

Before the Selwyn District Council

under: the Resource Management Act 1991

in the matter of: Proposed Private Plan Change 69 to the Operative
District Plan: Lincoln South

and: **Rolleston Industrial Developments Limited**
Applicant

Legal submissions on behalf of Rolleston Industrial Developments
Limited

Dated: 22 November 2021

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LEGAL SUBMISSIONS ON BEHALF OF ROLLESTON INDUSTRIAL DEVELOPMENTS LIMITED

INTRODUCTION

- 1 This hearing will determine a request by Rolleston Industrial Developments Limited (*RIDL*, the *Applicant*) to the Selwyn District Council (the *Council*) to change the Operative Selwyn District Plan (the *District Plan*) to rezone approximately 190 hectares of land on Springs Road, Lincoln currently zoned Rural (outer plains) to Living Z and Business 1 (Local Centre).
- 2 Also known as Plan Change 69 (*PC69*), this plan change would enable approximately 2,000 residential sites and three commercial areas.
- 3 An ODP is proposed for the PC69 site, as well as some bespoke rules related to the site which have either been proposed or agreed by the Applicant as a way to mitigate adverse effects, and otherwise address concerns raised by the Council and submitters through this process.
- 4 These legal submissions:
 - 4.1 Provide an update to changes made on PC69 since the filing of evidence;
 - 4.2 Consider the responsive planning framework under the National Policy Statement on Urban Development 2020 (*NPS-UD*), particularly in light of the directive nature of the Canterbury Regional Policy Statement (*CRPS*);
 - 4.3 The merits of a strategic planning process as against a private plan change process;
 - 4.4 We then provide a brief comment on:
 - (a) Versatile soils;
 - (b) Moirs Lane;
 - (c) The Lincoln Wastewater Management Pond;
 - (d) The Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill; and
 - (e) The document filed by Nancy Borries; and

4.5 Introduce the relevant witnesses and experts that will be providing evidence to the Commissioner on this plan change.

- 5 These legal submissions do not repeat the objective and policy interpretation for PC69 of the District Plan and other Resource Management Act 1991 (*RMA*) documents, except so far as required for the discussion of the main issues below. This analysis has already been set out in the original application, the Officer's Section 42A Report (the *Officer's Report*), and the evidence of **Mr Phillips**.

CHANGES SINCE THE APPLICATION FOR PC69

- 6 There have been a number of changes made to the proposed rules and ODP since the application for this plan change. These include a number of changes that have been proposed after the filing of the applicant's evidence.
- 7 Following the filing of applicant evidence, a number of the applicant's experts were encouraged to engage in some further dialogue with Council experts to determine (and where possible, try to resolve) any issues and outstanding areas of disagreement.
- 8 As a result, a number of further amendments have been made to the ODP. These changes are shown in tracked and highlighted in **Appendix 1** to these submissions.
- 9 We understand these changes have resolved a number of concerns held by the Council experts, and each of the relevant experts which will be presenting over the next few days will speak to these amendments as relevant to their area of expertise.
- 10 We go on to address issues that might otherwise be outstanding.

RESPONSIVE PLANNING UNDER THE NATIONAL POLICY STATEMENT FOR URBAN DEVELOPMENT 2020

- 11 One of the key issues for the Commissioner to decide in this hearing is whether the plan change can be approved, despite the objective in the CRPS which directs that urban development falling outside of the greenfield priority areas is to be 'avoided' (Objective 6.2.1.3).
- 12 We are conscious that this topic has been covered at another plan change hearing before the Commissioner. It is repeated for completeness as this hearing involves different and potentially different counsel.
- 13 We provide a brief summary timeline of the relevant planning instruments at **Appendix 2** for reference.

- 14 The question that is to be asked is how the RPS is to be interpreted in light of the NPS-UD? This is especially so because the RPS contains an "avoid" policy with respect to development outside Map A, yet the later in time, and higher order, NPS-UD contains Objective 6 and Policy 8 which requires a responsive planning approach to out-of-sequence and unanticipated development.
- 15 To answer this question it is helpful at the outset to first cover some basic principles of statutory interpretation especially relating to the hierarchy of planning documents, and the effect of later in time legislation on existing legislation.

Principles of statutory interpretation

- 16 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase.¹
- 17 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):²
 - 17.1 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;
 - 17.2 the language must be given its plain and ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan, have taken from" the planning document;
 - 17.3 the interpretation should not prevent the plan from achieving its purpose; and
 - 17.4 if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.
- 18 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise. Where that meaning, however, creates an anomaly, inconsistency, or absurdity (such as is the case here) other principles of statutory interpretation must be considered to

¹ The most fundamental principle of statutory interpretation is contained in section 5(1) of the Interpretation Act 1999: "The meaning of an enactment must be ascertained from its text and in light of its purpose".

² *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

help shed light on how a planning document should properly be interpreted. We touch on some of those relevant concepts now.

- 19 It is widely accepted that the RMA provides for a three tiered management system – national, regional and district. This establishes a ‘hierarchy’ of planning documents:³
 - 19.1 First, there are documents which are the responsibility of central government. These include National Policy Statements. Policy statements of whatever type state objectives and policies, which must be “given effect to” in lower order planning documents.
 - 19.2 Second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans.
 - 19.3 Third, there are documents which are the responsibility of territorial authorities, specifically district plans.
- 20 Therefore, subordinate planning documents, such as a regional policy statement, must give effect to National Policy Statements. This is expressly provided in section 62(3) of the RMA. The Supreme Court has held that the “give effect to” requirement is a strong directive⁴ and that the notion that decision makers are entitled to decline to implement aspects of a National Policy Statement if they consider that appropriate does not fit readily into the hierarchical scheme of the RMA.⁵ The requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.⁶
- 21 Where there is an apparent inconsistency between two documents, particularly where one is a higher order document, the Courts will first seek to reconcile this inconsistency and allow the two provisions to stand together.⁷
- 22 Where two provisions are totally inconsistent (such that they cannot be reconciled in a way that they can be read together), then it is appropriate to look to the doctrine of implied repeal. The doctrine of implied repeal provides that a provision that is later in time,

³ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [10]-[11].

⁴ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [80].

⁵ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [90].

⁶ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [91].

⁷ *R v Taylor* [2009] 1 NZLR 654.

impliedly repeals the earlier provision. It is a doctrine of last resort and should only be applied where all attempts at reconciliation fail.⁸

The potential inconsistency in the RPS and the NPS-UD

23 The potential inconsistency is between Objective 6.2.1.3 of the RPS and Objective 6 and Policy 8 (and relevant clauses) of the NPS-UD.

24 Objective 6.2.1.3 of the RPS provides:

Recover, rebuilding and development are enabled in Greater Christchurch through a land use and infrastructure framework that: [...]

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

25 It has been decided by case law in relation to some RMA planning documents, that the ordinary meaning of the word 'avoid' means "not allow" or "prevent the occurrence of".⁹ Therefore read literally, the objective provides that decision makers must not allow urban development outside of existing urban areas or the greenfield priority areas identified in Map A.

26 However adopting this interpretation of the RPS would not reconcile the RPS with Policy 8 of the NPS-UD and would lead to the type of problems identified by the Court in *Powell*. Namely, the interpretation would be contrary to the very purpose of Policy 8, would prevent the NPS-UD from achieving its purpose and would interpret the word "avoid" in a vacuum and outside the context of reading the RPS and the NPS-UD together.

27 Policy 8 provides that:

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.*

⁸ *Taylor v Attorney-General* [2014] NZHC 2225; *Kutner v Phillips* [1891] 2 QB 267 (QB).

⁹ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [93].

- 28 A rigid interpretation of the word “avoid” in the RPS inherently prevents local authorities from being responsive in the way required by the NPS-UD, as it prevents them from even considering the merits of a plan change that might otherwise add significantly to development capacity and contribute to well-functioning urban environments (the criteria for Policy 8 NPS-UD) where these fall outside of greenfield priority areas.
- 29 The requirement of the NPS-UD, that local authorities be responsive to development capacity meeting certain criteria even if it is unanticipated or out-of-sequence is clearly intended to target exactly this type of objective in the RPS and to say that the “avoid” policy in the RPS prevents all developments that fall outside Map A would to act in a manner contrary to the specific direction in Policy 8.
- 30 This is further affirmed by the Ministry for the Environment’s guide on understanding and implementing the responsive planning policies (the *MfE Guide*) which states that:

“Objective 6(c) recognises local authorities cannot predict the location or timing of all possible opportunities for urban development. It therefore directs local authorities to be responsive to significant development opportunities when they are proposed. [...]

Expected outcomes

The responsive planning policy in the NPS-UD limits a local authority’s ability to refuse certain private plan-change requests without considering evidence. This is because Policy 8 requires local authorities to make responsive decisions where these affect urban environments. Implementing this policy is expected to result in more plan-change proposals being progressed where they meet the specified criteria (see section on criteria below). This will likely lead to proposals being brought forward for development in greenfield (land previously undeveloped) and brownfield (existing urban land) locations, which council planning documents have not identified as growth areas. [...]

Local authorities may choose to identify in RMA plans and future development strategies where they intend:

- *development to occur*
- *urban services and infrastructure to be provided.*

The identified areas must give effect to the responsive planning policies in the NPS-UD and therefore should not represent an immovable line. Council policies, including those in regional policy statements relating to out-of-sequence development, will need to be reviewed and, in some cases, amended to reflect the responsive planning policies of the NPS-UD. [emphasis added]

Reconciling the inconsistency

- 31 It will be necessary, as a matter of interpretation, to attempt to try and reconcile the inconsistency between the two documents. If that is not possible the NPS-UD as the later in time document, and the higher order document, will have impliedly repealed (or amended) the meaning of "avoid" in the RPS.
- 32 Implied repeal of the objective in the RPS should be a last resort, and we submit there is therefore a way the two documents can be reconciled and read together as the Courts expect those interpreting legislation to do.
- 33 In this context, we consider it highly relevant that:
 - 33.1 The NPS-UD provides a clear national level direction to enable development capacity and is therefore a higher order document than the RPS in terms of the resource management hierarchy; and
 - 33.2 The NPS-UD is the most recent in time planning document. While PC1 to the RPS did in part give effect to the NPS-UD this was not in relation to Policy 8 where it was noted more work would be required to give full effect to the responsive planning framework established by the NPS-UD (as discussed earlier).
- 34 In light of this, it is appropriate to 'read down' or 'soften' the interpretation of 'avoid' in the RPS to give effect to the NPS-UD (at least until such time as the RPS gives full effect to the NPS-UD, which we consider would require an amendment to this objective in the RPS). This would be done by grafting a limited exception onto the objective where a development could meet the NPS-UD because it adds significantly to development capacity and contributes to a well-functioning urban environment.
- 35 Therefore, read in light of the NPS-UD, the objective in the RPS should now be read as meaning "except if otherwise provided for in the NPS-UD, avoid..."

- 36 Further, the NPS-UD requires local authorities to give effect to it “as soon as practicable”.¹⁰ This interpretation of the RPS in light of the NPS-UD requires the Selwyn District Council to give effect to Objective 6 and Policy 8 even though the RPS does not yet. This is appropriate given the likelihood that an amendment to the RPS is unlikely to occur for some time now.
- 37 Finally, we note that clause 3.8(3) of the NPS-UD requires that regional councils are to include criteria in their RPSs for determining what plan changes will be treated, for the purpose of implementing Policy 8, as “adding significantly to development capacity”. This criteria has not yet been added to the RPS and we would expect this to also be covered in ECan’s intended review of the RPS which may not be until 2024.
- 38 Nevertheless the criteria is not required for local authorities to give effect to Policy 8 in the interim (i.e. in the absence of such criteria) and until such criteria is provided, it is appropriate for a decision maker to consider whether a particular plan change would add significantly to development capacity on a case by case basis. This will necessarily involve hearing evidence on that topic from applicants and individual submitters.
- 39 It cannot have been the intention of the NPS-UD which requires Councils to give effect to its provisions “as soon as practicable” to wait until an RPS develops criteria in some years’ time. That interpretation would be an absurdity and contrary to the plain meaning of the words. Given the amount of time it took ECan to amend their RPS to be consistent with the NPS-UDC (i.e. after the NPS-UD had been implemented), this is too long for the District Council to wait in order to fulfil its obligations under the NPS-UD to act as soon as practicable particularly in the case of a Council who is in the process of reviewing its District Plan and who is facing rezoning requests from submitters.
- 40 Selwyn District Council would not be giving effect to the NPS-UD ‘as soon as practicable’ if it was to wait for ECan to develop this criteria and in the meantime to refuse to consider requests for rezoning which on the basis of evidence produced adds significantly to development capacity.

The view of the Christchurch City Council and the Canterbury Regional Council

- 41 We understand, from legal submissions filed in other processes by CCC and ECan, and from the evidence of **Mr Langmam** in this

¹⁰ NPS-UD, clause 4.1(1).

hearing, that the Councils do not agree with our interpretation and are of the view that:

- 41.1 Plan changes are required by section 75(3) of the RMA to give effect to both the NPS-UD and CRPS.
- 41.2 Plan Change 1 to Chapter 6 of the CRPS (*PC1*) gives effect to the NPS-UD.
- 41.3 There is nothing in the NPS-UD that gives Policy 8 any elevated significance over other objectives and policies.
- 41.4 The responsive planning framework cannot be treated as a process isolated from the remainder of the NPS-UD.
- 41.5 The statutory requirement to give effect to the CRPS engages the 'avoid' objective provided by the CRPS, with all plan change decisions required to give effect to this.
- 41.6 The CRPS and the NPS-UD are not at odds with each other, it is entirely appropriate to develop a restrictive framework that enables growth or provides for responsiveness in certain areas, and restricts growth elsewhere.
- 41.7 The responsive planning provisions need to be interpreted and applied as a whole within the context of the NPS-UD and that this has the effect of those provisions being read down or somehow limited.
- 41.8 There may be circumstances that warrant a 'hard line' approach to urban growth. The CRPS achieves a well-functioning urban environment in that it aligns urban growth with the strategic provision of infrastructure.
- 41.9 The NPS-UD does provide a pathway for the consideration of requests to release land for development capacity that is out of sequence but only where it is demonstrated on its merits and in a manner that complements existing strategic planning.
- 42 With respect, we outright do not agree with this interpretation and note that the Selwyn Council has received its own legal advice that is of the same (or at least very similar) view as us.
- 43 We provide the following comments in response to the CCC and ECan legal interpretation:

43.1 While we accept that the CRPS as amended by PC1 does to some extent give effect to the NPS-UD. But this is at most 'partial effect':

- (a) The scope of PC1 was restricted to only include additional land identified in the Our Space 2018-2048 process, initiated under the previous National Policy Statement on Urban Development Capacity 2016 (*NPS-UDC*).
- (b) Given the NPS-UDC required local authorities only to determine the 'sufficient development capacity' required in the short, medium, and long term, the CRPS (as amended by PC1) could only ever identify the minimum amount of development capacity that is required to be enabled by the NPS-UD. Noting that the NPS-UD now requires 'at least' sufficient development capacity to be provided for.
- (c) The Report prepared by ECan itself to the Minister on PC1 expressly recognise that:¹¹
 - (i) the purpose of PC1 is not to identify any additional areas appropriate for future rezoning;
 - (ii) the purpose of PC1 is to give effect to Policy 2 and clause 3.7 of the NPS-UD and that therefore this would give effect to the NPS-UD "in part";
 - (iii) PC1 does not purport to give full effect to the NPS-UD given the scope of PC1 under the streamlined planning process;
 - (iv) further changes to the CRPS would be required in order to fully give effect to the NPS-UD (including the introduction of the criteria required under clause 3.8 NPS-UD);
 - (v) further work to the CRPS is currently being undertaken and in the meantime, any plan change requests will need to be considered in light of the NPS-UD.

43.2 Our legal interpretation does not rely on Policy 8 of the NPS-UD having any particular elevated significance over the other objectives and policies in the NPS-UD. All other objectives

¹¹ Report to the Minister for the Environment on Proposed Change 1 to Chapter 6 of the CRPC, March 2021.

and policies in the NPS-UD will be relevant in the context of whether a particular plan change achieves the purpose of the NPS-UD and to which it would be appropriate to apply the responsive planning framework to. For example, we consider it unlikely, if not impossible, that there would ever be a situation where a plan change meets the tests in Policy 8, but is contrary or inconsistent with Objective 6. We consider PC73 is also consistent with Objective 6.

- 43.3 We reject the notion that a 'hard line' approach to urban growth may be warranted under the NPS-UD. This is particularly so when the MfE Fact Sheet on responsive planning expressly states that *"a hard rural urban boundary without the ability to consider change or movement of that boundary would not meet the requirements of the responsive planning policy."*
- 43.4 As such, there is an inconsistency or a tension between the CRPS and the NPS-UD which must be resolved in order to meet the requirement to give effect to both of these documents in section 75(3) of the RMA. Our interpretation above, sets out the most appropriate way to reconcile this inconsistency in the way intended by the NPS-UD, being the document that came later in time.
- 43.5 Nowhere in the NPS-UD does it require that responsive planning be undertaken "in a manner that complements existing strategic planning". And it is not clear how or why CCC and ECan would read this requirement into the NPS, when the NPS-UD is clearly trying to do the opposite.
- 43.6 To assert that plan changes falling outside of the PIB should be accompanied by a change to the CRPS is absurd and could not have been the intention of the NPS-UD. We note that a private developer has no ability to request a change to the CRPS. Under the RMA, the ability to amend an RPS is limited to a Minister of the Crown or a territorial authority.¹² This interpretation therefore does not provide an accessible method or solution for reconciling the CRPS with the need to be responsive those plan changes anticipated under Policy 8. Further, the NPS-UD itself requires regional councils to amend their regional policy statements to give effects to the NPS-UD.
- 43.7 CCC and ECan (including the evidence of **Mr Langman**) appear to completely ignore the fact that the NPS-UD is a later in time, higher order document.

¹² Clause 21, Schedule 1, Part 2 Resource Management Act 1991.

44 We understand CCC and ECan are also concerned about precedent and cumulative effects of our interpretation of these planning documents. We do not really see this as an issue as ultimately, any decision under the responsive planning framework in the NPS-UD must meet the tests in the NPS-UD. Not every ad hoc application outside of the PIB is guaranteed to be granted under Policy 8. All applications will still be subject to a high level of scrutiny on a case by case basis and dependent on evidence as to:

44.1 Whether it adds significantly to development capacity;

44.2 Contributes to a well-functioning environment; and

44.3 Is otherwise consistent with the rest of the NPS-UD and other planning documents (i.e. as these might be amended by the NPS-UD).

45 It is therefore entirely appropriate to consider this proposal under the responsive planning framework in the NPS-UD.

PC69 and the responsive planning framework

46 Having demonstrated above that the responsive planning framework in the NPS-UD does apply to this particular plan change and that it is not precluded by the avoid objective in the CRPS, we go on to consider whether this particular plan change would meet the tests for this framework.

47 It is clear that this plan change is unanticipated by RMA planning documents, and is out-of-sequence with planned land release – if it was anticipated or planned, it would have been identified in Map A of the CRPS. Therefore the responsive planning framework is invoked and a decision maker must take it into account.

Well-functioning urban environment

48 Under Policy 8, the test of whether the development would “contribute to a well-functioning urban environment” must be considered.

49 A well-functioning urban environment is defined (in minimum terms) in Policy 1 to the NPS-UD and each of these points are covered in the evidence of the various experts on behalf of the Applicant which we will hear over the coming days, including with regard to:

49.1 Enabling a variety of homes that meet the needs, in terms of type, price, and location, of different households;

49.2 Having good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;

- 49.3 Supporting, and limiting as much as possible adverse impacts on, the competitive operation of land and development markets; and
- 49.4 Supporting reductions in greenhouse gas emissions, and being resilient to the current and future effects of climate change.
- 50 It is these matters that will be covered specifically in the evidence of the various witnesses.
- Add significantly development capacity***
- 51 As noted above, no criteria has been incorporated into the CRPS as to what would constitute adding significantly to development capacity. However, this does not prevent the Commissioner from determining on a case by case basis, what this might mean.
- 52 We note that the MfE Guidance notes that such criteria could include:¹³
- 52.1 Significance of scale and location;
- 52.2 Fulfilling identified demand;
- 52.3 Timing of development (i.e. earlier than planned land release); or
- 52.4 Infrastructure provision.
- 53 The MfE Guidance also notes that the criteria should not undermine competitive land markets and responsive planning by setting unreasonable thresholds and that the criteria should have a strong evidence base.
- 54 The evidence of **Mr Sellars, Mr Jones, Mr Colegrave, Mr Akehurst, Mr Copeland, Mr Phillips** and **Mr Carter** all confirm comprehensively that this particular plan change would add significantly to development capacity. There can be no serious dispute on that point.
- 55 **Mr Langman**, in his evidence, accepts that the proposal would provide 'significant development capacity' in terms of quantum of dwellings, but that nevertheless PC69 should be declined in its entirety because:¹⁴

¹³ <https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-responsive-planning-policies.pdf>

¹⁴ At [3(a)].

- 55.1 sufficient development capacity has already been identified to meet expected housing demand over the medium term;
 - 55.2 it is out of sequence with planned infrastructure development; a
 - 55.3 it would compromise opportunities for intensification elsewhere in Greater Christchurch; and
 - 55.4 it would not contribute to a well-functioning urban environment.
- 56 With respect to sufficient development capacity already being identified, we note that the applicant has a number of experts that demonstrate this is not the case. No evidence has been provided by the Councils that rebuts any of this evidence. **Mr Langman** appears to be relying on the capacity assessment documents themselves as his expert witnesses on this matter but without the Commissioner hearing from the authors of those reports.
- 57 Further to this, we note clause 3.2 of the NPS-UD requires that for capacity to be 'sufficient' to meet expected demand, it must be 'plan enabled.' Clause 3.4 of the NPS-UD goes on to state that development is 'plan-enabled' for housing if, in relation to the medium term, it is on land zoned accordingly for housing¹⁵ under either an operative or proposed district plan.
- 58 **Mr Langman** explicitly sets out this definition in his evidence, yet then fails to mention or address whether the medium term capacity assessments he relies on do in fact meet this definition. None of the future development areas which were incorporated into the CRPS through the PC1 process, and that the Council includes in their medium term capacity assessment, are plan enabled yet. A fact that is not engaged with in **Mr Langman's** evidence.
- 59 Further, the evidence of **Mr Sellars** and **Mr Jones** clearly demonstrates that while the Councils, on paper, might believe there is sufficient development capacity, this is certainly not the case on the ground. There is an acute residential house shortage in Lincoln, and more generally in Greater Christchurch. This is starkly evidenced by rising house prices.
- 60 Nevertheless, it is our submission that the NPS-UD does not prevent (but in fact encourages) the zoning of additional land above what might be considered 'sufficient' development capacity. This is clear

¹⁵ I.e. housing use is a permitted, controlled, or restricted discretionary activity.

from the direction in Policy 2 of the NPS-UD for local authorities to “at all times, provide at least sufficient development capacity...”

- 61 With respect to being out of sequence with planned infrastructure release, a number of the applicant’s experts cover this topic. We note there are many planned infrastructure upgrades that are able to integrate with and service this development. Often, and particularly in Selwyn, infrastructure provision comes after and follows development. This is not unusual in the development space as there needs to be demand before infrastructure is invested in. We say, PC69 can feasibly be integrated with infrastructure planning and funding decisions, noting that PC69 itself will provide this funding to enable the infrastructure through development contributions.
- 62 With respect to compromising opportunities for intensification elsewhere in Greater Christchurch, we note this is not a criteria of the responsive planning framework. And as provided for in the evidence of **Mr Sellars** and **Mr Jones**, the market for intensified inner city living is not at all the same as that for standalone dwellings in Selwyn. Providing for one, will not compromise the other as they are distinct buyer markets. In any case, as there is a clear lack of sufficient development capacity in Greater Christchurch, ideally one would provide for both.
- 63 Finally, with respect to whether the plan change demonstrates a well-functioning urban environment, this is an evidential matter covering a number of expert topics. Based on the evidence put forward by the Applicant, we say PC69 will provide for a well-functioning urban environment.

The urban environment to be considered

- 64 **Mr Langman**, in his evidence, considers that development capacity must be assessed with relation to Greater Christchurch as the ‘urban environment’.
- 65 We do not agree with **Mr Langman** that the significance of a development should be considered as against the Greater Christchurch urban environment only.
- 66 An urban environment is defined so broadly in the NPS-UD that it can encompass a number of varying and overlapping urban environments. For example, in this context, we consider the urban environments of Lincoln, Selwyn, and Greater Christchurch to be of most relevance. In any event all experts, including **Mr Langman** (as noted above) do accept that PC69 would provide significant development capacity for Greater Christchurch.

STRATEGIC PLANNING PROCESSES V PRIVATE PLAN CHANGES

- 67 **Mr Langman** (as well as **Mr Nicholson**) holds a strong view that spatial planning exercises should be the preferred option for identifying areas for additional urban development, over separate private plan changes.
- 68 Private plan changes, however, are a perfectly legitimate public process to be used in the enabling of additional urban development. In fact, Policy 8 of the NPS-UD itself specifically recognises this by using the exact words 'plan change'. Policy 8 does not require the Council to be responsive to unanticipated/out-of-sequence significant development capacity when participating in strategic planning processes.
- 69 Private plan changes will not inevitably preclude or inhibit future strategic growth outcomes. As noted above, the responsive planning framework requires a detailed merits analysis against the criteria in the NPS-UD and other relevant planning documents. Policy 8 does not just open the floodgates to all out-of-sequence development to be granted.
- 70 In any case, the growth of Lincoln is contemplated by the CRPS. We note that Lincoln is identified as a 'Key Activity Centre' (KAC) in the CRPS which are defined as:

"Key existing and proposed commercial centres identified as focal points for employment, community activities, and the transport network; and which are suitable for more intensive mixed-use development."

- 71 We also note Objective 6.2.2 in relation to KACs:

"Urban form and settlement pattern

The urban form and settlement pattern in Greater Christchurch is managed to provide sufficient land for rebuilding and recovery needs and set a foundation for future growth, with an urban form that achieves consolidation and intensification of urban areas, and avoids unplanned expansion of urban areas, by: [...]

2. providing higher density living environments including mixed use developments and a greater range of housing types, particularly in and around the Central City, in and around Key Activity Centres, and larger neighbourhood centres, and in greenfield priority areas, Future Development Areas and brownfield sites; [...]"

- 72 As such, we say that the expansion of Lincoln is not so out of line with likely future strategic planning that a plan change in this area could not reasonably be considered on its merits.
- 73 Further development of a KAC would also be consistent with Objective 3 of the NPS-UD which (among other things) seeks to enable more residents and jobs in urban environments that are in or near employment centres. KACs are inherently intended to be employment centres. **Mr Langman** at paragraph 74 of his evidence does not seem to appreciate that Lincoln is a KAC.
- The key issue is timing**
- 74 One of the key issues that arises from the consideration of whether urban development is best provided for through a strategic planning processes or through a private plan changes is that of timing.
- 75 The issue with strategic planning processes is how slow they can be. Not just in terms of assessment, such as capacity assessments, but also the implementation of these processes into planning documents. Our Space is a good example of this.
- 76 On the other hand, there is evidence before the Commissioner that there is a clear demand for housing in Lincoln (regardless of PC69) and a need to provide supply more generally. If this supply is not provided in Lincoln, this will cause market dysfunction and result in people moving even further away (such as Leeston or Darfield) to find what they are looking for. This in itself results in undesirable outcomes with respect to well-functioning urban environments.
- 77 The PC69 site is an inevitable extension of the Lincoln Township, which we submit, based on the evidence, is almost certainly to be identified as an area for growth in future strategic planning exercises in any case.
- 78 In light of this and the persistent and worsening housing crisis in New Zealand, we say the rezoning of this site is best achieved through the quicker private plan change process.
- 79 With respect to the infrastructure considerations, we consider these will arise regardless of this plan change, particularly in the current New Zealand context where growth and development to mitigate the housing crisis is being strongly encouraged. It is for the Council to consider and address how it will provide for further infrastructure following PC69.

VERSATILE SOILS

- 80 The impacts on highly productive soils have been covered extensively in the Officer's Report, and the evidence of **Mr Phillips** and **Ms McCusker**.
- 81 **Ms McCusker** concludes in her evidence that she does not consider the plan change will have a significant adverse effect on the district or region's versatile soil resource, nor will it create a shortage of land or soil resource in the future. **Ms McCusker** provides a number of reasons for this conclusion and in particular, the fact that the LUC classifications for this site are inherently limited by the wetness of the soil.
- 82 A number of submitters have provided written evidence in response to **Ms McCusker's** evidence which she will respond to in her summary. Significant weight is placed by submitters on the 'forthcoming' National Policy Statement on Highly Productive Land (NPS-HPL). It is important to keep in mind that the NPS-HPL is still under development following a consultation process in 2019. This consultation process put forward a number of proposed objectives and policies. There were a significant number of submissions received on the consultation, with recurring themes (including from the Selwyn Council) that the provisions as drafted did not provide enough guidance or certainty to be capable of implementation.
- 83 While it is appropriate to have the NPS-HPL in mind, it should not be given much weight, if any, considering the uncertainty around what its final form might look like.

MOIRS LANE

- 84 We understand there may still be some contention as to the width of Moirs Lane. **Mr Boyes** in his evidence noted that connection to this lane presents difficulties for connection as its legal width is only some 13.5m.
- 85 The evidence of **Mr McLeod** confirms, with reference to the deposited plan (attached to his evidence), that the width of Moirs Lane is in fact 20.12m and sufficient to provide for the proposed collector road.
- 86 We consider the deposited plan to be the most accurate source of information as to the width of Moirs Lane.

THE LINCOLN WASTEWATER MANAGEMENT POND

- 87 With respect to the Lincoln Wastewater Management Pond (the *Pond*), **Mr England** for the Council seeks to maintain the 150m

setback area set out in the District Plan in order to manage reverse sensitivity effects.

- 88 **Mr England** notes that the Pond is currently used as a contingency measure in emergency situations for buffer storage.
- 89 We understand that the Council does not hold any consents to use the Pond in this manner but has applied for consent to do so (noting that consent is on hold). It is not clear what authorisation the Council is currently relying on to use the Pond for emergency buffer storage.
- 90 Reverse sensitivity is the vulnerability of a lawfully established land use to complaints from a newly established, more sensitive, land use. However, a land use that is not lawfully established, or creates effects from breaching consent conditions, cannot claim to be at risk of suffering from reverse sensitivity effects.
- 91 We do not consider that reverse sensitivity effects can be relied on to justify the need to maintain the setback to the Pond.

RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT BILL

- 92 The recently announced Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (the *Amendment Bill*) in essence proposes to enable (through permitted activity status), among other things, the establishment of up to 3 residential dwellings of up to 3 storeys high in existing residential zones.
- 93 **Mr Langman** in his evidence raises the Amendment Bill a number of times, suggesting that this bill is likely to significantly increase development capacity, which will subsequently put an increased pressure on infrastructure and infrastructure planning, and contribute to other effects such as transport which are at issue in this hearing.
- 94 We emphasise that the Amendment Bill is just that, a bill. And as such little, if any, weight can be afforded to its current form until it is made law. The Amendment Bill is currently at the Select Committee stage before Parliament, having received 1,053 submissions (including that of Selwyn District Council raising a number of concerns with the bill).
- 95 While the Selwyn District Council has delayed the hearing of its residential chapters on the Proposed Plan as a result of this impending bill, other Councils have taken the view expressed here that until it is law it is not relevant. We understand that Waimakariri District Council does not intend to take any steps in

response to the Amendment Bill in its proposed plan process until it is finalised and becomes law.

- 96 We understand the Government intends to pass the legislation by 16 December 2021. Until that point in time, and confirmation of the final form of the Amendment Bill, we consider it inappropriate to take it into account in this process.
- 97 We accept that should the Amendment Bill be passed before a decision on this plan change can be made, that it might be appropriate for further submissions to be sought from the Applicant on any possible implications.

RESPONSE TO DOCUMENT FILED BY NANCY BORRIES

- 98 **Ms Borries** filed a 2000 Environment Court memorandum of consent relating to PC45 to the Transitional Plan, presumably to speak to at the hearing.
- 99 It is not at all clear what relevance this Memorandum of Consent has to the current proceedings.

CONCLUSIONS AND WITNESSES TO APPEAR

- 100 To conclude, the evidence supports the Commissioner granting this plan change. All concerns and issues raised in the Officer's Report and in submissions have been addressed adequately by the proposed rules package and amended ODP.
- 101 I will now call the following witnesses to speak to their evidence:
- 101.1 **Mr Carter** on behalf of the Applicant;
 - 101.2 **Mr Jones** on real estate;
 - 101.3 **Mr Sellars** on land valuation;
 - 101.4 **Mr Copeland** on economics;
 - 101.5 **Mr Akehurst** on economics;
 - 101.6 **Mr Colegrave** on economics;
 - 101.7 **Mr Farrelly** on greenhouse gas emissions;
 - 101.8 **Mr Thompson** on geotechnical;
 - 101.9 **Mr Smith** on traffic modelling;

- 101.10 **Mr Fuller** on transport;
- 101.11 **Ms McCusker** on versatile soils;
- 101.12 **Mr McLeod** on infrastructure;
- 101.13 **Mr O'Neil** on flooding and stormwater;
- 101.14 **Ms Nieuwenhuijsen** on odour;
- 101.15 **Mr Van Kekem** on odour;
- 101.16 **Ms Lauenstein** on landscape and urban design;
- 101.17 **Mr Compton-Moen** on landscape and urban design;
- 101.18 **Mr Veendrick** on hydrology;
- 101.19 **Mr Taylor** on ecology;
- 101.20 **Ms Drummond** on ecology; and
- 101.21 **Mr Phillips** on planning.

Dated: 22 November 2021



Jo Appleyard / Lucy Forrester
Counsel for Rolleston Industrial Developments Limited

APPENDIX 1

APPENDIX 2

Document	Time of implementation	Comments
Land Use Recovery Plan (<i>LURP</i>) ¹⁶	Took effect in December 2013 .	<p>A regional planning document prepared under Canterbury Earthquake Recovery Act 2011.</p> <p>It puts land use policies and rules in place to assist the rebuilding and recovery of communities (including housing and businesses) disrupted by the Canterbury Earthquakes.</p> <p>Of most relevance, however, it amended the RPS to include Chapter 6 (Recovery and rebuilding of Greater Christchurch) and identified 'greenfield priority areas'.</p> <p>The LURP introduced the first iteration of what we know as 'Map A' into the RPS. We have included the LURP version of Map A in Appendix 1 for your reference.</p>
National Policy Statement on Urban Development Capacity (<i>NPS-UDC</i>) ¹⁷	Took effect in December 2016 .	<p>The purpose of the NPS-UDC was to ensure that councils enabled development capacity for housing and businesses (through their land-use planning infrastructure) so that urban areas could grow and change in response to the needs of their communities.</p> <p>The emphasis of the NPS-UDC was to direct councils to "<i>provide sufficient development capacity and enable development to meet demand in the short, medium, and long term.</i>"¹⁸</p>
Our Space 2018-2048: Greater Christchurch	Final report endorsed by the Greater Christchurch	This document was expressly prepared to give effect to the NPS-UDC in Greater Christchurch and in particular the provision of "sufficient development capacity". Our

¹⁶ <https://dpmc.govt.nz/our-programmes/greater-christchurch-recovery-and-regeneration/recovery-and-regeneration-plans/land-use-recovery-plan>

¹⁷ https://environment.govt.nz/assets/Publications/Files/National_Policy_Statement_on_Urban_Development_Capacity_2016-final.pdf

¹⁸ Refer for example OA2, PA1, PC1, PC3, PC4 of the NPS-UDC.

Document	Time of implementation	Comments
Settlement Pattern Update (<i>Our Space</i>) ¹⁹	Partnership in June 2019.	<p>Space identified that housing development capacity in Selwyn and Waimakariri is potentially not sufficient to meet demand over the medium and long term (10 to 30 years).</p> <p>It was intended that this document then form the basis of changes to Regional and District Planning documents to give effect to the NPS-UDC in a planned and collaborative way across Greater Christchurch.</p> <p>Our Space proposed that Map A of the RPS be amended to include 'Future Development Areas' which would give effect to the NPS-UDC.</p> <p>We have included a copy of Map A included in Our Space at Appendix 2 for your reference. We point your attention to the note at the bottom of this map which provides "<i>While it is intended Our Space provides some direction to inform future RMA processes, [this map] is indicative only.</i>"</p>
National Policy Statement on Urban Development (NPS-UD) ²⁰	Took effect in August 2020.	<p>This national policy statement replaced the previous NPS-UDC.</p> <p>Of particular relevance is the following change in the direction to councils to "<i><u>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.</u></i>"²¹</p> <p>It also introduced a range of policies and objectives not even contemplated in the NPS-UDC. Of particular note is Objective 6</p>

¹⁹ <https://greaterchristchurch.org.nz/assets/Documents/greaterchristchurch/Our-Space-final/Our-Space-2018-2048-WEB.pdf>

²⁰ <https://environment.govt.nz/assets/Publications/Files/AA-Gazetted-NPSUD-17.07.2020-pdf.pdf>

²¹ Refer Policy 2, Clause 3.2, Clause 3.3, Clause 3.11, Clause 3.13 of the NPS-UD.

Document	Time of implementation	Comments
		and Policy 8 (which we consider in more detail below).
Plan Change 1 to Chapter 6 of the RPS (PC1) ²²	PC1 made operative July 2021 .	<p>PC1 was approved by the Minister for the Environment (the <i>Minister</i>) under the Streamlined Planning Process (which we explain in more detail in paragraphs 5-23 below).</p> <p>PC1 effectively amends the RPS to include in Map A the Future Development Areas identified in Our Space. Map A as contained in Our Space and PC1 are identical. It also introduced new objectives and policies around the new future development areas.</p> <p>We have included a copy of amended Map A introduced into the RPS as a result of PC1 at Appendix 3 for your reference.</p> <p>PC1 does not fully give effect to the NPS-UD as it includes only the Future Development Areas from Our Space which only gave effect to the NPS-UDC.</p>

²² <https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-regional-policy-statement/change-chapter-6/>