

**IN THE ENVIRONMENT COURT AT CHRISTCHURCH**

**I MUA I TE KOOTI TAIAO**

**I ŌTAUTAHU ROHE**

**ENV-2022-CHC-**

**IN THE MATTER**

of the Resource Management Act  
1991 (**RMA or the Act**)

**AND**

**IN THE MATTER**

of an appeal under clause 14(1) of  
the First Schedule of the Act in  
relation to Plan Change 69 to the  
Selwyn District Plan

**BETWEEN**

**LINCOLN VOICE INCORPORATED**  
Appellant

**AND**

**SELWYN DISTRICT COUNCIL**  
Respondent

**Notice of appeal against decision on Proposed Plan Change 69**

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Dated: 4 August 2022

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AJS-914571-1-35-V1-e

Andrew Schulte (andrew.schulte@cavell.co.nz)  
Counsel for respondent

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**To:** The Registrar  
Environment Court  
Christchurch

1. Lincoln Voice Incorporated (**Lincoln Voice**) appeals against the decision of the Selwyn District Council (Respondent) to approve Plan Change 69 to the Selwyn District Plan (**PC69**).
2. Lincoln Voice is the successor to 13 individuals who made submissions, or were part of joint submissions, on PC 69. Those 13 individual submitters are all members of Lincoln Voice.
3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
4. The Appellant received notice of the decision on or about 22 June 2022.
5. The decision was made by the Selwyn District Council (**Respondent**).
6. Lincoln Voice is appealing against the decision to approve PC69 in its entirety.

**Reasons for the appeal**

7. While the submissions on which Lincoln Voice relies for its appeal raise a number of issues with the application, many of which it does not consider have been adequately addressed, Lincoln Voice's three key issues are: the reliance on the National Policy Statement – Urban Development (**NPS-UD**) to justify unplanned and non-integrated development, the failure to give effect to the Canterbury Regional Policy Statement (**CRPS**), and the loss of Highly Productive Land.
8. Further, Lincoln Voice says that:
  - 8.1 PC69:

8.1.1 Is contrary to Part 2 of the Resource Management Act;

Without limiting the generality of the above, Lincoln Voice considers that PC69 does not promote sustainable management of natural resources as it will not: sustain the potential of highly productive land to meet the reasonably foreseeable needs of future generations; safeguard the life supporting capacity of that land; or avoid, remedy or mitigate the adverse effects on that land (s.5). It is not an efficient use of highly productive land (s.7(b)), it will not maintain or enhance that land (s.7(f)) and does not have regard for its finite characteristics (s.7(g)).

8.1.2 does not properly implement the Respondent's functions under section 31 of the Act; and

8.1.3 fails to give effect to relevant higher order statutory documents.

*National Policy Statement – Urban Development 2020*

8.2 The rezoning and subdivision of this land is contrary to the NPS-UD because, amongst other things, it does not enable a productive and well-functioning urban environment, it undermines the NPS-UD requirement that councils plan well for growth and ensure a well-functioning urban environment, and it does not meet the requirements in Policies 1, 6(a) and (b), and 8 of the NPS-UD. While accepting that the NPS-UD is enabling, it does not mean that all plan changes are appropriate and must be approved, especially when they are contrary to the purpose of the RMA.

*Canterbury Regional Policy Statement*

8.3 The rezoning of this land is contrary to Chapter 6 and Map A of the CRPS (including, but not limited to, Objectives 6.2.1(3) and 6.2.4, and Policies 6.3.1(4), 6.3.4 and 6.3.5) because, amongst other things, the proposal fails to be located and designed in a way that achieves consolidated and coordinated urban growth that is integrated with the provision of infrastructure, and the rezoning fails to plan for transport infrastructure which maximises integration with land use patterns and facilitates the movement of people and goods and provision of services in Greater Christchurch.

*Loss of Highly Productive Land*

8.4 The rezoning and subdivision of this land is contrary to the proposed National Policy Statement for Highly Productive Land (**NPS-HPL**) because the PC 69 land is a large contiguous area of HPL, and as such PC69 is contrary to the Government direction to protect these soils of national importance. It is also inconsistent with Policy 15.3.1.2 of the CRPS, and contrary to Policy B1.1.8 of the operative District Plan and Policy UG-P9 of the proposed District Plan.

8.5 Development of the land will have a significant adverse effect on highly productive land and versatile soils when there is no necessity for this land to be developed, as alternative locations which do not have as significant adverse effects exist, and should be preferred.

- 8.6 The Commissioner found that the applicant's assessment of the extent of highly productive land was an understatement. The difference in the extent, between submitters and the applicant, was considerable and no satisfactory reason was given for it. Yet the applicant's position on the issue of highly productive soils was otherwise accepted, seemingly without question. In this respect, Lincoln Voice say the Commissioner erred.
- 8.7 The Commissioner's decision tends, in fact, to relegate the issue of the loss of highly productive soils, despite the weight of evidence that this finite resource is under considerable threat from development, and that the safeguarding of such resources is part of the purpose of the RMA. In part, that position is founded on previous authority, summarised in the Respondent's "Versatile Soils - Baseline Report" from 2018. Those findings (amongst other factors) may have had a detrimental impact on the ability to protect HPL, to the extent that the proposed NPS-HPL must be seen as a corrective step. Lincoln Voice says, respectfully, that those previously held positions no longer represent the value that ought to be afforded HPL, regardless of whether the NPS-HPL has been finalised, and should be reconsidered in light of the extent that HPL has been and could still be lost to residential development at Selwyn (and elsewhere);
- 8.8 On the issue of highly productive soil alone, the rezoning of this land for residential and other development is not the most effective and efficient use of the land in terms of the requirements of s.32 of the Act.

#### **Relief sought**

9. Lincoln Voice seeks:
- 9.1 that PC69 be declined; and
- 9.2 if appropriate, costs of and incidental to this appeal.

#### **Further potential issue**

10. Lincoln Voice is concerned in respect of how the Respondent has decided to incorporate PC69 in the variation that they are proposing to give effect to the Medium Density Residential Standards (**MDRS**), required under the Resource Management (Enabling Housing Supply and other matters) Amendment Act 2021 (**EHS**).
11. The concern is that given there are no appeal rights under the EHS for decisions on implementing the MDRS, there is the potential that the key date of 20 August 2023 will be upon us while still awaiting a hearing or decision on the Lincoln Voice appeal. And, once the MDRS decision is

made, the outcome of the appeal may become moot, or at least problematic, should PC69 be modified or declined.

12. In the circumstances, Lincoln Voice considers that excluding PC69 from the variation is the proper course. While subject to the appeal process, it cannot become operative, and the Respondent's decision cannot be assumed to be the final outcome.
13. Lincoln Voice considers that this matter may need to be determined as a preliminary issue, and/or the subject to a declaration by the Court, subject to any clarification from the Respondent.

**Mediation**

14. Lincoln Voice supports mediation, but notes that the appeal is already reasonably focused, and the relief sought is the decline of PC69.

**Attachments**

15. Copies of the following documents are attached:
  - a. A copy of the submissions by the members of the unincorporated grouping that became Lincoln Voice, upon which the appeal derives standing.
  - b. A list of the names and addresses of persons to be served with a copy of this notice of appeal.

**Signed:**



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Counsel for Lincoln Voice Incorporated

**Date:** 4 August 2022

**Address for Service:**

Lincoln Voice Incorporated  
C/- Cavell Leitch  
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TO: Registrar, Environment Court, Christchurch

AND TO: Selwyn District Council

**Advice to recipients of copy of notice of appeal***How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

*How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.