a further minute giving directions as to the making available to me of further information regarding the availability of wastewater facilities and the provision of a memorandum of Mr Paul Rogers, solicitor, addressing the issue of the relationship between the National Policy Statement – Urban Development and the Canterbury Regional Policy Statement.
- 2.8 In addition I directed that the evidence or submissions of a number of submitters who were scheduled to present evidence at the hearing but were unable to attend should be lodged with the Council.
- 2.9 In the event I received a written statement of evidence from Ms Helen Urquhart dated 28 March 2022. This had in fact been presented to me by a third party at the hearing on 28 March 2022.

Site visit

- 2.10 I conducted an initial site visit from the roads on the perimeter of the land the subject of the proposed change on Sunday 20 March 2022. A further more detailed site visit followed on 26 May 2022 involving an on-site inspection of the Chen property at 330 Trents Road, Prebbleton, the Pollard property at 601 Shands Road, Prebbleton, the

Somerfield property at 382a Trents Road, Prebbleton and the Lees property at 374 Trents Road, Prebbleton.

Fourth minute

- 2.11 After the final site inspection, I issued a minute on 30 May 2022 closing the hearing.

The statutory framework

- 2.12 It is appropriate that I should note that at a meeting of the Council on 27 July 2021, SDC resolved to accept the plan change request under Clause 25(2)(b) of the First Schedule of the RMA with the intention that PC68 would be the subject of public notification, submissions and the substantive merits of the proposal considered at a public hearing which has been completed.

- 2.13 It is noted that the Resource Management (Enabling Housing Supply and Other Matters) Enabling Act 2021 ("the Enabling Act") requires SDC to prepare and notify a variation to the SDP or proposed SDP on or before 20 August 2022. The Council has resolved that the variation which is to be promulgated is to include Prebbleton and any ...

*PPCs that have a decision recommending approval within
Prebbleton.*

- 2.14 The report which accompanied the advice to the Council noted that the variation would be subject to a full public participatory process post notification, where all parties would have an opportunity to submit on the proposed variation. It appears to follow that should I recommend approval of PC68, that will then be incorporated in the variation to be promulgated, with the consequent ability of persons with an interest in PC68 to be involved further in the planning process.
- 2.15 At the hearing I sought assistance as to the implications of the resolution of the Council in-so-far as it affected my treatment of PC68. I made the comment that it appeared that submitters were likely to have "two bites at the cherry" because those involved in the present hearing process would have the ability to make further submissions when the variation was promulgated.

2.16 Mr Williamson, giving evidence on behalf of a number of submitters, commented that he found the plan change to be “highly irregular”. Mr Williamson was critical of the pathway that SDC had adopted in this case, querying why the applicant did not request the proposed rezoning through a submission to the proposed SDP and secondly why the Council did not modify and adopt the plan change request so that it could be properly considered within the more up-to-date policy setting. Helpfully, Mr Williamson acknowledged that I could only consider the matter before me on its merits and that decisions already made in the past were outside my control for the purposes of the current proceedings. He said that the purpose of his raising the matters was to illustrate what it meant for “local authority decisions” to be “responsive” (or not) for the purposes of the National Policy Statement on Urban Development 2020 (“NPS-UD”) ⁷.

2.17 The view which I have formed, and which was communicated at the hearing, and which I now repeat, is that I should not concern myself with the implications of the Council’s resolution, in-so-far as it affects the resolution of the merits of PC68. My obligation, in terms of the statutory provisions of the RMA, is to consider the merits of PC68 and to make a recommendation to the Council on the question of whether PC68 should be adopted. This is the process which I have followed and will continue to follow. The fact that there may or may not be a further opportunity for involvement by interested parties is not a matter which is relevant to my consideration of PC68.

3. **STATUTORY FRAMEWORK**

The requirements for approval

3.1 The requirements for a plan change are set out in ss73, 74 and 75 of the RMA. I refer to the relevant statutory provisions later in this recommendation.

3.2 The mandatory requirements which must be satisfied before a plan change can be approved are now well settled. I do not apprehend there to be any real dispute about the fundamental principles which govern the exercise of bringing about a change to a plan. A “relatively

⁷ *Summary statement of evidence of Nick Williamson / paragraphs 8 to 19 incl*

comprehensive summary of the mandatory requirements" for the Act in its form before the Resource Management Enabling Act 2005 came into force was contained in *Long Bay Okura Great Park Society Inc v North South City Council* ⁸. Following the passing of the Resource Management Amendment Act 2005 and the Resource Management Amendment Act 2009, the Environment Court amended the list to reflect the legislative changes ⁹ with the consequence that the general requirements can now be recorded as follows: -

- (i) *a district plan (change) should be designed in accord with – and to assist the territorial authority to carry out – its functions so as to achieve the purpose of the Act* ¹⁰;
- (ii) *when preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement* ¹¹;
- (iii) *when preparing its district plan (change) the territorial authority shall: -*
 - (a) *have regard to any proposed regional policy statement* ¹²;
 - (b) *give effect to any operative regional policy statement* ¹³.
- (iv) *in relation to regional plans: -*
 - (a) *the district plan (change) must not be inconsistent with an operative regional plan for any matter specified in s30(1) of the Act or a water conservation order* ¹⁴;
 - (b) *must have regard to any proposed regional plan on any matter of regional significance etc* ¹⁵.
- (v) *when preparing its district plan (change) the territorial authority must also: -*
 - (a) *have regard to any relevant management plans and strategies under other Acts* ¹⁶;
 - (b) *take into account any relevant planning document recognised by an iwi authority* ¹⁷.

⁸ *Long Bay Okura Great Park Society Inc v North South City Council* / Decision A78/2008 at para [34]

⁹ See *Colonial Vineyard Limited v Marlborough District Council* No [2014]NZ EnvC55 at paragraph [17]

¹⁰ S74(1)(a) and (b) of the RMA

¹¹ S75(3)(2)(a) of the RMA

¹² S74(2a)(i) of the RMA

¹³ S75(3)(c) of the RMA

¹⁴ S75(4) of the RMA

¹⁵ S74(2)(a)(ii) of the RMA

¹⁶ S74(2)(c) of the RMA

¹⁷ S74(2A) of the RMA

- (vi) *there is a formal requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.*
- (vii) *there is then reference to the test under s32 of the Act for objectives being that 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 ¹⁸;*
- (viii) *the policies are to implement the objectives and the rules (if any) are to implement the policies ¹⁹;*
- (ix) *each proposed policy or method (including each rule) 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 taking into account:-*
 - (a) *the benefits and costs of the proposed policies and methods (including rules) : and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods ²⁰.*

The matter of applying the legal principles

- 3.3 As will be seen later in this recommendation, there are significant difficulties associated with the application of a number of the *Colonial Vineyard Limited* requirements, in particular relating to the influence and effect of certain of the statutory instruments which are relevant in this case.

4. ASSESSMENT OF ACTUAL OR POTENTIAL EFFECTS ON THE ENVIRONMENT

INTRODUCTORY COMMENTS

- 4.1 During the course of the hearing, I heard evidence and submissions from a number of parties including counsel presenting submissions in relation to legal matters, expert witnesses giving evidence in relation to a range of matters and submitters who gave an account of particular concerns having regard to their assessment of the current environment and their perception of how this was likely to a change in an unacceptable way should PC68 proceed.

¹⁸ S74(1) and s32(1)(a) of the RMA

¹⁹ S75(1)(b) and (c) of the RMA (also s76(1))

²⁰ S32(2)(c) of the RMA

4.2 The key issues relating to the effects on the environment which have been identified as having particular relevance in this case are: -

- (i) transportation / road and access issues;
- (ii) greenhouse gas emissions;
- (iii) infrastructure / servicing issues;
- (iv) versatile soil issues;
- (v) what could be broadly be termed urban form issues;
- (vi) reverse sensitivity issues;
- (vii) geotechnical issues associated with identifying the suitability of the subject land for development;
- (viii) night sky / darkness issues.

4.3 A number of expert witnesses gave evidence on behalf of the applicant in relation to technical issues associated with the implementation of the proposed change. Significant parts of that evidence touched upon the issue of the existing amenities of the area the subject of the proposed change and the surrounding area. Many residents expressed concerns that the essentially rural character of the surrounding environment would change to their detriment. They expressed a desire that Prebbleton should retain its existing structure involving retention of an essentially rural aspect on the periphery of existing development, including larger lifestyle properties.

4.4 Notwithstanding what may be noted as an absence of expert evidence supporting the expressed fears and concerns of the residents, their evidence of concern must be taken into account. This point was highlighted in *Harewood Gravels Company Limited v Christchurch City Council*²¹ where, in discussing the evidence of landscape experts and the evidence of residents concerned about proposed quarrying activities, Davidson J stated ...

[226] The criticism of the Court's approach to the evidence of the landscape expert is in my view entirely misplaced. The Court said that the experts did not (so far as it knew) engage with the residents' views that their amenity is adversely impacted by quarrying activity taking place in the locality. That is simply to point to the need for an understanding of the experience and concerns about amenity including rural character of those affected, and for those elements to be objectively brought into account, recognising their inherent subjectivity. What better evidence in the first place is there than that of those who experience and live with the effects, provided their evidence is

²¹ CIV-2017-409-891
[2018] NZHC 3118

objectively assessed against the provisions of the District Plan and other expert evidence? The Court was not in error in observing the need for this fundamental step. A querulous and unreasonable stance taken by a resident will never prevail, but their living experience, not overstated, must be prime evidence. It is easy to dismiss or minimise the views of affected persons as subjective, yet theirs are the experiences of the very effects and amenity with which the Court is concerned.

- 4.5 This case serves as a reminder of the need to give proper consideration to the expressed views of residents in relation to my assessment of environmental effects, in order to arrive at a just recommendation in this case.
- 4.6 What follows under this head is an extensive review of the evidence given by interested parties in relation to the important issue of the assessment of environmental effects. In order to do justice to the careful preparation and presentation of the evidence and submissions in relation to relevant issues, I have felt it necessary to make a more extensive record of the evidence and submissions than would perhaps otherwise be the case. There is of course, unavoidably, an element of overlap and I have attempted to restrict the commentary where overlap occurs.

TRANSPORTATION

Introduction

- 4.7 Clearly PC 68 will have a significant impact upon the Prebbleton and wider transportation network. The issues which call for examination in this context are whether PC 68 will properly integrate into the network, whether PC68 seeks to maximise connectivity and accessibility for all modes including walking and cycling and whether the land the subject of PC68 is located so that it may be appropriately serviced by and integrate well with the existing and future public transport network.

Transport / submissions

- 4.8 A number of residents raised concerns regarding transport matters in their submissions. These were summarised in the evidence of Mr Smith, referred to hereafter. I have drawn upon his summary of the matters raised in submissions which record transport matters which are of concern to the submitters.

- 4.9 The following submitters (for convenience I have noted their submission numbers) made submissions raising concerns regarding the congestion on the road network and increased travel to and from Christchurch: -

*Submitter 4 / Stephanie Broomhall
Submitter 12 / David and Julie Somerfield
Submitter 25 / Greg and Jenny Tod
Submitter 26 / Christchurch City Council
Submitter 33 / Warren Ladbrook
Submitter 34 / Canterbury Regional Council
Submitter 36 / Marilyn and Stuart Thorne
Submitter 40 / Nettles Lamont
Submitter 41 / Helen and Roger Urquhart*

- 4.10 The following submitters made submissions in relation to existing congestion and the anticipated traffic generated from PC68 exacerbating existing congestion: -

*Submitter 4 / Stephanie Broomhall
Submitter 40 / Nettles Lamont
Submitter 41 / Helen and Roger Urquhart*

- 4.11 The following submitters raised concerns over the increased traffic in the plan change area and the capacity of the roads on the network: -

*Submitter 2 / Donovan Taynton
Submitter 8 / Jonelle Bowman
Submitter 28 / Laura Chisholm
Submitter 29 / Angus Chisholm
Submitter 38 / Shayne and Karen Richardson*

- 4.12 Other submitters have expressed concerns over the ability of Trents Road to handle more traffic being: -

*Submitter 12 / David and Julie Somerfield
Submitter 25 / Greg and Jenny Tod
Submitter 33 / Warren Ladbrook
Submitter 36 / Marilyn and Stuart Thorne*

- 4.13 The following submitters considered that there had been no consideration of the wider effects on Christchurch City with the road network not being able to handle the expected growth being: -

*Submitter 28 / Laura Chisholm
Submitter 34 / Canterbury Regional Council*

- 4.14 A number of submitters raised the cumulative effects that the plan change would have given other proposed development in the area being: -

Submitter 13 / Andrew Dollimore
Submitter 22 / Tania Hefer
Submitter 23 / Gary Burgess
Submitter 35 / David and Fiona Lees
Submitter 41 / Helen and Roger Urquhart

- 4.15 A number of submitters have highlighted concerns as to road, pedestrian and cycle safety and road safety in general as a result of increased traffic on the network being: -

Submitter 8 / Jonelle Bowman
Submitter 12 / David and Julie Somerfield
Submitter 19 / Chris and Carol White; Adam Gard'ner and Lucy Gard'ner-Moore
Submitter 20 / Prebbleton Community Association
Submitter 25 / Greg and Jenny Tod
Submitter 28 / Laura Chisholm
Submitter 29 / Angus Chisholm
Submitter 33 / Warren Ladbrook
Submitter 37 / Bernard and Andrea Parsonage
Submitter 38 / Shayne and Karen Richardson
Submitter 41 / Helen and Roger Urquhart

- 4.16 The following submitter raised the issue that an excessive amount of vehicle accesses can have safety implications being: -

Submitter 29 / Angus Chisholm

- 4.17 Other submitters have raised specific concerns regarding the safety of the upgraded intersections, regarding the potential conflict with vehicles and visibility at the intersections being: -

Submitter 20 / Prebbleton Community Association
Submitter 41 / Helen and Roger Urquhart

- 4.18 Certain submitters expressed concerns over a lack of public transport connectivity to the proposed plan change area. These concerns address a lack of transport network or bus stops in the locality of the site of PC68 being: -

Submitter 18 / Waka Kotahi NZ Transport Agency
Submitter 21 / Murray and Julie Fletcher
Submitter 25 / Greg and Jenny Tod
Submitter 26 / Christchurch City Council
Submitter 28 / Laura Chisholm
Submitter 29 / Angus Chisholm
Submitter 30 / Adam and Sarah Pollard
Submitter 32 / Trevor Holder and Karlee Mayne
Submitter 34 / Canterbury Regional Council

- 4.19 The following submitters expressed concern over the sustainability of the proposed plan change relating to emissions and reliance on the private car being: -

*Submitter 18 / Waka Kotahi NZ Transport Agency
Submitter 21 / Murray and Julie Fletcher
Submitter 26 / Christchurch City Council
Submitter 34 / Canterbury Regional Council
Submitter 40 / Nettles Lamont*

- 4.20 The following submitters raised concerns over pedestrian and cycling infrastructure in the proposed area with certain of the submitters wanting more provision for walking and cycling being:

*Submitter 8 / Jonelle Bowman
Submitter 19 / Chris and Carol White;
Submitter 19 / Adam Gard'ner;
Submitter 19 / Lucy Gard'ner-Moore
Submitter 27 / Ministry of Education
Submitter 29 / Angus Chisholm
Submitter 33 / Warren Ladbrook*

- 4.21 Certain site-specific matters were raised by submitters expressing safety concerns relating to Prebbleton School because of the perceived absence of footpaths and cycle facilities on Trents Road and Hamptons Road being: -

*Submitter 27 / Ministry of Education
Submitter 29 / Angus Chisholm*

- 4.22 Lastly, one submitter expressed concern over the safety of their mowing operations in relation to the increase in traffic and widening of Hamptons Road which was said to be likely to change amenity and make roadside mowing more dangerous being: -

Submitter 42 / Angela Phillips

Transport / applicant's evidence

David John Robert Smith

The effect of PC68

- 4.23 The applicant relied upon the expert evidence of Mr David John Robert Smith, a technical director of the company known as Transportation Planning at Abley Limited, a company specialising in transportation.

Mr Smith is undoubtedly well qualified to provide expert transport evidence having appropriate qualifications and extensive experience in transportation planning and engineering matters. Mr Smith, on behalf of Abley Limited, prepared a document headed *Prebbleton Private Plan Change (Integrated Transportation Assessment)* in October 2020, ("the Abley Report") which assessed the potential transportation related effects of the proposed re-zoning on the future transport network.

- 4.24 The overall conclusion in this summary statement presented at the hearing was that the site of PC68 integrates well with the Prebbleton and wider transportation network and seeks to maximise connectivity and accessibility for all modes including walking and cycling ²². He also concluded that PC68 was well located to be directly serviced by public transport and had the potential to integrate well with the public transport network, maximising opportunities for uptake of sustainable transportation modes ²³.
- 4.25 Mr Smith went on to state that he had addressed questions raised in the report under s42A of the RMA relating to the staging of the development through an additional transportation modelling assessment. He recorded that he subsequently recommended that 120 lots could be established at the southern end of PC68 as an initial stage of development directly connecting to Guinea Drive and the southernmost Hamptons Road access shown on the ODP. He said that this initial stage could be supported following the construction of the Shands Road/Trents Road roundabout, with the remainder of the development to follow the completion of the Shands/Hamptons roundabout upgrade and Trents and Hampson Roads seal widening project ²⁴.
- 4.26 As a result of considering the transport report of Mr Mathew Ross Collins (referred to hereafter), a transportation planner and engineer, on behalf of the Council, he gave consideration to the issue of whether a second approach lane was required from the Shands Road northern approach at the Shands/Trents roundabout and also considered the question of the upgrading of Hamptons and Trents Road frontages to

²² Summary evidence of David John Robert Smith / paragraph 2.2

²³ Summary evidence of David John Robert Smith / paragraph 2.3

²⁴ Summary evidence David John Robert Smith / paragraph 2.6

include footpaths to connect with existing footpaths on Hamptons Road and Trents Road.

- 4.27 Mr Smith commented on the additional Shands/Trents Road roundabout modelling assessment ²⁵. He remained of the view that the original configuration involving a single lane roundabout provided a satisfactory level of service in the morning and evening peak periods, but agreed that improvements were appropriate acknowledging that the addition of PC68 traffic results in an increase in delays on the Shands Road southern approach in the morning peak from 7 seconds to 30 seconds. He considered that this increase could be offset by enhancements to the roundabout and concluded, after undertaking transportation modelling of the relevant intersection, that enhanced roundabout configuration, involving the addition of a second approach and circulating lane for the Shands Road southern approach and a second approach lane from the northern approach Shands Road roundabout was an approach which reduced morning peak delays on the Shands southern approach from 30 seconds to 8 seconds.

Network effects assessment

- 4.28 Mr Smith noted ²⁶ that he had undertaken a capacity assessment

".... by forecasting 2030 traffic volumes both with and without the development traffic. The forecasts have been based on 2.8% growth per annum on all corridors from 2020-2030. The 2.8% growth aligns with the Statistics New Zealand medium growth population forecast from 2018-2028 for Selwyn District and has been adopted as an indicator of likely traffic growth."

- 4.29 Mr Smith concluded that both corridors being the Shands Road corridor and the Springs Road corridor, had sufficient capacity to accommodate the full development of the site in the vicinity of the plan change ²⁷. He went on to conclude that the changes in road and intersection performance in relation to the plan change were minimal and the effects were acceptable given the construction of the three roundabouts as intended by the SDC through the delivery of the LTP ²⁸.

²⁵ Summary evidence of David John Robert Smith / paragraph 3.1 et seq

²⁶ Evidence of David John Robert Smith / paragraph 10.3

²⁷ Evidence David John Robert Smith / paragraph 10.4

²⁸ Evidence David John Robert Smith / paragraph 10.8

Strategic planning framework

4.30 Mr Smith then went on to deal with the strategic planning framework, making reference to the Canterbury Regional Land Transport Plan (2021-2031), Canterbury Regional Public Transport Plan (2018-2028), and the objectives and policies of the SDP, to the extent that these documents contain provisions in relation to transportation. He said that it was his view that the plan change was consistent with or not contrary to the provisions of these documents ²⁹.

4.31 Mr Smith referred to the Canterbury Regional Land Transportation Plan (2021-2031) and noted that the plan change was not inconsistent with the objectives of the plan as the site was within walking and cycling distance of Prebbleton Town Centre with good infrastructure provision for these modes and well located to support the provision of high-quality public transport which could be delivered along Springs Road or through the plan change site using the primary road ³⁰.

4.32 Mr Smith then went on to refer to the Canterbury Regional Public Transport Plan (2018-2028) which referred to service to and from satellite centres, including Prebbleton. He noted that four new high frequency routes were proposed. He said that the proposed bus route network showed a high frequency service between Prebbleton and Christchurch CBD and said that there was improved public transport accessibility between the site and the Christchurch CBD ³¹.

4.33 Mr Smith then referred to the SDP stating that it was anticipated that at the resource consent stage of any development, the transport related rules of the SDP would form an appropriate bases for the design and layout of the internal site ³².

Cumulative effects

4.34 Mr Smith referred to the inclusion of the 28% growth in traffic to replicate the cumulative effects of ten years of further development in the District based on future forecast population increases and said³³ ...

²⁹ Evidence David John Robert Smith / paragraph 11.1

³⁰ Evidence David John Robert Smith / paragraph 11.2

³¹ Evidence David John Robert Smith / paragraph 11.3

³² Evidence David John Robert Smith / paragraph 11.4

³³ Evidence of David John Robert Smith / paragraph 12.9

"This growth rate aligns well with the Selwyn District forecast included in Appendix 2 to the QTP report included with the S42A report for the Plan Change. The QTP report represents "Scenario 1" which is a forecast agreed by the Greater Christchurch Partnership Committee and included 34% growth in 2018-2028 and 53% growth 2018-2038. When rebased to 2021 (as is consistent with my modelling) this equates to 2.3% per annum out to 2038. As such I consider that my modelling provides a robust assessment of the likely future traffic demands in the vicinity of the Plan Change if Prebbleton, Rolleston and Lincoln continue to develop in line with Statistics New Zealand forecasts and the expectations of the Greater Christchurch Partnership Committee."

4.35 Mr Smith then went on to note the commitment of SDC through the Selwyn District Long Term Plan (2021-2031) to upgrade transportation infrastructure to facilitate future urban growth as the Canterbury District continued to grow. He went on to state that whilst Shands Road and Springs Road had a finite capacity, the SDC had anticipated future growth and included upgrades in the vicinity of PC68 and further north along these corridors towards Christchurch. He said that the capacity of these corridors was anticipated to reduce over time and this would be a function of growth across the Selwyn District generally, rather than exclusively due to PC68 ³⁴.

4.36 Then Mr Smith referred to the SDC's Development Contributions Policy and said that this policy provided a means to levy developers to fund any network upgrades required because of cumulative effects. He said that the policy was currently regularly updated to align with infrastructure identified in the three yearly Long Term Plan ("LTP") cycle therefore it was possible to levy for additional infrastructure which may not already be identified in the current LTP ³⁵.

Road safety

4.37 Mr Smith dealt with the issue of road safety in a section of his evidence. He noted that a number of submitters had expressed concerns about safety as a result of increased traffic on the network including pedestrian and cyclists' safety. He considered that whilst there were no footpaths currently along the site frontage and on-street cycle lanes located on Springs Road, a future project that would be located along the Trents Road frontage was a cycleway between Templeton and Prebbleton which was in the draft LTP for 2023/24. He considered this project would increase cyclist's safety in proximity

³⁴ Evidence David John Robert Smith / paragraph 12.11

³⁵ Evidence David John Robert Smith / paragraph 12.12

to the site and was likely to be designed as a shared path to allow for pedestrian use ³⁶. Mr Smith expressed the view that as part of the SDP, speed environments and traffic volumes within local streets were low and best suited for walking and cycling between streets ³⁷.

4.38 Mr Smith then went on to refer to the issue of vehicle accesses. He said that the consideration of access design will be addressed if subdivision consenting stage and safety considerations will be addressed in detail as part of that and subsequent design stages ³⁸. He said that there were no underlying safety issues along any of the corridors in terms of crash history or underlying risk assessment of the road environment. He noted the intention of SDC to upgrade roads and to control vehicle movements through relevant intersections. He recommended that the speed environments on the adjoining corridors be evaluated should the plan change be approved to be consistent with an urban environment for all road users ³⁹.

4.39 Lastly, under this head, Mr Smith referred to concerns regarding the safety of upgraded intersections regarding the potential conflict with vehicles and visibility of the intersection. He said that safety audit processes would be required in the design process of the roundabouts as required by the SDC engineering code of practice ⁴⁰.

Public transport connectivity

4.40 Mr Smith noted concerns had been expressed over lack of public transport connectivity to the proposed plan change area. He acknowledged that the existing level of public transport nearby was limited. However he noted that the Greater Christchurch Public Combined Business Case stated an intention to enhance connections between Lincoln and Prebbleton and the activity centre along Riccarton Road in the medium term. He said that as Prebbleton developed there were options available to re-direct services to better serve PC68 in the future including running public transport services along Springs Road past the plan change site. He said that public transport would be further supported by ensuring that there was a

³⁶ Evidence David John Robert Smith / paragraph 12.14

³⁷ Evidence David John Robert Smith / paragraph 12.15

³⁸ Evidence David John Robert Smith / paragraph 12.16

³⁹ Evidence David John Robert Smith / paragraph 12.17

⁴⁰ Evidence David John Robert Smith / paragraph 12.18

high standard of access for walking within the plan change site to bus stops and that there needed to be sufficient residential catchment in the vicinity of the plan change site prior to a dedicated route being provided by the Canterbury Regional Council ⁴¹.

Pedestrian and cycling

4.41 Mr Smith noted concerns which had been expressed over pedestrian and cycling infrastructure. He said that in the Abley Report he had highlighted the importance of the Templeton and Prebbleton link along Trents Road connecting Prebbleton to Christchurch City Council's cycling infrastructure and the Little River Rail Trail. He said that he understood this would be funded by SDC and established in 2023/24 as per the LTP ⁴². He went on to state that no further pedestrian or cycling infrastructure was planned or to be developed on Shands Road or Hamptons Road but that pedestrian and cycling use would be limited as both Trents Road and Springs Road would offer more attractive pedestrian and cycling infrastructure. He considered Trents Road to be better located for the proposed pedestrian and cycle link as it was closer to the Prebbleton Town Centre and Springs Road had an existing pedestrian and cycling facility acting as a connection between Christchurch and Lincoln ⁴³.

4.42 As far as the wider pedestrian and cycling infrastructure was concerned, Mr Smith said that there were new pathways and connections provided for in the design of the CSM2 that linked Rolleston to the south of Templeton and that there was now an extension of the Rail Trail to the north of Prebbleton connecting to the Christchurch Southern Motorway separated shared path. He said that Springs Road offered road cycle lanes and footpaths connecting to the site to the separate and shared path to Lincoln that follows Birches Road ending with the town centre ⁴⁴.

Site specific matters

4.43 Mr Smith went on to deal with safety concerns which had arisen regarding travel to Prebbleton school. These concerns related to the

⁴¹ Evidence David John Robert Smith / paragraphs 12.19 to 12.22 incl

⁴² Evidence David John Robert Smith / paragraph 12.27

⁴³ Evidence David John Robert Smith / paragraph 12.28

⁴⁴ Evidence David John Robert Smith / paragraph 12.29

absence of footpaths and cycle facilities on Trents Road and Hamptons Road. He considered that Hamptons Road did not need to be used for active modes to travel from the site to the school as the internal roading within the plan change site effectively connected pedestrians and cyclists to Trents Road ⁴⁵.

4.44 Mr Smith stated that where Trents Road was to be crossed in the vicinity of Farthing Drive, there was a low-speed environment and relatively low traffic volume ⁴⁶.

4.45 Mr Smith went on to state that Prebbleton School was within walking distance of the school and he considered there were safe options for both pedestrians and cyclists with Springs Road having a shared path with the local streets being designed for low-speed environment or traffic volumes. Furthermore he said that a cycle facility at (and likely shared path) would be installed by the Council on Trents Road to connect these routes ⁴⁷.

4.46 Lastly under this head, Mr Smith expressed the view that there were no particular concerns regarding the safety of mowing operations because a speed reduction along Hamptons Road would improve safety and that the process of setting appropriate speed limits was a matter for the Council not for the applicant ⁴⁸.

Comments on submissions

4.47 Mr Smith reviewed the evidence of submitters in his evidence summary ⁴⁹. As to the concern expressed by Mr Langman about the current reliance of Prebbleton on Christchurch for employment, noting that no employment was included within PC68, Mr Smith stated that Prebbleton was located in close proximity to four Key Activity Centres identified under the Canterbury Land Use Recovery Plan (being Rolleston, Lincoln, Hornby and Halswell). He said that these centres all offered employment. He went on to state that he had been supplied with business demographic data from Mr Colegrave indicating a substantial increase in employment in the Hornby and Halswell areas in the past 10 years. He noted that there was a

⁴⁵ Evidence David John Robert Smith / paragraph 12.30

⁴⁶ Evidence David John Robert Smith / paragraph 12.31

⁴⁷ Evidence David John Robert Smith / paragraph 12.32

⁴⁸ Evidence David John Robert Smith / paragraph 12.33

⁴⁹ Summary evidence David John Robert Smith / paragraph 4.1 et seq

significant and increasing quantity of employment within 7 km of the PC68 site.

- 4.48 Mr Smith went on to note that Mr Langman had raised concerns about cumulative downstream traffic effects in spite of the comprehensive modelling assessment undertaken by QTP and the conclusions of Mr Collins on behalf of SDC. He made reference to having reviewed the QTP modelling report, noting that the report included 10,049 households developed between 2018 and 2038 “which is consistent with the full development of the Plan Changes listed in Appendix A including PC68”. He stated that the network model testing was highly conservative and that it considered a scenario which was more than double the anticipated growth forecast to occur within the district ⁵⁰.
- 4.49 Mr Smith said that the allocation of households within the Canterbury Transport Model over the next 20 years to align with the medium-high growth scenarios was made up of a combination of greenfield and infill growth with both being included in the model. Because of this he said that there was already an allocation within the transportation modelling in the QTP report for infill development such as would be established by the Medium Density Residential Standards. He said that the Scenario 2 modelling assessment presented the cumulative effect of both greenfield and infill development to match a medium - high growth forecast as well as 14 private plan changes delivering 10,049 household. He said that an extremely conservative approach had been taken which provided confidence that Shands Road and Springs Road were expected to experience little change in forecast traffic growth when comparing a 2038 scenario with 10,000 additional dwellings than forecast.
- 4.50 Mr Smith went on to note that not all of the plan changes that had been heard to-date had been recommended to be granted so that the 10,000 households included in the assessment was an upper limit on the cumulative land use growth forecast and resulted in cumulative transportation network effects ⁵¹.
- 4.51 Mr Smith then went on to refer to Mr Langman’s expressed concerns that the PC68 site was not currently serviced by public transport. He expressed the view that there were options to redirect existing public

⁵⁰ *Summary evidence David John Robert Smith / paragraphs 4.5 to 4.7*

⁵¹ *Summary evidence David John Robert Smith / paragraph 4.10*

transport services or to provide new public transport services through and adjacent to the site. He expected that the central primary school shown on the ODP would be designed in such a way as to be able to accommodate buses. He expected that concerns regarding the availability of public transport would be met by the use of mechanisms in place to regularly review bus services with the expectation that several new services would be established to integrate public transport with land use growth as it happened elsewhere ⁵².

The evidence of submitters in relation to transportation matters

Introduction

- 4.52 As already noted earlier in this recommendation, a number of submitters who gave evidence at the hearing raised transportation concerns, many mirroring what had already been stated in their submissions. A summary of the principal matters raised follows.

Murray Fletcher

- 4.53 Mr Fletcher referred to the Integrated Transportation Assessment that had been prepared by Abley Consultants and reviewed by Flow Transportation Services and was critical of the conclusions arrived at stating that they were flawed. He said that the traffic counts used were from 2017/18 and 2019 and not current at the time of the writing of the report. He referred to the traffic counts for a number of roads and said that a more appropriate comparison to PC68 to be used for the effects on Springs Road was the village where the counts were more around to 12,000 to 13,000 vpd. He said that the assumption of the growth rate of 2.8% per annum was flawed as it did not consider residential growth already approved and underway for Lincoln and Rolleston and the plan changes to be considered for a further 5,700 new homes and seven developments in Rolleston which would put significantly more traffic onto Shands Road ⁵³.

- 4.54 Mr Fletcher criticised the views of Mr Collins to the effect that the effects of PC68 on the adjacent transport network would be acceptable when considered in isolation of the other privately initiated plan changes, stating that this was a weak conclusion because of flaws

⁵² Summary evidence David John Robert Smith / paragraph 4.11 to 4.13
⁵³ Evidence Murray Fletcher /paragraph 27

in the Abley Report, secondly because it was based on a first come first served basis and thirdly it was not included within the settlement areas, so that other private changes being considered by the SDC would not be factoring PC68 into any traffic calculations and traffic effects as a result ⁵⁴. Mr Fletcher was critical of the assertion that the traffic on Shands Road and Springs Road would experience little change in forecast growth when comparing a 2038 scenario with 10,000 additional dwellings more than forecast and found this hard to believe ⁵⁵.

4.55 Mr Fletcher said that the suggestion in the QTP modelling that additional traffic demand would result in movement shifts to less congested routes into Christchurch was flawed because there were four alternative routes and the model did not know the condition of these routes ⁵⁶.

4.56 Mr Fletcher was of the view that there needed to be a plan in place like the "Our Space" report to clearly set out where land should be developed so that there was more certainty for future infrastructure planning. He said that the reference in the s42A Report to other plan changes in Rolleston and Lincoln having yet to be released and thus assessment of traffic speculative at this time and if the changes were declined then there was limited cumulative effect, was an "odd statement" ⁵⁷.

4.57 Mr Fletcher commented that in the transport conclusions of Mr Cleese there was no reference to the Climate Change Response (Zero Carbon) Enabling Act 2019 and public transport ⁵⁸. Mr Fletcher was critical of what he termed inadequate consideration of the use of walking, cycling and public transport and that the comments made in the relevant reports were cursory. He said that public transport and climate change had not been adequately considered ⁵⁹. Mr Fletcher said that Hamptons Road was classified as an arterial road and protection should be in place to protect access to it and promote safety. In his view the effects on Trents and Hamptons Road needed

⁵⁴ Evidence of Murray Fletcher / paragraph 28

⁵⁵ Evidence of Murray Fletcher / paragraph 29

⁵⁶ Evidence of Murray Fletcher / paragraph 30

⁵⁷ Evidence of Murray Fletcher / paragraph 31

⁵⁸ Evidence of Murray Fletcher / paragraph 33

⁵⁹ Evidence of Murray Fletcher / paragraph 34

to be considered as part of the PC68 application and inferred that they had not been adequately considered ⁶⁰.

CCC/ CRC / Marcus Hayden Langman

- 4.58 Mr Langman referred to a number of objectives and policies of the CRPS ⁶¹. He referred to Objective 6.2.4 and Policies 6.3.3, 6.3.4 and 6.3.5 of the CRPS. He stated that CCC was specifically concerned that the Integrated Transport Assessment shows that the vast majority of residents commuted from Prebbleton to Christchurch for work (67%) and he said that no additional employment opportunities were provided for as part of PC68 and further said that there had been no demonstrations as to how the proposal would contribute to reduced greenhouse gas emissions ⁶².
- 4.59 Mr Langman then went on to refer to the review by Mr Matt Collins on behalf of SDC where he recommended a number of changes to the ODP as well as traffic upgrades. However Mr Langman said that Mr Collins did not assess effects on the wider transport network but did state that PC68 was inconsistent with the Prebbleton Structure Plan and that it was outside the anticipated urban area and was concerned about the prospect of additional impact on the Greater Christchurch transport network as additional residents in Selwyn travelled to access services and employment. Mr Langman said that this was a key concern for CCC particularly when considered in combination with other private plan changes proposed that had not been planned for at a strategic level. He said that the combination could result in significant cumulative and unacceptable impacts on the transport network ⁶³.
- 4.60 Mr Langman went on to state that he considered that PC68 would contribute to cumulative downstream effects for Christchurch City where many of the ultimate destinations of Prebbleton residents lay, particularly for employment and retail where he said that levels of service in relation to traffic congestion were already poor. He went on to note that modelling indicated that average speeds in the morning peak period would fall substantially by 2048 especially for trips between Selwyn, Waimakariri and Christchurch because of the

⁶⁰ *Evidence of Murray Fletcher / paragraph 35*

⁶¹ *Evidence of Marcus Hayman Langman / paragraph 134 et seq*

⁶² *Evidence of Marcus Hayman Langman / paragraphs 135 and 136*

⁶³ *Evidence of Marcus Hayman Langman / paragraph 138 and 139*

increased population associated with PC68 and other plan changes. Mr Langman went on to note that several strategic transport assessments undertaken for Our Space and the Future PT Business Case had already been undertaken suggesting that the location of land use growth could significantly impact the distribution of trips and the resulting level of congestion and traffic speeds ⁶⁴.

4.61 Mr Langman was of the view that unplanned or out of sequence development, particularly outside the PIB, could inhibit integrated and strategic approach to the delivery of efficient and effective public transport, this being reflected in the Regional Public Transport Plan which emphasised the need for integration of public transport and land use planning as being essential to managing growth ⁶⁵.

4.62 Mr Langman stated that development should be commensurate with the level of accessibility already existing or planned and not reliant on future level of public transport service which was unplanned, unfunded and ran counter to the stated policy directions of statutory documents. Mr Langman concluded that PC68 did not support the integration of land use and transport infrastructure and would impede the maintenance of an efficient and effective transport network. He found that PC68 was inconsistent with relevant policies in the CRPS ⁶⁶.

Greg and Jenny Tod

4.63 Mr and Mrs Tod expressed concern over the placement of the spine road running between Hamptons and Trents Road which egressed onto Trents Road directly opposite their business entrance and expressed concerns regarding the effect on business, lifestyle amenity, security and safety. They noted that in the Collins transport report it was stated that it may be an infringement of the district plan rules and it may be unsafe for large trucks to unload at the Tod gate/roadside and Mr Tod concluded that he would be amazed if concerns about the location of the intersection were not considered a problem ⁶⁷.

⁶⁴ Evidence of Marcus Hayman Langman / paragraphs 140 and 141

⁶⁵ Evidence of Marcus Hayman Langman / paragraph 142

⁶⁶ Evidence of Marcus Hayman Langman / paragraphs 143 and 144

⁶⁷ Evidence of Greg Tod / paragraphs 1 and 2

4.64 Later in his evidence, Mr Todd stated that traffic was a nightmare in its present state and would only get worse and that new roundabouts would not alleviate traffic volumes and that was where the problem lay ⁶⁸.

Adam Roger Pollard

4.65 Mr Pollard referred to the accumulative effects of traffic pressure noting that Shands Road was already a very busy road. He said that adding traffic from Faringdon south west and Faringdon west with approximately 1000 sections and the possibility of approval of Plan Change 69 (at Lincoln) there would be another 2000 sections added from Lincoln which would increase the substantial amount of traffic ⁶⁹.

4.66 Mr Pollard referred to the new Trents Road roundabout proposed for 2022/2023 but said that he was yet to be informed by SDC as to the impact on their property ⁷⁰.

4.67 Mr Pollard went on to state that he agreed with Mr Fletcher's comments in relation to the age of data used for traffic movements noting that there had been a considerable increase in vehicle movements in the past three years. He said that he would have thought that the most up-to-date information would be used by consultants and that it should not be for submitters to have to provide that information ⁷¹.

David and Fiona Lees

4.68 In their evidence, Mr and Mrs Lees referred to cumulative traffic effects resulting from the number and density of proposed change and subdivision compounding with multiple subdivisions elsewhere in the Selwyn District. Mr Lees referred to funnelling of traffic from newer subdivisions on top of growth in Lincoln, Rolleston, Springston, Selwyn and other parts of Prebbleton, increase in traffic, safety to pedestrians and cyclists, noise and difficulty in crossing roads.

⁶⁸ Evidence of Greg Tod / paragraph 22

⁶⁹ Evidence Adam Roger Pollard / paragraph 1

⁷⁰ Evidence Adam Roger Pollard / paragraph 2

⁷¹ Evidence Adam Roger Pollard / paragraphs 3 and 4

Nettles Lamont

4.69 In her evidence, Ms Lamont said that the burgeoning effect of traffic with the PC68 would be “huge”. She said that there would be over 1000 extra vehicles expecting to utilise roads around Prebbleton to get to shopping and commercial areas further afield, that the current roading structure could not cope with the additional load as it is already overloaded. She said that a development such as that outlined would lead to further congestion and vehicle emissions, noise and pollution ⁷².

Helen Urquhart

4.70 Ms Urquhart noted that the majority of people living in Prebbleton commuted to Christchurch for employment opportunities. She said that houses in Prebbleton were marketed with the proximity of the Southern Motorway as an advantage and she questioned how this development would be likely to be any different. She said that the Prebbleton commute would continue to grow, that slower speeds would be implemented and with the increase in traffic, travel times would increase and the pressure on bottlenecks would also increase. She referred to the cumulative effects of the multiple plan changes happening within Lincoln and Rolleston and the effect of those. She was sceptical of the utility of electric bikes and scooters and doubted whether many people would do their supermarket shopping using a bike. She said that people would still want to use their cars. She said that the traffic had not been normal for years in the area with continual residential and roadworks in the area so traffic counts were never going to be a true reflection of what was really happening ⁷³.

S42A Report / transportation

4.71 In the s42A Report, Mr Cleese noted the preparation of the Integrated Transport Assessment and commented on the location and status of roads in the vicinity of PC68. He said that in the event that the plan change was to be approved, it was anticipated that the speed limits on the three frontage roads would need to be reviewed. He noted the

⁷² Evidence Nettles Lamont / paragraph 18

⁷³ Evidence of Helen Urquhart / paragraph 5a

recommendation by Mr Collins that both Hamptons and Trents Roads were to be formed to urban standards ⁷⁴.

4.72 Mr Clease then dealt with the issue of intersection functionality ⁷⁵. He noted the provisions of the Abley Report which models the effects of the additional traffic generated by PC68 on the four relevant intersections. He noted that the modelling identified that the four intersections would continue to perform and adequately provide the upgrade works programmed by the Council are undertaken. He further noted that there was a potential timing issue and recorded the recommendation of Mr Collins that the applicant undertake further modelling of these intersections to better understand performance in the absence of upgrades and if not how long the timing issue will be between the subdivision buildout and the programmed upgrade.

4.73 Mr Clease then went on to note that there were three solutions to the problems associated with the four key intersections being: -

- (i) the applicant undertakes further sensitivity modelling with the timing of upgrades overlaid with the timing of likely buildout with the additional modelling demonstrating that the intersection will continue to perform adequately;
- (ii) if sensitivity modelling does show that there is a significant (of temporary issue) then a second option is that the applicant enters into an agreement with the Council to provide additional funding to enable the programme works to be advanced;
- (iii) the third option is to add a new rule to the district plan as a consequential amendment with the rule limiting the number of houses that be built and occupied prior to the upgrades being in place.

4.74 Mr Clease was of the view that all of the above options would provide an adequate solution to ensure that the four key intersections closer

⁷⁴ S42A Report / paragraph 94

⁷⁵ S42A Report / paragraphs 95 to 100 incl

to the site will continue to operate safely and provide a reasonable level of service ⁷⁶.

- 4.75 Mr Clease went on to consider pedestrian and cycle connections associated with PC68 ⁷⁷. He noted the evidence of Mr Collins which I will not repeat at this point. Mr Clease agreed that the connections advocated for by Mr Collins will assist in providing future residents with alternative means of transport and noted that the final design of cycle facilities could be determined in discussion with the Council as part of the subdivision consent process.
- 4.76 Mr Clease then went on to discuss the issue of public transport saying public transport options were limited. He concluded that whilst the site is not currently well serviced by public transport the plan change and ODP do not preclude the provisions of such services in the future ⁷⁸.
- 4.77 Mr Clease went on to examine the issue of cumulative transport network effects ⁷⁹, referring to the evidence of Mr Collins, which I will not repeat, save to observe that the major concern of Mr Collins related not so much to the traffic generated by PC68 per se but rather the cumulative traffic effects that might be generated by the sweep of plan changes proposed in the wider area, including those in Rolleston and Lincoln.
- 4.78 Mr Clease stated that he understood from the feedback from Mr Andrew Mazey, SDCs roading asset manager, that the Greater Christchurch Partnership organisations are well aware of the potential changes to the commuter volumes arising from the plethora of recent plan change applications and are in the process of investigating how to support modal or shift towards public transport and the potential for commuter rail from Rolleston. In the meantime the Partner organisations are reviewing the function of the wider road network noting that such is an iterate process and is hoping to proceed in the context of considerable uncertainty generated by the multitude of plan changes in locations that have not been previously identified for growth ⁸⁰. Mr Clease said that tension was inevitable with the door opening created by the NPS-UD and stating that that document

⁷⁷ S42A Report / paragraphs 101 to 104 incl

⁷⁸ S42A Report / paragraphs 105 and 106

⁷⁹ S42A Report / paragraphs 107 to 113 incl

⁸⁰ S42A Report / paragraph 112

created a process whereby the co-ordination of urban growth with transport infrastructure became a reactive and iterative, particularly where the effects derived from individual plan changes are found to be acceptable and any adverse effects were only felt cumulatively ⁸¹.

- 4.79 In reaching his conclusions on transport, Mr Clease noted the recommendations of Mr Collins relating to additional sensitivity modelling and amendments to the ODP plan and narrative. Mr Clease noted, sensibly in my view, that because decisions on other plan changes in Rolleston and Lincoln were at that time yet to be released, the extent of any increase in traffic generated by them was simply speculative at the time of writing. He said that in the event that a number of plan changes were approved, the QTP modelling suggests that the additional traffic demand will result in movement shifts to alternative less congested routes into Christchurch but noted that there was a likelihood that there would be some increase in congestion in the short term ⁸².

Mr Smith / response to s42A Report

- 4.80 Mr Smith commented upon the transportation evidence contained in the s42A Report in his evidence-in-chief which has already been recorded. This involved commenting on the report produced by Flow Transportation Specialists as Appendix B to the s42A Report.

Mr Smith / cumulative and wider effects of plan changes

- 4.81 As to the important issue of cumulative and wider effects of the plan changes in the Selwyn District, Mr Smith said that he had reviewed the QTP report and agreed with the conclusion of Mr Collins that regional modelling indicated that Shands Road and Springs Road were expected to experience little change in forecast traffic growth, when comparing the 2038 scenario with 10,000 additional dwellings more than forecast. He said that the calculation of Mr Collins as to the cumulative number of households included in the plan changes and his conclusions addressed the concerns raised by some submitters regarding the potential cumulative effects of the various plan changes which had been lodged across the District ⁸³.

⁸¹ S42A Report / paragraph 113

⁸² S42A Report / paragraphs 114 to 116 incl

⁸³ Evidence of David John Robert Smith / paragraph 12.36

Mr Smith / traffic modelling

4.82 Mr Smith then went on to refer to traffic modelling in the Transportation Hearing Report ⁸⁴. Mr Smith referred to the capacity assessment presented in section 7.3 of the report where Mr Collins considered that 2,700 vehicles per hour per lane in the ITA overestimated capacities and offered a range of 2,070 to 2,530 vehicles per hour per lane. Mr Smith said he considered this assessment to represent a moot point as the modelled traffic volumes presented were less than the upper range quoted by Mr Collins, which essentially validated his own assessment ⁸⁵.

4.83 Mr Smith went on to refer to the evidence of Mr Collins relating to his recommendation that no dwellings be occupied until such time as the relevant intersection and carriageway upgrades are completed or under construction. Mr Smith said with construction of these projects to be completed on or before 2024/5 he considered it was very unlikely that all five projects would be in place prior to substantial development of the plan change sites. He went on to state that he had undertaken an assessment to determine the effects of modest extent of development prior to the completion of these projects ⁸⁶.

4.84 The conclusions which Mr Smith reached following an assessment by him were ⁸⁷: -

- (i) the Shands Road/Trents Road roundabout upgrade is required prior to any development occurring on the plan change site;
- (ii) when the Shands Road/Trents Road roundabout upgrade is complete there is likely to be a temporary shift of right turning traffic from the Shands Road/Hamptons Road priority control intersection. He has estimated that 120 lots would only generate only up to 30 movements in a peak hour through this intersection which is only one vehicle every two minutes and he considers that it is very unlikely that re-routing from Hamptons to Trents Roads would exceed this amount and on this basis the

⁸⁴ *Evidence of David John Robert Smith / paragraphs 12.37 to 12.54 incl*

⁸⁵ *Evidence of David John Robert Smith / paragraph 12.38*

⁸⁶ *Evidence of David John Robert Smith / paragraph 12.40*

⁸⁷ *Evidence of David John Robert Smith / paragraphs 12.42 and 12.43*

Shands/Hamptons roundabout is not required prior to 120 lots being established on the site;

(iii) the Springs Road/Hamptons Road upgrade is not relied upon by the plan change as the intersection has sufficient capacity to accommodate the full PC68 traffic volumes in its current form.

(iv) the view of Mr Smith is that 120 lots of development at the southern end of the plan change site can occur once the Shands Road/Trents Road roundabout is operational.

4.85 Mr Smith accepts that the Shands Road/Hamptons Road roundabout should be installed prior to more intensive development of the site. However he notes that the modelling results to demonstrate that the development does not require the Springs Road/Hamptons Road intersection upgrade to be complete prior to full development of PC68 ⁸⁸.

4.86 Mr Smith goes on to state that the Trents and Hamptons Roads seal widening projects are timed in the LTP to be delivered at the same time as the intersection upgrades. He considers it will be beneficial for these to be in place prior to wider development of PC68.

4.87 Mr Smith goes on to note that Mr Collins was advised that SDC intended to construct a single lane roundabout at the Shands Road/Trents Road roundabout. Mr Smith has noted that modelling results demonstrate there is step change deterioration in performance of a roundabout if it were constructed as a single lane roundabout and goes on to consider an additional approach lane for left turning traffic being added to the Shands Road north approach.

4.88 Mr Smith proceeds to consider the 2030 modelling results with the addition of the left turn and considers that the proposed enhancement will maintain or improve the operational performance of the Shands Road corridor, will require less land taken be it at a lower cost compared to a full dual lane roundabout. He has therefore recommended to the applicant team that the addition of a second approach lane from the north along Shands Road will benefit road users within PC68 as well as other road users ⁸⁹.

⁸⁸ *Evidence of John Robert Smith / paragraph 12.44*

⁸⁹ *Evidence of John Robert Smith / paragraphs 12.45 to 12.52 incl*

4.89 Mr Smith then refers to the proposed second approach lane from the Shands Road north approach, noting that land acquisition will be required. He considers that the size and location of the roundabout island and other geometric design features of the roundabout as proposed by SDC are suitable to accommodate the enhancement without requiring significant additional design work. He states that he has checked the future forecast traffic volumes on Shands Road for the forecast year of 2030 and confirms that the volumes reconcile with the QTP 2038 traffic volumes in the morning peak period which provides an additional validation check on the robustness and reliance which can be placed on Mr Smith's modelling assessment ⁹⁰.

Mr Smith / frontage upgrades

4.90 Mr Smith goes on to refer to frontage upgrades and supports the updating of the ODP to refer to the Trents Road and Hamptons Road frontages being upgraded. He also supports the inclusion of a pedestrian facility along Trents Road and that it is appropriate to provide a pedestrian footpath along the Hampson Road frontage as part of the plan change. However he notes that there is no adjacent development to the south/west of the site and there is excellent pedestrian connectivity within the site as no demand for a continuous footpath along Hamptons Road beyond the extent of the plan change site ⁹¹.

Mr Smith / provision for cycling

4.91 Mr Smith then refers to agreement with the recommended cycle routes presented by Mr Collins in Figure 6 of his report as indicative routes for further assessment at the appropriate time, agreeing that indicative cycling routes could be added to the ODP and that these would be confirmed and assessed in further detail as part of any future subdivision consent application ⁹².

Mr Smith / Prebbleton Structure Plan

4.92 Mr Smith agreed with the broad observation of Mr Collins that there will be an additional impact on the Greater Christchurch network if growth and residential activity within the Selwyn District is not

⁹⁰ Evidence of David John Robert Smith / paragraphs 12.53 and 12.54

⁹¹ Evidence of David John Robert Smith / paragraphs 12.55 and 12.56

⁹² Evidence of David John Robert Smith / paragraph 12.57

accompanied by a corresponding increase in employment and services. He noted that the modelling assessment undertaken by QTP took into account consideration of future forecasts of employment etc which provided Mr Smith with confidence that the future effects of anticipated residential development on the wider transport network had been assessed in an appropriate manner ⁹³.

Mr Smith / responses to submissions

4.93 Mr Smith then went on to comment upon a number of matters raised in submissions as follows ⁹⁴: -

- (i) he agreed that the request for traffic calming on Springs Road, Trents Road, Hamptons Road was a matter for the Council;
- (ii) he said that the adjacent areas with respect to PC68, the roading network in the ODP anticipated these areas may become urbanised in the long term;
- (iii) Mr Smith said that he did not consider a modest increase in density would result in a step change in demand for transport services but agreed that in theory higher density supported public transport outcomes;
- (iv) as to truck access to 345 Trents Road, Mr Smith said that a design process for the new intersection would consider the needs of the submitter to ensure that truck movements were facilitated and that a safety audit would also be required to ensure safe design for all modes of transport;
- (v) Mr Smith agreed to the inclusion of adjacent areas in PC68 was unlikely to have a consequential effect to the conclusions of the ITA. He said that the ODP included transport links to the boundary of adjacent undeveloped areas which provided excellent collections for all road users should these areas develop in the future.

⁹³ Evidence of David John Robert Smith / paragraph 12.58

⁹⁴ Evidence of David John Robert Smith / paragraph 12.59

Mr Smith / conclusions

- 4.94 Mr Smith concluded that the plan change could be supported in relation to transportation matters. He recommended that 120 lots could be established in PC68 following the construction of the Shands Road / Trents Road roundabout with the remainder requiring the Shands/Hamptons roundabout upgrade and Trents and Hamptons Roads seal widening projects to be built ⁹⁵.

Mr Mathew Ross Collins (Selwyn District Council)***Mr Collins / review of reports and evidence***

- 4.95 Mr Collins has been engaged by SDC as a transport expert for PC68 since August 2021. I have already made reference to the evidence of Mr Collins when referring to the S42A Report prepared by Mr Cleese. Mr Collins has experience as a transportation planner and engineer in the public and private sector and outlined that experience. He had prepared the Transportation Hearing Report dated 13 December 2021 attached as Appendix B to the S42A report ("Transportation Hearing Report"). He had reviewed the evidence of Dave Smith and Patricia Harte and also the evidence of Nick Williamson and Marcus Langman. He had also reviewed a summary statement from Jonathan Cleese ⁹⁶.
- 4.96 Mr Collins assessed the modelling undertaken by Mr Smith relating to the Shands Road//Trents Road roundabout. Mr Collins concluded that a minor increase in traffic approaching the roundabout in a northerly direction would be likely to have a much greater effect on queuing and delays than had been assessed by Mr Smith who had stated that the modelling identified only minor delays of around 30 seconds on the Shands Road (south) approach during the morning period. This was because Mr Collins was concerned that the reported delays were highly sensitive to change in traffic volume as the Shands Road (south) approach was essentially at capacity. Mr Collins had discussed his concerns with Mr Smith and as a result said that he was comfortable with what was termed a second option involving the addition of a double approach land on Shands Road (south). Mr

⁹⁵ Evidence of David John Robert Smith / paragraph 13.1 to 13.3 incl
⁹⁶ Summary evidence Mathew Ross Collins / paragraphs 1.1 to 1,4 incl and 3.1 to 3.3 incl

Collins said that this upgrade was required as a direct consequence of the traffic effects of PC68 ⁹⁷.

4.97 Mr Collins went on to refer to the staging of development to align with the delivery infrastructure. He agreed with Mr Smith's assessment and conclusion which in summary was ⁹⁸: -

- (i) the Shands Road/Trents Road roundabout upgrade was required prior to any development occurring on PC68;
- (ii) the Shands Road/Hamptons Road roundabout was required prior to more than 120 lots gaining access to Hamptons Road;
- (iii) the Springs/Road Hamptons Road upgrade was not required prior to the full development within PC68.

4.98 Mr Collins then went on to adopt the recommendations of Mr Smith as to the timing of lots being made available to the public. Mr Collins went on to state that he shared the concerns of Mr Williamson about how staging would be achieved and considered that the staging which had been recommended by Ms Harte in her evidence should be identified in a district plan rule. He suggested a wording which regulated the release of allotments by reference to the upgrading of the relevant intersections and seal widening ⁹⁹.

4.99 Mr Collins then referred to the funding of transport infrastructure noting that Mr Williamson had raised concerns about that issue. Mr Collins considered that all required transport infrastructure needed to support PC68 was funded in the LTP of SDC other than the double lane Shands Road/Trents Road roundabout. Mr Collins said that the Council and Waka Kotahi currently had funding allocated to upgrade the intersection to a single lane roundabout whereas PC68 necessitated additional capacity upgrades on the Shands Road approaches and departures. Mr Collins went on to note the programme dates for the infrastructure and sounded the cautionary note that despite the high certainty of the funding and delivery of these improvements, there is always a possibility that Waka Kotahi

⁹⁷ *Summary evidence Mathew Ross Collins / paragraph 4.1 et seq*

⁹⁸ *Summary evidence Mathew Ross Collins / paragraph 5.1*

⁹⁹ *Summary evidence Mathew Ross Collins / paragraphs 5.4 to 5.7 incl*

may choose to reallocate funding away from these projects. He said that in view of this possibility the matter was appropriately addressed through the inclusion of a rule as previously discussed ¹⁰⁰.

4.100 Mr Collins then discussed the requirement for a developer agreement with SDC which would rely on third party land acquisition. He went on to state that the success of developer agreements to address infrastructure upgrades required to support privately initiated plan changes depended upon the willingness of the plan change applicant and the number of parties that benefited from the infrastructure upgrade but said that he understood that the Council had a willingness to work with the applicants to secure the additional upgrade for the Shands Road/Trents Road intersection. He said the he recommended that a staging rule would act as a strong incentive for the applicant to enter into the developer agreement with the Council ¹⁰¹.

4.101 Mr Collins then went on to discuss the provision of the continuous footpath on Hamptons Road and on Trents Road between PC68 and Farthing Drive. He noted his understanding that the applicant supported his recommendation for the footpath connection on Hamptons Road and had agreed to it being identified in the ODP ¹⁰².

Mr Collins / cumulative effects

4.102 Mr Collins then referred to the important issue of the cumulative effects on the wider transport network ¹⁰³. He noted the concerns which had been expressed by Mr Langman in his evidence relating to the cumulative effect that PC68, and other plan changes within Selwyn District may have on the wider transport network. Mr Collins noted that SDC had engaged QTP to assess the transport effects of two future land use scenarios for Selwyn District: -

- (i) one scenario related to growth in Selwyn based on a forecast agreed by the Greater Christchurch Partnership Committee;

¹⁰⁰ *Summary evidence Mathew Ross Collins / paragraphs 6.1 to 6.4 incl*

¹⁰¹ *Summary evidence Mathew Ross Collins / paragraphs 6.5 to 6.8 incl*

¹⁰² *Summary evidence Mathew Ross Collins / paragraphs 7.1 to 7.4 incl*

¹⁰³ *Summary evidence Mathew Ross Collins / paragraphs 8.1 to 8.6 incl*

- (ii) the second scenario added an additional dwellings in the Selwyn District only, without any changes to employment or any changes to households in Christchurch or Waimakariri.

4.103 Mr Collins stated that if PC68 did not result in a corresponding increase in local employment and access to services, there could be expected to be an additional impact on the Greater Christchurch transport network. However he said that wider area effects and “out of sequence” plan change such as PC68 “may not be overly apparent in a macro scale regional traffic model”. Mr Collins was of the view that whilst PC68 would have effects on the wider transport beyond those assessed by Mr Smith in his Integrated Transport Assessment, those effects (including cumulative effects of other plan changes) were more appropriately addressed at a district and/or regional level. However In answer to a question from me, Mr Collins said that the cumulative effects had already been assessed, referring to the QTP Report dated October 2021 ¹⁰⁴ to which I am about to make reference.

4.104 Lastly Mr Collins commented upon servicing PC68 with public transport, stating that whilst there was no guarantee that PC68 would be directly served by public transport in the future, he considered there were no fundamental reasons why this could not occur ¹⁰⁵.

The QTP report

4.105 The QTP report was prepared for SDC by Flow Transportation Specialists Limited and is dated October 2021 entitled *Future Year Transport Model Outputs / Selwyn 2031 Update (Selwyn 2051)* (“QTP report”). As Mr Collins notes in the Transportation Hearing Report the engagement of QTP was to test the effects of greater residential growth in Selwyn on the Greater Christchurch transport network, as part of SDC’s “Selwyn 2051” plan. Mr Collins noted that the transport models outputs provided in the QTP report do not attempt to precisely predict future conditions, but rather provide a broad indication of likely outcomes of a certain set of assumptions

¹⁰⁴ Summary evidence Mathew Ross Collins / paragraphs 8.4 to 8.6 incl

¹⁰⁵ Summary evidence Mathew Ross Collins / paragraphs 9.1 to 9.4 incl

come to pass and he noted that further model limitations were noted in the report itself ¹⁰⁶.

4.106 The QTP report assesses the difference between two potential scenarios in 2038 ¹⁰⁷: -

(i) **Scenario 1 (2038)**

Growth in Selwyn based on forecast agreed by Greater Christchurch Partnership Committee for households, population, and employment;

(ii) **Scenario 2 (2038)**

Scenario 1 plus an additional 10,000 dwellings (Selwyn District only), without any changes to employment, or any changes to households in Christchurch or Waimakariri. It was noted that these were slightly lower than the sum of the current privately initiated plan changes (10,900 dwellings) which Mr Collins had previously noted.

4.107 Mr Collins noted ¹⁰⁸ that QTP found that: -

- (i) travel patterns in both scenarios were indicated to remain similar to 2021, but with an increased magnitude proportional to population increase (increase of around 32% peak hour trips);
- (ii) there is and will be a high demand between Selwyn and Christchurch with approximately 50% of Selwyn's peak hour trips starting or finishing in Christchurch with trips distributing across available corridors between the two districts;
- (iii) for both scenarios limited growth was indicated on some routes (such as Springs Road and Shands Road due to downstream constraints in Christchurch) resulting in other routes seeking a higher increase in traffic;

¹⁰⁶ *Transportation Hearing Report / para 4*
¹⁰⁷ *Summary evidence Mathew Ross Collins / paragraph 8.3*
¹⁰⁸ *Transportation Hearing Report / page 7*

- (iv) for both scenarios more than 90% of trips were indicated to be by private vehicle;
- (v) Scenario 2 is indicated to cause increasingly poor performance on several parts of the Prebbleton network when compared with Scenario 1 including at: -
 - (a) Springs Road/Marshes Road intersection;
 - (b) Shands Road/Marshes Road intersection.

4.108 Mr Collins summarised the findings of the QTP assessment and his view of “out of sequence” development in the following summary ¹⁰⁹: -

- (i) should PC68 affect the quantum of residential growth within Selwyn, without a corresponding increase in local employment and access to services, additional impact on the Greater Christchurch transport network could be expected as additional residents in Selwyn travel to access services and employment;
- (ii) however, the wider area effects of an “out of sequence” plan change such as PC68 may not be overly apparent in a macro scale regional traffic model. As the vehicle movements generated by a plan change distributed across the wider transport network, they have become a smaller proportion of the total trips on the network.

4.109 The limitations of the QTP model are set out in the QTP report ¹¹⁰. Noting it is possible to make reasonable and useful predictions of potential outcomes in the future, the report highlights the difficulty in predicting future behaviour, noting that the transport models had been calibrated to reflect 2006 travel behaviour, within an inherent assumption that this would continue. The report states that while over the past few decades this has proven (empirically) to be a valid assumption, the recent (2021) government policy statements on land transport and housing and urban development suggest that

¹⁰⁹ *Summary evidence Mathew Ross Collins / paragraph 8.4*
¹¹⁰ *At paragraph 2.3 et seq*

significant intervention is needed in the near future to force travel behaviour change in order to address climate change, sustainability issues, urban design and to provide better long-term outcomes.

Mr Collins / summary

Mr Collins summarised his views in his evidence ¹¹¹. He recommended that subject to two matters, he considered that there were no transport impediments to the approval of PC68: -

- (i) that district plan activity(ies) and rule(s) be provided to require development within PC68 to be staged with nearby transport network upgrades as discussed in his evidence;
- (ii) that the ODP and narrative identify that footpaths are to be provided on Trents Road and Hamptons Road, between PC68 and the intersections with Farthing Drive as discussed in his evidence.

Transport effects / my assessment and findings

Cumulative effects

- 4.110 Because of the number of plan changes which are either in the process of consideration, or the subject of approval in the Selwyn District, there is considerable uncertainty as to the extent to which further development will be permitted and the consequences of such development as is permitted on the wider transportation network. The submitters in opposition have rightfully drawn attention to the difficulties of assessment which are imposed by this level of uncertainty. Whilst the statutory regime for privately initiated plan changes contemplates that requests for private changes will be dealt with on their merits and without delaying to await the outcome of other contemplated privately initiated requests for plan changes, that does not mean that such requests should be dealt with in a vacuum without attempting to assess the present transportation setting and also the likely future transportation setting. On the basis of the available evidence it is necessary to make the best possible assessment of the cumulative effects associated with other

¹¹¹ *Summary evidence of Mathew Ross Collins / paragraph 10*

developments which are either in train or contemplated and which, on balance, are realistic possibilities.

- 4.111 In practical terms, the provision of adequate information to enable an assessment of cumulative effects to be made represents a difficult hurdle. There will always be a level of uncertainty as to the likely extent of future development which will hinge upon the treatment of plan changes which are in the course of evaluation as well as those which have been approved.
- 4.112 Notwithstanding the element of uncertainty regarding the extent of likely future development discussed above, there has been an assessment of transportation effects associated with future growth on the basis of the consideration of a number of development scenarios. Particular emphasis is placed on the Abley Report. Much of the report is concerned with the direct transportation effects of the implementation of PC68 ¹¹².
- 4.113 I have been particularly influenced by the conclusion of the network effects assessment contained in the Abley Report ¹¹³.
- 4.114 Mr Collins rightfully highlighted that assessing the effects of out-of-sequence development, such as PC68, created complex challenges for councils and road controlling authorities ¹¹⁴. He accepted, as I do, that PC68 would have effects on the wider transportation network which are likely to be beyond those assessed by Mr Smith in his Integrated Transport Assessment. However the QTP Report has provided a level of comfort in that whilst the purpose of the report was not to assess the cumulative of traffic effects of the multiple plan changes within Selwyn, it does provide insight into the potential quantum of effects, by comparing a standard population growth scenario (Scenario 1) with a high population growth scenario (Scenario 2). I note that the report provides a broad indication of likely outcomes if a certain set of assumptions come to pass.
- 4.115 I accept the statement of Mr Collins that without a corresponding increase in local employment and access to services, an additional impact on the Greater Christchurch transport network can be

¹¹² *Abley Report / paragraph 7*

¹¹³ *Abley Report / paragraph 9*

¹¹⁴ *Summary evidence Mathew Ross Collins / paragraph 8.2*

expected as additional residents in Selwyn travel to access services and employment. However I do not regard this level of uncertainty as militating against approval of PC68, subject to the conditions which, it has been suggested, should be imposed should the plan change be approved.

- 4.116 I accept the statement in the Abley Report ¹¹⁵ that with 10 years of background traffic growth, both the Shands Road corridor and the Springs Road corridor have sufficient capacity to accommodate the full development of the site. However there is likely to be an additional impact on the Greater Christchurch Transport Network. I accept the statement by Mr Collins that the transport effects of PC68 on the adjacent transport network can be managed through projects in SDC's LTP and further assessments during the subdivision stage of development ¹¹⁶. Accordingly I find that concerns regarding cumulative effects are insufficient to act as a barrier to the approval of PC68.

Conditions of approval

- 4.117 I accept and adopt the statement of Mr Collins that subject to implementation of his recommendations, there are no impediments to PC68 ¹¹⁷. It follows from the extensive discussion of the evidence and reports in relation to transportation matters, that in order to manage the effects of the development of PC68 on the transportation network, it is necessary for there to be a number of conditions imposed upon the development of the land in question, in order to ensure that the effects on the transportation network are acceptable. I note as follows

- (i) The ODP has been amended to provide that the Trents Road and Hamptons Road frontages are to be upgraded to an urban standard in accordance with the Engineering Code of Practice. These frontages are to encourage properties to front these roads as well as providing for walking and cycling connections within Prebbleton and between Prebbleton, Lincoln and Rolleston;

¹¹⁵ Abley Report / paragraph 7.9

¹¹⁶ Transportation Hearing Report / paragraph 8

¹¹⁷ Summary evidence of Mathew Ross Collins / paragraph 10.2

- (ii) The staging rule suggested by Mr Collins is to be inserted in the SDP in the following form

Part C

12 LIVING ZONE RULES – SUBDIVISION

12.1 SUBDIVISION – GENERAL

Prebbleton

12.1.3.48A In respect of the Living zoned land identified in Appendix []

(a) No residential allotments may be created within ODP Area [] prior to completion of the upgrading of the Shands Road/Trents Road intersection involving a roundabout with two laning of Shands Road on both approaches and on the northern departure to the roundabout.

(b) No more than 120 residential allotments may be created within ODP Area [] prior to the completion of:

- (i) the upgrading of the Shands Road/Hamptons Road intersection to form a roundabout; and*
- (ii) seal widening of Trents Road, between Springs Road and Shands Road; and*
- (iii) seal widening of Hamptons Road, between Springs Road and Shands Road.*

This provision reflects the requirement for intersection and upgrades and seal widening to occur prior to certain stages of development, reflecting the concerns expressed by (in particular) Mr Collins;

- (iii) It is noted that the latest version of the ODP (Version 6) and narrative identifies that footpaths are to be provided on Trents Road and Hamptons Road, between PC68 and the intersections with Farthing Drive, as recommended by Mr Collins;
- (iv) The imposition of speed limits is not a matter to concern me at this stage but observe that consideration may be given at some later time to the imposition of speed limits by SDC on roads where the further restrictions are seen as necessary.

4.118 A final comment under this head is appropriate. I observe that given the level of uncertainty regarding wider transportation effects which I have commented upon in this recommendation, ideally a full assessment of these effects would be made, with reference to information as to plan changes which were to become operative and other factors such as the impact that public transport initiatives in the

Canterbury Region to establish the likely effect upon the overall transportation network. As is discussed in detail later in this recommendation, the provisions of the NPS-UD, in terms of timing requirements, do not allow for the delays which would be inherent in such an analysis taking place. Accordingly it has been necessary to make an assessment on the basis that the information presently available in spite of any inadequacies in the information which is presently available.

GREENHOUSE GAS EMISSIONS

Evidence on behalf of the applicant

Evidence of David John Robert Smith

- 4.119 Mr Smith (on behalf of the applicant) referred to the issue of vehicular travel and associated emissions in his evidence ¹¹⁸. Mr Smith considered that Prebbleton was well located to restrict vehicular travel and associated emissions compared to other developing urban areas located further away. He then referred to the potential to improve public transport and new technologies including the continued uptake of electric and hybrid vehicles and buses which he said was likely to decrease vehicle related emissions across the fleet as signalled in Waka Kotahi's *Vehicle Emission Prediction Model*. This model estimates that by 2048 two-thirds of New Zealand's vehicle fleet will be electric or hybrid vehicles and the average carbon dioxide equivalent emissions per vehicle will reduce by as much as 60% in accordance with Figure 5 of his evidence.

Evidence of Ms Harte

- 4.120 Ms Harte referred to the issue of greenhouse gas emissions in the summary of her evidence ¹¹⁹. She referred to the evidence of Mr Smith which I have referred to in the preceding paragraph. She then went on to note that the comparison of PC68 with intensification of existing residential areas was not appropriate as the NPS-UD contemplated expansion as well as intensification and thus comparing the two forms of increasing capacity in the context of supporting reduction of greenhouse gas emissions was inappropriate. She went on to refer to

¹¹⁸ Evidence David John Robert Smith / paragraphs 12.23 to 12.25 incl

¹¹⁹ Summary of evidence of Patricia Harte / paragraphs 11.1 to 11.4 incl

Objective 6.2.2 of the CRPS which supported consolidation of urban areas, one basis being that it was most likely to minimise the adverse effects for work, education, business and recreation. She said it was surprising that the latest and only amendment to that document was the addition of two FDAs at Rolleston which were a significant distance from central Christchurch as opposed to PC68. The inference was that the CRPS had not turned its back on development some distance from Christchurch, notwithstanding the implications in terms of the emission of greenhouse gases.

Greenhouse gas emissions / evidence of submitters

Murray Fletcher

- 4.121 Mr Fletcher noted that Mr Cleese had made no reference to the Climate Change Response (Zero Carbon) Enabling Act 2019 and public transport. He said that insufficient planning had been undertaken to establish the effect that accommodating the development would have on reducing vehicle numbers and carbon use. He was of the view that insufficient attention had been paid to the issue of climate change ¹²⁰.

Marcus Hayden Langman

- 4.122 When giving evidence, Mr Langman stated that there had been no demonstration as to how the proposal would contribute to reduced greenhouse gas emissions, which he said was a requirement for a well-functioning urban environment ¹²¹. Mr Langman noted that in the section 42A Report, Mr Cleese agrees that PC68 may not support reduction in greenhouse gases, primarily due to a reliance on private vehicles but had caveated this with a view that the same situation arises currently in relation to existing zoned land or land identified for future development in the Selwyn District ¹²². Mr Langman was of the view that it was not logical to draw this conclusion because PC68 was an addition, not in substitution, to other growth areas¹²³.

¹²⁰ Evidence Murray Fletcher/paragraphs 33 and 34

¹²¹ Evidence of Marcus Hayden Langman / paragraph 136

¹²² Evidence of Marcus Hayden Langman / paragraph 163

¹²³ Evidence of Marcus Hayden Langman / paragraph 164

- 4.123 Mr Langman went on to state that no aspect of the proposal looked to achieve the policy direction being to establish well-functioning environments which *at a minimum* support reductions in greenhouse gas emissions and said that there was no quantification of this nor any proposal to see how such reductions might be achieved¹²⁴. Mr Langman said that whilst not all land within the existing GPAs and FDAs may deliver on every NPS-UD or CRPS policy now, it could be reasonably expected that this would occur as a result of the strategic planning and infrastructure that would “unlock” that land for development¹²⁵. Mr Langman concluded by stating that land transport currently accounted for 41% of greenhouse gas emissions in Greater Christchurch, noting that plan prepared by Waka Kotahi¹²⁶.

Greg and Jenny Tod

- 4.124 Mr and Ms Tod expressed concerns about the loss of vegetation and the increase in carbon emissions from cars and log burners. It was stated that the reverse sensitivity of what was termed this “urban heat island” may have a negative effect on the Tod nursery and that there had been no full report into this effect tabled. Mr Tod said that there were a number of ways that climate change effects could be mitigated and they should be considered. In answer to a question from me, Mr Tod stated that larger sections would be likely to mitigate pollution more than the size of sections the subject of PC68¹²⁷.

Nettles Lamont

- 4.125 Ms Lamont referred to climate change, stating it was necessary to consider the negative aspect of zone change and the ensuing development on climate. She referred to the “urban heat island effect”. She said that the burgeoning effect of traffic with PC68 would be huge because over 1000 extra vehicles would be expecting to utilise the roads around Prebbleton to get to shopping and commercial areas further afield. She said that the development would lead to further congestion and vehicle emissions¹²⁸.

¹²⁴ Evidence of Marcus Hayden Langman / paragraph 165

¹²⁵ Evidence of Marcus Hayden Langman / paragraph 166

¹²⁶ Evidence of Marcus Hayden Langman / paragraph 167

¹²⁷ Evidence Greg and Jenny Todd/paragraphs 10 and 11

¹²⁸ Evidence of Nettles Lamont /paragraphs 17 and 18

Helen Urquhart

- 4.126 Ms Urquhart expressed concern regarding Co2 emissions. She said that if PC68 were to be approved, it could be used as an opportunity to make this a sustainable low carbon footprint using solar power and re-using great water ¹²⁹.

Waka Kotahi

- 4.127 Waka Kotahi NZ Transport Agency referred to the issue of carbon emissions in its submission. It referred to the fact that New Zealand had a target to achieve a net zero carbon target as mandated by the Climate Change Response Act 2002 by 2050 and went on to state that carbon emissions have been an increasingly important aspect for consideration when making planning decisions under the NPS-UD. The submission went on to state that the proposed plan change would likely further contribute to transport associated carbon emissions, noting that there was limited planning for the provision of improved public transport to support the future residents of the plan change area. The submission concluded by stating that specific consideration should be given to whether the plan change was consistent with the provisions of the NPS-UD and what improvements could be made to reduce the contribution of carbon emissions from the subject site ¹³⁰

Section 42A Report

- 4.128 Mr Cleese dealt with the issue of increased emissions in his report. He said that it was not an issue which was just specific to PC68 when compared with other growth areas within the Selwyn District, including for instance Rolleston, West Melton and Lincoln. He said that compared with other Inner Plains townships, Prebbleton was closer to Christchurch and therefore arguably growth in Prebbleton reduced the potential for greenhouse gas emissions relative to other growth options in Selwyn District ¹³¹.

¹²⁹ Evidence of Helen Urquhart/paragraph 5
¹³⁰ Whaka Kotahi submissions / paragraphs 15-19 incl
¹³¹ S42A Report / paragraph 217

Greenhouse gas emissions / my consideration and findings

- 4.129 I note Mr Langman's evidence that the reduction in greenhouse gas emissions was one of the key objectives of the NPS-UD and a significant issue for all plan changes before SDC. Mr Langman is right to emphasise the importance of this criterion. Undoubtedly transport emissions are a significant ongoing element in the generation of greenhouse gas associated with the establishment of residential areas.
- 4.130 I agree with Ms Harte when she stated in evidence that comparing PC68 with intensification of existing residential areas needed to be considered against the fact that NPS-UD contemplates expansion as well as intensification. She said that it was not appropriate to compare the two forms of increasing capacity in the context of supporting a reduction in greenhouse gas emissions ¹³². I observe that, taken to its logical conclusion, a strict and black letter application of the policy in the NPS-UD (referred to hereafter) relating to the supporting of reductions in greenhouse emissions, may well prevent any development outside established areas because such new development would be likely to have a material impact upon the extent of motor vehicle emissions associated with the need to travel for work opportunities and such like.
- 4.131 I have examined this issue alongside the relevant policy in the NPS-UD and have concluded that the relevant policy cannot be read narrowly. As Ms Harte has pointed out in her evidence ¹³³ Objective 6.2.2 of the CRPS supports consolidation of urban areas. The explanation for this is that such development "is most likely to minimise the adverse effects for work, education, business and recreation". She states that it is perhaps surprising that the latest and only amendment to the CRPS was the addition of two FDAs at Rolleston which are 21.7 to 27.4 kilometres from Central Christchurch as are compared to PC68 which is 16 kilometres. Thus the CRPS has set its face against what could be termed a black letter application of the policy.

¹³² *Summary evidence of Patricia Harte / paragraph 11.3*

¹³³ *Summary evidence of Patricia Harte / paragraph 11.4*

- 4.132 Because Prebbleton is closer to Christchurch compared with other Inner Plains townships such as Rolleston, West Melton and Lincoln, and growth has been identified in these other areas, it is arguable that growth in Prebbleton reduces the potential of greenhouse gas emissions relative to the other growth options in the Selwyn District because of a closer proximity to Christchurch. This is certainly not a complete answer to the question of whether the proposal supports reductions in greenhouse gas emissions but goes some way towards this.
- 4.133 In summary I have concluded the issue of greenhouse gas emissions does not operate to prevent the development the subject of PC68. In my view the issue needs to be seen in the context of the fact that NPS-UD clearly contemplates the need for development in greenfield areas. Whilst there will be an increase in greenhouse gas emissions by reason of the development associated with PC68, I note that the relevant policy in the NPS-UD (Policy 1(e)) speaks of supporting the reduction of greenhouse gases. I agree with Mr Cleary when he stated in his submissions that greenhouse gas emissions are to be avoided ¹³⁴ and that realistically, the use of private motor vehicles and attendant emissions must be contemplated.

INFRASTRUCTURE SERVICING (WATER/WASTEWATER/ STORMWATER)

The evidence for the applicant

- 4.134 The application includes an infrastructure assessment prepared by Davie Lovell-Smith Limited which is appended as Appendix A to the application. The assessment includes not only the servicing necessary to support the PC68 site (and some 820 new dwellings) but also the servicing which would be necessary were all the land located within Shands, Trents and Hampton Roads ultimately be rezoned to Living Z (approximately 1040 dwellings).

Andrew James Emil Hall

- 4.135 Mr Hall gave evidence on behalf of the applicants. He is a Chartered Professional Engineer and a director of Davie Lovell-Smith Limited, an engineering firm based in Christchurch. He holds qualifications

¹³⁴ Opening submissions on behalf of applicant / paragraph 8.9

both as a surveyor and professional engineer. He has significant experience in civil engineering related to the development of land which includes the provision of infrastructure.

- 4.136 Mr Hall was satisfied that there was adequate provision for the proper disposal of stormwater. Whilst there was no formal SDC stormwater reticulation in the area to service the site, geotechnical testing and investigations had been carried out in the area and these showed that the underlying soils were conducive to good soakage conditions. Mr Hall said that the PC68 area was underlaid with deep gravels and the ground water level was at a depth of approximately 5 to 10 metres and that it was intended that stormwater would be infiltrated to ground as is normal on the western side of Prebbleton ¹³⁵.
- 4.137 Mr Hall went on to state that a discharge consent would be required from Environment Canterbury and as part of this process conditions from Environment Canterbury would be agreed in a co-ordinated fashion with SDC ¹³⁶.
- 4.138 Mr Hall then referred to stormwater facilities which would be required and said that the stormwater design would comply with the requirements of SDC's relevant standards ¹³⁷. Mr Hall noted that a discharge consent was required from Environment Canterbury for the stormwater runoff during construction but did not express the view that this would cause any difficulties.
- 4.139 Mr Hall went on to deal with the disposal of wastewater. As it will be noted later in this recommendation, I have paid particular attention to this element of PC68. Mr Hall said that SDC was progressively working towards a single, integrated wastewater treatment plan. The existing plant receives wastewater from Lincoln, Prebbleton, Springston, West Melton and Rolleston and is currently called the Eastern Selwyn Sewage Scheme ¹³⁸. Mr Hall said that he had consulted with Mr Murray England of SDC as to the ability of the Pines to accommodate PC68. Current capacity exists and full capacity would certainly be available following the planned upgrade at the Pines Wastewater Treatment Plant ("Pines WWTP") ¹³⁹.

¹³⁵ Evidence Andrew James Emil Hall /paragraph 3.11

¹³⁶ Evidence Andrew James Emil Hall /paragraph 3.12

¹³⁷ Evidence Andrew James Emil Hall /paragraph 3.17

¹³⁸ Evidence Andrew James Emil Hall /paragraph 3.20

¹³⁹ Summary evidence Andrew James Emil Hall /paragraph 8

4.140 Mr Hall said that a new pumping station would be installed on the lower end of the area of PC68 which would involve the installation of a new rising main from the pump station to the existing Prebbleton pump station as there was not currently capacity for the additional flows in the existing gravity network on Trents Road. Mr Hall noted the existing Prebbleton Pump Station had a limitation as to its capacity and explained why this was the case. Mr Hall noted that the proposed pump station could be provided with additional emergency storage to buffer peak flows or add additional catchment areas adjacent to the area of PC68. He stated that the PC68 site did not have a high groundwater level and as such there would be minimal egress of water into the system. He said that following implementation and some changes to the existing system, wastewater capacity should not inhibit the potential for this land to be developed ¹⁴⁰.

4.141 Finally Mr Hall noted that the applicants were willing to work with SDC to facilitate the construction of the key wastewater infrastructure upgrades by way of a private developer agreement or some other similar instrument ¹⁴¹. He noted that this type of arrangement allowed the developer to progress works, but in a joint arrangement with the Council so that all of the Council's strategic requirements are met and that the wastewater catchment is fully serviced. The extra/over costs of the key wastewater infrastructure, above that required by the developer, would be paid back to the developer by SDC at the time of S224c certification. Alternatively, he noted that SDC may wish to construct the infrastructure upgrades, or portions of it, and recover the costs through development contributions which would require the particular works to be included in SDC's long term plan.

4.142 Mr Hall then went on to deal with the issue of water supply. He noted that the water supply in Prebbleton was provided by a network of bores and pump pipework network and that a high-quality potable water was provided. Should more water be required for an expanding population, Mr Hall noted that additional bores would be installed in locations and depths so as to not detrimentally affect

¹⁴⁰ *Summary evidence Andrew James Emil Hall /paragraph 8*

¹⁴¹ *Summary evidence Andrew James Emil Hall /paragraph 3.30*

existing bores in any way ¹⁴². Mr Hall said that the Council had a water supply strategy for the provision of water to the PC68 area involving the installation of new pipework in the existing roads around the periphery ¹⁴³. SDC may require a bore to be installed on the site and the applicants were prepared to assist with this by way of providing land for a bore site and for facilitating the expansion of the pipe network strategy by way of a private developer agreement or another instrument. All future homes in the PC68 area will be serviced with a water supply connection to the boundary and in accordance with the standards of SDC. Mr Hall said that both SDC and the applicant were in full agreement as to the provision of water supply services to the PCV68 area ¹⁴⁴.

The evidence of submitters

Mr Langman

4.143 A number of submitters raised concerns regarding the provision of infrastructure. Mr Langman, giving evidence on behalf of CRC and CCC, noted that Policy 6.3.5(2) of the CRPS sought to ensure that the nature, timing and sequencing of the new development was co-ordinated with the development, funding, implementation and operation of transport and other infrastructure. Policy 6.3.5(2)(e) stated that this was in order to ensure that new development did not occur until provision for appropriate infrastructure was in place ¹⁴⁵. Mr Langman sounded a cautionary note stating that he did not agree that evidence merely demonstrating that feasible servicing options existed were sufficient, or that site specific upgrades could be made, given the need to service a number of developments should further notified plan changes be approved, including Plan Change 72 in the south of Prebbleton ¹⁴⁶.

4.144 Mr Langman went on to comment upon wastewater and noted that the conveyance of wastewater to the Pines WWTP was feasible but subject to timing of infrastructure works. Mr Langman noted that Mr England had noted that while there was capacity within the Prebbleton Termial PS to accept flows from this plan change, that

¹⁴² Evidence Andrew James Emil Hall /paragraph 3.32

¹⁴³ Evidence Andrew James Emil Hall /paragraph 3.34

¹⁴⁴ Evidence Andrew James Emil Hall /paragraph 3.35 to 3.39 incl

¹⁴⁵ Evidence Marcus Hayden Langman /paragraph 123

¹⁴⁶ Evidence Marcus Hayden Langman /paragraph 128

there were other private plan changes lodged in addition to this and that capacity may not be available for all. No discussion was provided on whether allocation would take place on a first come first served basis. However Mr England advised this would be updated at the hearing ¹⁴⁷. I refer to the further information provided by Mr England later in this recommendation.

4.145 Mr Langman made similar comments in relation to wastewater treatment, noting that the Pines WWTP was currently at or near capacity with upgrade plans all budgeted for. The essence of Mr Langman's evidence was that there was no commentary on what the cumulative impact of development would have on capacity at the WWTP if all the changes were approved ¹⁴⁸.

4.146 Mr Langman acknowledged that Mr England was satisfied that feasible options were available in relation to the disposal of stormwater ¹⁴⁹. However Mr Langman said that approving PC68 could potentially undermine the timely delivery of other land identified for planned urban development within the PIB and the FDAs that would be reliant on the remaining infrastructure capacity at the Pines WWTP until such time as upgrades were completed. He said that a precautionary approach should be taken ¹⁵⁰.

4.147 Lastly Mr Langman said that a further complicating factor for infrastructure planning was the Enabling Act which would have a considerable impact on the demand for infrastructure capacity existing in new development areas within the Selwyn District and that no analysis appeared to have been done at this early stage of the Act coming into force ¹⁵¹.

Nick Williamson

4.148 Mr Williamson said that the required infrastructure upgrades (and there were a few) would need to be undertaken (and funded) by the developer including the "proportional costs" of off-site or downstream effects where they were necessitated by growth beyond PC68. Mr Williamson inferred that he was critical of what he termed vague references to the

¹⁴⁷ Evidence Marcus Hayden Langman /paragraph 129

¹⁴⁸ Evidence Marcus Hayden Langman /paragraph 130

¹⁴⁹ Evidence Marcus Hayden Langman /paragraph 131

¹⁵⁰ Evidence Marcus Hayden Langman /paragraph 132

¹⁵¹ Evidence Marcus Hayden Langman /paragraph 133

proposals to implement funding, referring to vague references to “the subdivision state” “a Private Developer Agreement or some similar instrument” and “additional developer contributions” ¹⁵².

4.149 Thereafter Mr Williamson, under the heading “The Ways it will not Work as Intended” stated that there were no details about when and how future development agreements and conditions on subsequent applications required to serve the development would be carried out. He noted that it was the view of the reporting officer that funding of any such infrastructure upgrades necessitated by the plan change was not an impediment to zoning and said that he completely disagreed. He said to not have this issue set out in greater detail before approving the plan change and the resulting expectation being set would be likely to give rise to exactly the issues which the submitters had raised ¹⁵³.

4.150 Mr Williamson went on to state that there did not appear to be any mechanisms put forward to determine the extent to which the developer would contribute to infrastructure planned and budgeted for, and questioned what triggers were in place to ensure that the developer did not proceed ahead of any required upgrading, particularly where there had been multiple or other significant proposal and plan changes being entertained by the Council ¹⁵⁴. Mr Williamson stated that he was concerned that owners would have no interest in participating in agreements to contribute towards the cost of shared assets and said that he had no confidence that a development agreement was either a practical or even viable option ¹⁵⁵. Mr Williamson went on to state that in the absence of such agreement, the mechanisms for infrastructure upgrades were limited and to the extent the infrastructure works were intended to be included in the SDC’s Long Term Plan which would give rise to the ability to charge development contributions, the process for doing this was not quick or simple ¹⁵⁶.

4.151 As a complicating factor, Mr Williamson referred to the Enabling Act that re-introduced the ability of the Council to charge financial contributions on permitted activities but said that SDC was yet to

¹⁵² Evidence of Nick Williamson / paragraph 36

¹⁵³ Evidence of Nick Williamson / paragraph 46

¹⁵⁴ Evidence of Nick Williamson / paragraph 47

¹⁵⁵ Evidence of Nick Williamson / paragraph 49

¹⁵⁶ Evidence of Nick Williamson / paragraph 50

fully consider the implications of the changes and a yet unknown influence on infrastructure funding where there was the 3 Waters Reform presently being advanced by the Government ¹⁵⁷. Mr Williamson said that if the applicant was serious about looking into the provision and funding of infrastructure they would have included financial contribution provisions in PC68 as described in ss 77E and 108 of the RMA ¹⁵⁸.

Greg and Jenny Tod

- 4.152 Mr and Ms Tod expressed concern about the potential for water pollution and said that a groundwater level of 5 metres was not deep enough to protect it from direct stormwater discharge to land, particularly when soil permeability was classed as slow to rapid in the area ¹⁵⁹. Later, Mr and Ms Tod referred to the view that community infrastructure was going to get stressed and overloaded as there was no commitment to improve it ¹⁶⁰.

Ian and Fiona Lees

- 4.153 Mr and Ms Lees expressed concerns about water quality and supply and in particular the possible effects on their bore water. They posed a number of questions in relation to capacity, the question of whether there had been study into pollutants from the new urban area percolating into the aquifers supplying existing domestic wells in and around the subdivision and that the planners did not indicate how the significant increase in stormwater runoff would be mitigated.

Nettles Lamont

- 4.154 Ms Lamont expressed concerns about the quality and quantity of water, noting that in common with her neighbours, she and her husband had noticed a decline in water availability and were concerned that the negative effect on the water supply of the proposed residential development. Further she expressed concerns on the potential effects of the development on nearby waterways, referring to concerns about contamination and the NPS for Fresh

¹⁵⁷ Evidence of Nick Williamson / paragraph 51

¹⁵⁸ Evidence of Nick Williamson / paragraph 52

¹⁵⁹ Evidence Greg and Jenny Tod / paragraph 8

¹⁶⁰ Evidence Greg and Jenny Tod / paragraph 23

Water Management 2020 which provides for the Māori view that there is a need to consider the importance of the life supporting capacity of water from the mountains to the sea ¹⁶¹. Ms Lamont went on to refer to the huge pressure on the local infrastructure which could only cope with existing demand ¹⁶².

Murray Russell England

- 4.155 Mr England is the Asset Manager-Water Services for SDC. He has engineering qualifications and has responsibility for managing SDC's five waters including potable water, waste water, stormwater, land drainage and water races¹⁶³.
- 4.156 Firstly Mr England commented upon the issue of the availability of an appropriate water supply. He said that the Prebbleton Water Supply provided untreated deep-ground water to the Prebbleton community. He went on to state that Prebbleton was expected to grow of the next 30 years and that capacity upgrades were proposed to meet this growth. He considered that additional capacity within the network to service PC68 could be made available with further capacity upgrades proposed and planned for and therefore future water demand from the proposed plan change could be met ¹⁶⁴. Mr England stated that the reticulated water supply for PC68 would need to be designed to meet firefighting standards when either subdivision and/or building consents were sought from the Council ¹⁶⁵.
- 4.157 Mr England dealt with the issue of disposal of stormwater. He said that it was anticipated that stormwater would be discharged to ground and stated that the proposed management of stormwater was appropriate for this area. He noted that a resource consent for stormwater discharge would be required from Environment Canterbury before any subdivision consent could be approved ¹⁶⁶.
- 4.158 Mr England dealt with the arrangements for the treatment and disposal of wastewater associated with PC68. Mr England noted that wastewater was treated and disposed of at the Pines WWTP in

¹⁶¹ *Evidence of Nettles Lamont / paragraphs 14 and 15*

¹⁶² *Evidence of Nettles Lamont / paragraph 21*

¹⁶³ *Evidence of Murray England / paragraphs 1-4 incl*

¹⁶⁴ *Evidence Murray England / paragraphs 6-13 incl*

¹⁶⁵ *Evidence Murray England / paragraphs 14-17 incl*

¹⁶⁶ *Evidence Murray England / paragraphs 40 and 41*

Rolleston. The Pines WWTP was designed to be progressively upgraded to accommodate up to 60,000 persons equivalents of incoming flow, with plans to increase the treatment capacity up to 120,000 person equivalents being prepared. He noted the current connected catchment (2021) had a population equivalent to approximately 42,000 to 45,000. He said that there were plans to expand the irrigation area which equated to servicing for more than 120,000 person equivalents or more than 100,000 person equivalents if the largest irrigator was not in operation. Ultimately he said that additional areas within the 486 ha of land owned and consented could be developed for land-based disposal while remaining in compliance with existing resource consent conditions ¹⁶⁷.

- 4.159 As to wastewater conveyance, Mr England said the connection of the development's wastewater network to the Council's reticulated network (at the Prebbleton Terminal PS) was feasible. He said this would be the subject of an engineering approval process in the future ¹⁶⁸. I note that in his primary evidence, Mr England provided detailed evidence as to the proposed upgrading of return conveyancing capacity, that is to say the conveyance of wastewater from Prebbleton to the Pines WWTP. He also noted detailed evidence regarding the Pines WWTP. He noted that conveyance or wastewater from PC68 to the Pines WWTP was feasible and would be subject to the engineering approval process. He said that approving PC68 may limit options to rezone other areas in Prebbleton or may delay the development of existing zoned land until further upgrades were funded and constructed. Mr England went on to state that the current design wastewater treatment system which was being built in modular stages had an ultimate capacity of 60,000 person equivalents. The extension of the Pines WWTP to 120,000 person equivalents had been identified and funded in the SDC LTP with design and continuing works programme for the forthcoming years to allow for development in the district including that proposed in PC68. He noted that if PC68 were to be approved, development contributions were payable for additional lots ¹⁶⁹.

¹⁶⁷ Summary statement Murray England / paragraphs 7-8 incl
¹⁶⁸ Summary statement Murray England / paragraph 9
¹⁶⁹ Evidence of Murray England / paragraphs 37-39 incl

- 4.160 Because of my concerns regarding the status of information available in relation to the availability of facilities for wastewater conveyance, I directed that Mr England was to provide further information

..... regarding the availability for facilities for wastewater conveyance which I understand to involve upgraded pumps and pumping. If possible, details of the availability and timing of necessary upgrading steps should be provided. This information is relevant to the question of whether there would be adequate wastewater facilities to accommodate the housing the subject of the proposed change.

- 4.161 Mr England responded with a memorandum dated 14 April 2022 which dealt with the matters the subject of my inquiry. The contents of this minute are important because they deal with concerns which I had about the availability of conveyancing capacity in the light of evidence which I had heard to that point regarding the need for upgrading and my concern regarding the question of whether the development associated with other plan changes in the proximity would affect the availability of adequate conveyancing capacity facilities.

- 4.162 As to treatment capacity, Mr England reiterated that the Pines WWTP had sufficient capacity to process wastewater generated by PC68, including the other private plan changes in Prebbleton (PC72 and PC79) if they were also approved and proceeded. Mr England was comfortable that there were no short, medium or long term capacity constraints in terms of wastewater treatment ¹⁷⁰.

- 4.163 Mr England then dealt with what I perceived to be the more unsettled issue of the conveyance system intended to accommodate projected flows between Prebbleton and the Pines WWTP. Mr England referred to Map A in the CRPS and stated that infrastructure had been planned, funded and was in place to accommodate the growth within the current urban extent as shown in Map A. As to anticipated areas outside Map A, Mr England said that infrastructure capacity was assessed and provided on a "first come – first served" basis. He went on to state that subject to localised upgrades which he had identified in this previous evidence, there was enough capacity in the conveyancing infrastructure to accommodate the wastewater

generated by the two private plan changes that had been processed to a hearing, i.e. PC68 and PC72 ¹⁷¹ .

4.164 Mr England noted that a third plan change was under consideration (PC79). He went on to state that in the event that this plan change was approved, in company with the others referred to previously, and the balance of Prebbleton was developed with modest intensification, the combined population equivalent for Prebbleton was expected to be in the order of 10,800 person equivalents. He stated that there would be a shortage of capacity if one took into account PC72 (effectively given priority) and took into account the demands of the PC68 site. However he said that a number of modest upgrades were proposed to the local network and the Terminal Pump Station to enable the additional demand generated by PC68 to be accommodated ¹⁷². He stated that the design and construction of the proposed conveyance upgrades would be completed ahead of or at the time of the proposed change area developments ¹⁷³ .

4.165 Mr England then went on to discuss planned upgrades, noting schedule improvements as opposed to elements which would be incorporated by developers within each of the catchments. He said that developers of the proposed plan change areas would be required to provide a direct connection to the Prebbleton Terminal Pump Station or contribute towards the upgrade of the existing gravity reticulation network ¹⁷⁴. Mr England went on to refer what he termed "resilience and risk mitigation", noting that there were other wastewater connections available to Prebbleton, other than the current pipework between the Prebbleton Terminal Pump Station and the Pines WWTP ¹⁷⁵.

4.166 In summary Mr England said that in the event that density/yield of the private plan change areas increased further, or additional private plan changes were sought, then additional upgrades would be required. The cost and design of this infrastructure would be a matter to be explored at the point in the future when the location and yield of any further growth proposals were known ¹⁷⁶.

¹⁷¹ Response to minute Murray England / paragraphs 6-7 incl

¹⁷² Response to minute Murray England / paragraphs 10-12 incl

¹⁷³ Response to minute Murray England / paragraph 14

¹⁷⁴ Response to minute Murray England / paragraphs 17-20 incl

¹⁷⁵ Response to minute Murray England / paragraphs 21 and 22

¹⁷⁶ Response to minute Murray England / paragraph 28

Infrastructure / my consideration and findings

Stormwater

- 4.167 Having regard to the evidence of Mr Hall, I am satisfied that there will be adequate provision for the proper disposal of stormwater. As is noted in Mr Hall's evidence, geotechnical testing and investigations have been carried out and these have shown that the underlying soils are conducive to good soakage conditions. If I am satisfied that the stormwater design complies with the requirements of SDC's relevant standards (and I am entitled to assume that there will be compliance), there will be no issues associated with the disposal of stormwater associated with the development the subject of PC68, and I so find.

Wastewater

- 4.168 The issue of the disposal of wastewater is not straightforward. This is because in order to accommodate the development the subject of PC68, there will need to be infrastructure upgrades.
- 4.169 Mr Hall said that the Pines WWTP is west of Rolleston. Whilst there is some surplus capacity, it is clear that the Pines WWTP is likely to have to be upgraded to accommodate general growth in the district and also including the development the subject of PC68. I noted from the evidence of Mr England that the Pines WWTP upgrading has been considered as part of the 2021/22 LTP. I note the reference in Mr England's evidence to the fact that allowing the plan change may limit options to rezone other areas in Prebbleton or may delay the development of existing zoned land until further upgrades are funded and constructed. I have concluded that upgrading can be expected to be carried out by SDC as part of the works funded in the LTP and, importantly, if this is not the case, the cost of development can be recovered from the developer by way of development contributions.
- 4.170 I have noted that the existing Prebbleton pump station has a limitation on its capacity and that it is likely that the pumps will need to be upgraded to accommodate wastewater from any development of the land the subject of PC68. This matter was dealt with in the evidence of Mr Hall where he noted the likely requirements for new

pipings and upgrading of pumps. Mr Hall said that both the Council and the applicant were in agreement as to the provision of wastewater services and noted that the applicant was willing to work with STC to facilitate the construction of the key wastewater infrastructure upgrades by way of private development agreement or some other instrument.

- 4.171 Against the above background I have concluded that the disposal of wastewater generated by the development of the land the subject of PC68 will either be accommodated by works carried out and funded by the SDC as being funded in the relevant LTP, or, importantly, the cost will be able to be recovered by way of development contributions payable by the developer or by an appropriate agreement by the developer.

Water supply

- 4.172 I agree that no problems with water supply relating to PC68 will arise, for the reasons explained by Mr Hall, which I adopt.

Infrastructure / my final comments

- 4.173 I note that in the evidence of Mr Williamson, he was sharply critical of the feasibility of funding the work which needed to be carried out to service the development. In particular he took exception to the view of the reporting officer that funding of any infrastructure upgrades necessitated by the plan change was not an impediment to zoning and completely disagreed with this ¹⁷⁷. He went on to state that there did not appear to be any mechanisms put forward to determine the extent to which the developer would contribute and questioned the ability to recover development contributions under the Local Government Act 2002. Mr Williamson noted that this would require particular works being included in the Council's LTP and that this process was not quick or simple ¹⁷⁸.
- 4.174 The points made by Mr Williamson call into question the viability of PC68 and the question of whether I should recommend approval. I have concluded that there are sufficient mechanisms available,

¹⁷⁷ Evidence of Nick Williamson / paragraph 46

¹⁷⁸ Evidence Nick Williamson / paragraph 50

including agreements with the developer which have worked in the past with SDC, to justify a finding that the funding of infrastructure will be possible and that I am entitled to proceed on the basis that the relevant infrastructure will be available at the appropriate time and that it will be able to be funded one way or another. I do not consider that I am required to have absolute certainty as to which method of funding is likely to be adopted. The fact is that the developer will have a strong incentive to ensure that infrastructure is funded one way or the other, in the absence of which the development will not be able to proceed.

SOIL PRODUCTIVITY / VERSATILE SOILS

Introduction

4.175 A number of submitters have expressed concerns that the implementation of PC68 will result in the irreversible loss of productive land. The area of land which is to accommodate PC68 is significant in size and, should PC68 proceed, will inevitably result in the loss of productive soils.

4.176 The assessment of this important matter involves: -

- (i) making an assessment of the extent to which the subject land is presently utilised for productive rural activities;
- (ii) to assess whether the level of productivity is likely to change in the future;
- (iii) to attempt to measure the loss of the productive capacity of the land when measured against other land which is available in the overall bank of land available for productive purposes.

The evidence

Evidence of Victor Mkurutsi Mthamo

4.177 Mr Mthamo is a Principal Consultant for the environmental science, engineering and project management consultancy Reeftide Environmental and Projects Limited having been in this role for nine years. He has extensive experience in a number of matters which

qualify him as experienced to give expert evidence in relation to land/soil versatility and productivity potential ¹⁷⁹.

4.178 Mr Mthamo stated that the PC68 area included 36.13 ha of Land Use Capability ("LUC") Class 2 soils and 7.57 ha of LUC Class 3 soils. He reviewed site specific factors relevant to the productivity of soils on the subject site. The following matters were given particular emphasis ¹⁸⁰: -

- (i) because of moisture deficits, there is a need to establish irrigation to meet crop demand and a very significant amount would be required to buy and transfer consents for the PC68 area to irrigate for full productivity;
- (ii) the soils productivity potential is not realised because nutrient application rates will be limited by the limit set out in the Canterbury Land and Water Regional Plan;
- (iii) because of advances in technology and farming techniques over the years the loss of up to 43.7 ha of soil is unlikely to result in any significant loss of production as it can be made up elsewhere;
- (iv) the developable area in the context of total LUC2 and LUC3 soils in the district in the region is very small;
- (v) PC68 will not result in any significant cumulative loss of versatile soils at either a district or regional level;
- (vi) the site is bound by existing subdivisions and lifestyle blocks and Mr Mthamo expected that there would be significant resultant reverse sensitivity issues associated with intensifying agriculture production in such an area. Mr Mthamo referred to the judgment in *Canterbury Regional Council v Selwyn District Council* ¹⁸¹ where the court acknowledged that low productivity could arise because of reverse sensitivity effects from residential neighbours.

¹⁷⁹ Evidence of Victor Mkurutsi Mthamo/paragraphs 1.1 to 1.5 incl
¹⁸⁰ Summary of evidence of Victor Mkurutsi Mthamo/paragraph 4
¹⁸¹ *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25

- 4.179 In addition if the additional blocks which are sought to be included within the plan change are included, there will be an increase in the removal of soils which is regarded as insignificant.
- 4.180 Mr Mthamo took issue with the contention of Mr Marcus Langman who asserted that Mr Mthamo had downplayed the importance of the soil resource. Mr Mthamo did not agree and emphasised the importance of site-specific assessments to be taken into consideration to remove the sole reliance on the defaults LUC Classes 1-3. Mr Mthamo said that Mr Langman did not acknowledge the requirement for site-specific soil assessments when he concluded that Mr Mthamo had downplayed the importance of productive soils ¹⁸².
- 4.181 In summary Mr Mthamo did not consider that the soils on the site were capable of sustaining fully productive agriculture uses ¹⁸³.

Evidence of Marcus Hayden Langman

- 4.182 As noted above, Mr Langman took issue with the evidence of Mr Mthamo in relation to the loss of highly productive land. The essence of the evidence of Mr Langman was that Mr Mthamo had downplayed the importance of the soil resource. He acknowledged that the recent proposed National Policy Statement on Highly Productive Land ("proposed NPS-HPL") was in draft and was not required to be given effect to but maintained that the discussion document still contained relevant matters that could be considered in terms of planning practice. He referred to the cumulative and fact of loss of finite soils over time to urban development being potentially significant noting the extent to which land had been lost to urban expansion in Canterbury from 1990 to 2008 ¹⁸⁴.
- 4.183 Mr Langman considered that decisions regarding expansion onto high productive land should be made following a strategic review of development options across a district and some regional basis enabled through processes such as Our Space and the development of the Greater Christchurch spatial plan. He said that would ensure

¹⁸² *Summary of evidence of Victor Mkurutsi Mthamo/paragraph 7*

¹⁸³ *Summary of evidence of Victor Mkurutsi Mthamo/paragraph 8*

¹⁸⁴ *Evidence of Marcus Hayden Langman / paragraph 153 et seq*

that where greenfield expansion was to occur that urban growth was directed to areas that do not compromise the most valuable soil resources or that at least options were evaluated on a reasonably wide scale to determine the most appropriate location and development ¹⁸⁵.

Other submitters' evidence

4.184 Whilst no expert evidence was called by any submitters to contradict the evidence of Mr Mthamo, as noted above, a number of submitters expressed concerns about the loss of productive soils.

4.185 Greg Tod, giving evidence on his own behalf and on behalf of his wife Jenny, referred to concerns about the loss of productive land stating that the only reason that the land was not productive at present was because the landowners chose not to farm it. He referred to the potential for the land in question to be used for economically viable activities including growing salad crops in greenhouses, stating that from his experience there was no necessity to require greater than 50 ha as stated in the Versatile Soils Report to be productive ¹⁸⁶.

Submissions

4.186 A number of submissions addressed concerns regarding the loss of productive soils.

4.187 David and Julie Somerfield made reference to concerns about the loss of productive land. They maintained that PC68 would result in the loss of good productive land and appeared to be contrary to the intent of the draft NPS which (Objective 3) provided for the protection of productive land from an appropriate subdivision use and development. They made reference to PC68 resulting in uncoordinated urban expansion onto highly productive land and said that the land should be retained for rural purposes. Their primary concern was that whilst the area proposed to be re-zoned was not said by the applicant to be highly productive, the Somerfield land was highly productive and should be protected from having sensitive and incompatible activities adjacent to them.

¹⁸⁵ Evidence Marcus Hayden Langman/paragraph 153 et seq
¹⁸⁶ Evidence Greg Tod/paragraphs 15 and 16

4.188 The Canterbury Regional Council addressed the issue of highly productive land and versatile soils in its submission. It was noted that the plan change site was identified on Canterbury Maps as comprising Land Use Capability Classes 2,3 and 4 using the New Zealand Land Resource Inventory data. It was submitted that the area would be likely impacted upon by the impending direction in the proposed NPS-HPL and conflicted with the Selwyn District Plan Township Volume Policy B1.1.8 relating to the avoiding of rezoning land which contained versatile soils. Similarly, it was said that a conflict arose with regard to the proposed Selwyn District Plan Policy UG-P9 which provided for the recognition and provision for the finite nature of the versatile soils resource when zoning land to extend township boundaries to establish new urban areas.

4.189 There was then reference to CRPS Policy 5.3.12 which seeks to maintain versatile soils that contribute to Canterbury's overall rural productive economy. It was said that whilst this policy related to development within the wider region (i.e. outside of greater Christchurch) Environment Canterbury wished to draw attention to the emerging national direction on this matter and the strengthening of measures to protect highly productive land from development. Reference was made to *West Coast Regional Council v The Friends of Shearer Swamp*¹⁸⁷ where the High Court held that regard may be had to non-binding national policy documents as relevant background material even though those documents do not have any status under the RMA.

4.190 Lastly it was submitted that there was a lack of compliance with Objective 3 of the proposed NPS-HPL which refers to highly productive soils being protected by avoiding "uncoordinated urban expansion of highly productive land that has not been the subject to a strategic planning process".

Versatile soils/productive land issues/my consideration and findings

4.191 Undoubtedly productive soil is a precious resource with finite characteristics. Mr Mthamo made reference to *Selwyn Regional Council v Selwyn District Council*¹⁸⁸ where the Environment Court,

¹⁸⁷ [2012] NZRMA 45

¹⁸⁸ [1997] NZRMA 25

(with the experienced Judge Treadwell presiding), held that the term versatile soil/land should not be based just on the inherent properties of the soils in question (which is the LUC approach) but must be defined based on broader considerations than the land use capability. Mr Mthamo adopted the approach and noted that the assessment of versatile soil/land should take into account factors relevant to the overall success of a particular farming enterprise. In considering the evidence, I adopt this approach.

- 4.192 As far as the subject site is concerned, realities need to be confronted. I find, having regard to the constraints associated with the subject site, including water availability, the ability to apply nutrients and reverse sensitivity issues, the use of the subject land for intensive agriculture production is unlikely to occur at any time in the future. I do not overlook that land in the vicinity of the subject site is being used for highly productive purposes. Reference is made to the submission of David and Julie Somerfield, which is to this effect ¹⁸⁹. However the constraints to which I have just made reference and the setting of the subject site do not encourage the view that the land in its unaltered state will utilise the versatile soils in question for significant production purposes.
- 4.193 A further consideration is to have regard to the extent of what I will call the versatile soil land bank in the Selwyn District. The evidence of Mr Mthamo is to the effect that PC68 will have an insignificant effect on district and regional agricultural productivity potential having regard to the balance of the land in the Selwyn District containing versatile soils which remains available. I adopt this evidence.
- 4.194 The evidence of Mr Mthamo is notable for its thorough analysis of all relevant factors relating to the question of whether the loss of the soils which are versatile and productive dictates that PC68 should not proceed. I have carefully considered the opinions which have been expressed by submitters to the effect that loss is not acceptable. I have been particularly influenced by the statement by Mr Mthamo that the effect of PC68 on district and regional agricultural productivity potential is insignificant. I comment that the loss of productive/versatile soils is but one factor which requires

consideration when examining whether there should be approval to PC68. I adopt the evidence of Mr Mthamo.

- 4.195 In summary I have determined that the loss of soils which will follow the development of PC68 cannot be the final determinate of the fate of PC68 and that I should not find that this factor should militate against approval of the plan change.

URBAN DESIGN AND LANDSCAPE

Evidence for the applicant

The evidence of David Compton-Moen

- 4.196 Mr Compton-Moen gave evidence on behalf of the applicant. Mr Compton-Moen is a director at DCM Urban Design Limited, a private independent consultancy providing landscape and urban design services. Mr Compton-Moen outlined his qualifications and it being clear that he was well qualified and experienced in relation to the landscape assessment and design and urban design ¹⁹⁰.
- 4.197 At the commencement of his evidence, Mr Compton-Moen examined Prebbleton's form and growth, noting the growth of Prebbleton's population over the past 18 years. Reference was made to the *Prebbleton Structure Plan (The Future of Prebbleton)* ("the Structure Plan") adopted by SDC on 24 February 2010. This expected the village to grow by an additional 1,295 households by 2041 with a limited lot size in the L1 zone of 800 m².
- 4.198 After referring to the Structure Plan, Mr Compton-Moen noted the areas which had been developed, stating that all of the zoned land had now been developed. Lot sizes had decreased in recent years from a typical minimum of 800 m² to just over 500 m² which was highlighted in the design of the final stages of Prevelles where most sections ranged from 500 to 700 m² in size ¹⁹¹.
- 4.199 Mr Compton-Moen then went on to examine issues of connectivity and walkability. He said that overall PC68 was considered to meet the outcomes of Policy 4.2.10 of the SDP, being close to schools,

¹⁹⁰ Evidence of David John Compton-Moen / paragraphs 1.1 to 1.4 incl
¹⁹¹ Evidence of David John Compton-Moen / paragraph 5.10

shops (current and proposed) and recreational facilities. He noted that medical facilities were anticipated to be operating within the town centre in December 2022, approximately 1.2 km from the ODP area ¹⁹².

4.200 Mr Compton-Moen then went on to examine density and landscape character noting that a key consideration of PC68 was how it integrated with existing residential development adjacent to the west, noting that lot sizes proposed for low density developments had decreased over recent years. Mr Compton-Moen considered that PC68 was consistent with current urban development practice in the inner areas of Selwyn District (close to Christchurch City) of creating densities of 12 hh/ha and greater. He was supportive of this approach in Selwyn. Mr Compton-Moen recommended that for the rural-residential interface along Trents and Hamptons Roads, these be treated as urban roads with dwellings addressing the street with direct pedestrian access where possible ¹⁹³. He went on to state that given the importance of Shands Road he considered the proposal to provide larger sections of 1500 m² (minimum) appropriate. He said that the installation of 1.8 high close board timber fences on any road frontage should be avoided where possible ¹⁹⁴.

4.201 As to visual amenity effects, Mr Compton-Moen noted that the proposal would result in an overall change in character from open and rural residential to one that is more dense and suburban in nature. He said that the management of bulk and location of the belt would also help create a sense of openness through the centralisation of denser development. He said that the highest likely effects after mitigation would be experienced by those existing in rural and residential properties closest to the proposal of Trents and Hamptons Road. He stated that the scale and bulk and location of the proposal would allow for periods of natural extension of existing development within Prebbleton with a very low magnitude of change anticipated ¹⁹⁵.

¹⁹² Evidence of David John Compton-Moen / paragraph 6.5

¹⁹³ Evidence of David John Compton-Moen / paragraph 7.3

¹⁹⁴ Evidence of David John Compton-Moen / paragraph 7.4

¹⁹⁵ Evidence of David John Compton-Moen / paragraphs 9.1 and 10

4.202 Lastly Mr Compton-Moen dealt with mitigation measures in relation to design aspects ¹⁹⁶. Mr Compton-Moen stated that a series of mitigation measures or design aspects were proposed to either avoid remedy or mitigate potential adverse effects on urban design, landscape character, landscape values or visual amenity. He considered them important to ensure well-functioning urban design to ensure a well-functioning urban environment could be developed. I summarise them as follows: -

- (i) *MM1* - to provide a diversity of house size and lot size to provide choice with higher density development located close to high amenity and business areas;
- (ii) *MM2* - to create streets which had a high level of amenity provided for different mode or allocation and allowed for efficient use of land by having a street hierarchy with different road reserve widths. To encourage the use of low impact design techniques including grass swales;
- (iii) *MM3* – to create a well-connected walking and cycling network which combines with a green/blue network and existing facilities connected to key destinations;
- (iv) *MM4* - avoid direct vehicle access onto Shands Road for individual properties to allow for a high quality landscape treatment along this corridor and minimise potential effects on this arterial road;
- (v) *MM5* – provide a quality of green space and facilities appropriate in accordance with SDC policy for the future population with green links extending through the plan change area and connecting with adjoining residential and rural areas;
- (vi) *MM6* – solid fencing should be restricted to rear and side yards to retain character.

4.203 Mr Compton-Moen then went on to review the SDC's report under s42A of the RMA prepared by Mr Clease ¹⁹⁷. He found himself in agreement with his conclusions and he highlighted a number of aspects. In summary: -

- (i) the growth areas identified in the Structure Plan had been developed to their full potential;
- (ii) he agreed that it was not appropriate to retain rural outlook along Trents or Hamptons Roads and that properties along those roads should positively address these roads;

¹⁹⁶ Evidence of David John Compton-Moen / paragraphs 11.1 to 11.7 incl
¹⁹⁷ Evidence of David John Compton-Moen / paragraphs 12.1 to 12.6 incl

- (iii) the benefit and scale of the ODP is that it allows for a more comprehensive approach to development providing a high level of connectivity and are considered a placement/inclusion of open space;
- (iv) he agreed that 12 hh/ha is an appropriate minimum density stating that the increased density was consistent with other residential developments in Prebbleton and Rolleston to provide greater development capacity. It was considered appropriate for Prebbleton to meet the outcomes desired by the NPS : UD (2020);
- (v) he agreed with Mr Cleese that the properties on the Trents Road gap, the Shamy property and the two small lots in Hamptons Road should be included in the plan change area so that Shands Road becomes a logical edge for urban growth at this point in time.

4.204 Mr Compton-Moen then went on to comment on a number of submissions ¹⁹⁸. He stated: -

- (i) that the provision of infrastructure, medical rooms and community facilities such as a school were typically not identified at the ODP stage but appeared during the subdivision stage or at a later date as the demand dictated. He said that for the provision of schools this was a matter for the Ministry of Education to establish;
- (ii) road upgrades for greater levels of traffic were outlined in the evidence of Mr Smith. He said that the proposed ODP provided a high level of connectivity, hierarchy of street types and the provision of shared paths;
- (iii) in terms of shops the Prebbleton Commercial area is anticipated to continue growing and he stated that in his experience commercial development followed residential as opposed to the other way around;
- (iv) as to the retention of village character, rural amenity outlook and interface with rural amenity, he stated that all the aspects which provided Prebbleton with a village like character to the town centre would be unaffected by PC68. He said that Prebbleton already

had a suburban feel in many locations as opposed to a semi-rural town character but with high amenity and high walkability.

4.205 Mr Compton-Moen commented on the provisions of the CRPS in-so far as they related to development form and urban design, referring to Policy 6.3.2.¹⁹⁹ This policy provides that (relevantly) residential development is to give effect to the principles of good urban design and those of the *NZ Urban Design Protocol 2005* to the extent appropriate to the context. The policy identifies the importance of the following matters: -

- (i) Tūrangawaewae – the sense of place and belonging;
- (ii) the need for the well-integrated places, infrastructure, movement routes and networks, spaces, land uses and the natural inbuilt environment;
- (iii) the necessity for connectivity, that is to say the provision of efficient and safe high quality, barrier free, multi mobile connections within a development;
- (iv) safety, including the recognition and incorporation of *Crime Prevention Through Environmental Design* principles;
- (v) choice and diversity;
- (vi) environmental sustainable design;
- (vii) creativity and innovation.

4.206 Mr Compton-Moen observed that the explanation to the policy noted that urban design input could take place with the development of outline development plans, creation of development controls for the zones or define a growing level through the resource consent process. In his opinion the ODP, as amended, satisfies the requirements set out in Policy 6.3.2. In particular he said that there were no features of particular heritage or landmark value that were compromised by the development of PC68. In addition normal development as laid out in the ODP met the requirements of connectivity and integration with existing proposed urban development²⁰⁰.

¹⁹⁹ Evidence of David John Compton-Moen / paragraphs 14.1 to 14.3 incl
²⁰⁰ Evidence of David John Compton-Moen / paragraph 14.2 and 14.3

Evidence of Patricia Harte

4.207 As to the views of many submitters that it was inappropriate to extend the Prebbleton township to include the PC68 block, Ms Harte commented that there was an inevitability that townships and cities would expand to accommodate population growth ²⁰¹. Ms Harte noted that the opportunities for developing the subject land, which she said was a logical extension of the existing township, were limited and difficult. She said that the growth of Prebbleton to the southwest inevitably involved “leapfrogging” over existing large lot lifestyle development, given the constraints associated with acquiring and developing two residential densities for lifestyle properties in question ²⁰². Ms Harte was of the view that the extension of Prebbleton to the southwest was a logical one for a number of reasons which may be summarised as follows ²⁰³: -

- (i) the development prevented any further extension of the town south along Springs Road and in that way retained a compact character;
- (ii) the block was well served by the road network but locally in relation to travel to other destinations;
- (iii) the Council had planned upgrades of relevant intersections;
- (iv) the proposal ensured that there would be no additional access onto Shands Road thereby creating an effective boundary and limiting road safety impacts on what was perceived as a busy road;
- (v) the applicants had adopted a collaborative approach resulting in a block of land enabling a comprehensive residential development connecting to Sterling Park which was well established in this block.

4.208 Then Ms Harte dealt with the issue of density. She said that whilst a minimum density required 12 households per hectare was not required by the current District Plan, it had been part of the Greater Christchurch approach to new development and had been adopted by SDC in the urban growth policies in the PDP.

4.209 Ms Harte went on to comment that Environment Canterbury in its submission to PC68 had noted a continuing trend towards smaller

²⁰¹ *Evidence of Patricia Harte / paragraph 11.1*

²⁰² *Evidence of Patricia Harte / paragraph 11.3*

²⁰³ *Evidence of Patricia Harte / paragraph 11.4*

household size and further constraints that many households will face accessing housing. She stated that the densities report concluded that on a case-by-case basis 15 households per hectare was both desirable and feasible as the minimum net density in new greenfield areas ²⁰⁴. CCC simply stated in its submission that there should be a minimum density requirement of 15 hh/ha which is consistent with the greater Christchurch's report on density ²⁰⁵.

- 4.210 Ms Harte commented that the applicants had no issue with providing densities which were higher than 12 hh/ha and there was nothing to prevent higher densities occurring. She said that the only real limitation was with the provisions of the SDP which provided for more intensive development through a consenting process with an increasing number of developments having multi-unit and small lot developments in response to demand ²⁰⁶. Further Ms Harte said that her understanding of a recent density study undertaken by Harrison Grierson for the Greater Christchurch Partnership was that setting a density of 15 hh/ha would not necessarily achieve the desired outcomes sought for new urban areas. Ms Harte thought that these matters may well be addressed as part of SDC's response to the Enabling Act ²⁰⁷. Ms Harte said that applying minimum densities over a full plan change area was a coarse control and that more sophisticated tools and incentives were required to achieve good housing and community outcome. She considered it was sufficient that the minimum density of 12 hh/ha be retained for this plan change ²⁰⁸.

Urban design and landscape / the evidence of submitters

- 4.211 Mr Fletcher emphasised the report by Mr Compton-Moen and stated it was unhelpful because it did not show before and after visuals. He provided these in his evidence ²⁰⁹. Mr Fletcher commented upon the tree-lined character of Trents Road for most of its length and the contribution of this to a pleasant and calming outlook and carbon sinking. He questioned whether Mr Compton-Moen had grossly underestimated the visual effect and loss of amenity value that

²⁰⁴ Evidence of Patricia Harte / paragraph 12.3

²⁰⁵ Evidence of Patricia Harte / paragraph 12.4

²⁰⁶ Evidence of Patricia Harte / paragraph 12.5

²⁰⁷ Evidence of Patricia Harte / paragraph 12.6

²⁰⁸ Evidence of Patricia Harte / paragraph 12.7

²⁰⁹ Evidence Murray Fletcher / paragraphs 16 to 25 incl

would be associated with removing trees in Trents Road. He went on to refer to Hamptons Road, agreeing that the visual effects would be lower in this case but he said that he could not agree that the magnitude of change for Trents Road was like Hamptons Road.

4.212 Mr Fletcher questioned whether, looking at the comparison photographs that he provided, Mr Clease still agreed with his statement that there would be a high level of amenity albeit a different amenity in landscape character relevant to rural areas. He expressed concern about providing frontage road upgrades to urban standards and associated provision of integrated footpath network and improved cycle routes and questioned whether there was a desire to change the character of Trents Road in a manner depicted in the contrasting photographs.

4.213 David and Fiona Lees expressed concern about the changes which PC68 would bring about, stating that people chose to live in Prebbleton and the area because of the rural nature and aspect. They noted the country aspects that would be adversely impacted by the extent and density of the subdivision proposed noting that the quality of life was affected at present by the rural character where peace and quiet was appreciated, there was a lack of traffic, the vegetation provided a softening and country feel and there was an element of privacy because of distance from neighbours.

4.214 Nettles Lamont carried on the theme of others, namely that she had chosen to bring her family to live in a rural village environment and that this would unacceptably change if PC68 went ahead. She referred to Prebbleton being "under serious threat". Ms Lamont referred to the rural outlook and country feel in her home in Trents Road stating that she valued the spacious natural character low density residential allotments and the rural amenity values and peacefulness/quietness of the area ²¹⁰.

4.215 Ms Lamont went on to state that she took comfort from the fact that the rural zoning gave some protection from development that would inevitably impact on quality of life ²¹¹. Ms Lamont stressed that loss

²¹⁰ Evidence Nettles Lamont / paragraph 7

²¹¹ Evidence Nettles Lamont / paragraph 8

of rural character and amenity “just like smoke in a box” can never be recovered once development changes the landscape forever ²¹².

4.216 Helen Urquhart echoed the concerns of others ²¹³. She said that the rural urban boundary had been treated harshly by the developer involved in PC68 in the past referring to the existing boundary between Sterling Park and the adjoining lifestyle block at 414 Trents Road. She was critical of this interface and also said that there was a further example of poor rural urban planning on Hamptons Road illustrated by photographs which she produced where a boundary fence had been built parallel to the road and that the land was neglected. She said that the photographs depicted a harsh transition one side of the road residential, one side a row of paddocks.

4.217 Ms Urquhart was critical of a report which suggested the changes in visual experience of residents would be considered low given the character of existing views and existing boundary treatments on their properties with PC68 viewed as a natural extension of existing residential areas. Ms Urquhart said that collectively shelter belts, which were common in the area, provided what she termed “rural sense” and added a “greenness” to the area. She said that there was more to it than that because when Ms Urquhart stepped out of her gate “it feels like peace, we are back in the country or so it feels”. She said that the visual amenity that was being lost simply was not just shelter belts. Ms Urquhart referred to the evidence of Ms Harte when referring to the purpose of *Selwyn 2031 : District Development Strategy (Selwyn 2031)* which made reference to the protection of existing character and retaining the district sense of rural identity by adopting a consolidated approach to urban growth. She inferred that this would be infringed. She questioned whether trees would remain on Trents Road and said that whilst they may not have value individually, collectively they did.

Section 42A report of Jonathan Cleese

4.218 Mr Cleese had prepared a report under s42A of the RMA dated 25 February 2022. He presented a summary of the report at the hearing on 23 March 2022.

²¹² Evidence Nettles Lamont / paragraph 20

²¹³ Evidence Helen Urquhart / paragraph 2

4.219 Mr Clease noted that Prebbleton had undergone a rapid change in growth over the last decade or so and that the existing urban form and mix of densities reflected this. He noted that the Structure Plan was now over a decade old and that whilst the plan provided some broad guidance regarding the preferred direction of growth, namely that a clear separation should be maintained between Prebbleton and the urban edge of Christchurch to the north, and secondly that growth should occur to the east and west in preference to ribbon development extending along Shands Road, he regarded the Structure Plan as dated in terms of usefully informing how best to manage ongoing growth pressures.²¹⁴

4.220 Mr Clease referred to my discussion with Mr Compton-Moen at the hearing regarding the planning philosophy of arranging rural townships with a density transition from suburban character in the centre through to large lots on the periphery and then rural farm land beyond. Mr Clease said that in his experience such an arrangement could work well in low growth environments where the density transition essentially formed an “end state” to the township in question. However he said that where the township was subject to high rates of growth, such an arrangement became problematic with large lots in effect acting as a “moat” around the town neither limiting growth with consequent implications for housing supply and affordability or force growth to leapfrog therefore leaving a strip of larger lots in what ultimately became more central location. He referred to the development in Kingcraft Drive comprising of approximately 1 ha blocks, limiting high yielding suburban growth to the northwest of Prebbleton.

4.221 Mr Clease went on to refer to the potential for large lot development to preclude further growth options, including township growth was readily acknowledged in the *Rural Residential Strategy 2014* (“RRS 2014”). Because of concerns about frustration of development, Area 7 in the middle of the PC68 site was not identified in RRS 2014 as notified because of the potential to frustrate or preclude township growth. However as a result of submissions it was concluded that the inclusion of Area 7 was appropriate. Mr Clease said that the RRS 2014 recognised that the logical future growth path for Prebbleton

²¹⁴ Section 42A Report / paragraph 128

was out to Shands Road with Hamptons Road forming the southern border ²¹⁵.

- 4.222 Mr Clease then went on to refer to the shape of the area planned for PC68 as being not ideal because of several gaps all relatively small rural areas that would be largely bounded by suburban activities ²¹⁶. However he said that this did not present a hurdle or effect that was so adverse that the plan change should be declined. Mr Clease went on to refer to a number of submitters seeking their land be included if the plan change was approved, noting that such submissions raised issues of both scope and merit ²¹⁷.
- 4.223 Mr Clease went on to comment on the merits of the requests for inclusion, opining that the majority of submitters on the corner of Trents and Shands Roads did not request that their land be included. Mr Clease concluded that there was simply no scope to consider their inclusion, the exception being 701 Shands Road, Prebbleton, owned by Mr Shamy. However he agreed, that in terms of merit, there did not appear to be any insurmountable servicing issues with inclusion and that ultimately the inclusion of all of the land out to the Trents/Shands/Hampton Roads edges had merit in terms of urban form.
- 4.224 As to the small land holdings on the northern side of Hamptons Road, he thought that they should be included as consequential amendments. Mr Clease went on to state that he considered that the inclusion of the land holdings at 169 and 171 Hamptons Road (see the submission of Chris and Carol White and Adam and Lucy Gard'ner-Moore) should not be included due to the poor resultant urban form that would result in isolated suburban enclave extending out to an otherwise intact rural environment.

Urban design and landscape / my conclusions and findings

- 4.225 I accept that there is no compelling planning philosophy for supporting the arranging of rural townships with a density transition from suburban character in the centre through to larger lots on the periphery which would, in this case, present an impediment to the

²¹⁵ S42A Report / paragraphs 135 to 137 incl
²¹⁶ Section 42A Report / paragraphs 129 et seq
²¹⁷ Section 42A Report / paragraphs 138 to 147 incl

approval of PC68. I accept the evidence of Mr Compton-Moen in relation to this issue and note that it was supported by Mr Clease who was well qualified to comment on matters of urban design, having regard to his stated qualifications. I suspect that the philosophy referred to above had credence in the early stages of the development of town planning practice, later resource management, as a practice code governing when development could take place, but it is clear that to the extent that there could have been said to have been a practice as noted above, it no longer has application.

4.226 Whilst RRS-14 identified Area 7 as being concerned with large lot development, as Mr Clease has noted, the inclusion of the Area 7 block was seen as appropriate provided that the area was designed in such a manner as could readily transition to higher densities in due course. Thus, as Mr Clease has stated, the RRS-14 provisions for Shands Road form a clear long term township edge to the west with Hamptons Road forming the township edge to the south.

4.227 At this point I pause to comment upon the strongly held views of a number of submitters that if PC68 were to proceed, there would inevitably be a loss of the rural character of the general area. Many submitters stated that they made their choice of purchase of properties in the general vicinity on the basis of a perception that the properties in question would continue to enjoy what were essentially rural amenities. If there were to be a change then there was an expectation that would take place through a process involving extensive consultation with landowners in the area in question. It was said that this did not take place prior to the initiation of PC68. I have considerable sympathy for the concerns which have been expressed as to the inevitable change of character of the area in question. In this context I note that the evidence of Mr Compton-Moen indicated that with proper treatment, the development, involving higher density lots, could be accommodated with sensitive landscape treatment. But the reality is that there is an inevitability that if PC68 proceeds, a number of the qualities which were valued by the residents in the area, and in particular relating to the rural character of the area, will be lost.

4.228 This leads me to comment that the process of zoning which is enshrined in the RMA, and in particular involving the ability for persons to make applications for plan changes, recognises that there

can never be long term certainty as to the maintenance of any particular zoning in a particular area. In this case the pressure has come on SDC to provide substantially more land than is presently available for close urban development. The question of whether the present state of amenities should be preserved, by preventing further development in the area in question, involves a balanced judgment involving not only the consideration of the views of residents as to the maintenance of rural amenities, which are clearly very relevant and worthy of consideration, but also the need to provide further land to accommodate the pressure for housing and the overall interests of the community in question. Notwithstanding the views of residents that they did not expect there to be any change in the environment in question, the resource management system enshrined in the RMA means that change is always in prospect, whatever the current zoning of the land in question.

- 4.229 I conclude this section by stating that I accept the evidence of Mr Crompton-Mopen as to the acceptability, from an urban form perspective, of PC68. I agree that in terms of landscape character and values of the area the proposal will result in acceptable magnitude of change on existing rural-residential landscape character and values. I agree that aspects such as character, creativity and collaboration can be picked up at the subdivision stage when it will be possible to analyse the development enabled by the zoning at a more refined level of design.
- 4.230 Lastly I accept that the exclusion of the additional land which submitters have sought to include in the change will result in a suboptimal localised urban form resulting from PC68 and that several relatively isolated rural zone properties or enclaves will be largely surrounded by suburban or large lots residential development. As will be seen later in this recommendation, I have recommended the exclusion of the properties in question, largely for jurisdictional as opposed to merit-based reasons.
- 4.231 I note the statement of Mr Cleese that whilst the exclusion of the additional properties is not ideal, he considers that the resultant urban form issues will be relatively short-lived in nature and that ultimately Prebbleton would extend out to Shands Road and Hamptons Road with the gaps infilled. Mr Cleese may well be right about this but the determination of the inclusion of the properties in

question will have to await another day. Suffice it to say that at this point I have formed the view that PC68 can proceed without the inclusion of these properties, having regard to urban form considerations.

REVERSE SENSITIVITY

Introduction

4.232 A number of submissions raised the issue of potential reverse sensitivity effects arising from potential complaints by new residents in opposition to the proposed change. This is an important issue because if approval were to be given to PC68, that may potentially lead to complaints from new neighbours about the conduct of agricultural and other activities which are presently permitted but which give rise to noise, dust and traffic effects. These could well affect the standard of amenities expected by those carrying on residential activities on the land the subject of PC68. A summary of issues raised by submitters follows.

The submitters

Evidence of Xiaojiang Chen

4.233 Mr Chen is the owner of the property at 330 Trents Road. During the course of his evidence he referred to concerns that there may be difficulties associated with the conduct of activities on the purpose-built horse training area on his property. He posed the following questions ²¹⁸: -

- (a) *does the applicant wish to utilise my paddocks as a natural domain and to enhance the view of the proposed medium density properties?*
- (b) *or does the applicant assume the medium density property owners will enjoy watching me training my horses or hearing the noises/sucking the dust from the horse training area?*

4.234 On 26 May 2022 I conducted an inspection of the Chen property and in particular the horse training area which at that time was not being utilised. However I proceed on the basis that this area will

²¹⁸ Evidence of Xiaojiang Chen paragraph 3

potentially be used in the future when considering the issue of reverse sensitivity.

David Somerfield

4.235 Mr Somerfield and his wife own the property at 382 Trents Road, Prebbleton. A substantial business known as Trents Nursery has operated from this property for approximately 40 years and employs a number of people from the Prebbleton community and surrounding districts. The business generates substantial revenue of the order of \$2m per hectare per annum and contributes approximately \$3m per annum to the local area through wages and products and services purchased ²¹⁹.

4.236 Mr Somerfield said that he and his wife were concerned that if the application was approved with their property included and rezoned for residential purposes, this could have a detrimental effect on their business by restricting what is currently a complying rural activity and make them reliant on existing use rights. He saw this as having the potential to restrict business operations in the future. Mr and Mrs Somerfield are operating an intensive horticultural business on a constrained land area. He said this forced innovation and creativity but that this could be affected if he and his wife became reliant on existing use rights and their ability to change and adapt their business became restricted ²²⁰.

4.237 Mr Somerfield made reference to a number of elements which he said could give rise to reverse sensitivity concerns. Fans and heaters operate 24/7 and whilst noise levels are not exceeded, Mr Somerfield said that the noise was likely to prove annoying to close neighbours. There were also two outside fans ²²¹. Mr Somerfield then made reference to the issue of a 100 m setback which had been requested if the application were to be approved. Mr Somerfield said that the 100 m proposal came from a *NZ Standard 8409: 99: Code of Practice for the Management of Agrichemicals* and was obtained from the *Otago Regional Council Regional Plan Schedule 4 Good Management Practices for Agricultural Application*. Mr Somerfield made reference

²¹⁹ Evidence of David Somerfield / paragraph 8

²²⁰ Evidence of David Somerfield / paragraphs 1 and 2

²²¹ Evidence of David Somerfield / paragraph 5

to the use of a variety of pesticides and other sprays that could be considered potentially hazardous or require certification ²²².

4.238 Given the high capital cost in establishing a nursery, Mr Somerfield said that relocation to a more rural location was not feasible and that he and his wife held concerns for the longer-term future of what was a complying longstanding business ²²³. Because of the matters which were of concern Mr Somerfield requested that the application be declined or if approved, limits be placed on the land as set out in his submission which included a minimum lot size of 5000 m² ²²⁴.

4.239 On 26 May 2022 I inspected the Somerfield property, observing the significant number of tunnelhouses in proximity to the boundary with the land which is proposed to be zoned as part of PC68.

Greg and Jenny Tod

4.240 Mr Tod, gave evidence for himself and his wife. He referred to concerns about reverse sensitivity. Mr and Mrs Todd had been business owners operating from the property at 349 Trents Road for 24 years. They operate a plant nursery, Parva Plants, from the property employing four local people. Mr Todd responded to a comment by Mr Clease and referred to by Ms Harte that plant nurseries were “common features in urban environments” and that they were unaware of any reverse sensitivity issues. Mr Todd said that there was a big difference between a plant nursery like Trents Nursery, Morgan and Pollard Nursery and Parva Plants operated by Mr Tod and his wife to a garden centre. He said that there were activities carried out at their business that did not occur in garden centres ²²⁵.

Adam Roger Pollard and Sarah Elizabeth Pollard

4.241 Mr and Mrs Pollard are the owners of the property at 681 Shands Road situated at the corner of Shands Road and Trents Road. Part of the property is used for residential purposes but a substantial part is used for the conduct of a landscape gardening business known as Morgan-Pollard Landscapes Limited, a resource consent authorising

²²² Evidence of David Somerfield / paragraph 6

²²³ Evidence of David Somerfield / paragraph 8

²²⁴ Evidence of David Somerfield / paragraph 9

²²⁵ Evidence of Greg Tod / paragraph 14

the conduct of this business. When giving evidence Mr Pollard said that the property was purchased as a rural block with the ability to grow trees and turf and to run the landscaping business from this location. The business employs 62 permanent staff and 10 seasonal staff. As part of the maintenance and operation of the business, earthmoving and other equipment is used which would not be able to be operated in a residential zone due to noise and dust. Further Mr Pollard said that suitable material was burned from trimming hedges and trees etc. He and his wife believe that the submitted plan change would cause complaints and in the long run make it impossible to run the business on this property ²²⁶.

- 4.242 I record that on 26 May 2022 I inspected the Pollard property, and in particular those parts of the property where the processing of soil takes place and the loading areas for soil and other materials.

Mark and Joanne Hamlyn

- 4.243 Mr and Ms Hamlyn are the owners of 386 Trents Road and 398 Trents Road. They support PC68 subject to their two properties also being rezoned as they say that they will be directly affected and enclosed by the proposed residential development and therefore unlikely to continue using their property as intended under Rural Inner Plains i.e. run livestock, use machinery, burn offs etc. ²²⁷

Helen and Roger Urquhart

- 4.244 Mr and Mrs Urquhart reside at 335 Trents Road, Prebbleton. Mr and Mrs Urquhart expressed a concern that there might be a conflict around animals and stock. It was noted that Mr and Mrs Urquhart had sheep and so did a few neighbours and that dogs on the loose posed a potential risk to stock ²²⁸.

Angela Phillips

- 4.245 Ms Phillips owns and operates a rural farm at 799 Shands Road, Prebbleton. She expressed a concern that newcomers to country

²²⁶ Evidence Adam Roger Pollard / paragraph 8

²²⁷ Submission of Mark and Joanne Hamlyn

²²⁸ Submission of Helen and Roger Urquhart

living are often not prepared for and often complain about the sounds, odours, dust, smoke, machinery operating hours etc that accompany rural activity at various times of the year. Ms Phillips noted that food and fibre production operations involve intermittent use of gun irrigators, fertiliser application, cultivation sowing, harvesting machinery, lamb weaning etc day and night. She said that Hamptons Road was not a sufficient buffer to avoid loss of amenity and reverse sensitivity and that there was not an adequate separation distance ²²⁹.

Submissions and evidence on behalf of the applicants

Submissions on behalf of applicant

4.246 Mr Cleary addressed the issue of reverse sensitivity in his opening submissions ²³⁰. Mr Cleary submitted that reverse sensitivity was a well- established concept in resource management law and noted the factors which needed to be present before reverse sensitivity could be said to be a relevant effect. He went on to state that there was no evidence of anything other than a very minor and occasional effect associated with spray drift from Trents Nursery. He said that given the negligible level of effects associated with the market garden operation that followed the consequence of establishing more intense residential development and proximity to the boundary was unlikely to result in complaints.

4.247 In summary Mr Cleary submitted that reverse sensitivity was not a barrier to approving PC68. He noted that whilst the RMA provided limited protection to incumbent uses (through existing use rights) the RMA did not include any express principle that new activities must necessarily be curtailed or restricted simply to protect established uses.

Patricia Harte

4.248 Ms Harte addressed the issue of reverse sensitivity in her evidence, referring to submissions which raised the issue of potential adverse reverse sensitivity effects arising from complaints by new

²²⁹ *Submission of Angela Phillips*
²³⁰ *Applicant opening submissions / paragraphs 9.5 to 9.11 incl*

neighbours. She said that by reason of checking the existing Rolleston and Prebbleton ODPs, only one had a notation relating to reverse sensitivity which indicated to her that the potential for a reverse sensitivity issue justifying some kind of restriction on development was "quite limited". She went on to address the factors that needed to be present for there to be a problem ²³¹.

4.249 Ms Harte went on to note that for there to be a problem there needed to be an adverse effect generated by an activity that was very annoying to a resident or residence and that the resident/s needed to feel aggrieved about this to the point that they made a complaint to the Council. She said that normally persons affected would try to discuss the matter with the landowner and this often resulted in some agreement. She summarised the position by stating that in general adverse reverse sensitivity which affected a business being compromised was uncommon.

4.250 Ms Harte went on to refer to comments in the s42A report noting that there were plant nurseries within Christchurch suburbs with long established neighbours where no particular concerns had arisen. She noted that the report commented that it was specific activities such as intensive pig farming, dairy sheds, effluent ponds and mushroom factories that were likely to create potential issues of reverse sensitivity ²³².

4.251 Ms Harte then went on to deal with the concerns of particular submitters ²³³:-

- (i) as far as the submissions of Angela Phillips and Helen and Roger Urquhart were concerned, she said that issues detailed in the submissions had the potential to be more prevalent south of Hamptons Road and to a lesser extent north of Trents Road. She noted that Ms Phillips had made some suggestion regarding the treatment of Hamptons Road including no footpaths.
- (ii) she then went on to deal with the submissions of Mark and Joanne Hamlyn. She agreed that if the lots in

²³¹ Evidence of Patricia Harte / paragraph 16.2

²³² Evidence of Patricia Harte / paragraphs 16.3 and 16.4

²³³ Evidence of Patricia Harte / paragraphs 16.5 to 16.7 incl

question were to be part of the Living Z zone this would reduce any potential for reverse sensitivity although she said there was no evidence to suggest that this is, or is likely to be and issue of particular concern.

- (iii) lastly Ms Harte dealt with the submission of Julie and David Somerfield. She said that given that approximately two thirds of the site was covered with glasshouses and substantial boundary planting she thought that many of the effects referred to would be relatively confined. She said that as far as the suggestion that there be large lot sizes adjacent to the Somerfield property was concerned the appropriate time to determine the appropriate layout in the vicinity of the nursery was at the subdivision stage.

Jonathan Clease / s42A report

4.252 Mr Clease noted that in order for reverse sensitivity risk to be significant, the operations in question needed to be generating effects extending beyond site boundaries and then those effects in turn needed to be at a level when they were likely to give rise to amenity related complaints. Mr Clease said the sites in question were all bounded by lifestyle blocks or large blocks with dwellings in close proximity and that they should therefore already be operating in a manner that was not giving rise to unacceptable effects beyond their boundaries.

4.253 Mr Clease noted that a change in zoning would mean that there would be more residential neighbours with close dwellings located to shared boundaries but went on to state that it was common for farmland to adjoin residential properties and that as far as he was aware the interface did not give rise to significant limitation or farming operations particularly when those operations were separated by roads as is the case with Hamptons Road separating the PC68 site from the Phillips farm to the south ²³⁴.

- 4.254 Mr Clease went on to refer to plant nurseries and landscape depots being common features in urban environments, noting that there were a number of examples of plant nurseries located within suburban Christchurch with long established residential neighbours. He stated that these submitter activities could therefore be readily differentiated from the type of activities which regularly gave rise to amenity related complaints such as intensive farming, quarries, dairy sheds and associated effluent ponds, mushroom factories or rural machinery depots ²³⁵.
- 4.255 Mr Clease went on to note that the submitter sites already had residential neighbours and appeared to be operating in a reasonably benign manner. He was not convinced that reverse sensitivity risk was at the point where either the plan change should be declined or additional interface rules were necessary. He said that if I was of the view that the interface needed to be further managed, then there were several tools readily available such as wrapping the Living X zoning around the edge of the sites in question and including as a consequential amendment a rule requiring dwellings to be set a certain distance from a shared internal boundary.
- 4.256 Mr Clease said that in the absence of any submitter evidence identifying the extent and nature of offside effect he was unable to recommend lot sizes or building set-back rules that could be justified as being both necessary and effective in managing amenity issues at the interface. He went on to state that the cost of benefits of managing the interface were connected with my findings regarding whether some or all of the block should be included within the plan change and also rezoned ²³⁶.

Reverse sensitivity / my consideration and findings

Introductory comments

- 4.257 Issues raised regarding reverse sensitivity are undoubtedly of particular concern. Those raising reverse sensitivity concerns have been well justified in raising those concerns, and in particular concerns relating to the impact on the businesses operated from the Somerfield, Pollard and Tod properties. These properties are

²³⁵ S42A report / paragraph 120

²³⁶ Section 42A report / paragraphs 121 to 123 incl

potentially bordered by the residential development contemplated in PC68. As far as the Pollard property is concerned, my assessment will depend upon my recommendation regarding the question of whether adjacent properties should be included in PC68.

- 4.258 A particular issue which I must confront is whether, if I am satisfied that there are legitimate concerns regarding reverse sensitivity effects on adjacent properties, I can leave the question of whether steps should be taken to manage the interface to be established between the housing created by PC68 and the affected land to the subdivision stage, or whether, on the other hand, specific recommendations need to be made to deal with the interface at this time.
- 4.259 Given the location of the Pollard property I am of the view that there are no reverse sensitivity issues of sufficient moment, associated with the use of this property, to dictate that any particular arrangements need to be made to prevent reverse sensitivity complaints, such as providing for a buffer zone. Further, I do not regard the concerns of Mr Chen as justifying the imposition of any special conditions.
- 4.260 I have given careful consideration to the position of the Tod property where the plant nursery, Parva Plants, is operated. I have considered the report of Mr Cleese²³⁷ where he states that plant nurseries and landscape depots are common features of urban environments and that they appear to be able to co-exist without giving rise to complaints or amenity effects. Whilst I can readily understand the concerns of Mr and Mrs Tod in relation to the conduct of their business, I have concluded that no particular conditions need to be recommended by me in the context of my consideration of PC68, particularly having regard to the fact that the nursery is separated from the PC68 site by Trents Road.
- 4.261 I have a particular concern regarding the Somerfield property associated with the maintenance of greenhouse buildings immediately adjacent to the boundary of PC68. At subdivision stage, favourable consideration should be given for a setback along the relevant boundary the distance to be determined having regard to the need to ensure that the activities which are carried on the

Somerfield property do not give rise to significant adverse effects on the new neighbours. An alternative, as suggested in the Request ²³⁸ is that larger lots be created along the relevant boundary to mitigate or avoid potential adverse effects associated with the commercial use of the property in question. I note that Ms Harte has noted that it is expected to be several years before any housing is constructed on site and considers that the appropriate time to determine the appropriate layout in the vicinity of the nursery is at the subdivision stage ²³⁹. I agree. I have carefully considered the question of whether I should recommend the imposition of any conditions or rules at this stage to regulate the position and have decided that this is not appropriate at this stage and that consideration of this matter can await the subdivision stage.

- 4.262 In conclusion I note that having given careful consideration to the concerns expressed regarding reverse sensitivity matters, those concerns do not operate to prevent the approval of PC68.

GROUND CONDITIONS

Geotechnical / natural hazards

- 4.263 The original Request contained a section dealing with geotechnical investigations that had been prepared by ENGEO Limited. These reports advised that there were no mapped faults in the immediate area but that the area could be subject to ground shaking from movement of faults elsewhere. The area is located between the Greendale Fault and Port Hills Fault the latter of which has not been mapped. With regard to the liquefaction potential for the site, the ENGEO Report concluded that damaging liquefaction was unlikely consistent with a TC1 zoning.
- 4.264 The Request stated that there were no other known potential natural hazards that could affect the plan change site. In particular the site was not likely to be subject to material damage from erosion, falling debris, subsidence, slippage or inundation from any source ²⁴⁰.

²³⁸ Request / paragraph 5.5

²³⁹ Evidence of Patricia Harte / paragraph 16.7

²⁴⁰ Request / paragraph 5.8

Soil contamination

- 4.265 The Request went on to deal with the issue of soil contamination stating that a preliminary and detailed site investigation into the potential for soil contamination had been undertaken for the various properties contained in the plan change site. These were carried out as required by the Ministry for the Environment's *Contaminated Land Management Guidelines No.1 : Reporting on Contaminated Sites in New Zealand, 2011*. The investigation was undertaken by ENGEO Limited. The investigation concluded that the various properties had been used for mixed purposes including residential land use, trotting tracks, farming and stockpiles. It was stated that the likelihood of the majority of this land being impacted from this land use was low.
- 4.266 A number of potential areas of concern were highlighted in the desktop review and then further investigated during an onsite walkover. The walkover identified a number of Hazardous Activities and Industries List ("HAIL") activities with a possible contamination, namely burn pits etc. Soil samples were taken and tested. These tests confirmed that contamination such as lead, arsenic, copper, zinc and cadmium exceeded guideline criteria for residential land use on some specific sites. On the basis of these results ENGEO Limited recommended a remedial strategy be developed to manage the soil that exceeded the NES for residential land use. The strategy needed to be developed in co-ordination with final development plans including soil removal volumes and locations. Resource consents were expected to be required under NES for these works ²⁴¹.

Flooding

- 4.267 The plan change request includes a flood hazard report prepared by ENGEO Limited. The flood hazard report confirms that the site is not subject to coastal flooding or flooding from the Waimakariri or Selwyn Rivers. The flood risk is therefore caused primarily by localised ponding generated by rainfall which exceeds the sites ability to absorb that rainfall (rather than large volumes of overland flow generated from rainfall in offsite locations) ²⁴².

²⁴¹ Request / paragraph 5.9

²⁴² S42A Report / paragraph 71

- 4.268 Mr Clease went on to refer to the fact that the SDP does not contain any mapped flood hazard areas applicable to the site, however the proposed plan includes several overlays that identify flood management areas on the plains. These maps show that the majority of the site is free from flood risk. Having identified the areas where there was some risk, Mr Clease noted that the ODP aligned the proposed stormwater routes with existing features. Overall he found that the site was not located near any large waterways and was not in a location that was particularly prone to flooding or flood risk ²⁴³.

Ground conditions / my consideration and findings

- 4.269 I have given careful consideration to the ground condition matters referred to above. None of them act as an impediment to the development of the land the subject of PC68. There are no known potential or natural hazards that could affect the plan change site. The site has no particular susceptibility to flooding. As far as soil contamination is concerned, these will be able to be dealt with at the subdivision stage with the imposition of appropriate conditions at that time.
- 4.270 In summary I am satisfied that any residual concerns regarding ground condition matters can be dealt with at the appropriate time when subdivision is contemplated by the imposition of appropriate conditions at that time. That is likely to include the need for resource consents in relation to soil contamination removal/treatment issues and conditions relating to the disposal of stormwater.

NIGHT SKY DARKNESS

The effect of development on night sky darkness

- 4.271 The issue of the effect of the development contemplated by PC68 on night sky darkness was the subject of evidence by Ms Urquhart. In her evidence she said that currently there was no street lighting on Trents Road and there was an ability to see clearly into the night sky and see the Milky Way, constellations and the red moon last November. She was concerned about the prospect that with 820 new sections, there would be a significant production of light pollution.

²⁴³ S42A Report / paragraphs 71 to 75 incl

She noted that while LED's are better in reducing some light issues, there are other concerns as to the suspected impacts to human health and the environment caused by light emitting diodes that admit excessive amounts of blue light.

Night sky darkness / my consideration and findings

4.272 Ms Urquhart has raised an important point. The preservation of night sky amenities is worthy of consideration. I note that no provisions of the SDP relating to the preservation of night sky amenities were drawn to my attention during the hearing. Whilst I have noted that Rule 12.1.4.6 provides that in the Living WM zone, consideration is to be given as to whether street lighting options will assist with mitigating any adverse effects on the operation of West Melton Observatory, there appears to be no rule in the SDP which indicates that consideration should be given to street lighting options in the context of any application to subdivide and the subject of PC68.

4.273 I have formed the view that the issue raised is undoubtedly material and important. It certainly is not an issue which justifies declining the plan change and I so find. I am of the view that the treatment of outdoor lighting is a matter which can be properly dealt with at the subdivision stage, at which time the concerns regarding the night sky issue can be properly taken into account. This may involve imposing a condition that dense light spill should be directed at such an angle as to impede the enjoyment of views of the night sky, but it is not necessary for me to make any further comment about this matter.

5. ***THE INCLUSION OF THE LEES PROPERTY***

Background

5.1 The property of David and Fiona Lees situated at 374 Trents Road, Prebbleton, forms part of the land which is sought to be rezoned as part of PC68. Mr and Mrs Lees filed a submission in which they requested that the plan change be declined. However they stated that if the application were to be approved, they wanted conditions in the ODP amended to provide for lower density, fewer and larger sections.

- 5.2 Mr and Mrs Lees appeared before me and gave evidence on 28 March 2022, supporting their submission. In their evidence Mr and Mrs Lees stated that they were opposing PC68 “as it is” realising that “there may well be subdivision in the future, but that it ought to be an integrated part of a larger plan that works best for the community”. Mr and Mrs Lees were critical of lack of consultation, stating that they had not been approached by the developer at any stage. They said that they were concerned that they had not been consulted.
- 5.3 When hearing submissions, I addressed the issue of the implications of the inclusion of the Lees land and the land the subject of PC68, in circumstances where they opposed that inclusion. In particular, I questioned whether there was anything in the legislation which impacted upon the ability to include the Lees property in the land the subject of (in this case) PC68 ²⁴⁴.
- 5.4 In his submissions in reply ²⁴⁵, Mr Cleary submitted that there was no distinction in the RMA between council and privately initiated plan changes. The council was able to seek to rezone land regardless of a landowner’s agreement and Mr Cleary said that the same applied in relation to privately initiated plan changes. Mr Cleary went on to note that the approval of the plan change did not direct that Mr and Mrs Lees must develop their land either immediately or otherwise, rather it enabled development in the future.

The Lees property / my consideration and findings

- 5.5 I have given careful consideration to the position of the Lees family. On my second site inspection, I inspected the Lees property, noting its configuration and its position in relation to the balance of the land the subject of PC68. I have formed the view that I should consider the various matters raised by Mr and Mrs Lees as to the merits of the plan change and have done so in reaching the view expressed in my recommendation. I have done this on the basis that there is no jurisdictional impediment to the Lees land being included in PC68.

²⁴⁴ Submissions in reply of applicant / paragraphs 4.9 and 4.10

²⁴⁵ Submissions in reply of applicant / paragraphs 4.9 and 4.10

6. **INCLUSION OF ADDITIONAL LAND**

BACKGROUND

- 6.1 A number of submitters requested that in the event that the plan change were to be approved, their land also be included in the change. The land in question is helpfully identified in Figure 4 of the s42A Report by Mr Clease (**attached**). Two discreet issues arise in relation to the treatment of the submissions in question. Firstly I am required to determine as a procedural matter whether there is jurisdiction for me to consider the requests. Secondly, if I find that there is jurisdiction, I must proceed to consider the merits of the requests.

PROCEDURAL ANALYSIS / LEGAL PRINCIPLES HAVING APPLICATION

The bipartite test

- 6.2 In the submissions of the parties there is general agreement as to the legal principles which apply in relation to the determination of the jurisdictional question. In submissions on behalf of a submitter, Mr S J Shamy, Ms Limmer noted that Mr Shamy agreed with the summary of legal principles which were recorded in the submissions of the applicant ²⁴⁶. The leading authority is the decision of the High Court in *Clearwater Resort Limited v Christchurch City Council* ²⁴⁷ where a bipartite test was established: -

- (i) a submission is to be fairly regarded as “on” a variation “if it is addressed to the extent to which the variation changes the pre-existing status quo”;
- (ii) but if the effect of finding the submission is “on” a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that would be a “powerful consideration” against finding that the submission was truly “on” the variation. It is important that “all those likely to be affected by or interested in the alternative method suggested in the submission have the opportunity to participate”. So, where a submission could

²⁴⁶ *Plimer legal submissions / paragraph 10*

²⁴⁷ *Clearwater Resort Limited v Christchurch City Council AP34/02 / William Young J at [66] and [69]*

be said to be “coming out of left field” there might be little or no real scope for public participation.

- 6.3 See the helpful summary of relevant principles in the judgment of Kos J in *Palmerston North City Council v Motor Machinists Limited* ²⁴⁸. This test was adopted by counsel for the applicant in the opening submissions on behalf of the applicant ²⁴⁹.
- 6.4 In his submissions ²⁵⁰, counsel for the applicant submitted that *Clearwater Resort Limited* ²⁵¹ did not exclude zoning extension by submission and that incidental or consequential extensions of zoning changes were permissible provided: -
- (i) the submissions did not raise any matters that should have been addressed within the s32 evaluation report. If no further s32 issues were raised as a result of the submission, there was less reason to exclude it from the plan change;
 - (ii) persons directly, or potentially directed affected by the additional changes proposed by the submission had been given the ability to respond to the additional changes; and
 - (iii) the submission was not “out of left field” and completely unrelated to the plan change remit.
- 6.5 The legal authorities are helpfully summarised in *Motor Machinists Limited* ²⁵². The facts of that case were that the Council had notified a proposed change to its district plan and the respondent had filed a submission that its land also should also be rezoned. The Council held that the submission was not “on” the plan change because the plan change did not directly affect the respondent’s land. The Environment Court did not agree. An appeal to the High Court followed.

²⁴⁸ *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA 519 at paras [54] and [55]

²⁴⁹ *Opening submissions of applicant* / paragraph 11.4

²⁵⁰ *Opening submissions of applicant* / paragraph 11.5

²⁵¹ *Clearwater Resort Limited v Christchurch City Council* AP34/02 / *William Young J* at [66] and [69]

²⁵² *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA 519 at paras [54] and [55]

6.6 Because of its importance, I refer to the relevant sections of the judgment of Kos J. After referring to the s32 report, the judge stated

.....

[86]The extension of the OBZ on a spot-zoning basis into an isolated enclave within Lombard Street would reasonably require like analysis to meet the expectations engendered by s5. Such an enclave is not within the ambit of the existing plan change. It involves more than an incidental or consequential extension of the rezoning proposal in PPC1. Any decision to commence rezoning of the middle parts of Lombard Street, thereby potentially initiating the gradual transition of Lombard Street by instalment towards similar land use to that found in Taonui Street, requires coherent long term analysis, rather than opportunistic insertion by submission.

[87]There is, as I say, no hardship in approaching the matter in this way. Nothing in this precludes the landowner for adopting one of the three options identified in [78]. But in that event, the community has the benefit of proper analysis, and proper notification.

[88]In terms of the second limb of Clearwater, I note Mr Ax's confident expression of views set out at [30] above. However I note also the disconnection from the primary focus of PPC1 in the proposed addition of two lots in the middle of Lombard Street. And I note the lack of formal notification of adjacent landowners. Their participatory rights are then dependent on seeing the summary of submissions, apprehending the significance for their land of the summary of MML's submission, and lodging a further submission within the 10-day time frame prescribed.

[89]That leaves me with a real concern that persons affected by this proposed additional rezoning would have been left out in the cold. Given the manner in which PPC1 has been promulgated, and its focus on main road rezoning, the inclusion of a rezoning of two isolated lots in a side street can indeed be said to "come from left field".

6.7 The judge then summarised the correct approach in the following terms

....

[91] To sum up:

- (a) This judgment endorses the bipartite approach taken by William Young J in Clearwater Christchurch City Council in analysing whether a submission made under sch1, cl 6(1) of the Act is "on" a proposed plan change*
- (b) This judgment rejects the more liberal gloss placed on that decision by the Environment Court in Naturally Best New Zealand Ltd v Queenstown Lakes District Council, inconsistent with the earlier approach of the Environment Court in Halswell Holdings Ltd v Selwyn District Council and inconsistent with the decisions of this Court in Clearwater and Option 5 Inc v Marlborough District Council.*
- (c) A precautionary approach is required to receipt of submissions proposing more than incidental or consequential further changes to a notified proposed plan change. Robust, sustainable management of natural and physical resources requires notification of the s32 analysis of the comparative merits of a*

proposed plan change to persons directly affected by those proposals. There is a real risk that further submissions of the kind just described will be inconsistent with that principle, either because they are unaccompanied by the s32 analysis that accompanies a proposed plan change (whether public or private) or because persons directly affected are, in the absence of an obligation that they be notified, simply unaware of the further changes proposed in the submission. Such persons are entitled to make a further submission, but there is no requirement that they be notified of the changes that would affect them.

- (d) *The first limb of the Clearwater test requires that the submission address the alteration to the status quo entailed in the proposed plan change. The submission must reasonably be said to fall within the ambit of that plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change, unless the change is merely incidental or consequential.*
- (e) *The second limb of the Clearwater test asks whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process.*
- (f) *Neither limb of the Clearwater test was passed by the MML submission.*
- (g) *Where a submission does not meet each limb of the Clearwater test, the submitter has other options: to submit an application for a resource consent, to seek a further public plan change, or to seek a private plan change under sch 1, pt2.*

6.8 In her carefully researched and helpful submissions ²⁵³, Ms Limmer referred to a number of authorities including *Motor Machinists Limited* ²⁵⁴. She said that this case had often been relied upon as a reason to reject all and any "me to" submissions. However Ms Limmer submitted that this was an erroneous and overly simplistic application of the case in question and that further (relevant) legal principles in terms of the first limb in *Clearwater Resort Limited* had emerged since which included: -

- (i) the questions posed in *Motor Machinists Limited* needed to be answered in a way that was not unduly narrow. Reliance was placed on *Bluehaven*

²⁵³ Limmer submissions / paragraphs 13 to 15 incl

²⁵⁴ *Palmerston North City Council v Motor Machinists Limited* / supra

Management Limited v Western Bay of Plenty District Council ²⁵⁵

- (ii) in the end the jurisdiction issue comes down to a question of degree and perhaps even an impression, relying upon *Mackenzie v Tasman District Council* ²⁵⁶ citing with approval *Bluehaven Management Limited*;
- (iii) each case had to be assessed within the context it arose and that relevant and contextual considerations could include whether the submission sought to substantially alter or add to the relevant objective(s) of the plan change, or whether it only proposed an alternative policy or method to achieve any relevant objective in a way that was not radically different from that could be contemplated as a result from the notified plan change. Reliance was placed on an extract from *Bluehaven Management Limited v Western Bay of Plenty District Council* ²⁵⁷

..... submissions seeking some major alteration to the objectives of a proposed plan change would likely not be "on" that proposal, while alterations to policy and methods within the framework of the objectives may be within the scope of the proposal.

- 6.9 Consistent with this, Ms Limmer submitted that the Environment Court had noted that the fact that a rezoning request had not fallen within the area of a proposed plan change did not, in and of itself, make the submission out of scope ²⁵⁸. Ms Limmer noted that *Motor Machinists Limited* had held that *incidental or consequential changes* were permissible in any event. She went on to state that the Environment Court had observed that an example of a permissible consequential change would be the rezoning of land adjacent to the land proposed to

²⁵⁵ *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191 at para [36]

²⁵⁶ *Mackenzie v District Council* [2018] NZHC 2304 at [88]

²⁵⁷ *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [37]

²⁵⁸ *Well Smart Investment Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 at [24]

be rezoned by way of a plan change referring to *Tussock Rise Limited v Queenstown Lakes District Council* ²⁵⁹.

6.10 Ms Limmer went on to refer to the issue of fairness to other parties. She submitted that an assessment of whether a planning instrument might be *appreciably amended without real opportunity for participation by those potentially affected* is required and that this did not mean that any and every un-notified change would create unfairness issues ²⁶⁰.

6.11 Finally, under this head, further reference is required to be made to *Tussock Rise Limited* ²⁶¹ where it was stated

If a neighbour to a proposed residential zone submits that its land (however zoned in the ODP) should also be part of the proposed residential zone, then the Council's important integrated management function suggests that issue should be considered (and possibly resolved) sooner rather than later. This is an example of the kind of consequential "spatial change" identified by Whata J in Albany North. At least the issues raised by TRL should not be ruled out of Stage 1 as a jurisdictional matter in limine.

Consequential amendments

6.12 The scope of the statutory power to allow consequential amendments requires close examination in the context of the matters which I am called to determine. Zoning extension by subdivision is not excluded altogether if the changes proposed are incidental or consequential.

6.13 Clause 10(2) of Schedule 1 of the Act provides (relevantly) as follows

- (2) The decision –
 - (a)
 - (b) may include –
 - (i) matters relating to any consequential alteration necessary to the proposed statement or plan arising from the submissions; and
 - (ii) any other matter relevant to the proposed statement or plan arising from the submissions.

²⁵⁹ *Tussock Rise Limited v Queenstown Lakes District Council* [2019] NZEnvC 111 at [76]

²⁶⁰ *Limer submissions* / paragraph 16

²⁶¹ *Tussock Rise Limited v Queenstown Lakes District Council* [2019] NZEnvC 111 at [76]

- 6.14 In *Motor Machinists Limited*²⁶² the position regarding incidental or consequential extensions to zoning changes was stated as follows (after referring to the question of whether the submission raises matters that should have been addressed in the s32 evaluation report and whether the management regime is altered by the plan change)

....

*Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change. That is one of the lessons from the Halswater decision. Yet the Clearwater approach does not exclude altogether zoning extension by submission. **Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s32 analysis is required to inform affected persons of the comparative merits of that change.** Such consequential modifications are permitted to be made by decision makers under sch 1, sl 10(2). Logically they may also be the subject of submission.*

(emphasis added)

- 6.15 I note that in *Clark Fortune McDonald & Associates v Queenstown Lakes District Council*²⁶³ the court concluded the reference could impliedly confer jurisdiction to make amendments to rules, for instance if the objectives and policies changes were as the result of references. It would seem that this jurisdiction arises either as a consequential amendment under Schedule 1, clause 10(2) or under s293 of the RMA.

- 6.16 In *Clark Fortune McDonald & Associates*, the court dealt with an amended boundary adjustment rule. The court found that there was no need for further notification of the relevant amended boundary adjustment rule as the amendment was held to be consequential to an interim decision which it had released²⁶⁴.

- 6.17 I adopt the summary of the legal principles outlined above and proceed to examine the issue of scope in relation to each of the proposed requests for rezoning.

²⁶² *Palmerston North City Council v Motor Machinists Limited* [2014] NZRMA / at paragraph [81]

²⁶³ *Clark Fortune McDonald & Associates v Queenstown Lakes District Council* DC EnvC C089/02 at paragraph [28]

²⁶⁴ *Clark Fortune McDonald & Associates v Queenstown Lakes District Council* DC EnvC C089/02

SHANDS / TRENTS ROAD CORNER**Mr S J Shamy****Mr Shamy's position**

6.18 Mr S J Shamy is the owner of 701 Shands Road, Prebbleton shown in red in Figure 4 (**attached**). In his original submission, Mr Shamy opposed the rezoning requested in PC68 and requested that the entire area, including his own property, remain in rural zoning. In what was termed a "less preferable alternative" Mr Shamy requested that his property also be rezoned if the land the subject of PC68 was to be rezoned for residential development.

6.19 At the hearing, in answer to a question from me, Mr Shamy altered his position which now is that:-

(i) he is now neutral to the question of whether the land the subject of PC68 is rezoned. However if the land is to be rezoned, he wants his land included;

(ii) he is neutral as to whether the other properties in the Shands Road/Trents Road block are rezoned.

6.20 In her submissions on behalf of Mr Shamy, Ms Limmer referred to paragraph 46 of the s42A report which noted ²⁶⁵ ...

.... A key element in the merit of the plan change advanced by the applicant concerns the logical extension of the township boundary and the establishment of a new southwestern boundary to Prebbleton. The inclusion of the submitters' properties could therefore be said to fall within the broad ambit of PC68 insofar as the plan change examines the appropriate formation of the southern edge of the township.

6.21 She went on to refer to the "me to" submission relating to the detached land on the southern side of Hamptons Road suggested that this was illustrative of the difference between a submission within the ambit of PC68 and one that was not ²⁶⁶.

6.22 It was submitted by Ms Limmer that Mr Shamy's submission responds to and directly addresses the change to the status quo proposed by

²⁶⁵ Limmer submissions / paragraph 18

²⁶⁶ Limmer submissions / paragraphs 18 and 19

PC68. His proposal involved in-filling part of the “gap” in urban form resulting from PC68. She referred to the s42A Report which concluded that Mr Shamy’s request was arguably consequential to the substantive outcome sought in the plan change and further that the relief sought was sufficiently modest in scale and that their inclusion did not threaten or unduly expand the scope of the plan change ²⁶⁷. Ms Limmer submitted that the change sought was consequential as opposed to just “arguably”. Ms Limmer noted that Mr Shamy’s land would comprise a mere 3% (approximately) of the overall rezoned area if added to the 67.5 hectares currently proposed for rezoning and in that sense was genuinely incidental and remains so even if the entire 12 acres of the relevant gap was rezoned which comprised some 15% of the total area ²⁶⁸.

- 6.23 In order to obtain a proper understanding of the scope issues, it is necessary to refer to the position of the other landowners in the Shands Road/Trents Road block (“the corner block”).

Position of other landowners

- 6.24 The position of the other landowners in the corner block is as follows: -

(i) ***Adam and Sarah Pollard***

Mr Pollard gave evidence on behalf of himself and his wife being the owners of 681 Shands Road. The business of Morgan-Pollard Landscapes Limited operates from the 308 Trents Road entrance. He said (reflecting the relevant submission) that he and his wife primarily opposed PC68 in its entirety as presently submitted. His second preference was to have larger sections “as you move north as is the case on the eastern side of Trents Road”.

Mr Pollard went on to state that he understood that I was not able to recommend a change to a different type of zoning from what had been applied for. That being the case he said that if the Living Z zone was recommended by me, then he and his wife requested that their property be rezoned as per the whole block

²⁶⁷ *Limmer submissions / paragraph 21*

²⁶⁸ *Limmer submissions / paragraph 22*

“as it does not make sense to leave a corner out when we would be unfairly affected by the rezoning”. He later went on to refer to Mr Shamy’s submission in his evidence and said

12. *Mr Simon Shamy’s submission suggested that his block be included if the plan change was recommended as it made sense given his two boundaries bordering the proposed plan change. We were unaware of impact of this submission to us until reading paragraph 143-145 of the 42A report that was circulated. We were unaware of the process whereby we could oppose parts of his submission if we chose too (sic).*

13. *If Mr Shamy’s property was to be included then the same argument could be made for Mr Trevor Holder, Mr Chen’s and our property as having three outlying properties surrounded by development would seem very problematic for the landowners and Selwyn District Council.*

In addition Mr and Mrs Pollard raised reverse sensitivity issues both in their submission and in evidence, expressing concerns that the development of land adjacent to their property for housing purposes could result in complaints and in the long run make it impossible to run the business on the property in question.

(ii) ***Xaojiang Chen***

Xaojiang Chen is the owner of 330 Trents Road. In his original submission he opposed the plan change. In his evidence he said that although he objected to the proposed development in PC68 due to its development intensity²⁶⁹

..... I request that the Council treat the whole block between the three roads the same. If PC68 is to be accepted for more intense development the three properties including my development at 330 Trents Road should be rezoned in the same way.

Mr Chen also raised reverse sensitivity issues, associated with the operation of a horse training facility on part of his property.

(iii) **Trevor Holder and Karlee Mayne**

Trevor Holder and Karlee Mayne are the owners of 687 Shands Road. In their submission they opposed PC68 for a number of reasons, centred around their perception of the resultant detrimental effects on amenities which would follow the establishment of housing on the land the subject of PC68.

Mr Holder and Ms Mayne stated that if the development was to proceed, then their second preference was to follow the existing Prebbleton development plan which is that the further the relevant use spread out from Prebbleton township, the section sizes increase

..... as it has done in Kingcraft drive and penberly where the sections have a minimum size of approximately 5,000 m² to retain the rural character of the area and reduce impacts of traffic and services to all the existing residents.

Mr Holder and Ms Mayne concluded by stating

Our key points that we oppose this subdivision (sic) on the plans provided as it is a high-density development in a rural setting that does not match the rest of the area as you proceed away from the township.

Mr S J Shamy /the corner block / my consideration**The corner block / the position of landowners other than Mr Shamy**

6.25 Of pivotal importance in considering the corner block properties is to recognise that only one submission sought rezoning, namely that of Mr Shamy (as an alternative). As to this: -

- (i) Mr and Ms Pollard opposed the plan change but said that their second preference was to follow the existing Prebbleton development plan involving sections of a minimum size of approximately 5,000 m² to retain the rural character of the area. The relief sought was not consistent with the PC68 request and accordingly does not found jurisdiction to act as a platform for the inclusion of the land in question;

- (ii) Mr Chen opposed the proposed change in his submission although altered his position in giving evidence by stating that he wanted the Council to treat the whole block in the same way and that if PC68 was to be accepted for more intensive development, then all properties should be included. Thus the Chen submission does not provide a jurisdictional base for the inclusion of his land;
- (iii) Mr Holder and Ms Mayne also opposed the proposed change in their submission but stated that their second preference was to follow the existing Prebbleton development plan involving larger section sizes. This submission could not act as a jurisdictional platform for inclusion of the Holder/Mayne land in PC68.

6.26 The fact that submitters requested the inclusion of their land in the evidence before me as an alternative cannot affect the scope issue which is determined by the relief which was sought in submissions, not in the evidence which followed. Any relief granted must be within the scope of a submission. Accordingly, I find that there is no jurisdiction for me to order the inclusion of any of the land in the corner block, other than that of Mr Shamy, this because he was the only submitter who sought inclusion in his original submission.

The submission of Mr Shamy / the scope issue

6.27 I now turn to consider the position of the land of Mr Shamy in terms of the scope issue. Firstly, I consider whether the inclusion of this land in PC68 is justified on the basis that the inclusion could be considered to be an incidental or consequential extension of the zoning changes proposed in the plan change.

6.28 Applying the principles discussed earlier in this recommendation, I am of the view that this avenue for inclusion is not available for the following reasons: -

- (i) whilst, as Ms Limmer has observed, the increase in land area, as a percentage of the overall land the subject of PC68 is low, the area of land sought to be included is substantial;

- (ii) the inclusion of the land cannot be said to be a consequential alteration necessary to the proposed plan. Whilst it has been suggested that the inclusion of the land would tidy up the relevant part of the land the subject of the plan change, in the sense that the inclusion of the land would provide a more logical boundary for PC68 (and this may well be so), as a matter of impression and otherwise the extent of the area of the land dictates to me that the addition of the land is too significant in area to be treated as being either incidental or consequential to the plan change. Importantly, the amendment sought by Mr Shamy is not a necessary consequence of any approval of PC68 and is not needed to complete the proposed plan.

6.29 In summary the relief sought is not able to be granted pursuant to clause 10(2) of Schedule 1 of the Act as an incidental or consequential extension of the zoning changes proposed.

Does the submission fall within the ambit of the plan change?

6.30 The fact that I have found that inclusion of the land of Mr Shamy is not able to be facilitated as being an incidental or consequential extension of the zoning changes proposed is not an end to the consideration of the scope issue. The pivotal question is whether the Shamy submission can be reasonably said to fall within the ambit of the plan change. This is certainly arguable. However, a fundamental impediment to this argument is that the submissions of other parties in the corner block indicate to me that, contrary to the position taken by Ms Limmer, further analysis under s32 of the RMA is necessitated. *Motor Machinists* emphasised that one way of analysing whether a submission must reasonably be said to fall within the ambit of a plan change is to ask whether the submission raises matters that should have been addressed in the s32 evaluation and report ²⁷⁰. For the following reasons I have concluded that a further analysis was necessitated: -

- (i) an issue has arisen as to whether the land of Mr Shamy should be developed along the same lines as the balance of

²⁷⁰ *Palmerston North City Council v Motor Machinists Limited* [2014] NZRMA 519 at paragraph [81]

the block containing the PC68 land, or whether, on the other hand, Mr Shamy's land should be zoned so as to provide for larger section sizes representing a transition between the density of development in PC68 and the other development in the surrounding area. Mr Pollard referred to the need to give consideration to the rezoning of the whole block, rather than just the land of Mr Shamy. Mr Chen also raised the same issue;

- (ii) further, I am of the view that a s32 evaluation and report is necessary to consider the question of whether the development of Mr Shamy's land would be likely to have any material impact upon the ability of the Pollard family to conduct its business from the balance of the corner block. It cannot be assumed that the development of Mr Shamy's land would have no influence on this issue;
- (iii) I have reached the clear view that the question of whether Mr Shamy's land should be treated in isolation, and ahead of the other land in the corner block, given the submissions made by the other landowners in the corner block, clearly calls for analysis and comment in an appropriate evaluation and report.

6.31 In these circumstances, and on balance, I am not persuaded that the first limb of the *Clearwater* ²⁷¹ test can be satisfied. I have concluded that there are matters which should have been addressed in the s32 evaluation and report and were not. Further, under this head, I remind myself that a precautionary approach is called for and I have adopted such an approach.

The submission of Mr Shamy / participatory rights

6.32 My finding in relation to the first limb of the *Clearwater* test means that I am not able to consider the merits of the proposal to rezone Mr Shamy's land. However, in case I am incorrect in making this finding, I proceed to consider the issue of whether there is a real risk that persons directly or potentially affected by the additional changes proposed in Mr Shamy's submission may have been denied an effective

²⁷¹ *Clearwater Resort Limited v Christchurch City Council HC Christchurch AP34/02, 14 March 2003*

opportunity to respond to those additional changes in the plan change process. This is the second limb of the *Clearwater* test.

- 6.33 Earlier in this section, I referred to the comments of Mr and Mrs Pollard in relation to the submission of Mr Shamy, and in particular the statement that they were unaware of the process whereby they could oppose parts of Mr Shamy's submission if they chose to. This statement highlights the fact that whilst Mr and Mrs Pollard have had an opportunity to give evidence before me, they have not had the benefit of any analysis under s32 of the RMA relating to the question of whether Mr Shamy's land should be developed with larger sections than are contemplated by PC68 and whether his land should be developed ahead of the other land on the corner block with the lots created on Mr Shamy's land.
- 6.34 As already noted, Mr Chen raised the issue of the appropriateness of the whole of the corner block being rezoned, rather than just part of it. I contemplate that he should have had the benefit of an analysis under s32 of the RMA in the context of advancing submissions in evidence in relation to this issue.
- 6.35 An additional matter which must be considered is that Mr and Mrs Pollard have raised reverse sensitivity issues. There has been no analysis of the impact of the conduct of their business on persons occupying the land of Mr Shamy should it be developed in accordance with PC68. That would have been expected if Mr and Mrs Pollard were to have an informed position in relation to the status of that land.
- 6.36 Mr Holder and Ms Mayne have adopted a similar position to that of the Pollards in that their second preference was to follow the existing Prebbleton development plan which would involve larger section sizes than contemplated by PC68. The land of Mr Holder and Ms Mayne is immediately adjacent to that of Mr Shamy and the development of Mr Shamy's land would clearly be likely to have an effect on the amenities associated with the use of their land. I am left with the impression that there is a risk that Mr Holder and Ms Mayne, being persons directly affected by the additional changes proposed by Mr Shamy, could well have been denied an effective opportunity to respond to the changes in the plan change. I am unable to be sure that Mr Holder and Ms Mayne were aware of the changes proposed in Mr Shamy's submission because they took no further steps beyond lodging their submission.

In any event they should have had the benefit of a full analysis under s32 of the RMA so that they could put forward an informed view about the proposals to include Mr Shamy's land.

- 6.37 As a further matter, I am concerned that had proper notice been given of the request for rezoning of Mr Shamy's property, this may have attracted submissions beyond the landowners in the corner block. I am of the view that by reason of the absence of a proper analysis of the overall position, there may have been potential submitters who were "left in the cold". Accordingly the second limb of the *Clearwater* test cannot be satisfied.

Mr Shamy's position / concluding comments

- 6.38 It is important that I add a concluding comment. It is not my intention that anything in this recommendation should be taken as suggesting how Mr Shamy's property should be treated, should he determine that further steps, such as the initiation of a private change or submission on the forthcoming variation, be adopted. On the face of it, there may well be a strong case for inclusion of Mr Shamy's property, as well as some or all of the properties in the corner block in an enlarged development mirroring PC68. As Kos J noted in *Motor Machinists Limited*²⁷², there is unlikely to be any hardship in approaching matters in the way that I have because Mr Shamy will be able to attempt to seek to persuade the Council to promulgate a land change or himself seek a private land change or alternatively be involved in the plan change variation process which is contemplated by SDC. I suspect that Mr Shamy's land may well be strong candidate for rezoning, given urban form and other considerations, although the size of the lots to be created is likely to be an issue which will need to be resolved. However the evaluation of this matter will have to await another day.

THE TRENTS ROAD GAP

Properties making up "the Trents Road gap"

- 6.39 There are five 2 ha properties that make up what I will term "the Trents Road gap" between the PC68 site and the eastern edge of Prebbleton

²⁷² *Palmerston North City Council v Motor Machinists Limited* [2014] NZRMA 519 at paragraph [87]

/ Farthing Drive shown as a green rectangle. The position of the owners in relation to the possible rezoning of the Trents Road gap is as follows: -

(i) **David Somerfield**

David and Julie Somerfield are owners of 382 Trents Road, Prebbleton. Mr Somerfield gave evidence on behalf of himself and his wife. Mr and Mrs Somerfield operate Trents Nursery, being a wholesale plant producer which employs 21 permanent staff and a further 10 seasonal staff from August to April each year. The business has operated at the property since 1983 and supplies plants to garden centres throughout New Zealand.

In his submission Mr Somerfield requested that the application be declined or if approved, limits be placed on the mode of development of the applicant's land adjacent to the Somerfield property including a minimum lot size of 5,000 m².

In his evidence Mr Somerfield stated (in relation to the gap) ²⁷³....

The 42a report covers various procedural matters and in paragraphs 45 to 50 discusses what has been termed "the gap" which includes our property. The report notes that this area is not part of the application but recommends that these 5 lots could be included if it is considered that it is within the scope (which there seems to be some question about). We are concerned that our property might be included in an application which we oppose. We are concerned that if the application is approved and our property included and rezoned for residential purposes this could have a detrimental effect on our business by restricting what is currently complying rural use activity and make us reliant on existing use rights. This may restrict our business operations in the future. While we understand that including the gap properties would provide a neat form to the application land we are disappointed that the 42a Report fails to discuss what effect inclusion of the gap would have on existing complying rural land uses.

Mr Somerfield suggested that if PC68 was to be approved, the lots adjoining the property must have a buffer zone and that a council covenant (or consent

²⁷³ Evidence of David Somerfield / paragraph 1

notice through the subdivision consent process) should be registered on resultant titles for any new allotments adjoining the property to prohibit property owners complaining about existing rural uses. These matters have been considered in this recommendation.

(ii) **Mark and Joanne Hamlyn**

Mark and Joanne Hamlyn are the owners of 386 and 398 Trents Road, Prebbleton. In their submission Mr and Ms Hamlyn gave conditional support to the rezoning of the land the subject of PC68 stating

We will support subject to my two properties at 386 Trents Road and 398 Trents Road also being rezoned as we will be directly affected and enclosed by the proposed residential development and therefore unlikely to continue using our property as intended under the Rural Inner Plains i.e. run livestock, use farm machinery, burnoffs etc.

Effectively, ourselves and our 3 neighbouring properties (comprising 10 ha) would be completely isolated by PC68 and as we were not formally consulted or asked to be involved in this application, we request that our property be included and considered for rezoning approval as well.

(iii) **Jonelle and Richard Bowman**

Jonelle and Richard Bowman are the owners of 400 Trents Road, Prebbleton. In her submission, Ms Bowman stated that the decision that she wanted the Council to make was as follows

Amend to include the 5 blocks into zoning change to keep these consistant (sic) with immediate neighbouring properties.

In his submission Mr Bowman said that there had not been proper consultation with himself or his wife prior to the request being made. He opposed the proposed plan change as it currently stood excluding the 10 ha and said ...

I would consider supporting a proposal which included the 10ha.

(iv) **Norma and Dawn Eagle**

Norma and Dawn Eagle are the owners of 414 Trents Road, Prebbleton. They did not make a submission in relation to the request.

Trents Road gap / my consideration

Trents Road gap / the scope issue

6.40 In the s42A Report, Mr Clease expresses the view that the inclusion of (inter alia) the Trents Road gap could be said to fall within the broad ambit of PC68 insofar as the plan change examines the appropriate formation of the southern edge of the township. He goes on to state that the infilling of the "gaps" and the urban form resulting from PC68 is therefore arguably consequential to the substantive outcome sought in the plan change and they are sufficiently modest in scale that their inclusion does not threaten or unduly expand the scope of the plan change ²⁷⁴. Mr Clease went on to state that the exclusion of the Trents Road gap would in his view result in a poor localised urban form outcome with a relatively small pocket of rural and bounded by urban development²⁷⁵.

6.41 In her evidence, Ms Harte expressed a similar view. She considered that the request to include the Trents Road gap properties would in principle enable the area being rezoned to fully integrate with Sterling Park ²⁷⁶.

Incidental or consequential extensions

6.42 I note that incidental or consequential extensions of zoning changes proposed in a plan change are permissible provided that no substantial further s32 analysis is required to inform affected persons of the comparative merits of that change ²⁷⁷.

6.43 I have formed the view that the extension of zoning to include the Trents Road gap could not be said to be incidental or consequential. The inclusion of the land in question represents a substantial and material change to the boundaries of PC68. Were I to recommend that the Trents Road gap be included in PC68, that would represent a very substantial increase in the overall area of the land the subject of the change. This itself militates against the treatment of inclusion of this

²⁷⁴ S42A Report / paragraph 46

²⁷⁵ S42A Report / paragraph 140

²⁷⁶ Evidence of Patricia Harte / paragraph 13.3

²⁷⁷ *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA 519 at paragraph [81]

land as being either incidental or consequential, particularly having regard to my comments in relation to the interpretation of these concepts earlier in this recommendation. I should add that the element of necessity referred to in the statutory provision is clearly absent.

Are relevant submissions on the plan change?

6.44 Given this finding I now turn to examine the issue of scope. I have formed the clear view that the submission seeking the inclusion of the properties making up the Trents Road gap is not within scope. A critical factor supporting my view is whether any further s32 analysis could be said to be required. Mr Cleese says that it is not required. He points out that the transport report prepared for the applicant, and the peer review of Mr Collins, have not shown any transport related issue with the inclusion of additional sites and that Mr England's servicing report does not identify any issues with infrastructure capacity associated with including this additional land that could not be resolved through the subdivision consent process ²⁷⁸.

6.45 After careful analysis, I have concluded that I am unable to safely say that no further s32 analysis would be required before the Trent Road gap properties were to be included in PC68 for the following reasons: -

- (i) Mr Somerfield wanted PC68 to be declined but said that if it was to be approved there should be minimum lot sizes of 5,000 m² in area. There has been no analysis of the implications of this view;
- (ii) there has been no analysis of the effect on Mr and Ms Eagle being the owners of 414 Trents Road, Prebbleton. They did not make a submission;
- (iii) understandably, the s32 assessment which accompanied the application did not examine the s32 factors which indicate whether including the Trents Road gap properties would represent the most appropriate way of fulfilling the various matters which s32 calls to be assessed. In particular, given Mr Bowman's submission, the issue of whether the status quo should remain, or Trents Road gap properties have

a minimum area of 5,000 m², would need to be examined to comply with s32.

6.46 I am conscious of the fact that there is no intention to alter the objectives and policies of the SDP (other than in a minor respect). This is clearly a starting point in favour of the inclusion of the Trents Road gap properties being within scope, but still leaves for consideration other matters, including the question of whether the lots in the land in question should have a minimum size. I note from *Motor Machinists Limited* ²⁷⁹ that one way of analysing whether the submission reasonably falls within the ambit of the plan change is to ask whether the submission raises matters that should have been addressed in the s32 evaluation and report. If so, the submissions are unlikely to fall within the ambit of the plan change. Under this head I have concluded that the absence of a s32 analysis would be expected and acts as a barrier to considering the Trents Road gap as being within the scope of the existing submissions.

6.47 Finally under this head, I note that *Motor Machinists Limited* requires that a precautionary approach be adopted to receiving submissions proposing more than incidental or consequential further changes to a notified proposed plan change ²⁸⁰. In this case I have found that what is sought is more than incidental or consequential. Accordingly I have proceeded to examine the scope criteria to determine whether the Trents Road gap is within scope. Utilising a precautionary approach to that issue, I find that the submissions are not within scope.

Trents Road gap /participatory rights

6.48 I note my findings above. I proceed to consider the second limb of the *Clearwater Resort Limited* ²⁸¹ test, in case my finding on the first limb of the scope test is in error. I have reached a clear view in relation to the issue of whether the second limb of the test can be satisfied. I have concluded that the participatory rights of those who were entitled to make submissions in relation to the inclusion of the Trent Road gap properties may have been affected and interested parties may have

²⁷⁹ *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA / paragraph [81]

²⁸⁰ *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA / paragraph [91](c)

²⁸¹ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP 34/02, 14 March 2003

been denied an effective response to the proposed changes in the plan change process. As to this: -

- (i) I have noted that one of the owners of the subject properties did not make a submission (Eagle). The participatory rights of that owner would have been dependent on seeing the summary of submissions, apprehending the significance of the proposed rezoning of their land and lodging a further submission within the prescribed time period ²⁸². I have a real concern that these persons, clearly affected by the proposed additional rezoning, “would have been left out in the cold”;

- (ii) I have noted the level of disquiet about the apparent level of consultation with those who did make submissions. Mr and Mrs Somerfield were critical of the suggestion that there had been adequate consultation with them. They stated that at no time had the applicant made contact in any form with them as an adjoining property owner and that if they had done so, considerable time and effort incurred by all properties may have been avoided ²⁸³. Mr Bowman, in his submission, was critical of the level of consultation and said that he was certainly not asked to be involved in the proposal in question. It would be inappropriate for me to make any finding about the adequacy of consultation. However, whilst these parties have had an opportunity to state their case before me, the fact that there has been no s32 analysis leaves me with a concern that their participatory rights may have been fettered by lack of the provision of proper information to them regarding the proposed additional rezoning ²⁸⁴.

- (iii) Finally, it is appropriate that a precautionary approach be taken to the determination of this matter, as noted above.

²⁸² *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA / paragraph [88]

²⁸³ *See submission of David and Julie Somerfield* / paragraph 11

²⁸⁴ *See the comments of Kos J in Palmerston North City Council v Motor Machinists Limited* [2014] NZRMA / paragraph [91](d)

Trents Road gap / my findings

6.49 In conclusion, I have formed the view that I should not recommend that the Trents Road gap properties should be rezoned as part of my consideration of PC68. This is against the background that in his report, Mr Clease expresses the view that the exclusion of the Trents Road gap would result in a poor localised urban form outcome with a relatively small pocket of rural land bounded by urban development. His recommendation is that provided sufficient scope existed that the properties be included within PC68 and rezoned to Living Z with the ODP updated to show their inclusion ²⁸⁵.

6.50 Mr Clease may well be correct in expressing his concerns about the poor localised urban form outcome if the properties comprising the Trents Road gap are not included in the change. However there is a jurisdictional bar to my consideration of the merits of such inclusion. I note that the landowners in question are not without a remedy beyond this point. My preliminary consideration of matters indicates that there may well be grounds for rezoning the land in question subject to an appropriate and full analysis of the position being undertaken beyond this point and interested parties having a full and informed opportunity to comment. Clearly it would be inappropriate for me to express a view about this matter and I refrain from doing so.

HAMPTONS ROAD LOTS / 743 SHANDS ROAD AND 184 HAMPTONS ROAD

The setting / background matters

6.51 There are two small lots with frontages to Hamptons Road which will be bounded on all internal boundaries by the PC68 site: -

- (i) the property at 743 Shands Road located on the north-eastern corner of the intersection of Hamptons and Shands Road;
- (ii) the property situated at 184 Hamptons Road which, while it appears on maps to be two properties, it is in

fact one title comprising 1612 m² of land currently occupied by a dwelling.

("the Hamptons Road lots").

Should PC68 be approved, the Hamptons Road lots will constitute small rural zoned lots inserted into a residential suburban environment.

6.52 Mr Clease sees considerable merit in including both of these properties within the proposed Living Z zone and conversely expresses the view that their exclusion would result in a fragmented zone pattern. Mr Clease has noted that no submitter scope exists for either of these sites and therefore the inclusion would need to fall within the ambit of consequential amendments ²⁸⁶.

6.53 The property on the north-eastern corner of the intersection of Hamptons Roads and Shands Roads (743 Shands Road) is now owned by the SDC and has the legal purpose of "for use in connection with a road". This property is expected to be used to enable the Shands/Hamptons Roads roundabout.

The Hamptons Road lots / my consideration

6.54 In my view, the property on the north-eastern corner of the intersection of Hamptons Road and Shands Road (743 Shands Road) should not be added to the land sought to be rezoned in PC68 as being a consequential alteration necessary to the proposed plan. I agree with Ms Harte when she expresses the view that it may not be necessary or even appropriate for the land to be rezoned for residential purposes ²⁸⁷. Given that the subject property is expected to be used to enable the Shands/Hamptons Roads roundabout, there is no point in considering adding this land to the land the subject of PC68, either as a consequential or incidental amendment or otherwise.

6.55 The land at 184 Hamptons Road, Prebbleton, is in a different category. Whilst it may be tempting to consider that there is a strong case for saying that by reason of the size of this property, the rezoning of it would fill a gap and be consequential or incidental to PC68, the owners have not made a submission to PC68 and I have a residual concern

²⁸⁶ S42A Report / paragraph 146

²⁸⁷ Evidence of Ms Harte / paragraph 13.7

that notwithstanding the fact that the land may be an obvious candidate for inclusion in the land the subject of PC68, there may be matters which are at this stage unknown and which should be taken into account before I recommend that the land should be included in PC68. In this context, I note that there is no mention of this land in the s32 report. For this reason, and notwithstanding that the land is clearly a very strong candidate for rezoning should I recommend the land the subject of PC68 be rezoned, I refrain from recommending that this land be included, given my concerns regarding the preservation of the participatory rights of the owners and (possibly) others.

169 AND 171 HAMPTONS ROAD

The further Hamptons Road lots

- 6.56 Chris and Carol White and Adam and Lucy Gard'ner-Moore have sought the inclusion of their respective land holdings at 169 and 171 Hamptons Road, Prebbleton. These two lots are located on the southern side of Hamptons Road and are disconnected from the plan change site being separated by Hamptons Road, Prebbleton. Mr Cleese does not consider that the two properties should be included (even if scope were to be available) due to the poor resultant urban form that would result in an isolated suburban enclave extending out into an otherwise intact rural environment ²⁸⁸.

The further Hamptons Road lots / my consideration

- 6.57 The land in question is clearly disconnected from the plan change site. Whilst this case is not on all fours with the facts in *Motor Machinists Limited*²⁸⁹, there is a similarity in that the land is clearly "isolated" in the sense referred to by Kos J in *Motor Machinists Limited* which led to him concluding that such an enclave in the case in question was not within the ambit of the existing plan change. The subject land is "isolated" in a similar fashion to that dealt with in *Palmerston North City Council*.

²⁸⁸ S42A Report / paragraph 147

²⁸⁹ *Palmerston North City Council v Motor Machinists Limited* / [2014] NZRMA 519 / paragraph [86]

6.58 The land in question does not logically form part of an enlarged plan change area. It is separated by a road and its rezoning would call into question why land adjacent to it should not be treated in the same way. It does not logically form part of an enlarged plan change area. The question of whether the subject land should be rezoned would require long-term analysis rather than opportunistic insertion by submission. In addition, and importantly, there has been no analysis under s32 of the RMA which further reinforces my view that the request falls foul of the first requirement in *Clearwater Resort Limited*²⁹⁰ that the request must be within scope.

6.59 In addition there is a real risk that persons with an interest in the rezoning of this land would be disadvantaged and accordingly the requirements of the second limb of *Clearwater Resort Limited*²⁹¹ have not been satisfied. There is a strong possibility that persons with an interest in the rezoning of this land were deprived of an opportunity to comment on it because the summary of submissions was not visited by them and the opportunity for further submissions on the point lost. As was noted by Kos J in *Motor Machinists Limited*²⁹², Mr and Ms White and Mr and Ms Gard'ner-Moore have other opportunities to seek the rezoning of their land, such as by initiating a private change to the SDP or by becoming involved in the forthcoming variation. I express no view about the prospects of successfully seeking a rezoning but comment that PC68 does not represent an appropriate opportunity for involvement and that any consideration of the merits of the request will have to be decided on another day.

7. **STATUTORY FRAMEWORK / ANALYSIS**

INTRODUCTION

7.1 In the earlier part of this recommendation, I noted that a district plan (including as amended by any plan change) must give effect to any operative national policy statement²⁹³, any regional policy statement²⁹⁴,

²⁹⁰ *Clearwater Resort Limited v Christchurch City Council HC Christchurch AP 34/02, 14 March 2003*

²⁹¹ *Clearwater Resort Limited v Christchurch City Council HC Christchurch AP 34/02, 14 March 2003*

²⁹² *Palmerston North City Council v Motor Machinists Limited / [2014] NZRMA 519 at paragraph [78]*

²⁹³ *S75(3)(a) of the RMA*

²⁹⁴ *S75(3)(c) of the RMA*

have regard to any management plan or strategy prepared under other Acts ²⁹⁵, take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district ²⁹⁶ and must not be inconsistent with any regional plan ²⁹⁷.

7.2 In the s42A Report, Mr Clease provides a helpful discussion of the planning history of Prebbleton and the evolution of the statutory framework, discussing relevant instruments in chronological sequence. I adopt the sequence in the s42A Report and identify the relevant statutory instruments which need to be taken into account before discussing their impact on this case.

7.3 A matter which has assumed particular importance in considering the request is to determine the relationship between the National Policy Statement on Urban Development 2020 and the Canterbury Regional Policy Statement. The resolution of this critical issue is fundamental to the approach which is to be taken to my consideration of the request. I note that the issue has been raised in a number of other plan changes in the Selwyn District and that in this case I have had the benefit of extensive submissions in relation to the issue. My consideration of this issue follows.

LAND USE RECOVERY PLAN

7.4 By way of background to the amendments to the CRPS which are referred to hereafter, I note that the Land Use Recovery Plan ("LURP") was prepared in December 2013 to facilitate developing the recovery of the Greater Christchurch Area. As Mr Clease has noted, of significance, the LURP included amendments to the CRPS through a new Chapter 6 which directed land use change across the Greater Christchurch area. Importantly, the CRPS amendments included "Map A" which identified growth locations around the various Selwyn townships as "Greenfield Priority Areas". Mr Clease noted that the provisions included directed policies that growth should only occur within the identified Greenfield Priority Areas. The application site is *not* identified as a Greenfield Priority Area in the Selwyn District ²⁹⁸.

²⁹⁵ S74(2)(b)(i) of the RMA

²⁹⁶ S74(2A) of the RMA

²⁹⁷ S75(4)(b) of the RMA

²⁹⁸ S42A Report / paragraphs 176 and 177

- 7.5 In addition to directing the location of urban growth the new CRPS Chapter 6 also considered the provision of “Rural Residential” development, which was defined as residential development at a density of one to two households per hectare and located outside the greenfield priority areas. Policy 6.3.9 stated that the new rural residential areas could only be provided where they were located in accordance with a council adopted rural residential development strategy prepared in accordance with the Local Government Act ²⁹⁹. Reference has already been made to the fact that in 2014 SDC prepared the RRS-14 to set out the locations for rural residential development. A number of the areas identified in the RRS-14 were then rezoned to Living 3 through private plan changes ³⁰⁰.

OUR SPACE AND THE NATIONAL POLICY STATEMENT – URBAN DEVELOPMENT CAPACITY

- 7.6 By way of background to the National Policy Statement on Urban Development 2020, I note that Mr Cleese has recorded in the s42A Report ³⁰¹ that in response to increasing concerns regarding housing affordability, supply and integration with infrastructure, the Government gazetted the NPS-UDC in 2017, requiring councils in high growth areas to undertake an assessment of housing (and business) demand and supply and to demonstrate that there will be sufficient feasible development in place to support housing and business growth needs over the medium (next 10 years) and long-term (10 to 30 years).
- 7.7 In response to meeting the reporting obligations under the NPS-UDC the Greater Christchurch Partnership organisations (including SDC) prepared a document entitled *“Our Space 2018-2048 : Greater Christchurch Settlement Pattern Update Whakahāngai O Te Hōrapa Nōhoangi”* (“Our Space”). This document is focussed on how best to accommodate housing and business land needs in a way that integrates with transport and other infrastructure provisions etc. It provides targets for housing for 30 years and outlines how any identified short-fall capacities to meet these targets will be met, including through the identification of areas for housing growth. Mr

²⁹⁹ S42A Report / paragraph 179

³⁰⁰ S42A Report / paragraph 180

³⁰¹ S42A Report / paragraph 181

Cleese has noted, given the significant cross-over between Our Space and the CRPS, subsequent changes to the CRPS were signalled as being required to facilitate the outcome set-out.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020

The issue of relationship with CRPS

- 7.8 As Mr Cleese has noted in his report ³⁰² prior to July 2020, the planning framework for the Inner Plains was clearly established. Development to suburban densities could only occur within greenfield priority areas identified on Map A of the CRPS. Our Space recognised the need for some additional capacity to be made available in Rolleston with the additional locations of greenfield growth incorporated into the CRPS. Further, development of rural residential densities could likewise only occur in areas specifically identified in the RRS-14 and then only once a change in zoning to Living 3 had been confirmed through a private plan change process. The above analysis is important because it provides background to the gazetting of the NPS-UD. NPS-UD replaced NPS-UDC. NPS-UD was in response to growth pressures being faced nationally and has particular relevance for “Tier 1” Councils which include SDC.
- 7.9 As already, a noted fundamental issue which has arisen in this case, and not susceptible to easy analysis, is to determine the relationship between NPS-UD and the CRPS. As will be recorded later in this recommendation, the view which has been taken by a number of submitters is that the provisions of the CRPS, and in particular Map A, preclude the rezoning of the land the subject of PC68. The proponents of the change argue otherwise. They say that NPS-UD signalled a clear change in the criteria which need to be applied when considering this plan change and the provisions of NPS-UD, that NPS-UD must be taken as effectively overriding the requirements of the CRPS and that the provisions of the CRPS do not represent an impediment to rezoning.
- 7.10 I have received detailed legal submissions from counsel for the applicant, Mr Cleary, both in opening and reply, and submissions in response by Mr Wakefield on behalf of CCC and CRC. These will be referred to in greater detail hereafter. These submissions have been helpful and detailed. I observe that at this stage no party with an

³⁰²

S42A Report / paragraphs 185 et seq

interest in this issue has sought guidance from the courts. I note that I have considered the insightful analysis of this issue by Commissioner David Caldwell in his recommendation dated 10 January 2022 relating to proposed Plan Change 67. I should add that I have been provided with a memorandum from Mr Paul Rogers, of Adderley Head dated 13 September 2021 which addresses the issue in a comprehensive manner in the context of plan changes and submissions on the proposed District Plan. This memorandum was requested in my third minute in which I noted that the memorandum had been publicly released.

- 7.11 I have made my own independent assessment of this matter and given detailed consideration to the submissions and material which has been made available to me at the hearing. What follows represents my own assessment of this difficult legal issue.
- 7.12 As a final observation under this head, I comment that given the very real importance of the issue which is addressed by NPS-UD, it is regrettable that the document did not provide greater guidance as to the circumstances in which RMA planning documents could be taken as being effectively overridden by the application of the requirements of NPS-UD. The absence of clearer guidelines is unfortunate because it has imposed a significant burden on those tasked with interpreting and administering the provisions of the NPS-UD in circumstances such as the present.
- 7.13 In order to properly consider this matter, it is necessary to record the key objectives and policies in the CRPS, SDP and NPS-UD which are material.

The CRPS /key objectives and policies

- 7.14 The key objectives and policies of the CRPS which relate to the matters the subject of my consideration are:-

Objective 6.2.1:

Recovery framework

Recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that:

- 1. identifies priority areas for urban development within Greater Christchurch;*

.....

3. *avoids urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS;*

Policy 6.3.1:

Development within the Greater Christchurch Area

In relation to recovery and rebuilding for Greater Christchurch:

1. *Give effect to the urban form identified in Map A, which identifies the location and extent of urban development that will support recovery, rebuilding and planning for future growth and infrastructure delivery;*
.....
3. *enable development of existing urban areas and greenfield priority areas, including intensification in appropriate locations, where it supports the recovery of Greater Christchurch;*
4. *ensure new urban activities only occur within existing urban areas or identified greenfield priority areas as shown on Map A, unless they are otherwise expressly provided for in the CRPS.*

Selwyn District Plan / key objectives and policies

- 7.15 The objectives and policies which are of particular relevance in the SDP are: -

Objective B4.3.3:

For townships within the Greater Christchurch area, new residential or business development is to be provided within existing zoned land or priority areas identified in the Regional Policy Statement and such development is to occur ...

Policy B4.3.1 : (relevantly)

Ensure new residential rural residential or business development either:

.....

- *The land is rezoned to an appropriate Living or business Zone and, where within the Greater Christchurch area, is contained within existing zoned land and greenfield priority areas identified in the Regional Policy Statement and developed in accordance with an Outline Development Plan incorporated into the District Plan.*

NPS-UD / key objectives and policies

- 7.16 The key objectives and policies and other matters within the NPS-UD in relation to the matters which I am called to consider are: -

Objective 1 : *New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

Objective 2 : *Planning decisions improve housing affordability by supporting competitive land and development markets.*

Objective 3 : *Regional policy statements and district plans enable more people to live in and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

- (a) *the area is in or near a centre zone or other area with many employment opportunities;*
- (b) *the area is well-serviced by existing or planned public transport;*
- (c) *there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

.....

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 terms; and*
- (c) *responsive, particularly in relation to proposals that would supply significant development capacity.*

Policy 1 : *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- (a) *have or enable a variety of homes that:*
 - (i) *meet the needs, in terms of type, price, and location, of different households;*
 - (ii) *enable Māori to express their cultural traditions and norms; and*
- (b) *.....*
- (c) *have good accessibility for all people between housing, jobs, community services natural spaces, and open spaces, including by way of public or active transport; and*
- (d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) *support reductions in greenhouse gas emissions; and*
- (f) *are resilient to the likely current and future effects of climate change.*

Policy 2 : *Tier 1, 2 and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term.*

Policy 6 : *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

.....

- (d) *the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1);*

- (e) *any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity:*

.....

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.*

3.7 When there is insufficient development capacity

- (1) *If a local authority determines that there is insufficient development capacity (as described in clauses 3.2 and 3.3) over the short term, medium term, or long term, it must:*

- (a) *immediately notify the Minister for the Environment; and*
- (b) *if the insufficiency is wholly or partly a result of RMA planning documents, change those documents to increase development capacity for housing or business land (as applicable) as soon as practicable, and update any other relevant plan or strategy (including any FDS, as required by subpart 4); and*
- (c) *consider other options for:*
 - (i) *increasing development capacity; and*
 - (ii) *otherwise enabling development.*

Subpart 2 – Responsive planning

3.8 Unanticipated or out-of-sequence developments

- (1) *This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.*

- (2) *Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:*

- (a) *would contribute to a well-functioning urban environment; and*
- (b) *is well-connected along transport corridors; and*
- (c) *meets the criteria set under subclause (3);*

- (3) *Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.*

The relationship issue / submissions on behalf of applicant

Statutory interpretation principles

7.17 In his extensive submissions, Mr Cleary commenced by referring to the relevant principles of statutory interpretation. I agree that an appropriate summary of the principles as they apply to subordinate

legislation can be found in *Simons Pass Station Limited v MacKenzie District Council* ³⁰³. I note that in *Simons Pass Station Limited* there is reference to the leading Court of Appeal authority *Powell v Dunedin City Council* ³⁰⁴. Mr Cleary has helpfully summarised the principles ³⁰⁵. I adopt the summary. I agree that in circumstances where the plain ordinary meaning of a provision creates an anomaly, inconsistency, or absurdity, the other principles of interpretation must be taken into account in order to determine its proper interpretation ³⁰⁶.

7.18 Further, where there is an inconsistency between two documents, particularly where one is a high order document, the courts will first seek to reconcile this inconsistency and allow the two provisions to stand together. Indeed Mr Cleary submits that decision makers are under an obligation to make a “thoroughgoing attempt to find a way to reconcile” conflict, referring to *Royal Forest and Bird v Bay of Plenty Regional Council* ³⁰⁷.

7.19 Finally, under this head, I note that I agree with Mr Cleary that extrinsic materials can be considered as relevant to an interpretation, the critical factor being whether the material is sufficiently relevant³⁰⁸. As will be seen from the further discussion of this issue, this principle has particular relevance in this case.

The NPS-UD

7.20 Mr Cleary then dealt with the NPS-UD. Having traversed the means of implementing the objectives and policies above by local authorities, Mr Cleary highlighted that the NPS-UD also included a requirement on behalf of the council to provide *at least sufficient development capacity* to meet expected demand for housing in both existing *and* new housing areas (Clause 3.2). Mr Cleary submitted that the clear message was that growth was anticipated to be both up and out ³⁰⁹.

³⁰³ *Simons Pass Station Limited v MacKenzie District Council* [2020] NZHC 3265, (2020) 22 ELRNZ 277 at paragraphs [25] to [34] and [38]

³⁰⁴ *Powell v Dunedin City Council* [2004] 3 NZLR 721; (2005) 11 ELRNZ 144 (CA)

³⁰⁵ *Opening submissions of applicant* / paragraph 4.3

³⁰⁶ *Submissions of applicant* / paragraph 4.4

³⁰⁷ *Royal Forest and Bird v Bay of Plenty Regional Council* [2017] NZHC 3080 at paragraph [98]

³⁰⁸ See *Sky City Auckland Limited v Gambling Commission* [2008] 2 NZLR 182 at [38] to [55]

³⁰⁹ *Opening submissions of applicant* / paragraph 5.3

7.21 Mr Cleary then went on to note the requirement in Clause 3.8 that local authorities must have particular regard to the development capacity provided by a plan change if that development capacity: -

(a) would contribute to a well-functioning environment;

(b) is well connected along transport corridors; and

(c) meets the criteria under sub-clause (3); and

(3) every regional council must include criteria in its regional policy statement for determining what plan change will be treated, for the purpose of implementing Policy 8, adding significantly to development capacity.

7.22 Mr Cleary summarised the position by submitting that the overarching purpose of the NPS-UD was to set in place a framework to address an ongoing critical social and economic issue facing New Zealand being the under-supply of housing capacity to meet demand. He emphasised that sufficient development capacity *must* be enabled in the short (3 years) medium (3 to 10 years) and long term (30 years). He noted that there was a stated requirement *at all times* to meet the demand for housing ³¹⁰. Mr Cleary stated that even if the development capacity was unanticipated, local authorities *must* be responsible/ have regard to plan changes which provided for significant development capacity.

The CRPS

7.23 Mr Cleary then went on to refer to Chapter 6 of the CRPS. He noted that Chapter 6 was written with a clear focus on the recovery and rebuilding of Greater Christchurch after the earthquakes, that things had moved on from the time of recovery and that now was a time of growth as was illustrated by the evidence of Mr Sellars and Mr Colegrave ³¹¹.

7.24 Mr Cleary noted that post 2013, the only amendment of present relevance to Chapter 6 was Change 1, initially prepared under the previous NPS-UD 2016 and then finalised under the later 2020 version. This plan change included "targets" for housing development capacity in Greater Christchurch for the period 2018 to 2048. It also identified Future Development Areas that may be rezoned if certain criteria were met. In summary Mr Cleary submitted that the CRPS clearly did not give effect to the NPS-UD and nor did the operative Selwyn District Plan which

³¹⁰ Opening submissions of applicant / paragraph 5.5

³¹¹ Opening submissions of applicant / paragraphs 5.8 and 5.9

incorporated the hard urban limit approach of the CRPS and therefore did not have sufficiently zoned land to meet ongoing demand ³¹².

The hierarchy of documents

7.25 Mr Cleary then dealt with the question of the reconciliation of the provisions of the NPS-UD and CRPS. He noted that Objective 6.2.1 and Policy 6.3.1 in the CRPS had remained essentially unchanged since 2013 and that collectively they established the doctrinaire, hard urban limit approach ³¹³.

7.26 Mr Cleary then dealt with the hierarchy of documents under the RMA being ³¹⁴: -

- (i) national policy statements
- (ii) regional policy statements
- (iii) district plans.

7.27 Mr Cleary referred to the important decision of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* ³¹⁵ ("*King Salmon*") which held that to "give effect to" was a strong direction demonstrating that national policy statements give more than just general guidance to local authorities. He noted that more than an "overall judgment" approach was required when implementing the policies of a national policy statement ³¹⁶. Mr Cleary then went on to observe that *King Salmon* contained several observations which were relevant to PC68 as to why decision makers must give effect to national policy statements being: -

- (i) the hierarchical scheme of the RMA;
- (ii) national policy statements allow central government input into local decisions and decision makers should not decline to implement aspects of a national policy statement;

³¹² Opening submissions of applicant / paragraphs 5.11 to 5.13 incl

³¹³ Opening submissions of applicant / paragraph 6.2

³¹⁴ Opening submissions of applicant / paragraphs 6.5 to 6.6 (sic)

³¹⁵ *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] NZSC 38

³¹⁶ *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [132]

- (iii) that where provisions are in conflict between the two planning documents, it is important not to include too readily that reconciliation cannot be achieved.

7.28 Mr Cleary noted that SDP was required to implement the direction given by both regional and national level planning documents and that where changes were proposed the higher order documents needed to be considered. He went on to state that where a document or provision published later in time was inconsistent with a document published earlier it was logical to assume by the process of statutory amendment that the intention of the later in time document was to amend the earlier document.

7.29 Mr Cleary referred to and accepted the decision of the Court of Appeal in *R v Pora* ³¹⁷ where it was said that the approach to amendment described above was too technical and that where there was an inconsistency the proper approach was to determine which was the leading provision. Because of the importance of this matter I refer to the relevant parts of the decision

[38] We do not think it matters greatly whether the (sequentially) later provision was enacted at the same time as the earlier one (as was the case in Marr) or later in time (as is the case here). Preference for a later provision is equally a default one which pre-supposes a mechanical rather than a purposive approach to statutory interpretation. The latter is not to be preferred if the earlier expressly provides that it is to prevail.

[39] the proper approach is that described by Lord Herschell in Institute of Patent Agents and referred to above in paragraph [4]. Where there is inconsistency the court must determine which is the leading provision. This approach does not prevent implied repeal where it is clear that a later enactment supplants an earlier one. It makes it clear however that there is no chronological formula to be mechanically applied.

7.30 Mr Cleary submitted that the document at the top of the planning hierarchy was the NPS-UD and must be read as prevailing over inconsistent provisions within the subordinate CRPS. Mr Cleary went further and submitted that the NPS-UD must be considered the dominant component of the planning framework against which the plan change in question must be tested ³¹⁸.

³¹⁷ *The Queen v Pora* [2000] NZCA 403

³¹⁸ *Opening submissions of applicant / paragraphs 6.4 and 6.5*

Absurdity

7.31 Then Mr Cleary went on to take issue with the submission of CRC/CCC that taking a responsive approach meant that whilst there was an entitlement to “open the door” to consider PC68 on its merits, ultimately the door must be closed shut because Objective 6.2.1 and Policy 6.3.1 direct this outcome. Mr Cleary submitted that this would render Policy 8 meaningless and referred to Commissioner Caldwell’s decision on Plan Change 67 where he traversed the issues in question and concluded that Policy 8 provided the method by which a qualifying plan change could be assessed on its merits. Mr Cleary submitted that the NPS-UD responsiveness policy was deliberately included by Government in order to allow a pathway to development in areas anticipated by planning documents and that to rigidly apply the “avoidance” approach in the CRPS would prevent local authorities from acting in accordance with the NPS-UD ³¹⁹.

Extrinsic evidence

7.32 Lastly under this head, Mr Cleary dealt with the ability to introduce extrinsic evidence in aid of the interpretation of the NPS-UD. He referred to *Planning for Successful Cities – a discussion document on a proposed National Policy Statement on Urban Development (August 2019)* (“the Discussion Document”). Referring to relevant parts of the Discussion Document, Mr Cleary highlighted the need for a more responsive planning system for greenfield growth and submitted that both the Discussion Document and the document which followed the Discussion Document, the *Recommendations and Decisions Report on the National Policy Statement on Urban Development. Wellington : Ministry for the Environment and the Ministry of Housing and Urban Development* released in July 2020 (“the Decision”) were explicit in directing that the purpose behind a responsiveness policy was to ensure plan changes (greenfield included) which would add significantly to the development capacity and they must be considered on merit.

7.33 Mr Cleary submitted that PC68 could not be rejected as urged by CRC and CCC simply because it was said to be inconsistent with their strategic framework. Mr Cleary submitted that a responsive approach

³¹⁹ Opening submissions of applicant / paragraphs 6.7 to 6.10 incl

required me to consider PC68 on its merits and, in doing so, to put to one side the hard limits in Chapter 6 of the CRPS ³²⁰.

7.34 Mr Cleary relied upon the analysis of Commissioner Caldwell in his decision on Plan Change 67 ³²¹. As already noted, whilst I have been assisted by Commissioner Caldwell's analysis, and have considered his reasoning, I have reviewed all the material put before me and have formed a view independently of the decision of Commissioner Caldwell on this issue.

7.35 In essence Mr Cleary submitted that the NPS-UD responsiveness policy had been intentionally included by Government in order to allow a pathway for development in areas unanticipated by planning documents. Mr Cleary went on to refer to Chapter 12 of the document which followed the Discussion Document, namely the Decision released in July 2020. His submission was that I am entitled to have regard to this material, albeit extrinsic to the NPS-UD, in aid of interpreting its provisions. Because of their importance I refer to the conclusions in the Decision relied upon by Mr Cleary ³²² ...

The panel broadly supported the intent of improving planning responsiveness and agreed there would be value in retaining specific policy direction for local authorities to actively consider out-of-sequence and/or unanticipated development. Officials recommend introducing a policy to ensure planning decisions affecting urban environments are responsive to proposals that would add significant development capacity. This policy would apply to both RPSs and decisions on plan changes to district and regional plans. In particular, this policy should provide for opportunities to be considered on their own merits and not rejected simply because they do not align with current plans.

The policy would recognise the benefits of plan changes that would add significantly to development capacity and contribute to well-functioning urban environments. Because the intent is responsiveness in the planning system, this would apply to both greenfield and brownfield developments.

This approach will also address the possibility raised by submitters and the panel for local authorities to entrench hard urban growth boundaries in their RPSs. This could undermine the intent of the NPS-UD because RPSs are not subject to private plan changes under the RMA.

7.36 Mr Cleary submitted that the purpose behind the responsiveness policy was to ensure plan changes which would add significantly to development capacity must have the ability to be considered on merit.

³²⁰ Opening submissions of applicant / paragraphs 6.11 to 6.19 incl

³²¹ Opening submissions of applicant / paragraph 6.8 et seq

³²² Opening submissions of applicant / paragraph 6.17

PC68 is not able to be rejected as is urged by CRC and CCC simply because it is said to be inconsistent with their strategic framework ³²³.

Significant development capacity / the submissions of the applicant

7.37 Mr Cleary submitted that because CRC had failed in its requirement to include criteria in the CRPS as to what constituted “significant development capacity” I was able to determine what it might mean. Mr Cleary went on to submit that NPS-UD defined “urban environment” as an area of land that was or intended to be predominantly urban in character and was intended to be part of the housing market of at least 10,000 people and that SDC had previously considered Prebbleton, Lincoln and Rolleston collectively as an urban environment having collectively a population exceeding 10,000 ³²⁴.

7.38 Mr Cleary went on to note that the position of both CCC and CRC was that the question of capacity should be assessed within the context of the Greater Christchurch area but that notwithstanding this Mr Langman had properly acknowledged that the contribution of housing proposed, in terms of quantum, could be considered to be substantial. Mr Cleary went on to submit that the evidence of Mr Colegrave, Mr Sellars and Mr Cleese were all of the opinion that the significant additional capacity threshold was met ³²⁵.

Significant development capacity / the submissions of applicant in reply

7.39 Mr Cleary was critical of the evidence of Mr Williamson in relation to the issue of responsiveness (I refer to this hereafter). He submitted that Mr Williamson had failed to discuss in any meaningful way the relevance of the NPS-UD to the subject plan change. He submitted that Mr Williamson had not responded to my question regarding the responsiveness policy being able to provide for clear demand without the inherent delays associated with the development of spatial and reviews of the CRPS.

7.40 Mr Cleary traversed the evidence of Mr Williamson in relation to the availability of infrastructure, submitting that development agreements

³²³ *Opening submissions of applicant/paragraph 6.18*

³²⁴ *Opening submissions of applicant/paragraphs 7.1 and 7.2*

³²⁵ *Opening submissions of applicant/paragraphs 7.3 to 7.4*

which had been criticised by Mr Williamson, had been used by SDC on large scale greenfield developments in the past. He was critical of Mr Williamson's response as to whether or not he considered it necessary to have absolute certainty as to the availability of every single piece of infrastructure required to support the development and said that Mr Williamson sought to add a level of complexity to the issue of infrastructure which did not exist, given the level of funding already committed to SDC's long term plan for roading and wastewater upgrades. In conclusion he submitted that the plan change development was "infrastructure ready" as that term is defined in the NPS-UD ³²⁶.

Submissions on behalf of CCC and CRC

Introduction

7.41 Mr Wakefield presented extensive and detailed submissions in relation to the issue of the relationship between the NPS-UD and the CRPS for which I am most grateful. His starting point was that this was not a situation where the NPS-UD should be interpreted as having primacy/taking precedence over the CRPS and that the two documents 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 ³²⁷. He stated that if the applicant's interpretation was preferred and "high demand in the Selwyn District" demanded the approval of plan changes in reliance on Policy 8, that would be failure 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 1 ³²⁸.

7.42 Importantly, Mr Wakefield submitted that allowing departures of this nature from existing strategic infrastructure and spatial planning decision making with was why CCC and CRC were taking this request (and others) seriously. Spatial planning was 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 intended to achieve ³²⁹.

³²⁶ *Submissions in reply of applicant / paragraphs 4.1 to 4.8 incl*

³²⁷ *Wakefield submissions / paragraph 1.5*

³²⁸ *Wakefield submissions / paragraph 1.6*

³²⁹ *Wakefield submissions / paragraph 1.7*

7.43 After submitting that there was no sound legal interpretation that required the “responsive planning framework” to be given weight or precedence over a CRPS framework, he concluded that the outcome that CCC and CRC were supporting was not at odds with the intensification themes present in the NPS-UD, CRPS and now the Enabling Act. He said that if anything the legislation in higher order planning documents collectively supported limiting opportunity for speculative greenfield expansion, in order to make better use of available capacity within brownfield areas and to achieve meaningful intensification and the benefits that derived from that ³³⁰.

Relevance of Change 1

7.44 Mr Wakefield then went on to refer to the historical background to Change 1 which I refer to in some detail later in this recommendation. He submitted that the suggestion that Map A was now out-of-date could not be supported and noted that Change 1 amended Map A to identify FDAs in only July 2021 which he said could hardly be said to be outdated ³³¹.

Layering and effect of planning documents

7.45 Mr Wakefield then referred to *King Salmon* ³³² and admitted that while NPS-UD provided high level direction, the CRPS provided more particularised regional (and, in particular, sub-regional) direction in relation to similar matters, as well as a number of other important policy matters. He said that these other matters were needed to give effect to other national policy statements and the other statutory requirements of Part 2 of the RMA. In consequence CRPS were said to be by nature a more wide-ranging policy document and must be read as a whole when assessing plan change requests of this nature ³³³. Lastly Mr Wakefield said that there were a number of relevant policy directions in both the NPS-UD and the CRPS which varied in terms of their expression and that this was relevant when seeking to reconcile the documents ³³⁴.

³³⁰ Wakefield submissions / paragraph 1.8

³³¹ Wakefield submissions / paragraphs 2.3 to 2.8 incl

³³² *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38

³³³ Wakefield submissions / paragraphs 3.4 and 3.5

³³⁴ Wakefield submissions / paragraph 3.8

Doctrine of implied repeal

7.46 Mr Wakefield then dealt with the doctrine of implied repeal, submitting that the doctrine should not be invoked in this case as the two provisions at issue, which are alleged to be in contention with each other, serve a different statutory function. This as an important issue so I note the statutory functions which are referred to by Mr Wakefield as follows: -

- (i) Policy 8 of the NPS-UD serves as an administrative pathway, by “opening the gate” for plan changes, and then allowing them to be considered on their merits and against the relevant statutory framework;
- (ii) Objective 6.2.1 of the CRPS provides substantive policy direction in relation to the matter of urban growth in a sub-regional context.

7.47 Mr Wakefield said that the doctrine could not be invoked because the two instruments could work in tandem ³³⁵.

Responsive planning framework / significant development capacity

7.48 Mr Wakefield’s fundamental submission was that NPS-UD contains a number of objectives or policies all of which are intended to operate together and that the NPS-UD (when read as a whole) provides direction on a number of different components relating to urban development. In answer to a question from me, Mr Wakefield confirmed that the NPS-UD was concerned with urban development but that the CRPS had a wider application and dealt with other matters such as the coastal environment ³³⁶.

7.49 Mr Wakefield then went on to refer to the “responsive planning framework” being one component of the NPS-UD and said that the framework provided an administrative pathway for the consideration of out-of-sequence plan changes subject to the criteria which he specified. He noted that CRC had not yet included the criteria in question in the CRPS and that as a consequence PC68 needed to be

³³⁵ Wakefield submissions / paragraphs 3.9 to 3.11 incl

³³⁶ Wakefield submissions / paragraph 4.1

considered against other potentially relevant factors including those discussed in the non-binding Guidance published by the Ministry for the Environment and the relevant objectives and policies concerning urban growth in both the NPS-UD and CRPS ³³⁷ .

7.50 Again Mr Wakefield emphasised that the “significant development capacity” criterion was unique to the responsive planning framework and referred to the other criteria set out in clause 3.8(2) which engage with the requirement that urban environments are well functioning and well serviced. He said that these criteria overlapped with other NPS-UD objectives and policies (including Objective 6) and remain part of the wider coherent scheme of the NPS-UD ³³⁸ .

7.51 In supporting this interpretation Mr Wakefield referred to the following factors ³³⁹: -

- (i) there was nothing expressly stated in the NPS-UD that gave Policy 8 any elevated significance over any other objective or policy. He said, put another way, there was nothing in the NPS-UD or Policy 8 that demanded exceptions or legitimate departures from any other restrictive policy provisions;
- (ii) the parent objective for Policy 8 – Objective 6 – put three different matters on an equal footing all of which had to be satisfied. He said that the implication of this was that the responsive planning framework could not be treated as a pathway isolated from the remainder of the NPS-UD;
- (iii) thirdly he said there was nothing stated expressly or implicitly in the NPS-UD to suggest that the responsive planning framework provided, or is enabling of or directed innate flexibility for urban development;
- (iv) he said that whilst the appropriateness of such a framework would depend upon the facts and circumstances of each case he submitted that for

³³⁷ Wakefield submissions / paragraphs 4.2 and 4.3

³³⁸ Wakefield submissions / paragraph 4.4

³³⁹ Wakefield submissions / paragraph 4.5

Greater Christchurch it could be found to be an entirely valid approach to give effect to the NPS-UD;

- (v) finally he said that if precedence were to be given to being “responsive” without engaging the other criteria, the end result would be a proliferation of ad hoc (and potentially significant and speculative developments) being granted.

7.52 In response to the case for the applicant that “rigidly” applying the avoidance direction and the CRPS would be out of step with the NPS-UD, Mr Wakefield submitted that there was no provisional purpose statement in the NPS-UD that directed the *enablement* of development through plan changes or any other processes. Instead, the NPS-UD (and Policy 8) relied on the standard Schedule 1 process to evaluate and decide any plan changes which engaged all RMA matters and the relevant statutory framework ³⁴⁰.

7.53 Finally under this head, Mr Wakefield said that it was not his submission that any plan change request that conflicted with the CRPS avoidance framework should not be considered. However he said that neither Policy 8 nor the balance of the NPS-UD gave rise to any presumption of approval or support. Instead he said that decisionmakers had to look at all aspects of the relevant statutory framework, the language used in relevant provisions and to make a reasoned statutory decision ³⁴¹.

The term “responsive”

7.54 Mr Wakefield then went on to consider the term “responsive” ³⁴². He said that it was of significant concern to CCC and CRC that the responsive planning framework was being pitched as a positive or enabling mechanism for urgent urban growth when it was essentially devoid of any detailed substantive policy direction. In answer to the submission by the applicant that Policy 8 would be totally meaningless for Greater Christchurch if the CRPS avoidance framework was respected, Mr Wakefield noted that there needed to be a recognition and proper management of certain resource management matters and that the applicant’s submission would only hold water if the term “responsive” was considered a proxy for a substantive direction to

³⁴⁰ Wakefield submissions / paragraph 4.7

³⁴¹ Wakefield submissions / paragraphs 4.8 to 4.10 incl

³⁴² Wakefield submissions / paragraphs 4.11 et seq

approve plan changes but he said that that is not what it says. It was possible to be responsive in other ways including by collaborating with other local authorities and seeking to change the CRPS ³⁴³.

7.55 The essence of the applicant's approach is that the proper application of the NPS-UD would preclude waiting for CCC and CRC to collaborate and request a change to the CRPS. Mr Wakefield's submission was that change should only occur through collaboration and a companion request to change the CRPS stating that this is what the statutory framework required until such time as the CRPS was amended (if that was the case) ³⁴⁴. Mr Wakefield said that the responsive planning framework criteria (when introduced into the CRPS) would play a critical role in evaluating plan change requests against Policy 8. When the criteria are included, Mr Wakefield said that they would act to distinguish ad hoc/speculative plan changes from those that would actually deliver significant development capacity ³⁴⁵.

7.56 Importantly, Mr Wakefield submitted that the decision maker was being tasked with pre-empting what the criteria would say which was unfortunate timing. He went on to submit that there was 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 deserved close and careful attention ³⁴⁶.

7.57 Mr Wakefield concluded by stating that in response to the suggestion that the CCC and CRC interpretation rendered Policy 8 "meaningless" he noted that the FDAs brought in by Change 1 provided for flexibility and responsiveness in areas that are not live zoned for urban development. He acknowledged that outside of those areas, there was a restriction on urban development but within the FDAs there was an ability to be responsive to plan change requests ³⁴⁷

The submissions in reply of the applicant

7.58 The submissions in reply of Mr Cleary identified the key issue as the relationship between the NPS-UD and the CRPS. In the first part of those submissions Mr Cleary noted the detailed legal advice which had

³⁴³ *Wakefield submissions / paragraph 4.11 to 4.14 incl*

³⁴⁴ *Wakefield submissions / paragraph 4.15*

³⁴⁵ *Wakefield submissions / paragraph 4.16*

³⁴⁶ *Wakefield submissions / paragraph 4.17*

³⁴⁷ *Wakefield submissions / paragraph 4.18*

been prepared for SDC by Adderley Head, highlighting relevant passages. In essence his submission was that the responsive provisions in the NPS-UD were created to expeditiously address the housing crisis identified by the Government in background documents and that NPS-UD specifically recognised and provided for an exceptional legitimate departure from restrictive objectives such as CRPS Objective 6.2.1.

7.59 The submission went on to state that according primacy to the avoidance of Objective 6.2.1 of the CRPS would represent a reading down of Policy 8 of the NPS-UD which was not legally permitted. Mr Cleary said that the administrative pathway identified by Mr Wakefield for private plan changes downplayed the importance of Policy 8 in its role in implementing the NPS-UD. He said that the responsiveness provisions were to be applied in two stages, the first being a decision under Clause 25 of the First Schedule to the RMA to accept, adopt or reject the plan change for public notification (that decision has already been made) and the second to consider the substantive consideration of PC68 on its merits ³⁴⁸.

7.60 Mr Cleary then went on to consider whether the CRPS (incorporating Change 1) gave effect to the NPS-UD. He said that the acceptance by Mr Wakefield that Change 1 ...

..... only partially gave effect to the NPS-UD requirements, but it did not seek to give effect to all such requirements

was a realistic acceptance. He said that a more fulsome analysis of the issue of whether or not Change 1 gave full effect to the NPS-UD had been included in the supplementary report of Mr Cleese, which he supported ³⁴⁹.

7.61 Mr Cleary then went on to submit that Change 1 relied on inaccurate and outdated information ³⁵⁰. As to this: -

- (i) he said that Change 1 relied on data incorporated in the Our Space document;

³⁴⁸ Submissions in reply of applicant / paragraphs 2.1 to 2.12 incl

³⁴⁹ Submissions in reply of applicant / paragraphs 3.1 to 3.5 incl

³⁵⁰ Submissions in reply of applicant / paragraphs 3.6 to 3.12 incl

- (ii) that Change 1 was approved by the Minister in May 2021, in the apparent absence of any contemporaneous evidence on the issue of demand and supply within the Selwyn District;
- (iii) there was no suggestion in the documents relating to Change 1 that any effort had been expended in updating the 2017/18 analysis or considering any publicly available evidence on this issue;
- (iv) there was a further very real difficulty in reliance on the FDA's included in Change 1 in that they did not equate to either short or medium term "plan enabled capacity" as defined in Clause 3.1 of the NPS-UD. He said that this meant the responsibility for providing short and medium term capacity, i.e. out to eight to ten years, fell squarely on the shoulders of territorial authorities such as SDC.

7.62 Mr Cleary went on to submit that there were a number of reasons why simply identifying land within a regional policy statement as either a Greenfield Priority Area or FDA failed to provide certainty that the same land would crystallise into zoning ³⁵¹. As to this Mr Cleary submitted: -

- (i) some landowners, visited with a rezoning opportunity, will decide that they do not harbour any ambition to rezone or develop;
- (ii) that zoning should never be confused with the volume of sections available at any one time to meet demand, referring to *Appealing Wanaka Inc v Queenstown Lakes District Council* ³⁵² and noted that land may be zoned residential but that did not mean that it was actually assisting to meet the quantity of sections demanded and only sections for sale could do that.

7.63 Mr Cleary then went on to consider the question of whether the operative plan gave effect to the NPS-UD ³⁵³. He concentrated upon the timing issue noting that the NPS-UD imposed an obligation on

³⁵¹ *Submissions in reply of applicant / paragraphs 3.13 to 3.15 incl*

³⁵² *Appealing Wanaka Inc v Queenstown Lakes District Council [2015] NZEnvC 196 at [113]*

³⁵³ *Submissions in reply of applicant / paragraphs 3.16 to 3.18 incl*

behalf of SDC to *at all times* provide at least sufficient development capacity to meet expected demand for housing. He noted that operative SDP pre-dated the NPS-UD by some considerable time and said that there were several areas in which the operative plan did not give effect to the higher order NPS-UD. Mr Cleary ³⁵⁴: -

- (i) referred to the evidence of lack of land availability;
- (ii) submitted that the SDP did not enable more people to live in areas of the District where there was a high demand for housing;
- (iii) related to this said that there was a failure to give effect to the enabling aspects of the objectives of the NPS-UD.

Relationship between the NPS-UD and CRPS/my consideration and findings

Preliminary comments / the matters of choice and timing

Introduction

7.64 I accept the fundamental principle of statutory interpretation that every effort should be made to reconcile the provisions of NPS-UD and the CRPS. I have given this matter careful consideration. I have concluded that whilst, as Mr Wakefield has submitted, NPS-UD provides high level direction and CRPS provides more particularised regional (and in particular a sub-regional) direction in relation to development, the two documents cannot be treated as being on an equal footing, applying the principles in *King Salmon* ³⁵⁵. Whilst an attempt must be made to read the two documents together, in an attempt to reconcile their contents, this does not involve ignoring the effects which flow from the fact that the two documents are on different hierarchical levels. It is this feature which leads to my conclusion that the hierarchical structure determines the manner which each of the documents should be interpreted, as is noted later in this recommendation.

³⁵⁴ Cleary submissions in reply / paragraph 3.18

³⁵⁵ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38

The markets

7.65 A matter of particular significance is to consider whether, in the Greater Christchurch area there is what could be called an interchangeable housing market or whether, on the other hand, there are different markets which require differing treatment. In this context I note that Policy 1 of the NPS-UD (set out in paragraph 7.16 above) is to make planning decisions which contribute to well-functioning urban environments that, as a minimum

(a) *have or enable a variety of homes that: -*

meet the needs, in terms of type, price and location, of different households

7.66 Policy 8 reinforces the view that the NPS-UD is concerned to provide a variety of outside development opportunities by referring to decisions that

..... contribute to well-functioning urban environments

7.67 A “well-functioning urban environment” has the meaning in Policy 1 which reinforces the view that any decisions made under the NPS-UD must have a consciousness of the requirement to meet needs, in terms of type, price, and location of different households.

7.68 It is in relation to the discussion of this issue that the submissions of Mr Wakefield and Mr Cleary part company. Mr Wakefield’s submission was that the recent change to the CRPS (post the NPS-UD) was specifically developed to provide requisite levels of development capacity across certain temporal periods. He noted that several FDAs had been identified to enable land within these areas to be rezoned by SDC or others if required to meet medium housing needs. Mr Cleary concentrated upon the failure of the provisions of the CRPS to provide for the element of choice which I have discussed in some detail above.

7.69 After careful consideration, I have concluded that the NPS-UD does not treat all housing markets on the same plane, and that the housing opportunities associated with the developments legitimated by the provisions of Change 1 do not satisfy the different housing market which is legitimised by the NPS-UD, consisting of those persons who wish to live in or adjacent to Prebbleton on small residential sections. I agree with Mr Cleary that the documents relating to Change 1 (which are examined hereafter) suggest that data available from the

2017/2018 analysis was not thoroughly reviewed. If that had been the case, then the extraordinary demand for sections in and around Prebbleton could have been expected to have been clearly identified. I summarise by concluding that in effect the provisions of the NPS-UD in relation to choice represent a paradigm shift from the more restrictive provisions of the CRPS.

The timing issue

7.70 A second, and associated matter is to consider the timing of the provision of development opportunities. If the approach which is contended for by Mr Wakefield is adopted, there will, of necessity, be a delay in providing development opportunities which have associated with them an element of choice (discussed above) because the provision of such opportunities will have to await the processes which are being undertaken to review the overall housing availability position. I note that the process of considering and completing work to develop and include the criteria in the CRPS that will respond to the requirements of the NPS-UD is likely, understandably, to take some time. Measured against this, it has been pointed out that the housing opportunities which would be facilitated by the approval of PC68 would not be available for some time, given the procedure which SDC has adopted, involving the promulgation of a variation and the delays which are likely to be inherent in the process which has been adopted. However I have formed the view that the promulgation of PC68 represents a more immediate and timely response to meeting the housing needs than the adoption of the process suggested on behalf of CCC and CRC, involving further consultation and reporting. I make it clear that I make no judgment about the question of whether there has been a failure on behalf of CRC to introduce the responsive planning framework criteria which are intended to be introduced into the CRPS to assist in evaluating plan change requests against Policy 8. I agree that this process is unlikely to be straightforward and will take some time. However the provisions of NPS-UD make provision for the timing issue. I observe that Policy 2 of the NPS-UD provides that the SDC must

..... at all times

provide at least sufficient development capacity to meet expected demand for housing over the short term, medium term and long term.

7.71 If my findings in relation to the element of choice are accepted, then it follows that should it be established that there is an inadequate supply of housing opportunities which have associated with them an appropriate element of choice to comply with the provisions of the NPS-UD, the suggestion that potential household owners should be required to wait for the further consideration of matters is antithetical to the specific timing provisions of the NPS-UD.

The relationship issue / my consideration

7.72 Of fundamental importance to my consideration of the relationship between the two statutory documents is the requirement to adopt an holistic approach to interpretation that incorporates the factors identified in *Powell v Dunedin City Council* ³⁵⁶. Further, the policy considerations in *Nanden v Wellington City Council* ³⁵⁷ serve as a useful test for assessing the appropriateness of the conclusions reached. Most importantly, there appears to be agreement amongst all interested parties that in the case of conflict between the provisions of planning documents there is an obligation to make a "thorough going attempt to find a way to reconcile" that conflict ³⁵⁸. See *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* ³⁵⁹, citing *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* ³⁶⁰.

7.73 There are significant difficulties in attempting to reconcile the provisions of the two statutory documents. This is in part because of the implications of the specification of the elements of choice and timing associated with the NPS-UD to which I have already made reference. It is clear that the CRPS is not yet in a state which reflects these critical elements as is required under s55 of the RMA. I note that Mr Wakefield submitted that the CRPS provides more particularised regional direction in relation to relevant matters and that the CRPS is by nature a more wide-ranging policy document which must be read

³⁵⁶ *Powell v Dunedin City Council* [2004] 3 NZLR 721; (2005) 11 ELRNZ 144 (CA)

³⁵⁷ *Nanden v Wellington City Council* [2000] NZRMA 647

³⁵⁸ *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* [2017] NZHC 3080 at [98]

³⁵⁹ *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* (2017) 20 ELR NZ 564 at paragraph [98]

³⁶⁰ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] 1 NZLR 593

as a whole when assessing plan change requests, notwithstanding the hierarchical analysis of the two documents ³⁶¹.

7.74 Mr Wakefield's submission, as I understood it, was that because both documents have a different emphasis, it is possible to read the documents together. As Mr Wakefield submitted, it is not able to be said that it is necessary for one to fall away, in favour of the other,

.... as the two can work in tandem.....

so that the responsive planning framework in the NPS-UD remains part of the wider coherent scheme of that document and there is nothing in the NPS-UD or Policy 8 that demands exceptions or legitimate departures from other restrictive policy provisions, including those contained in the CRPS which are of particular moment in this case ³⁶².

7.75 I find myself in agreement with the submission that the processing of this plan change is on face value consistent with the intention of the responsive planning framework (in the sense that the plan change is capable of being processed). However I agree with the submission that neither Policy 8 nor the balance of the NPS-UD gives rise to any presumption of approval, or support for any trumping of other statutory planning instruments. Whilst I agree with the submission that there is a requirement to consider requests against all aspects of the relevant statutory framework, in the end result a decision maker must be cognisant of the hierarchical structure of the statutory documents. It follows from my further analysis of this issue that Policy 8 and the balance of the NPS-UD does support the effective "trumping" of the CRPS in the critical area of the placement and timing of development ³⁶³.

7.76 A fundamental difficulty in the analysis of the relationship between the two statutory documents is to recognise that CRC has not yet included the criteria for the "responsive planning framework" established by Objective 6 and Policy 8 in the NPS-UD (which I have already commented upon). Mr Langman noted that when developed, the criteria will guide the determination of what constitutes "significant development capacity" in a Greater Christchurch and Canterbury context. Mr Langman said that given that CRC had initiated but not yet completed work to develop and include criteria in the CRPS that will respond to clause 3.8(3) of NPS-UD, the plan change could not

³⁶¹ Wakefield submissions / paragraphs 3.4 and 3.5

³⁶² Wakefield submissions / paragraphs 4.5

³⁶³ Wakefield submissions / paragraphs 4.9 and 4.10

technically achieve the relevant criteria that will respond to clause 3.8(3) in Policy 8, and nor did the plan change achieve the requirement to contribute to a well-functioning urban environment or to be well connected along transport corridors.

7.77 Whilst Mr Langman is correct to highlight the requirement to include criteria in the CRPS for the purpose of implementing Policy 8, the timing provisions of the NPS-UD dictate that notwithstanding the lack of established criteria in the CRPS, I must proceed to form an evidence based view of matters at this time and not wait until some indeterminate time for the CRC process to be completed. That approach would be antithetical to the timing requirements of the NPS-UD.

7.78 As noted earlier in this recommendation, SDC, being a Tier 1 local authority, has an obligation to *at all times* provide at least sufficient development capacity to meet expected demand for housing and business land over the short, medium and long terms as required by Policy 2 of the NPS-UD.

7.79 I have concluded that it would be inappropriate to await the further review of Change 1 in the face of the clear and direct provisions of Policy 2 and the wording “at all times” and must be read as meaning the position now and at all times in the future. There can be no gloss put on those words to satisfy the suggestion that there is a need to await the steps taken to review Change 1. I note that there are no provisions of the NPS-UD which require local authorities to amend statutory documents under their control in order to make the document consistent with the provisions of the NPS-UD ³⁶⁴. However local authorities are required to make amendments to documents that are required to give effect to any provision of a national policy statement that affects the document by using the process in Schedule 1 ³⁶⁵. I conclude that the requirement to have adequate development capacity available “at all times” dictates that effect must be given to the provisions of the NPS-UD, ahead of any amendments to (in this case) the CRPS.

³⁶⁴ S55(2) of the RMA

³⁶⁵ S55(2)(B) and (2)(C) of the RMA

Unanticipated development capacity

7.80 Pivotal to an understanding of the relationship between the two statutory documents is to recognise the circumstances that Policy 8 of the NPS-UD addresses. Policy 8 provides that local authority decisions must be responsive to plan changes

*.... that would add significantly to development capacity and contribute to well-functioning urban environments, **even if the development is:-***

- (a) **unanticipated by RMA planning documents;** or*
- (b) out of sequence with planning land release.*

(emphasis added)

7.81 Having considered the analysis of this matter by Commissioner Caldwell, I find myself in agreement with his finding that the above provision "must be given some meaning". The provision specifically addresses not only out-of-sequence developments but those that are "unanticipated" by the RMA planning documents. The development which is contemplated in this case is clearly not anticipated by the CRPS, in that it is to be established in an area which is not provided for in that document.

7.82 Importantly, the fact that the contemplated development is unanticipated by the CRPS does not carry with it any presumption that the development is appropriate. As Mr Wakefield has submitted, the net is cast wide and there are a number of factors which must be considered before there can be approval of (in this case) PC68. The issues which need to be considered (inter alia) include: -

- (i) whether the change would add significantly to development capacity;
- (i) whether the decision on the relevant development is integrated with infrastructure planning and funding decisions;
- (ii) whether the decision is strategic over the medium and long term; and
- (iii) whether the decision is responsive, particularly in relation to proposals that would supply significant development capacity;
- (iv) whether the decision contributes to a well-functioning urban environment as contemplated by Policy 1.

- 7.83 All of these matters require consideration, there being no presumption that the proposed development will satisfy any of the criteria in question.

My concluding comments and findings

- 7.84 The analysis of this matter is not without difficulty as is evidenced by the well considered competing submissions on the point which have been made in this case and elsewhere. The application of the provisions of the NPS-UD present a major departure from what has become a settled process for determining the timing and location of the development opportunities contained in the CRPS. I interpolate that this document contemplates an orderly process involving collaboration between interested parties including local authorities associated with the CRPS to determine appropriate land use opportunities and the ultimate reflection of the results of such collaboration in the provisions of the CRPS and relevant district plans.
- 7.85 The implications of making a finding which effectively usurps this statutory process have to be considered because this undoubtedly leads to the necessary adoption of a relatively unstructured process where the relationship between impacts of separate plan changes is not able to be examined at a particular time to establish whether, when viewed as a whole, the various plan changes represent desirable cohesive planning. But the legislature was clearly aware of the implications of interfering with the previously established regime. The NPS-UD made specific reference to changes which were made out of sequence and, more importantly, not contemplated by existing planning instruments. I have proceeded to make my findings on the basis of a clear awareness of the magnitude of the paradigm shift from the provisions of the statutory regime as it was before the NPS-UD and those which existed thereafter.
- 7.86 I have concluded that the imprimatur to provide appropriate development capacity at this time in circumstances where the element of choice is preserved, is clearly conveyed by the provisions of the NPS-UD.
- 7.87 I note that in his submissions, Mr Wakefield advised that it was not the submission of CRC / CCC that any plan change request that conflicted with the CRPS avoidance framework should not be considered. He said

that both bodies accepted that the processing of these plan changes appears at face value to be consistent with the intention of the responsive planning framework. However he went on to state that 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 instruments ³⁶⁶.

7.88 I find myself in agreement with Mr Wakefield to the extent that this plan change is able to be processed and I am able to consider the request in this case against all aspects of the relevant statutory framework and make a reasoned statutory decision ³⁶⁷.

7.89 In conclusion, I have formed the view that there is no impediment to my consideration of the proposal the subject of PC68 against the relevant statutory provisions and the relevant planning framework, including the provisions of the NPS-UD which I have identified above. I now make that assessment.

8. **STATUTORY DOCUMENTS / ASSESSMENT**

INTRODUCTION

8.1 I refer to my analysis of the statutory framework for my consideration of PC68 in paragraphs [7.1] to [7.89] above. I proceed on the basis of my analysis of and findings in relation to the statutory framework which lead me to make a merit-based assessment of the various elements of that stated framework at this point.

SECTION 31 OF THE RMA

8.2 Section 31 of the RMA provides for the functions of territorial authorities. One function of particular relevance (S31)(1) of the RMA is

(a) *the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district;*

(aa) *the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district;*

³⁶⁶ Wakefield submissions/paragraphs 4.8 and 4.9

³⁶⁷ Wakefield submissions/paragraph 4.10

(b) *the control of any actual or potential effects of the use, development, or protection of land*

- 8.3 I record that my consideration and treatment of the issues in this case reflects an application and recognition of the stated functions of (in this case) SDC.

PART 2 OF THE RMA

Introduction

- 8.4 I note that under s74(1)(b) of the RMA, any changes to a district plan must be in accordance with the provisions of Part 2 of the RMA. This sets out the purpose of the RMA (s5) matters of national importance that must be recognised and provided for (s6) and other matters that particular regard is to be had to (s7).
- 8.5 In his s42A Report, Mr Clease states that notwithstanding the SDC has notified the proposed SDP, he considers that the purpose of the Act is reflected in the objectives and policies of the SDP, which PC68 does not seek to change. He goes on to state that the appropriateness of the plan change in achieving the purpose of the RMA is also a requirement under s32 of the RMA³⁶⁸.
- 8.6 Given the nature of the PC68 area, Mr Clease is of the view that there are no s6 matters in play. In terms of other matters set out in s7 of the RMA, he considers that the efficient use and development of natural and physical resources (s7(b)), the efficiency and end use of energy (s7(b)(a)), the maintenance and enhancement of amenity values (s7(c), the maintenance and enhancement of the quality of the environment (s7(f)); and the effects of climate change (s7(1)) are relevant to the plan change ³⁶⁹.
- 8.7 In his report, Mr Clease notes that various submitters have expressed concerns about the creation of a large residential development without a corresponding increase in local employment and access to services resulting in a further increase in the existing pattern of commuter travel from Prebbleton. Concerns have also been expressed about impacts in terms of climate change and the impacts on the road

³⁶⁸ S42A Report / paragraphs 280 and 281

³⁶⁹ S42A Report / paragraphs 282 and 283

network. Mr Clease said that in considering this issue he has noted that Prebbleton is located closer to Christchurch than any of the other Inner Plains townships and as such development of Prebbleton will result in fewer emissions relevant to the alternative if the same growth was located in Lincoln or Rolleston (absence of any high volume public transport system). Conversely he says that it is likely to result in higher overall emissions than if growth was accommodated by infill in Christchurch ³⁷⁰.

- 8.8 He goes on to state that he is not convinced that the townhouse infill market in inner Christchurch is readily interchangeable or able to be substituted for stand-alone family size houses and townships such as Prebbleton and explains the reasons for this. In summary Mr Clease expresses the view that the plan change represents a “less bad” option in terms of climate change effects when compared with the readily substitutable alternatives. Otherwise he considers the matters set out in s7 and s8 have been addressed in the effects assessment and consideration of submissions and in the various reports from technical experts attached ³⁷¹.

Part 2 / evidence of Patricia Harte

- 8.9 Ms Harte commented that the purpose of the function is listed in s31 of the RMA as to give effect to the RMA, including its purposes set out in Part 2. She referred to the purpose of the Act and concluded that the requested plan change was providing for development at a rate which enables people in the communities of Prebbleton and greater Christchurch to provide for their wellbeing. In particular she said it would assist in providing for one of the basic needs of people, namely the provision of homes for people to live in ³⁷².

Part 2 / my consideration and findings

- 8.10 I do not at this stage propose to repeat my analysis of the environmental effects of PC68. Suffice it to say that I am of the view that PC68 accords with the provisions of Part 2 of the RMA. I agree with Mr Clease that the purpose of the Act is reflected in the objectives and policies of the SDP which PC68 does not seek to change (subject

³⁷⁰ S42A Report / paragraphs 284 and 285

³⁷¹ S42A Report / paragraphs 284 to 286 incl

³⁷² Evidence of Patricia Harte / paragraph 7.2(b)

to one addition). To the extent that PC68 has required an analysis of initial or potential effects of the use and development of the land proposed for PC68, I summarise the position by stating the conclusion previously reached, namely that in balancing both the positive and negative aspects of the proposed change, I have concluded that on balance, PC68 clearly promotes the various matters the subject of s5 of the Act.

- 8.11 I agree with Mr Clease that there are no matters under s6 of the RMA in play. I am of the view that proper regard has been made to the matters of national importance set out in s7 of the RMA as is reflected in my assessment of environmental effects. In summary the efficient use and development of natural and physical resources (s7(b)), the efficiency of the end use of energy (s7(b)(a)), the maintenance and enhancement of amenity values (s7(c)), the maintenance and enhancement of the quality of the environment (s7(f)) and the effects of climate change (s7(i)), being relevant to the plan change have properly been taken into account and are supportive of the plan change.

NPS-UD

Introduction

- 8.12 Were it not for the coming into force of NPS-UD on 20 August 2020, it appears to be common ground that this request would have faced a high hurdle, represented by the restrictive provisions of the CRPS and in particular Map A. There is a fundamental difference in the approach taken to these provisions by the applicant and the submitters in opposition, and in particular CCC and CRC. In summary, CCC and CRC argue that, notwithstanding the hierarchical differences, the NPS-UD and the CRPS can be read together and that a proper approach to an examination of the merits, by reference to the various criteria contained in the two instruments, can only yield to one conclusion, namely that approval should not be given to PC68.

The term “responsive”

Introduction

- 8.13 The term “responsive” is not defined in the NPS-UD. However the interpretation of the term assumes particular importance when one has regard to its introduction in Objective 6 and Policy 8, both of which refer to decisions affecting urban environments needing to be responsive, in relation to proposals that would supply significant development capacity and in relation to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments.
- 8.14 Mr Wakefield submitted that the submission of the applicant that Policy 8 would be meaningless if the CRPS avoidance framework was respected would only hold water if the term “responsive” was considered a proxy for a substantive direction to “approve” plan changes but he said that is not what it says. He noted that it was possible to be responsive in other ways including by collaborating with other local authorities and seeking a change to the CRPS ³⁷³.

The term “responsive” / my consideration and findings

- 8.15 I refer to my discussion of this term commencing at paragraph 7.64. The term “responsive” cannot be defined in a vacuum but must reflect the statutory context. Given the imprimatur in Policy 2 of the NPS-UD for Tier 1 local authorities to provide development capacity “at all times”, it must follow that the question of whether a local authority decision is responsive to plan changes is required to be examined in the context of the duty to make provision “at all times”. In the particular context in which the term “responsive” appears, I have concluded that whilst Mr Wakefield is correct in submitting that it is possible to be responsive in ways other than by approving plan changes, a local authority will not be acting in a responsive manner if the process of processing appropriate enabling instruments unduly delays plan changes to a point where the local authority is in breach of Policy 2 because appropriate provision has not been made “at all times”. As already noted, I do not overlook the fact that even if PC68 is approved by the Council, there are likely to be delays before the development the subject of PC68 can proceed. But lengthier delays

must be anticipated if the collaborative process which has been urged by Mr Wakefield is adopted.

- 8.16 In summary I have concluded that the processing of PC68, including the making of a decision in relation to it, represents a response which is in compliance with Policy 8, this on the assumption that the plan change is approved, (a matter which falls to be considered later in this recommendation).

Significant development capacity

Introduction

- 8.17 I have canvassed and discussed the submissions made on behalf of the parties in relation to the appropriate treatment of the concept of significant development capacity. I will not repeat my analysis of the relevant submissions. I now proceed to discuss the evidence and submissions led on behalf of the competing parties in relation to this much contested issue.

Evidence of Gary Russell Sellars

- 8.18 Mr Sellars is an experienced registered valuer who has specialised in (inter alia) land development valuation. He has been involved in a number of plan change applications in the Selwyn District and is accordingly familiar with the West Melton, Prebbleton, Rolleston and Lincoln vacant land market ³⁷⁴.
- 8.19 Mr Sellars referred to an historical analysis of residential development in Prebbleton. He stated that since 2014 there had only ever been a limited supply of sections available to the market in Prebbleton which had always been sold down quickly ³⁷⁵. Mr Sellars went on to comment that there was market evidence of the shortage of available residential sections in Prebbleton and other districts which, combined with the increased prices, had resulted in buyers looking further afield in the likes of Darfield, Kirwee and Leeston where there were cheaper section prices and greater availability ³⁷⁶.

³⁷⁴ *Summary of evidence of Gary Russell Sellars/paragraphs 1.1 to 1.5 incl*

³⁷⁵ *Summary of evidence of Gary Russell Sellars/paragraph 7*

³⁷⁶ *Summary of evidence of Gary Russell Sellars/paragraph 13*

- 8.20 Mr Sellars then went on to note that there had been a significant price escalation in Prebbleton during the past 12 months at or around 100%. He said that the levels of price escalation were extreme even in a buoyant market and provided a clear indication of the constrained supply. He said that a similar trend had occurred in the improved residential sale prices in Prebbleton ³⁷⁷.
- 8.21 Mr Sellars stated that the supply of vacant residential land had failed to keep pace with the ongoing level of demand in Prebbleton. There were currently only two sections available for sale in Prebbleton and there was currently an insatiable demand for residential sections throughout Greater Christchurch. He said that the situation was desperate in Prebbleton where there were only two sections available and no further sections were planned in the short term until plan changes occurred ³⁷⁸.
- 8.22 In conclusion Mr Sellars said that as with other locations in the Selwyn District, the current land market in Prebbleton exhibited a dysfunctional market where there was virtually no current supply or choice with uncompetitive market practices being adopted by vendors and extreme price escalation ³⁷⁹.

Evidence of Fraser Colegrave

- 8.23 Mr Colegrave is an experienced economist who has worked on numerous land use and property development projects across Greater Christchurch including several in Selwyn. Relevantly, he has provided evidence on five other district plan changes over the past six months (PC67, PC69, PC72, PC73 and PC75). Accordingly he is very familiar with the matters the subject of this request ³⁸⁰.
- 8.24 Mr Colegrave noted the rapid growth in the Selwyn District population and expressed the view that SDC was not currently meeting its NPS-UD obligations to provide at least sufficient capacity to meet the demand for new dwellings at either district or sub-district level. This was because SDC's estimates of demand for additional dwellings were

³⁷⁷ *Summary of evidence of Gary Russell Sellars/paragraphs 14 to 16 incl*

³⁷⁸ *Summary of evidence of Gary Russell Sellars/paragraphs 17 to 20*

³⁷⁹ *Summary of evidence of Gary Russell Sellars/paragraph 25*

³⁸⁰ *Evidence of Fraser Colegrave / paragraphs 1.1 et seq*

too low while its estimates of likely capacity to meet that demand were over-stated ³⁸¹.

8.25 Mr Colegrave went on to state ³⁸² that it was his assessment that the PC68 proposal would provide strong economic benefits including: -

- (i) providing a substantial, direct boost in market supply to meet current and future short-falls;
- (ii) bolstering land market competition, which helps deliver new sections on the market quicker and at better average prices;
- (iii) providing a variety of housing options/typologies to meet diverse needs and preferences, which was also required by the NPS-UD;
- (iv) contributing to achieving critical mass to support greater local or retail/service provision;
- (v) the one-off economic stimulus associated with developing the land and constructing the dwellings that will be enabled there.

8.26 Mr Colegrave then went on to discuss areas of disagreement with, in particular, Mr Langman. He agreed that the focus should be broadly on Greater Christchurch and said that the purpose of his evidence was to determine the need for and the merits of providing additional residential land to meet the need for new dwellings in Prebbleton, which was a sub-market of the Selwyn District housing market. He categorically rejected the insinuation that the markets were perfectly interchangeable and that people would realistically trade up a potential new dwelling in Prebbleton with one located in (say) Fendalton, Sumner or Marshlands ³⁸³.

8.27 Mr Colegrave went on to state that the population growth in Selwyn was exceptionally high and that housing demand was far more acute in Selwyn than in the city or the rest of the sub-region and Mr Langman did not appear to acknowledge what he termed "these basic facts" ³⁸⁴.

³⁸¹ *Summary statement of Fraser Colegrave / paragraphs 3 to 5 incl*

³⁸² *Summary statement of Fraser Colegrave / paragraph 7*

³⁸³ *Summary statement of Fraser Colegrave / paragraphs 10 to 12 incl*

³⁸⁴ *Summary statement of Fraser Colegrave / paragraph 14*

- 8.28 Mr Colegrave said he was perplexed by the statement of Mr Langman that demand should not be used as the driver for increased supply and said that this made no sense. He considered that building consent trends to be a better measure of underlying demand rather than house prices ³⁸⁵.
- 8.29 Mr Colegrave went on to state that the demand projections used in the 2021 capacity assessment significantly understated recent trends and that its corresponding estimates of capacity were fundamentally flawed ³⁸⁶.
- 8.30 Mr Colegrave took issue with the 2018 HCA being said to be generally fit for purpose because it included a peer review process and said that this document was fatally flawed because it assumed that all plan enabled capacity was automatically feasible for development which was not the case. In answer to the suggestion by Mr Langman that sufficient development capacity had already been identified to meet the demand, Mr Colegrave said that such conclusions were incorrect and that the District faced significant short-falls in capacity ³⁸⁷.
- 8.31 Mr Colegrave went on to reinforce the view that the various factors identified in his evidence as potentially limiting market supply (relative to feasible capacity) would be significant over the medium term and could not be discounted as suggested by Mr Langman. He went on to refer to examples and said that he failed to see how a spatial planning process could, as Mr Langman states, address material reasons why feasible capacity may not be converted in the market supply ³⁸⁸.
- 8.32 Importantly, Mr Colegrave said that a critical issue was timing. He noted the three-year gap between each HCA, and said that given the very long lead times associated with both land development and house construction, relying just on HCAs to address capacity shortfalls was flawed. A more responsive approach was desirable both from a market and regulatory perspective ³⁸⁹.
- 8.33 Finally Mr Colegrave referred to the impacts of the new medium residential standards ushered in by the Enabling Act. He said that he did not consider the recent medium density residential standards to

³⁸⁵ *Summary statement of Fraser Colegrave / paragraphs 15 and 16*

³⁸⁶ *Summary statement of Fraser Colegrave / paragraphs 18 and 19*

³⁸⁷ *Summary statement of Fraser Colegrave / paragraphs 20 and 21*

³⁸⁸ *Summary statement of Fraser Colegrave / paragraphs 22 to 24 incl*

³⁸⁹ *Summary statement of Fraser Colegrave / paragraph 27*

have any material bearing on the District's likely supply demand balance. He said that district land prices, the age of the housing stock and local housing preferences did not lend themselves to the sort of density uplifts enabled by those provisions and that caution should be applied when assuming any drastic rise in housing capacity through the new legislation ³⁹⁰.

Evidence on behalf of CCC and CRC

Evidence of Marcus Hayden Langman

8.34 Fundamental to the evidence of Mr Langman was his contention that the scale for considering "significant development capacity" should be at Greater Christchurch level not at Selwyn District level, reflecting the CCC submissions.

8.35 Mr Langman noted that the only matter missing within the CRPS at this point was the clause 3.8 criteria which will guide the assessment of what constitutes "significant development capacity" ³⁹¹. Mr Langman went on to make observations regarding this matter ³⁹². As to this: -

- (i) he emphasised that the requirement for local authorities to be responsive to plan changes in the NPS-UD was only relevant if certain criteria were satisfied and that there was nothing express or inherent in that document that demanded flexibility more generally;
- (ii) Mr Langman submitted that Chapter 6 of the CRPS provided clear strategic direction for urban development and with the inclusion of Change 1 gave effect to Policy 2 of the NPS-UD;
- (iii) he said that the important time-frames in the NPS-UD had been so far achieved;
- (iv) he submitted that CRC had, in his view correctly, prioritised completion of the 2021 HCA, adoption of Change 1 and development of an FDS through Greater

³⁹⁰ *Summary statement of Fraser Colegrave / paragraphs 27 to 29 incl*

³⁹¹ *Evidence of Marcus Hayden Langman / paragraph 90*

³⁹² *Evidence of Marcus Hayden Langman / paragraph 90*

Christchurch Spatial Plan over finalising the criteria under clause 3.8(3);

- (v) ahead of the inclusion of the criteria under 3.8(3) in the CRPS, the MfE guidance on the responsive planning policies provided quantitative and qualitative factors to determine what constituted significant development capacity;
- (vi) ahead of the clarification in relation to the criteria referred to above under clause 3.8(3), it was submitted that it was open for applicants to seek plan changes that would give effect to both the CRPS and NPS-UD. He suggested that a proposal to CRC to effect a companion change to the CRPS to enable development in a manner that did not conflict with Chapter 6 was appropriate;
- (vii) he submitted that having identified FDAs through Change 1, the CRPS had already enabled a level of responsive planning to occur;
- (viii) he noted that Objective 6 of the NPS-UD required the decision were both integrated with infrastructure and strategic over the medium and long-term.

8.36 In essence the evidence of Mr Langman was to the effect that sufficient development capacity to meet expected housing demand over the medium term had already been identified in the CRPS and that the failure to include criteria under clause 3.8(3) in the CRPS to give guidance to land users was able to be explained (as noted above).

8.37 Mr Langman then went on to deal with housing demand, available capacity and meeting needs by location. He acknowledged that the NPS-UD identified that the enabling of a variety of homes was integral to a well-functioning urban environment. He said that whilst he accepted the demand for housing was high in Prebbleton, he understood that was the nature of the whole of the Christchurch housing market at present and considered the perception of high demand in Selwyn District had been partly because of the release of GPAs and FDAs in Rolleston and Lincoln for development. He said this did not mean that Prebbleton was the

optimal location for further greenfield expansion ³⁹³. He noted that no FDAs were identified for Prebbleton and that it was not a key activity centre ³⁹⁴.

8.38 Mr Langman went on to refer to the Our Space document which provided medium to long-term direction. He said that a balanced and transitional approach was required to deliver against UDS outcomes and adapt to identified demographic and housing trends. He said that the conclusion he drew from Table 6.1A of Chapter 6 was that the GCP and CRC considered the location of housing demand to be important but not determinative of the most appropriate location for development capacity ³⁹⁵.

8.39 Mr Langman then went on to consider whether development capacity provided through Chapter 6 and the SDP was sufficient and not overestimated in the 2021 HCA. He said that the MDRS could only be less enabling of development to the extent necessary to accommodate one or more of the qualifying factors set out in s77 I to L of the RMA ³⁹⁶.

8.40 Mr Langman then went on to consider the 2021 HCA, his overall conclusion being that this document was generally consistent with the requirements for preparing an HCA as outlined in subpart 5 of the NPS-UD, that the 2018 HCA incorporated a peer review process and was considered fit for purpose. Mr Langman noted that the study area for the 2021 HCA appeared to differ from the 2018 HCA as the former seemed to encompass the full extent of the three territorial authorities as opposed to just the Greater Christchurch urban environment (as identified in Map A in the CRPS and Figure 1 in Our Space). Mr Langman went on to note that Change 1 was now operative and that as a result of three private plan changes being in train, which would in total enable nearly 1,200 hhs. In addition the Environmental Protection Authority had granted consents for 970 lots which would extend the Farrington subdivision in Rolleston ³⁹⁷.

8.41 Mr Langman noted that Mr Colegrave had distinguished between capacity and likely market supply. He said that the factors inhibiting the release of land cited by Mr Colegrave would not be significant over

³⁹³ *Evidence of Marcus Hayden Langman / paragraphs 100 to 102*

³⁹⁴ *Evidence of Marcus Hayden Langman / paragraph 104*

³⁹⁵ *Evidence of Marcus Hayden Langman / paragraph 105*

³⁹⁶ *Evidence of Marcus Hayden Langman / paragraph 106*

³⁹⁷ *Evidence of Marcus Hayden Langman / paragraph 107*

the medium term. He said that the 2021 HCA included a section on development capacity that was “reasonably expected to be released”. He said that whilst point in time assessments for development capacity were important bench mark reports, the three-year cycle for competing HCAs (or in the first instance a NPS-UD deadline for a full housing business assessment by December 2021) ensured that any new information could be considered across the entire urban development rather than just at a local level. Mr Langman went on to state that the introduction of the MDRS would mean that estimates for land capacity and supply in existing urban areas had been significantly underestimated by the HCA ³⁹⁸.

8.42 When dealing with sufficient development capacity, Mr Langman said that sufficient development capacity to meet expected housing demand over the medium term had already been identified which had led to Change 1 and the inclusion of FDAs. He said that should recalculations be required these could first be off-set against the medium-term surplus capacity in Selwyn of between 3,667 and 4,961 households as shown in Table 3 of the 2021 HCA. He said that given the intensive up-zoning in Christchurch City and the introduction of the MDRS, there was a potential medium-term surplus of up to 92,453 households within Greater Christchurch. He noted that there was no directive in the NPS-UD to enable anything more than was sufficient. He said that providing abundant development capacity could undermine the efficient and untimely intake of existing zone capacity for residential development ³⁹⁹.

8.43 When dealing with the implications of the Enabling Act, Mr Langman noted that in the Cabinet paper introducing the bill, one of the benefits noted was that the Enabling Act would enable a range of developments which would result in less pressure being placed on urban dispersal/sprawl. Mr Langman traversed the provisions of the Enabling Act and submitted that neither Mr Cleese, nor the other Council experts had taken into account the impact of the NDRS provisions in relation to capacity or planning for the subject site, Prebbleton or Greater Christchurch ⁴⁰⁰.

³⁹⁸ Evidence of Marcus Hayden Langman / paragraph 107

³⁹⁹ Evidence of Marcus Hayden Langman / paragraphs 108 to 110 incl

⁴⁰⁰ Evidence of Marcus Hayden Langman / paragraphs 111 to 116 incl

Significant development capacity / my consideration and findings

- 8.44 In an earlier part of this recommendation, I commented upon the important issue of whether, in assessing development capacity, it was appropriate to give consideration to the element of choice in the housing market. Fundamental to the position adopted by CCC and CRC is that Change 1 already makes provision for land which can be developed for housing and that this provision matches the obligations to make provision for development capacity contained in the NPS-UD. Mr Langman is of the view that there is a need for greater intensification within Christchurch's urban areas and that this would reduce the need for further expansion of peripheral areas. He said that Objective 6.2.2 of the NPS-UD recognised that while the majority of intensification would take place within in Christchurch City rather than Selwyn or Waimakariri, the contribution to these areas to the overall growth pattern was important ⁴⁰¹.
- 8.45 In an earlier part of this recommendation, I made the finding that the NPS-UD was clearly concerned to preserve the element of choice. The implications of this are that the creation of development opportunities in the urban areas of Christchurch cannot be taken as satisfying any established need, based on choice, for housing in or around Prebbleton. The preservation of this element of choice is precisely what Policy 1 is concerned with.
- 8.46 It follows from my findings in relation to the issue of choice, that the evidence of Mr Sellars and Mr Colegrave is of particular importance. That evidence concentrated upon the in-balance of supply and demand for residential sections in Prebbleton which had resulted in significant price escalation and what Mr Sellars termed a "disfunctional market where there is virtually no current supply or choice with uncompetitive market practices being adopted by vendors and extreme price escalation" ⁴⁰². I adopt this evidence.
- 8.47 Mr Colegrave expressed the view that the PC68 proposal would provide the strong economic benefits which are set out in paragraph 8.25. The combined effect of the evidence of Mr Sellars and Mr Colegrave is that the provision for housing development in the plan change area, the yield for the plan change area, being 820 lots based on the Living Z

⁴⁰¹ *Langman evidence / paragraph 49*

⁴⁰² *Sellars evidence summary / paragraph 25*

density rule and the roading and servicing layout specified in the ODP, would add significantly to development capacity.

8.48 On any view of the interpretation of “significant development capacity” the facilitation of land use opportunities associated with PC68 can clearly be regarded as “significant”. I do not overlook that unanticipated developments such as that the subject of PC68 must be able to satisfy the criteria set out in clause 3.8(2) of the NPS-UD. The fact that the development capacity is “significant” is not the end of the matter. It may be significant, and not acceptable, because (inter alia) of a failure to contribute to a well-functioning urban environment, or because it is not well connected along transport corridors.

8.49 A particular difficulty in this regard is that clause 3.8(3) of the NPS-UD provides

Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

I have already dealt with the implications of the acknowledgement by CRC that this matter has not yet been dealt with. In the absence of direction in this statutory document, I am obliged to determine the elements which must exist before any plan change can be considered as adding significantly to development capacity.

8.50 I have concluded that it is difficult to imagine the creation of a land use opportunity which more clearly adds significantly to development capacity than that associated with PC68. I should note that Mr Langman has accepted that PC68 would provide significant development capacity in terms of the “quantum” of dwellings but does not accept that it satisfies the criteria when considered in its wider context ⁴⁰³. In summary I am satisfied that the development which will follow PC68 will satisfy the requirement that it would add significantly to development capacity in terms of the requirements of Objective 6 and Policy 8.

⁴⁰³

See reference Wakefield submissions / paragraph 5.4

Contributing to a well-functioning urban environment

Introduction

8.51 The finding that I am satisfied about the addition of significant development capacity is but one factor which must be considered when implementing Policy 8 of the NPS-UD. This provides that decisions should be responsive to plan changes that would add significantly to development capacity

..... and contribute to well-functioning urban environments

8.52 Then, what are expected of well-functioning urban environments is defined in the following terms

Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- (a) *have or enable a variety of homes that :*
 - (i) *meet the needs, in terms of type, price, and location of different households; and*
 - (ii) *enable Māori to express their cultural traditions and norms; and*
- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport; and*
- (d) *support, and limit as much as possible adverse impact on, the competitive operation of land and development markets; and*
- (e) *support reduction in greenhouse gas emissions; and*
- (f) *are resilient to the likely current and future effects of climate change.*

So Policy 1 defines the circumstances which must exist before there can be a finding that a planning decision contributes to a well-functioning urban environment. I now examine the submissions and evidence relating to this issue.

Well-functioning urban environment / opening submissions on behalf of the applicant

8.53 In the opening submissions on behalf of the applicant, Mr Cleary submitted that the current urban environment in Selwyn did not represent a well-functioning urban environment, relying on the

evidence of Mr Sellars. He said that if approved, the PC68 site would contribute substantially towards a well-functioning urban environment by adding a significant number of residential houses with a variety of medium and low-density allotments at a minimum of 12 households/hectare.

8.54 Mr Cleary went on to state that PC68 was expected to provide a one-off economic stimulus by providing employment for around 262 people over a 10-year construction period. He said that PC68 was directly adjacent to the Prebbleton area which was marked as an identified growth area in the Our Space report and that the area had already been marked as suitable for future development because the Greater Christchurch councils believed that Prebbleton had the facilities and amenities, transport links and ability to undertake further development and growth in population. He noted that the PC68 site was located in a manner that was consistent with future growth direction and the most recent strategic planning document undertaken for Prebbleton ⁴⁰⁴.

8.55 Mr Cleary then went on to deal with the issue of the reduction in greenhouse gas emissions being a requirement of a well-functioning urban environment which is referred to in Policy 1(e). He said that, notably, the language of the policy referred to the word “support” but did not say that greenhouse gas emissions are to be avoided or the reduction of the same must be demonstrated or particularised.

8.56 Mr Cleary went on to note that Objective 3 contemplated the rezoning of areas that were not well serviced by existing or planned public transport and that there were other factors at play including proximity of areas of employment or areas where there was a high demand for housing. He then went on to refer to Policy 1(c) referring to accessibility including by way of public or active transport and said realistically, and plainly, the use of private motor vehicles and attendant emissions must be contemplated. Finally, under this head, Mr Cleary referred to the opinions of Mr Smith and Ms Harte and said that this evidence was supportive of a reduction in greenhouse emissions ⁴⁰⁵.

⁴⁰⁴ *Opening submissions on behalf of applicant / paragraphs 8.2 to 8.7 incl*

⁴⁰⁵ *Opening submissions on behalf of applicant / paragraphs 8.8 to 8.10 incl*

Well-functioning urban environment / evidence of Patricia Harte

8.57 Ms Harte stated that the location of PC68 would enable easy access to jobs, community services and open space and routes for public and active transport. She went on to state there was the potential for reduced greenhouse emissions through a compact urban form with Prebbleton being relatively close to various employment opportunities. She referred to the increasing trend towards working from home as supporting her view. She also referred to Prebbleton being serviced by regular buses through to Christchurch and Lincoln and said that a range of cycling and walking opportunities would be enabled by the development ⁴⁰⁶.

Well-functioning urban environment / evidence of Marcus Langman

8.58 Mr Langman took issue with the suggestion that the site at PC68 was currently or will be well connected to or along transport corridors. He said that there would be heavy reliance on private vehicle use for residents, with the consequential emissions of greenhouse gases. He said that there had been no attempt by Ms Harte to quantify how there was to be a reduction in greenhouse emissions which he said was a significant gap in the case.

8.59 Mr Langman noted that in the s42A report, Mr Cleese agreed that PC68 may not support reductions in greenhouse gases because of the reliance on private vehicles but said the same situation arose currently in relation to existing zoned land or land identified for future development in the Selwyn District. He took issue with the suggestion that PC68 could draw comfort from these factors, stating that PC68 was an addition and not in substitution to other growth areas ⁴⁰⁷.

8.60 Mr Langman then went on to submit that no aspect of the proposal looked to achieve the policy direction that development should contribute to well-functioning environments which *at a minimum* supports reductions in greenhouse gas emissions. He said that this was one of the key objectives of the NPS-UD and a significant issue for all plan changes before SDC ⁴⁰⁸. Mr Langman concluded that the recent mode shift plan for Greater Christchurch, prepared by Waka

⁴⁰⁶ Evidence of Patricia Harte / paragraph 7.15

⁴⁰⁷ Evidence of Marcus Langman / paragraphs 157 to 164 incl

⁴⁰⁸ Evidence of Marcus Langman / paragraph 165

Kotahi with the GCP stated that land transport currently accounted for 41% of greenhouse emissions in Greater Christchurch, thus recognising the significant contribution of private vehicle use to greenhouse emissions and private change ⁴⁰⁹.

Well-functioning urban environment / section 42A report

8.61 Mr Clease considered that the proposal would enable a variety of homes to meet the needs of different households and would support the competitive operation of land and development markets. He noted that the discussion on urban design and urban form matters concluded that the application site was well located in terms of adjacency to Prebbleton and located in an area identified as being a logical preferred growth path avoiding both expansion north towards Christchurch and ribbon development along Springs and Shands Road to the south ⁴¹⁰.

8.62 As to accessibility of employment, Mr Clease noted that PC68 would provide limited accessibility because the site itself did not contain a commercial area and Prebbleton township likewise did not contain a large employment base. However he said that the application site was located within cycling distance of Lincoln, Rolleston and Hornby and the proposed Halswell Key Activity Centres. He noted that public transport services were currently limited in Prebbleton but that there was a potential for such services to be enhanced. Having said that Mr Clease said that active and public transport opportunities were unlikely to be practicable for the majority of residents in the short term which had a flow-on effect in terms of the degree to which the proposal could support reductions in greenhouse gas emissions ⁴¹¹.

8.63 Mr Clease noted that an increase in commuter traffic would result in more people taking trips but noted that this was not an issue just specific to PC68 but also to other growth areas in the Selwyn District. He said that if climate change were to be used as a reason to refuse growth in Prebbleton then no growth anywhere in the Selwyn District would be appropriate for the same reason. He said that markets for quite different locations and housing typologies were not interchangeable referring to the Greater Christchurch Housing Development Capacity Assessment which supported this view.

⁴⁰⁹ Evidence of Marcus Langman / paragraph 167

⁴¹⁰ Section 42A report / paragraph 213

⁴¹¹ Section 42A report / paragraphs 214 to 216 incl

8.64 In summary Mr Clease considered that the proposed development would add significantly to development capacity and that the effects resulting from under supply on the efficient functioning of the housing market outweighed the risks associated with over supply. He concluded that the proposal would contribute to a well-functioning urban environment subject to the amendments to the ODP recommended by Mr Collins ⁴¹².

Well-functioning urban environment / my consideration and findings

8.65 Policy 8 states that local authority decisions affecting urban environments are to contribute to well-functioning urban environments. Policy 1 makes it clear how one is to approach the issue of whether any particular decision contributes to a well-functioning urban environment by specifying the minimum requirements, each of which have been discussed in the foregoing part of this recommendation.

8.66 In considering whether a particular decision contributes to a well-functioning urban environment my consideration must be directed to each of the elements which are prescribed as a minimum and then consideration must be given to whether, when the elements are viewed collectively, the planning decision in question can be said to contribute to a well-functioning urban environment. Any planning decision may be strongly supported by some of the elements and perhaps less so by others but sight must not be lost of the fact that the requirements are minimum requirements. If the minimum requirements are not established, then the decision in question will not be able to be said to contribute to a well-functioning urban environment. In relation to this important matter, it is necessary to examine each of the elements in turn.

8.67 I comment on each of the elements in turn: -

(i) ***Policy 1(a)(i) / meet the needs in terms of type, price and location of different households***

I agree with Mr Clease that the proposal will enable a variety of homes to meet the needs of different households and will

⁴¹² Section 42A report / paragraphs 218 to 220 incl

support the competitive operation of land and development markets. The uncontested evidence of Mr Sellars and Mr Colegrave strongly supports this conclusion. Mr Cleary has made the observation that the current urban environment in Selwyn is not a well-functioning urban environment, particularly with respect to its housing market. I conclude that the change which will be brought about by PC68 will result in people being able to meet their needs in terms of this policy;

(ii) ***Policy 1(a)(ii) / enable Māori to express their cultural traditions and norms***

I have studied the report from Mahaanui Kurataiao Limited dated 10 February 2021 which was attached to the response to a request for further information from Davie Lovell-Smith dated 16 June 2021. In that report it is stated

Ngāi Tahu are tangata whenua of the Canterbury region, and hold ancestral and contemporary relationships with Canterbury. The contemporary structure of Ngāi Tahu is set down through the Te Rūnanga o Ngāi Tahu Act 1996 (TRoNT Act) and, through this structure and this Act, sets the requirements for recognition of tangata whenua in Canterbury.

The natural resources – water (waterways, waipuna (springs), groundwater, wetlands); mahinga kai; indigenous flora and fauna; cultural landscapes and land – are taonga to manawhenua and they have concerns for activities potentially adversely affecting these taonga. These taonga are integral to the cultural identify of ngā rūnanga manawhenua and they have a kaitiaki responsibility to protect them. The policies for protection to taonga that are of high cultural significance to ngā rūnanga manawhenua are articulated in the Mahaanui Iwi Management Plan (IMP).

The report goes on to consider matters which are of concern to Māori and an evaluation based on the Manaaniui Iwi Management Plan ("IMP"). I will not repeat the discussion in the document, but note that there were a number of recommendations at the conclusion of the document as follows: -

Recommendation 1

The applicant should incorporate recommendations from the Ngai Tāhu Subdivision Development Guidelines in the development;

Recommendation 2

All erosion and sediment control measures installed should be constructed, inspected and maintained in accordance with ECan's Erosion and Sediment Control Toolbox for Canterbury;

Recommendation 3

Future subdivisions should incorporate best practice onsite stormwater management controls;

Recommendation 4

An accidental discovery protocol (consistent with Appendix 3 of the IMP) should be established to avoid any adverse effects on cultural values;

Recommendation 5

The remediation of contaminated sites to minimise the prospects of contaminated water entering water bodies;

Recommendation 6

Indigenous planting as a critical mitigation measure.

I am satisfied that the matters which are of concern to Māori have been identified in the above recommendations and that the matters of concern will be dealt with in the context of the implementation of PC68, either in terms of the requirements set out in the change associated with the ODP and narrative, or the additions which can be expected to be imposed upon the subdivision of the land the subject of PC68.

(iii) ***Policy 1(b) / have or enable a variety of sites that are suitable for different business sectors in terms of location and site size***

There are no specific sites specifically identified for business use. However, as Ms Harte has noted, the development will incorporate fibre broadband to ensure that the increasing trend towards and in many cases requirements for working from home opportunities are fully enabled ⁴¹³. To this extent there is provision for a particular business sector, namely the increasing sector of business people who wish to work from their homes. I am satisfied that PC68 will give effect to this policy to a limited extent.

(iv) ***Policy 1(c) / good accessibility for all people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport***

In my assessment of the evidence relating to transportation, I commented upon the issue of accessibility which is the subject of this comment in the policy. Whilst PC68 will provide limited accessibility to employment by way of active transport, because

⁴¹³ Evidence of Patricia Harte / paragraph 7.15

the site itself does not contain a commercial area and Prebbleton township likewise does not contain a large employment base, the application site is located within cycling distance of Lincoln, Rolleston, Hornby and the proposed Halswell key activity centres. Further, there is the potential for public transport services to be enhanced with their proposed internal spine road network capable of accommodating public transport.

To the extent that public transport opportunities are unlikely to be practicable for the majority of residents, there will undoubtedly be a flow on effect. I note that Prebbleton is serviced by regular buses through to Christchurch and Lincoln. I find that whilst public or active transport opportunities are limited at present, there is the likelihood that such services will be established to accommodate the needs of those residing in the newly established housing environment.

(v) ***Policy 1(d) / support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets***

This criterion is undoubtedly satisfied. In this regard I refer to my findings in relation to the evidence of Mr Sellars and Mr Colegrave who strongly support the view that PC68 will support and limit adverse impacts on the competitive operation of the relevant land and development markets.

(vi) ***Policy 1(e) support reductions in greenhouse gas emissions***

Earlier in this recommendation I discussed the issue of reductions in greenhouse gas emissions and made certain findings in relation to that issue.

On the basis of my previous discussion and findings, I am of the view that to the extent that it is possible, in the context of making provision for housing opportunities adjacent to Prebbleton, PC68 to some extent supports the policy in question for the reasons previously discussed.

(vii) ***Policy 1(f) / resilient to the likely current and future effects of climate change***

In considering this issue, I adopt the analysis of Mr Clease where he states that if climate change were to be used for a reason to refuse further growth in Prebbleton then no growth anywhere in the Selwyn District would be appropriate ⁴¹⁴. The alternative would be that growth should be accommodated as infill within Christchurch. I adopt Mr Clease's reference to the Greater Christchurch Housing Development Capacity Assessment which identified that substitution in the markets for quite different locations and housing typologies was by no means certain.

In reliance upon the evidence of Mr Sellars and Mr Colegrave, it is clear that the Christchurch infill market and the market for Prebbleton are quite different markets and accordingly when examining the question of resiliency to the likely current and future effects of climate change, this factor has to be taken into account. It is not an answer to say that PC68 should not proceed because of the infill opportunity in Christchurch offering greater resiliency, this because that is a quite different market. In the result I am of the view that to the extent that is possible, PC68 is resilient to the likely current and future effects of climate change, in the sense I have outline above.

8.68 My overall conclusion under this head is that PC68 will contribute to a well-functioning urban environment having regard to the minimum standards which are prescribed for such an environment and Policy 1 of the NPS-UD.

Strategic over the medium term and long term

Introduction

8.69 Objective 6 states that decisions on urban development are to be

.... strategic over the medium term and long term

The submissions / evidence

8.70 Fundamental to the attack on PC68 by (in particular) CCC and CRC is that PC68 cannot be said to be “strategic” because: -

- (i) the Council has adopted a more strategic “community-led” approach to managing growth through the preparation of structure plans for the larger townships in the Greater Christchurch area such as Prebbleton ⁴¹⁵.
- (ii) PC68 runs contrary to one of the major policies in the NPS-UD reflecting strategic planning being ⁴¹⁶

Councils are required to work together to produce “Future Development Strategies”, which set out in the long-term strategic vision for accommodating urban growth.

- (iii) Mr Williamson stated that the opposite of strategic planning could be described as “opportunistic planning” which presented proposals to spread more of “what people want” because “they want it now” under the guise of adopting a policy of “responsiveness” ⁴¹⁷;
- (iv) that PC68 is inconsistent with the agreed strategic planning framework established through Our Space in that it does not give effect to the CRPS ⁴¹⁸;
- (v) strategic planning exercises such as the UDS, Our Space, and more recently the Greater Christchurch 2050 Strategic Framework, can offer more integrated and accessible mechanisms to galvanise wider community engagement than standard RMA processes. Agreed strategic directions can then be consistently anchored in statutory and non-statutory plans ⁴¹⁹;
- (vi) if SDC were to approve PC68 ahead of the wider strategic planning exercise being completed, this could

⁴¹⁵ Evidence of Nick Williamson / paragraph 27

⁴¹⁶ Evidence of Nick Williamson / paragraph 72

⁴¹⁷ Evidence of Nick Williamson / paragraph 73

⁴¹⁸ Evidence of Marcus Hayden Langman / paragraph 28

⁴¹⁹ Evidence of Marcus Hayden Langman / paragraph 69

result in ad hoc development and set a precedent for subsequent decision making without fully considering the cumulative impacts of other requests or having analysed alternative growth scenarios. Any decision on these private plan changes would drive the spatial planning exercise which is not the most sensible approach to considering the location of urban growth ⁴²⁰.

- 8.71 Mr Langman noted that a spatial plan exercise was expected to be completed within two years to inform the 2024 Long Term Plans as required by the NPS-UD. This work will inform a full review of the CRPS scheduled to be notified in 2024. Further Mr Langman noted that in July 2021 the GCP collaboratively prepared and published a Housing Capacity Assessment in accordance with the requirements of the NPS-UD which was relied upon ⁴²¹.

Strategic over the medium-term and long-term / my consideration and findings

- 8.72 The issue of whether PC68 represents a strategic response over the medium and long-term requires a contextual analysis. Prior to the introduction of NPS-UD, the statutory planning framework favoured what could be termed a “top down” and strictly structured approach to the identification of areas for new developments. Submitters in opposition are right to point out the merits of this approach because in concentrating upon the wider picture, there is a basis for holding that the chosen locations are the most appropriate in a Greater Christchurch context, that suitable infrastructure will indubitably be available for the chosen locations and that the transportation network can be relied upon to provide efficient transportation networks.

- 8.73 The settled framework referred to above changed with the coming into force of the NPS-UD. That document:-

- (i) anticipates that the strategic planning reflected in planning documents such as the CRPS may be displaced by decisions which are not anticipated by those documents (Policy 8);

⁴²⁰ Evidence of Marcus Hayden Langman / paragraph 72

⁴²¹ Evidence of Marcus Hayden Langman / paragraphs 74 and 75

- (ii) requires local bodies such as SDC to at all times provide sufficient development capacity to meet demand for housing over the short-term, medium-term and long-term, thus giving rise to the prospect that the provision of such land use opportunities will displace the strategy embedded in existing planning instruments such as the CRPS (Policy 2).

8.74 Consideration of whether decisions are strategic involves an examination of context. There has been a paradigm shift in the identification of the elements which are to be considered in considering whether decisions are strategic, because of the introduction of the new requirements in the NPS-UD which will inevitably impact upon the reliance upon the strategy embedded in existing planning instruments such as the CRPS.

8.75 Because the provisions of the NPS-UD require consideration of plan changes which give effect to the objectives and policies in that document which contain a temporal element, it will generally not be possible to consider with any degree of certainty the likely impact on other plan changes which have either been initiated or are likely to be initiated. Undoubtedly in a perfect world there would be an overall assessment of the implications of approving all plan changes which are in prospect at one time. Mr Langman was correct to emphasise the benefits of an holistic assessment of Spatial planning. However, by its terms, the NPS-UD effectively displaces this approach and requires a different approach to the consideration of the issue of whether decisions on plan changes could be said to be "strategic".

8.76 I am satisfied that the approval of PC68 represents decision making which is strategic over the medium-term and long-term, thus satisfying Objective 6. The term "strategic" is not defined. I have taken the term to be associated with decision making which is not ad hoc, but rather planned with reference to likely future events and circumstances.

8.77 In this case I have already made reference to the substantial body of evidence dealing with a number of aspects of the proposed change including transportation, infrastructure and associated matters. On the basis of the evidence I have concluded that the decision making associated with PC68 is not "ad hoc" but is planned with regard to present and future circumstances. The evidence which I have heard

provides a setting for PC68 in the context of the environment as it is now and the future environment and, to that extent, must be said to represent a “strategic” analysis and response.

CANTERBURY REGIONAL POLICY STATEMENT

Introduction

8.78 Fundamental to the prospects of success for this request, is the consideration which will need to be given to the provisions of (in particular) Change 1 of the CRPS. Reference has already been made to the provisions of particular application. As already noted, if the provisions of Change 1 were to be applied, utilising what could be termed a black letter approach, this request would face significant difficulties. I have already commented upon the relationship between the NPS-UD and the CRPS. Fundamental to an examination of the provisions of the CRPS, in order to determine the extent to which its contents must be applied in this case, is to recognise the hierarchical structure inherent in the RMA which places the NPS-UD on a higher tier in the hierarchy than the CRPS. At this point it is helpful to gain an understanding of the manner in which the CRPS has developed, and in particular Change 1.

Change 1 to the CRPS / historical analysis

Introduction

8.79 In response to a direction which I made during the course of the hearing, Mr Wakefield helpfully made available to me a memorandum dated 23 March 2022 which had attached to it a number of documents which describe the historical development of Change 1 to the CRPS. The analysis of the history to Change 1 is relevant to my consideration of the issue of responsiveness, highlighted by the relevant provisions of the NPS-UD. CCC and CRC submit that the relevant provisions of the NPS-UD have already been given effect to, in that a number of steps have been taken to implement the relevant objectives and policies with the consequence that the responsiveness criteria in the NPS-UD must be taken as having been complied with. This is an important issue and calls for an examination of a number of background documents which describe the steps taken to comply with the requirements of the NPS-UD.

Report to the Minister for the Environment / March 2021

8.80 This report reviews the obligations under the NPS-UD and concludes that there is clear justification for proposed Change 1 and its alignment with the NPS-UD ⁴²². The report deals with the submissions that more land should be released for development due to uncertainties and demand over time and reported inaccuracies in the capacity assessment undertaken to support Our Space. Environment Canterbury accepted the findings of the capacity assessment that informed Our Space stating that these findings had been independently peer reviewed. The report notes that the next capacity assessment under the NPS-UD was scheduled to be completed later in 2021 which could consider changes in population and employment projections in order to assess demand ⁴²³.

8.81 The report notes the submission of Urban Estates seeking to enable a “merits based” assessment of applications for rezoning outside the areas identified in Map A. Importantly, the report states ⁴²⁴ ...

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.

8.82 The report went on to deal with the issue of the development proposal adding significantly to development capacity. The report states ⁴²⁵ ...

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.

8.83 Importantly, pending the review, the report states

In the meantime, we recognise the NPS-UD as 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.

⁴²² Report to the Minister / paragraph 94

⁴²³ Report to the Minister / paragraphs 123 and 124

⁴²⁴ Report to the Minister / paragraph 131

⁴²⁵ Report to the Minister / paragraph 132

- 8.84 The report states that it was not considered that any amendments were required in response to submissions that consider there to be insufficient flexibility ⁴²⁶.

Evaluation under s32 of the RMA

- 8.85 This document contains a discussion of the proposed change in the context of NPS-UD and the relevant statutory framework ⁴²⁷. There follows a discussion of options ⁴²⁸. Then there is a discussion of the NPS-UD in relation to efficiency and effectiveness ⁴²⁹. There follows a discussion of the requirements placed on local authorities and a section dealing with the risk of acting or not acting ⁴³⁰.
- 8.86 Because of its importance I highlight certain sections of this part of the report under "Risk of Acting or Not Acting" ⁴³¹...

The NPS-UD requires local authorities to provide at least sufficient development capacity to meet expected demand for housing and business land over the short, medium and long-term, as well as providing for an additional competitiveness margin. At present the land supplied within the Waimakariri and Selwyn Districts falls short of that requirement in the medium and long-term. The NPS-UD requires that, if a local authority determines that there is insufficient development capacity over the short term, medium term or long term, which is wholly or partly a result of RMA planning documents, it must change those documents to increase development capacity for housing or business land as soon as practicable. The NPS-UD requires local authorities to give immediate effect to these policies.

The Proposed Change is necessary to ensure that Waimakariri and Selwyn District Councils can rezone areas in within the FDAs, as required, to meet shortfalls in the available development capacity for housing as part of their District Plan Reviews. At present, the existing policy framework of the CRPS is an impediment to the Council's rezoning any land outside of that already identified for development in the CRPS. The Proposed Change will enable any future zoning of land to occur in a timely way through Selwyn and Waimakariri District Council's District Plan Reviews and/or subsequent processes, and for those councils to give effect to the requirements of the NPS-UD.

- 8.87 The report concludes that the purpose of the Proposed Change is the most appropriate way to achieve the purpose of the RMA. It is stated that the evaluation of options demonstrates that the purpose of the

⁴²⁶ Report to the Minister / paragraph 133

⁴²⁷ S32 evaluation / pages 15 to 20

⁴²⁸ S32 evaluation / page 41

⁴²⁹ S32 evaluation / page 49

⁴³⁰ S32 evaluation / page 76 / paragraph 7.3

⁴³¹ S32 evaluation / page 76 / paragraph 7.3

Proposed Change and CRPS objectives are most likely to be achieved by Option 2 which is to modify Map A to identify future development areas through a change ahead of the scheduled full review of the CRPS and to insert new policy provisions to enable land within these areas to be rezoned by the Selwyn and Waimakariri District Councils if required to meet their medium-term housing needs ⁴³².

Legal and statutory framework

8.88 The report to the Minister contains a discussion of the legal and statutory framework relating to compliance with the requirements of the relevant national direction and the RMA. The appendix discusses the council obligations in relation to the statutory documents and concludes that the Proposed Change gives effect to the NPS-UD ⁴³³.

8.89 The report goes on to note that an extension of time to respond was granted by the Minister and the Proposed Change was reviewed in the light of the new requirements of the NPS-UD before being notified in January 2021. The report states ...

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

[63] *The purpose of this Proposed Change is to respond to an identified shortfall in development capacity as required by clause 3.7 of the NPS-UD so that the council can give effect to Policy 2 of the NPS-UD i.e. to provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term.*

8.90 The report goes on to note that the Proposed Change identifies and enables additional development capacity for housing and greenfield areas within the area shown on Map A and provides the SDC and Waimakariri District Council with the flexibility to consider rezoning land within the future development areas to meet medium term housing demands ⁴³⁴

⁴³² S32 evaluation / page 77

⁴³³ Legal and statutory framework / paragraph 59

⁴³⁴ Legal and statutory framework / paragraph 64

Peer review / March 2021

8.91 A peer review was conducted by the Honourable Lester Chisholm, a retired Judge of the High Court. The report discusses and compares the former NPS-UD 2016 and the NPS-UD. It then goes on to discuss the submissions which sought increased flexibility. The report states ...⁴³⁵

I might add that submissions opposing Change 1 on the basis that more land should be made available would have to be considered within the constraints of the streamlined planning process (this is not a criticism of the process or its utilisation on this occasion). There has been no opportunity to present evidence and, when making recommendations to the Minister, CRC can only assess the information concerning capacity and demand that is before it. As it was entitled to do, CRC accepted and relied upon the Our Space material.

8.92 Then the report went on to express the opinion that the “fixed non-contestable boundaries” on Map A were not of themselves contrary to the NPS-UD but were a fundamental component of a strategy that had been evolving over time. The report noted that Change 1 could not be divorced from its history and context, was part of an ongoing process, with the implementation of Policy 8 still to come. It was stated that to the extent that submitters were seeking a “responsive” and “flexible” approach by virtue of Policy 8, a touch of reality was required and that NPS-UD only came into force after the streamlined planning process for Change 1 had commenced and CRC was working on that issue⁴³⁶.

8.93 The report went on to state⁴³⁷ ...

As the Council has noted in response to a number of submissions on this topic, NPS-UD is a higher order document under the RMA and decision makers assessing plan changes will need to consider the implications of the national direction alongside the policies contained in Chapter 6. It is unrealistic to expect these matters to be resolved overnight.

Evidence of Mr Langman

8.94 Mr Langman made particular reference to Objective 6.2.2 of the CRPS which, amongst other things, sets targets for intensification through to 2028⁴³⁸. Mr Langman noted that the explanation to Objective 6.2.2 recognised that there was a need for greater intensification within Christchurch’s urban areas, and that this would reduce the need for

⁴³⁵ At paragraph [86]

⁴³⁶ At paragraph [88]

⁴³⁷ At paragraph [89]

⁴³⁸ Evidence of Marcus Langman / paragraphs 47 to 50 incl

further expansion of peripheral areas. It recognises that while the majority of intensification will take place within Christchurch City rather than Selwyn or Waimakariri, the contribution of these areas to the overall growth pattern was important. Mr Langman noted that development of a greenfield area outside of that planned in the CRPS: -

- (i) impacts on the ability to achieve intensification targets within Greater Christchurch;
- (ii) will have a flow-on effect proportionally reducing the success of delivery of housing through intensification of existing brownfield areas which were said to run counter to the intention of the Enabling Act.

8.95 Mr Langman then went on to describe key features of Chapter 6 including Map A. He noted that it was anticipated through the preparation of Chapter 6 that there would be requests for development of adjoining existing townships which led to the notification of the “avoidance” framework. He said this provided certainty around the spatial extended growth. He went on to note that intensification was a key tool to achieve a number of outcomes in the CRPS including the efficient use of land, increase in uptake of public transport and increased transport efficiency and limiting carbon emissions. Mr Langman said that the Chapter 6 framework encouraged the sustainable and self-sufficient growth of the Greater Christchurch towns ⁴³⁹.

8.96 Mr Langman went on to note that approval by the Minister for the Environment of Change 1 and noted that the change identified Future Development Areas within the existing Projected Infrastructure Boundary in Rolleston, Rangiora and Kaiapoi and inserted associated policy provisions enabling land within these areas to be rezoned by the Selwyn and Waimakariri District Councils if required to meet their medium (ten year) housing needs. He emphasised that urban development outside the identified areas was to be avoided ⁴⁴⁰.

8.97 Importantly, Mr Langman took strong exception to the evidence of Ms Harte who considered Map A in the CRPS was out-of-date. He said that

⁴³⁹ *Evidence of Marcus Langman / paragraphs 51 to 55 incl*
⁴⁴⁰ *Evidence of Marcus Langman / paragraphs 56 to 59 incl*

this opinion was erroneous and at worst misleading. He said that he noted the development versions of Map A noting that the additions of new urban greenfield area across Greater Christchurch as recently as 2021. He went on to refer to the history of the development of Change 1 and said that it could not be said that Map A was “out-of-date” without a proper explanation ⁴⁴¹.

- 8.98 Mr Langman went on to refer to Mr Colegrave’s evidence, expressing the view that it was narrowly focused on the population growth of Selwyn District rather than Greater Christchurch. He said that high numbers of commuters to Christchurch from all Selwyn townships indicated that population growth in Selwyn was not supported by an equivalent increase in business development. He said that much of the growth had been as a result of high level of land supplies and that Our Space identified the delivery of new dwellings through redevelopment and intensification a key issue. The result of this was to enable people to live close to work opportunities and establish public transport routes. He went on to note that the provisions of the CRPS that were relevant to PC68 supporting the evidence which he had given ⁴⁴².

S42A Report

- 8.99 This report notes the intensification Objective 6.2.2 of the CRPS, noting that there appears to have been a significant increase in the number of medium density houses built in Christchurch in recent years. However in addition to a gradual shift in emphasis towards intensification, the report notes that Objective 6.2.2(5) concurrently seeks to ⁴⁴³ ...

..... encourage sustainable and self-sufficient growth of the towns of Rangiora, Kaiapoi, Woodend, Lincoln, Rolleston and Prebbleton and consolidation of the existing settlement of West Melton.

- 8.100 The report goes on to state the view that the addition of the PC68 block will help reinforce the commercial viability of the town centre due to the provision of additional households in the local retail catchment ⁴⁴⁴.
- 8.101 After noting that the NPS-UD opens the door to overcome the prescriptive CRPS directions regarding growth only being located

⁴⁴¹ Evidence of Marcus Langman / paragraphs 60 to 63 incl

⁴⁴² Evidence of Marcus Langman / paragraphs 65 to 66 incl

⁴⁴³ S42A Report / paragraph 225

⁴⁴⁴ S42A Report / paragraph 226

within greenfield priority areas, the report notes that “such door opening” is not however open-ended and that the growth areas still need to “stack up” in terms of their alignment with the other outcomes sought in the CRPS ⁴⁴⁵.

8.102 The report then goes on to summarise the position noting that were this application to have been considered prior to the NPS-UD being gazetted “then such a policy conflict would have presented an extremely high hurdle”. The report concludes that the PC68 block is compatible with the other outcomes sought in the CRPS for new growth areas ⁴⁴⁶.

8.103 The report goes on to consider direction in the CRPS regarding rural residential development, noting that Policy 6.3.9 provides for this form of housing where the location for such is identified in an RRS, noting that the central portion of the application site is so identified and that accordingly this identification can be taken to mean that it meets the CRPS qualifying criteria. The report suggests that this inclusion in the RRS provides some context in relation to the assessment of effects in-so-far as development to rural residential densities is anticipated as acceptable in terms of the CRPS without the need for recourse to the NPS-UD Policy 8 doorway ⁴⁴⁷.

Canterbury Regional Policy Statement / my consideration and findings

8.104 Earlier in this recommendation I made a number of findings in relation to the relationship between the NPS-UD and the CRPS. These findings are fundamental to my approach to the consideration of the application of the provisions of the CRPS. The historical analysis of the development of Change 1, referred to above, indicates that the process of considering the implications of the national direction alongside the policies contained in Chapter 6 of the CRPS is not complete and, as the Honourable Lester Chisholm stated, it is unrealistic to expect these matters to be resolved over-night.

8.105 Given the complexity of the required analysis on a Canterbury wide basis, it is not surprising that there has been no finality in relation to the assessment in question and I do not see that CRC can be criticised

⁴⁴⁵ S42A Report / paragraph 227

⁴⁴⁶ S42A Report / paragraphs 229 and 230

⁴⁴⁷ S42A Report / paragraphs 231 to 233 incl

for this. But, as noted in some detail earlier in this recommendation, the provisions of the NPS-UD call for prompt consideration and action to be taken in relation to (in this case) the demand for housing adjacent to Prebbleton. Whilst there is clearly a conflict with the directive outcomes sought in the CRPS, the provisions of the NPS-UD require an assessment of this plan change on the merits without awaiting a Canterbury wide assessment of matters which could be expected to be ultimately reflected in the provisions of the CRPS.

- 8.106 I have concluded that proper consideration has been given to relevant objectives and policies of the CRPS. Clearly PC68 is inconsistent with the location requirements of that document. Otherwise, as noted by Mr Cleese in the s42A Report, there is reference to encouraging sustainable and self-sufficient growth in Prebbleton. The extensive analysis of the implications of PC68 indicate that this objective can be satisfied. In summary, for the reasons expressed in this recommendation, I find that the provisions of the CRPS do not act as a barrier to the approval of PC68 and that effect will be given to these provisions to the extent that the NPS-UD permits.

**CANTERBURY LAND AND WATER REGIONAL PLAN AND
CANTERBURY AIR REGIONAL PLAN**

- 8.107 Under s75(4)(b) of the RMA, a district plan cannot be inconsistent with a regional plan, which in respect of this request includes the Canterbury Land and Water Regional Plan and the Canterbury Air Regional Plan. The establishment of activities within the plan change site will either need to meet the permitted activity conditions of these plans or be required to obtain a resource consent. The s42A Report concludes that the effects associated with the requirements under these regional plans can be considered at the time of a detailed development and necessary consents are obtained ⁴⁴⁸. I agree.

**NATIONAL POLICY STATEMENT FOR FRESH WATER
MANAGEMENT 2020 AND NATIONAL ENVIRONMENTAL
STANDARD FOR FRESHWATER**

- 8.108 The National Policy Statement for Fresh Water Management 2020 introduces the fundamental concept of Te Mana o te Wai which refers to the fundamental importance of water and recognises the protection

⁴⁴⁸ S42A Report / paragraphs 234 and 235

of the health of fresh water. There is a hierarchy of obligations set out in Objective 2.1 which prioritises firstly, the health and wellbeing of water bodies and fresh water ecosystems, secondly the health needs of people and thirdly the ability of people in communities to provide for their wellbeing now and in the future. There are policies referring to the preservation of inland wetlands, the habitats of indigenous freshwater species and for communities being able to provide for their wellbeing.

- 8.109 The s42A Report notes that the site does not include any waterways or wetlands, with subdivision-phase or earthworks and associated management of stormwater subject to obtaining the necessary regional consent. Given the absence of waterways and wetlands on the site, the s42A Report states that a change in zone does not threaten the values that the NPS-FM seeks to protect ⁴⁴⁹. I agree.

***NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING
AND MANAGING CONTAMINANTS IN SOIL TO PROTECT
HUMAN HEALTH***

- 8.110 The report states that, as this is a request for a zone change and not to determine the actual use of the site, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("NES-CS") does not strictly apply. The report states that any risk of developing the land for residential purposes where there is a risk to people's health can be effectively managed under the NES-CS of the subdivision stage of the process. I agree ⁴⁵⁰.

MAHAANUI IWI MANAGEMENT PLAN

- 8.111 The Mahaanui Iwi Management Plan ("IMP") is a planning document recognised by an iwi authority and lodged with the Council relation to the district's resource management issues. Under s74(2A) of the RMA, the council must take into account the IMP.
- 8.112 The applicant has advised that prior to lodgement a draft copy of the application was lodged with Mahaanui Kurataiao Limited representing tangata whenua interests. As already noted, the report on PC68 was received from Mahaanui Kurataiao Limited dated 10 February 2021

⁴⁴⁹ S42A Report / paragraphs 236 to 239 incl

⁴⁵⁰ S42A Report / paragraphs 240 to 241

which has already been the subject of comments by me. I will not repeat those comments here. I conclude by stating that I am satisfied that proper regard has been had to the IMP to the extent that its content has a bearing on the resource management issues in this case and that accordingly the provisions of s74(2A) of the RMA have been satisfied.

CONSISTENCY WITH THE PLANS OF ADJACENT TERRITORIAL AUTHORITIES

- 8.113 Mr Cleese notes that matters of cross-boundary interests are outlined in the SDP (in Section A1.5 of the Township Volume). The report concludes that there are no directly relevant provisions and that cross-boundary interests have primarily been addressed and managed through the sub-regional approach in managing growth across Greater Christchurch through the Greater Christchurch Partnership Forum and resultant Our Space document. I agree ⁴⁵¹.

9. ANALYSIS UNDER S32 OF THE RMA AND ASSOCIATED MATTERS

Introduction

- 9.1 An important element in the consideration of PC68 is to consider the report under s32 of the RMA which accompanied the application ("the s32 assessment"). S32 of the RMA requires: -
- (i) the consideration and evaluation of the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act (s32(1)(a)) as well as;
 - (ii) an assessment of whether the provisions of the proposal are the most appropriate way to achieve the objectives (of both the proposal and the existing district plan objectives) having regard to the efficiency and effectiveness of the provisions and having considered other reasonably practicable options (s32(1)(b)).
- 9.2 The report under the s32 assessment of the RMA which accompanied the application commenced with an analysis of the criteria of s32 required for the relevant assessment and went on to discuss the

⁴⁵¹ S42A Report / paragraphs 245 to 246 incl

objectives and policies of the SDP. An important feature of PC68 is that it does not seek to alter any objectives or policies of the SDP (other than in a minor respect referred to hereafter). In the s32 assessment ⁴⁵², it was contended that an examination under s32(3)(a) of whether the objectives of the district plan are the most appropriate way of achieving the purpose of the RMA is not required. This is because as the SDP is operative, it is assumed that the objectives are the most appropriate way of achieving the purpose of the Act. Similarly it is assumed that as no policies are proposed to be altered, they represent the most appropriate means of achieving the objectives of the SDP.

Objectives and policies of the SDP

Introduction

- 9.3 S32(1)(b) of the RMA requires examination of whether the proposed plan change provisions are the most appropriate way of achieving the objectives of the SDP. As is noted in the s42A Report ⁴⁵³ there are several objectives and policies specific to the form of development of Prebbleton Township itself. There are also objectives and policies addressing urban form and residential amenities generally.
- 9.4 It has already been noted that there is no intention to change the objectives and policies of the SDP (save in a minor respect) and that it can be assumed that the SDP has been prepared to give effect to the purpose of the RMA. Notwithstanding this, a discussion of relevant objectives and policies of the SDP is required to examine the question of consistency with the proposal. A discussion of the relevant objectives and policies, identified in the s42A Report, follows.

Objective B4.3.3 and Policy B4.3.1

- 9.5 These provisions give effect to the CRPS direction regarding growth areas and seek that within the Greater Christchurch area, new residential development is contained within existing zoned areas or priority areas identified within the CRPS. The proposal is clearly contrary to this. However, these provisions are subject to the same need to consider unanticipated proposals under the NPS-UD where

⁴⁵² Section 32 assessment / paragraph 7.2
⁴⁵³ Section 42A Report / paragraph 252

proposals are in locations where development is not anticipated. Accordingly, the objective and policy must be read as being subject to the NPS-UD provisions.

Objectives and policies / urban growth matters

- 9.6 The following objectives and policies are relevant: -

Objective B4.3.6

This seeks to ensure that Living Z areas achieve an average net density of at least 10 households per hectare.

Objective B4.4.4 and Policy B4.3.6

Seeks that the growth of townships achieves a compact urban form where practical.

Policies B4.3.7 and B4.3.8

Requires the provision of an ODP in the identification of principal roads, stormwater and parks, integration or upgrades with infrastructure and any other methods necessary to protect important features.

Objective B3.4.5

Seeks that urban growth provide a high level of connectivity within the development with adjoining land areas and provide suitable access to a variety of forms of transport.

- 9.7 In an earlier part of this recommendation, I considered the issue of urban form and the matters associated with the provision of an ODP. My findings in relation to these matters (which I will not repeat here) reinforce the view that there is compliance with each of the objectives and policies specified above.

Policies B4.3.64 and B4.3.65

- 9.8 Policy B4.3.64 seeks to

.... encourage land located to the east and west of the existing Living and Business zones, being those Living and Business zones that adjoin Springs Road, which is located as close as possible to the existing township centre as the first preferred areas to be rezoned for new residential development at Prebbleton, provided sites are available and appropriate for the proposed activity.

- 9.9 This is followed by Policy B4.3.65 which seeks to

... discourage further expansion of Prebbleton Township north or south of the existing Living Zone boundaries adjoining Springs Road and PC68.

- 9.10 I agree with the view expressed in the s42A Report ⁴⁵⁴ that there is an alignment with both of the above policies because PC68 does not result in a north or south expansion along Springs Road but is located to the west of the existing Living zones and is located as close as possible to existing suburban areas.

Policy B4.3.3 / isolated pockets of land

- 9.11 Policy B4.3.3 seeks to ...

.... avoid zoning patterns that leave land zoned Rural surrounded on three or more boundaries with land zoning Living or Business.

Mr Clease has noted that this policy falls within a section of the SDP that directs how growth is to be managed in that part of the District outside of Greater Christchurch. He states that the policy is not strictly in play. However the principle of forming logical urban edges remains relevant, especially as the proposal is for an out-of-sequence development that is overtly not aligned with policies directing growth in Greater Christchurch ⁴⁵⁵. A comment by Mr Clease that ideally the entire block bounded by Hamptons, Trents, and Shands Roads would be rezoned in a comprehensive manner is understandable. He goes on to note that the PC68 site as currently proposed does resolve a number of relatively isolated pockets of rural land embedded within new suburban environments ⁴⁵⁶.

- 9.12 Mr Clease correctly observes that the PC68 site as currently proposed does result in a number of relevantly isolated pockets of rural land embedded within new suburban environments and that the resultant urban form sits uneasily against the policy direction regarding the formation of logical urban boundaries ⁴⁵⁷.
- 9.13 Undoubtedly the incorporation of the isolated pockets within PC68 would result in the formation of a more logical urban boundary and a zoning pattern that complies with Policy B4.3.3. The observation by Mr Clease that if the isolated pockets are not included then the resultant gaps are likely to be relatively short-lived is in my view a correct observation. I have given consideration to the question of

⁴⁵⁴ S42A Report / paragraphs 257 to 259 incl

⁴⁵⁵ S42A Report / paragraph 260

⁴⁵⁶ S42A Report / paragraph 261

⁴⁵⁷ S42A Report / paragraph 261

whether the isolated pockets of land should be included in the land to be rezoned as part of PC68. After careful consideration I have formed the view that there are jurisdictional barriers to the inclusion of all of this land, for the reasons which I have set out extensively in an earlier part of this my recommendation. I will not repeat what was said at this point.

- 9.14 As to the future, there can be no certainty about the steps which are taken beyond this point to rezone the isolated blocks and it would be inappropriate for me to express any view as to the merits of that rezoning, other than in a very general sense. In summary I have concluded that having regard to the future treatment of the isolated blocks, the compliance with Policy B4.3.3 or the failure to at this time comply with Policy B4.3.3, does not represent a barrier to the rezoning of the land the subject of PC68.

SDP / my consideration and findings

- 9.15 For the reasons set out above, I have concluded that, subject to the comments made above, the proposal the subject of PC68 should not be rejected because of a failure to comply with any of the objectives and policies of the SDP. I have already given extensive consideration to the environmental effects which will flow from the establishment of PC68 and will not repeat my findings at this point. I note that the s32 assessment concluded that the listed of matters and outcomes sought were fully satisfied by the proposal ⁴⁵⁸. I agree.

Proposed Selwyn District Plan

- 9.16 I agree with the understanding of Mr Cleese that there is no specific requirement to consider a plan change against the proposed SDP especially given that the urban provisions are subject to a significant number of submissions and decisions and decisions have yet to be released.
- 9.17 I have noted the comments of Mr Cleese in his report to the effect that the Urban Growth chapter of the proposed SDP is intended to assist in meeting demands for housing and business opportunities and that new urban areas have an underlying general rural zoning but are

⁴⁵⁸

S32 assessment / paragraph 7.2

identified within an “urban growth overlay”. The Urban Growth Overlay (“UGO”) is intended to generally identify areas for future growth while still requiring these areas to go through a more specific rezoning process before they can be developed for urban purposes. Mr Clease notes that the central portion of the site *is* identified as an UGO (albeit for rural residential purposes) ⁴⁵⁹.

- 9.18 I regard the provisions of the proposed SDP as not having a material influence on the question of whether I should recommend acceptance of the request in this case. The plan in question is at a very early stage and its final form will have to await a number of planning processes as yet not undertaken. In those circumstances I have not regarded it as having a material bearing on this matter.

Whether the provisions of PC68 are the most appropriate way to achieve the objectives / examination of options

The options

- 9.19 The provisions of s32(1)(b) of the RMA require a proper analysis to be made of all alternative options of achieving the relevant objectives of the proposal. When considering this matter I have had regard to the four options identified by Mr Clease in his report ⁴⁶⁰ which are: -

Option 1

Retain a rural zone.

As Mr Clease has noted in the s42A Report, ⁴⁶¹ this is the option preferred by the majority of submitters who enjoy what can be termed rural amenities associated with the undeveloped character of the land at present. I have identified the site of PC68 as being appropriate for development for a number of reasons. Further, as Mr Clease has noted, PC68 is sited in a location that aligns with the SDP guidance concerning the preferred direction in which Prebbleton is to grow and identified in the RRS-14 as a preferred growth path. I agree with Mr Clease that given the shortage of land available for housing in Prebbleton, the retention of this block of land as rural land does not represent

⁴⁵⁹ S42A Report / paragraph 263

⁴⁶⁰ S42A Report / paragraphs 264 to 277 incl

⁴⁶¹ S42A Report / paragraph 265

an efficient or effective option when measured against the need to address the housing needs of the community.

Option 2

Rezone the centre of the site to Living 3 and keep the balance rural.

This option would most readily align with the provisions of the SDP and the CRPS policy frameworks. I do not favour this option in spite of it being readily compatible with both the SDP and CRPS policy frameworks, because of the paramount and overarching provisions of the NPS-UD which present, as Mr Cleese has noted, material changes in both the policy framework and the physical environment since the RRS-14 was developed. I agree with Mr Cleese that higher yielding forms of development are a more efficient use of the land resource and that notwithstanding the lack of compatibility with the area identified by the RRS-14, PC68 represents an opportunity to provide significantly more houses in an appropriate location that can be easily serviced and so I do not favour this option.

Option 3

Rezone to Living Z and Living X.

Ms Harte has noted in her evidence ⁴⁶² that the S42A Report refers to PC68 requesting rezoning of most of the site as Living Z “with a strip of low-density living X zoning (minimum 1500 m²) along the Shands Road frontage”. She states that for the record Living Z zoning was requested for the whole PC68 site but with a requirement in the ODP that the land fronting Shands Road have a minimum lot size of 1500 m².

I am of the view that development to suburban densities of the site the subject of PC68 is appropriate and I consider this a more efficient use of the site than the alternatives for the reasons which are set out in this recommendation.

Option 4

Rezone the entire site to Living Z with a minimum density of 15 hh/ha.

The PC68 request proposes a minimum net density of 12 households per hectare and is to this extent consistent with the provisions of the CRPS, which only requires a minimum net density of 10 households per hectare in greenfield areas in the Selwyn District. I note that a density of 12 hh/ha is a standard minimum density that has been applied to recent Living Z greenfield areas in the SDP and is likewise the density requirement in the proposed SDP ⁴⁶³. It is clear that the housing typologies in Prebbleton are limited to three to four bedroom detached family houses, with very few smaller low maintenance housing options available. For this reason the density of 12 hh/ha does represent an increase in density relative to other recent housing developments in Prebbleton. However I note that the ODP contemplates the provision of pockets of medium density housing both to enable the overall yield target to be met and to provide some choice in housing typology.

As Mr Cleese has noted in his report ⁴⁶⁴ a further increase to 15 hh/ha will have benefits in terms of the efficient use of this site but those benefits need to be weighed against the delivery of a new era of housing that comfortably integrates with the existing township. I agree with Mr Cleese that a requirement to deliver a yield of 15 hh/ha would be out of context with Prebbleton and recommend against this level of density.

- 9.20 I note that in his evidence, Mr Williamson referred to alternatives which he said had not been considered. He felt that the s32 assessment in the original application was hugely simplistic and that there were numerous other options that should be considered ⁴⁶⁵. Mr Williamson went on to state that an assumption had been made that because existing zones were being used, they were somehow “deemed” to give effect to the high order policies. Mr Williamson

⁴⁶³ S42A Report / paragraph 273 et seq

⁴⁶⁴ S42A Report / paragraph 277

⁴⁶⁵ Evidence of Nick Williamson / paragraph 75

noted that the objectives and policies that presently apply to the land were changing because the entire PC68 area would be subject to the Township Volume ⁴⁶⁶.

9.21 Mr Williamson went on to consider two further alternatives which he said had not been considered at all: -

- (i) to introduce a “future development” zone to hold the land in abeyance until such time as higher densities could be achieved. He said that the advantage of a future or deferred development zone was that it provided time for the infrastructure planning to occur more comprehensively; ⁴⁶⁷
- (ii) the second alternative was to intrude a more “agile” and adaptive approval to land development that provided for some development to occur now but in a form that maintained the potential for full urbanisation in the future without the impediments that could result if land was allowed to be developed into a “lifestyle” form of development ⁴⁶⁸.

My assessment of the benefits and costs

9.22 Mr Williamson is correct to point out the advantages of waiting so that there is greater certainty in relation to (in particular) infrastructure planning. However, in my view neither alternative would give proper effect to the directive provisions of the NPS-UD which I have outlined earlier in this my recommendation. The first alternative involves waiting and seeing and the second a delay in providing for the totality of the anticipated development. In my view neither of these scenarios is acceptable, given the critical need for the provision of housing identified by Mr Sellars and Mr Colegrave and the directive provisions of the NPS-UD.

9.23 The matter of identifying other reasonably practicable options for achieving the objectives of PC68 is not a straightforward matter. However, I have formed the view when considering the available options, the provisions of the NPS-UD must be taken into account as

⁴⁶⁶ Evidence of Nick Williamson / paragraph 76

⁴⁶⁷ Evidence of Nick Williamson / paragraph 78

⁴⁶⁸ Evidence of Nick Williamson / paragraph 79

the directive provisions in that document mean that a number of options that might otherwise be available are no longer available. In particular the “do nothing” option is clearly ruled out when one has regard to the directive provisions of the NPS-UD.

- 9.24 I note that in the s32 assessment, there is an analysis of the benefits and costs of the proposed change ⁴⁶⁹. This is to satisfy the requirement under s32(2)(ii) of the RMA which provides that an assessment must ...

....if practicable, quantify the benefits and costs referred to in paragraph (a)

this in the context of examining the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act ⁴⁷⁰.

- 9.25 I have considered the helpful analysis of benefits and costs contained in the s32 assessment referred to above, which includes the options examined by Mr Cleese, but also the option of developing the land by resource consent, being stated as Option 3 in the s32 assessment. This option was said to have the advantage of the Council having the ability to place stricter controls on the development through consent conditions that may be possible through a plan change and the potential for greater environmental benefit through the Council having greater control over development. I have carefully considered this option. Whilst later in this recommendation I note that using the plan change with the associated ODP as a vehicle for providing the land use opportunity to develop the land for housing purposes has associated with it an element of uncertainty which has been commented upon critically by Mr Langman and Mr Wakefield, I am satisfied that the ODP and explanation have a sufficient degree of certainty for me to be able to recommend acceptance of them in the context of this request for a plan change. As noted hereafter, I have it in mind that further certainty will be engendered by the subdivision process which will follow any rezoning of the land in question.

- 9.26 I draw attention to the comments which follow in relation to the issue of the enforceability of the ODP which is relevant in this context.

⁴⁶⁹ See assessment / paragraph 7.3

⁴⁷⁰ S32(1)(a) of the RMA

Taking a broad view, I have concluded that identifying that the land could be developed by resource consent and recommending that the request be refused would almost certainly represent a failure to discharge the directive responsibilities which are contained in the NPS-UD and in particular the duty to provide sufficient development capacity to meet expected demand for housing over the short-term, medium-term and long-term. In my view treating this obligation on the basis that landowners have the ability to make applications for resource consents would not represent a discharge of this obligation and so I find that this option is clearly not acceptable.

- 9.27 In addition I have had regard to the assessment of the benefits and costs of the proposed change set out in the s32 assessment which accompanied the application ⁴⁷¹.
- 9.28 In summary I have concluded that the requirements of s32(1)(b) of the RMA have been discharged by the examination of the options referred to above and the choice of the option which is reflected in my recommendation which is associated with the incorporation of the ODP and narrative to the ODP.

Part 2 matters

- 9.29 Earlier in this recommendation I made a brief mention of Part 2 of the RMA in the context of my assessment of statutory documents. Some further elaboration is required at this time. I record that under s74(1)(b) of the RMA, any changes to a district plan must be in accordance with the provisions of Part 2 of the RMA.
- 9.30 Dealing with the purpose of the Act enshrined in s5 of the RMA, I find that the purpose of the Act is currently reflected in the objectives and policies of the SDP which PC68 does not seek to change (except to a minor extent).
- 9.31 As Mr Cleese has noted in his report ⁴⁷² the efficient use and development of natural and physical resources (s7(b)), the efficiency of the end use of energy (s7(ba)), the maintenance and enhancement of amenity values (s7(c)), the maintenance and enhancement of the

⁴⁷¹ S32 assessment / paragraph 7.3

⁴⁷² S42A Report / paragraph 283

quality of the environment (s7(f)), and the effects of climate change (s7(i)) are relevant to the plan change.

- 9.32 I have already considered the effects of the creation of what is undoubtedly a large residential development in the context of the use and development of this natural and physical resource. I have concluded, as is noted in the section of this recommendation dealing with s32 of the RMA, that PC68 represents the efficient use and development of the appropriate resources.
- 9.33 As to the efficiency of the end use of energy, this matter has been fully considered previously. I have considered this matter in the context of the flow-on effects of climate change. Undoubtedly, as has already been noted, there will be an increase in the existing pattern of commuter travel from Prebbleton to other centres of employment which clearly has impacts in terms of climate change. However, I have noted that Prebbleton is located closer to Christchurch than any of the other Inner Plains townships and that the development in Prebbleton will result in correspondingly fewer emissions relative to the alternatives. Overarching this topic is my finding that the Christchurch inner city market is not interchangeable with that in Prebbleton. On balance I have concluded that proper consideration has been given to the efficiency of the end use of energy and the effects of climate change and that PC68 can be said to have been prepared in accordance with the provisions of s7 of the RMA as required by s74(1)(b)) of the RMA.
- 9.34 I have made a number of findings in relation to the maintenance and enhancement of amenity values earlier in this my recommendation and will not repeat those findings at this point. Suffice it to say that I find that PC68 has been prepared in accordance with the provisions of Part 2 of the RMA relating to their maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment.

Evidence based decision making

- 9.35 The NPS-UD is prescriptive as to the manner in which local authorities must act when changing plans in ways that affected development of urban environment. Such local authorities must ⁴⁷³:-

⁴⁷³ NPS-UD clause 3.11

- (i) clearly identify the resource management issues being managed;
- (ii) use evidence about land and development markets and the results of the monitoring required by the statement, to assess the impact of different regulatory and non-regulatory options for urban development. Local authorities must include the matters referred to above in relevant evaluation reports and further evaluation reports prepared under ss32 and 32A of the Act.

9.36 I comment that this recommendation reflects the identification of relevant resource management issues and the adoption of the use of evidence and analysis which is prescribed above. The resource management issues have been clearly identified and (with reference to the use of evidence about land and development markets) I have had regard to the evidence of Messrs Sellars and Colegrave in relation to these issues to assess the options for urban development in this case. I conclude that the requirements of clause 3.11 of the NPS-UD have been satisfied.

Section 32AA

9.37 Section 32AA of the RMA requires a further evaluation for any changes made to the proposal since the evaluation report was completed. The relevant part of the statutory provision is as follows: -

- (i) *A further evaluation required under this Act –*
 - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes; and*
 - (b) *must be undertaken in accordance with s32(1)(2)(4); and*
 - (c) *must, despite paragraph (b) and s32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*
 - (d)-
 - (i) *in an evaluation report that is made available for public inspection at the same time as the approved proposal ...or the decision on the proposal, is notified; or*

(ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section;

(iii) an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with sub-section (1)(d)(ii).

9.38 As to this, I note that, consistent with my previous findings in relation to this matter, because PC68 does not seek to alter or add to the objectives, policies or rules of the SDP (except for a minor exception) there is no need to evaluate the extent to which the objectives are the most appropriate way to achieve the purpose of the Act. A further analysis of this issue is not required.

9.39 The main alterations to the proposal relate to amendments to the ODP, to which I have already made reference. The amendments address the prescription of cycle routes and frontage upgrades which respond to the analysis which was carried out to that point and does not call for any further analysis. I am satisfied that the requirements of s32AA of the RMA are satisfied.

10. **OUTLINE DEVELOPMENT PLAN**

Introduction

10.1 The ODP which is to form part of PC68 has been the subject of a number of iterations, the last being version R6. The ODP contains the basic elements of the development area including connections with adjoining areas. The latest iteration of the ODP reflects the fact that there has been refinement of the document through the process of preparing the plan change request and responding to the s42A reports. The relevant amendments, as proposed by Ms Harte ⁴⁷⁴ are: -

- (i) cycle routes have been identified along the primary north-south roads and the east-west road and eastern north-south secondary roads;
- (ii) frontage upgrade notations have been added for the lengths of the plan change area adjoining Trents Road and Hamptons Road requiring the developers of the plan

⁴⁷⁴ Summary evidence of Patricia Harte / paragraph 4.1

change to upgrade these frontages to the usual urban standard involving wider carriageways, footpaths and cycleways.

- 10.2 Associated with the ODP is an explanatory narrative document which will form part of PC68, should it be approved. This document contains an amendment to the original document making provision for educational facilities ⁴⁷⁵, to reflect matters raised in the s42A Report relating to the provision of educational facilities. Ms Harte stated that an alternative option to the ODP narrative would be ⁴⁷⁶

At the time of subdivision, consultation with Ministry of Education will consider whether it is appropriate and necessary for any land to be provided for education purposes with the site, and the appropriateness of any amendments to the layout shown in the ODP to accommodate this.

Evidence / submissions on the ODP

Mr Williamson

- 10.3 Mr Williamson was particularly critical of the use of the ODP. He noted that the ODP identified areas of proposed open spaces surrounded by "high density" housing and lot sizes but said it was not clear whether the open space areas were intended to remain private or vest as public open space. He said that the process by which this decision was made and whether they would vest without compensation or cost, or whether the Council would be expected to purchase those areas was not addressed in PC68 ⁴⁷⁷. Mr Williamson described the ODP as

..... one of the most critical flaws with PC68

together with the accompanying "narrative" as it was defined by the applicant's planner.

- 10.4 Mr Williamson noted that the SDP anticipates "standards" which have very different functions in an RMA context than a "narrative" (which he says could at best be described as an "explanation".) ⁴⁷⁸ Mr Williamson went on to state that he expects that the ODP "standards" referred to in the SDP are of the nature set out in all other Living

⁴⁷⁵ S42A Report / paragraphs 166 to 170

⁴⁷⁶ Evidence of Patricia Harte / paragraph 17.6

⁴⁷⁷ Evidence of Nick Williamson / paragraph 35

⁴⁷⁸ Evidence of Nick Williamson / paragraph 53

zones which includes most of the fundamental development and performance standards associated with urban form and development etc. He said that instead of this, what is proposed through PC68, is that any subdivision or development that is in “general accordance” with the ODP will be assessed as discretionary activities, whether or not the aspirations set out in the “narrative” are met ⁴⁷⁹.

10.5 Mr Williamson commented upon the subdivision process in his summary statement of evidence ⁴⁸⁰. He noted his concerns regarding over-reliance on the subdivision consenting process and said that these concerns were supported by his practical experience. He noted that it was the “expectation” of the applicant’s experts that the unresolved questions regarding infrastructure adequacy upgrade requirements, and funding methods could be dealt with at the subdivision stage. He noted that the engineer of the applicant had acknowledged that infrastructure upgrading would be required, including downstream works, some which were subject to regional consenting processes. But he said that these requirements, could not be lawfully imposed as conditions of subdivision consent where they required the approval of, or actions to be taken by, a third party beyond the application site.

10.6 Mr Williamson has raised matters of considerable importance in this case. In broad terms, the issue is whether the ODP presented by the applicant represents a suitable vehicle to ensure the development of the land the subject of PC68 in accordance with both the ODP and the accompanying narrative and whether the anticipated subdivision process have been overstated. In order to properly consider these matters, it is necessary to have regard to the provisions of the SDP which govern the use of outline development plans to see how such plans are to be utilised in the context of the SDP.

The ODP / my consideration and findings

10.7 An examination of the provisions of the SDP shows that the use of outline development plans is widespread throughout the plan. The plan typically uses the wording (in relation to rules) that any subdivision

⁴⁷⁹ Evidence of Nick Williamson / paragraph 53 to 55 incl
⁴⁸⁰ Evidence of Nick Williamson / paragraph 25 et seq

..... shall be in general accordance with the outline development plan (specified)

There are a number of outline development plans for areas adjacent to Prebbleton. There is no definition of an outline development plan in the SDP.

- 10.8 The resolution of the question of whether the use of an ODP in this case is appropriate requires revisiting the findings which I made in relation to the extent to which there needs to be certainty in relation to the provision of infrastructure at the time of the establishment of the development the subject of a change and thereafter. My findings in this regard were (broadly) that there is a practical limit to the extent to which there needs to be certainty in relation to the provision of infrastructure and that reliance is able to be placed on the mechanisms which have operated satisfactorily to-date, namely infrastructure funded by SDC where provision has been made for the relevant expenditure in a LTP, the use of development agreements and the funding of infrastructure by the imposing of development contributions under the Local Government Act 2002. I will not repeat what I have stated earlier in this recommendation regarding these matters but refer to my findings in this regard.
- 10.9 I have concluded that the ODP and associated narrative contain the essential elements of the proposed change which are required to be implemented. The minimum density has been prescribed. I do not regard the prescription of choice associated with the subdivision consent process to be a fatal flaw in the narrative. It is not necessary at this stage, when considering the broad question of whether the land the subject of PC68 is a suitable candidate for rezoning, to require the prescription of standards beyond those which are the subject of the narrative.
- 10.10 The broad purpose of my consideration of this request is to consider whether any proposed rezoning the subject of PC68 is appropriate, having regard to the wide range of matters which I have already considered to this point. Undoubtedly there is a threshold to be reached in relation to the provision of sufficient information to identify clearly the nature of the rezoning which is sought. But it is not essential to my consideration of the rezoning request to consider matters beyond the threshold, that is to say those matters which are

not pivotal to the question of whether the land should be rezoned, but will need to be resolved at a later date, in the context of subdivision provisions or otherwise. In summary I find that the information which has been presented to this point has met the threshold test to which I have just made reference.

10.11 I have noted the criticisms made by Mr Williamson regarding the implications of the prospective subdivision process. It is clear that Mr Williamson has significant experience and knowledge in this area and I accept that he has a better understanding of subdivision provisions than most. I have given careful consideration to the question of whether the matters which have been raised by Mr Williamson should act as a barrier to the approval of PC68. It is clear that a wide range of conditions are available to councils when imposing conditions on subdivision consents which are directed at governing and controlling the environmental effects which will flow from subdivision. The matters which have been raised in relation to possible difficulties utilising the subdivision process do not impact on the ability to ensure structure upgrading and associated matters. It is clear from the evidence I have heard that ODPs, coupled with the subdivision process which follows, represents a process which has been used satisfactorily in the past in relation to other approved developments.

10.12 I do not see it as my role at this point to attempt to identify all the issues which may arise in relation to the prospective subdivision process. It is for the developer to deal with these matters, in company with SDC. In the event that some fundamental difficulty arises with the position of conditions in the subdivision process, that will be a matter for the developer to deal with. In summary, I am satisfied that whilst Mr Williamson was right to draw my attention to possible difficulties in the subdivision consent process, the matters he has raised do not act as a barrier to the approval of PC68.

10.13 I note that the prescription that any subdivision in Prebbleton should be

In general accordance with the respective concept and/or Outline Development Plans

has been utilised to this point. I do not see it as my role to make any pronouncement on the validity of this rule and anticipate it being used in this case. I find that it is capable of implementation, albeit that

there is some level of uncertainty associated with the ability to approve a subdivision plan which does not exactly match the ODP. It covers immaterial departures from the ODP, but not material departures.

11. **OVERALL ASSESSMENT AND FINDINGS**

Discussion

11.1 The process of evaluating the competing evidence and submissions both for and against the approval of PC68 has represented a complex exercise. Overarching my consideration of relevant matters has been my recognition that the coming into force of the NPS-UD has represented a paradigm shift in the framework for the consideration of privately initiated plan changes, directed at providing new housing opportunities. This has had a particular influence on the outcome in this case.

11.2 As will be noted from my analysis of matters to this point, I have been satisfied that the requirements of s32 of the RMA have been complied with and in particular have formed the view that the proposal the subject of PC68 represents the best means of achieving the purpose of the RMA enshrined in s5. I will not repeat my analysis of this matter contained earlier in this recommendation.

11.3 I make it clear that my analysis in analysing matters has not taken place without my having due regard to the statutory documents other than the NPS-UD. I have attempted to explain the relationship between the various statutory documents, to attribute the degree of importance which needs to be associated with each document, on the way to forming the view that I should recommend the approval of PC68.

Recommendation

11.4 In the result, and having regard to my analysis of the evidence and submissions and findings referred to above, I make the following recommendations:-

1. that the Council either accept, accept in part or reject the submissions referred to and summarised in **Appendix A** and for the reasons which are particularised in this my recommendation;
 2. that pursuant to clause 10 of Schedule 1 of the Resource Management Act 1991, the Council approve Plan Change 68 to the Selwyn District Plan by rezoning the land parcels set out in the request of the applicant (**Appendix B**);
 3. that a new Outline Development Plan Living Z zone, West Prebbleton(**Appendix C**), and accompanying narrative (**Appendix D**) be inserted in Appendix 19 of Volume 1 Townships of the Selwyn District Plans;
 4. that an addition be made to SDP Policy B4.3.77 in accordance with **Appendix E**;
 5. that a new rule be introduced into the SDP in accordance with **Appendix F**.
 6. that any other consequential amendments including but not limited to renumbering of clauses and planning maps as appropriate be made in order to give effect to this recommendation.
- 11.5 Given the length of these recommendations, the extent of detail and the complexity of the matters referred to herein, I reserve leave to make corrections and alterations should they be necessary on the basis that such alterations or corrections do not alter the substance of the findings in these recommendations. Further, whilst these recommendations are final in relation to the determination of matters of substance, I am concerned to ensure that no difficulties arise in relation to the implementation of my findings. Accordingly, I reserve the right to give further directions or rulings in relation to matters of implementation should that be necessary.

DATED this 23rd day of June 2022

"A C HUGHES-JOHNSON"

**A C HUGHES-JOHNSON QC
COMMISSIONER**