

BEFORE THE SELWYN DISTRICT COUNCIL

UNDER the Resource Management Act 1991

AND

IN THE MATTER Of a request to change the Operative Selwyn District Plan –
Plan Change 71

**SUBMISSIONS ON BEHALF OF FOUR STARS DEVELOPMENT
LIMITED AND GOULD DEVELOPMENT LIMITED**

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A handwritten signature in dark ink, reading "Anthony Harper". The signature is fluid and cursive, with the first name "Anthony" and last name "Harper" clearly distinguishable.

1 INTRODUCTION & SCOPE OF LEGAL SUBMISSIONS

- 1.1 In recent plan change applications, the housing market in Rolleston has been described as dysfunctional, with an ongoing, insatiable level of demand that is far outstripping any available capacity or supply. The adverse social and economic consequences of this dysfunctional market are undeniable, including a marked increase in unaffordability of housing and sections.
- 1.2 There can be no doubt that the lack of land supply is a key contributing factor towards the present housing crisis in Rolleston. PC71 is therefore, a market response to an urgent need to increase supply.
- 1.3 The applicants are extremely well placed to provide additional capacity. Mr. Kennard has over three decades of experience in the local real estate market, and has an extensive track record of delivering greenfield sites to the market.
- 1.4 The description of the Request and an analysis of its merits against the statutory framework is comprehensively addressed in the evidence filed on behalf of the Applicants, including the summaries to be presented today. I do not propose to add unnecessarily to this analysis. In short however, the PC71 land is ideally located to provide for demand, being in close proximity to Rolleston Town Centre and existing recreational and educational facilities. There seems to be little disagreement on that matter, with both urban design witnesses (Lauenstein & Nicholson) extolling the benefits of the location. Even Mr Langman for the CRC/CC acknowledges that development in this location would result in a compact urban form.¹
- 1.5 Through evidence, the local authority opponents of PC71 refer to a "*perception of high demand*".² They ask that the Council declines the Request and instead leave it to the Greater Christchurch Partnership to address the current housing crisis through a range of processes that are either only just commenced (Spatial Plan 2050), or are unlikely to be notified until late 2024 (CRPS Review). The Applicants say this approach simply perpetuates the housing crisis and is fundamentally inconsistent with the National Policy Statement on Urban Development 2020 (NPS UD).
- 1.6 A further opponent of the Request (CIAL) argues the constraint of the current air noise contour is such that part of the land should not be made available for residential development. Consistent with the responsive approach required under the NPS, the Applicants say that the contour should not be determinative, particularly as it is based on outdated analysis and information. To the extent that the contour should be considered a constraint, which is not accepted, it is temporary only. In reliance on the best and most current information available, the Applicants say there is a very high probability that this constraint will disappear in the very near future.

¹ Evidence of Marcus Langman, at para 113.

² Evidence of Marcus Langman, at para 96.

- 1.7 The Request is opposed by Foodstuffs South Island, who have recently lodged an application for a large scale supermarket on land at 157 Levi Road. The application is yet to be notified, and there is no certainty it will be approved. Quite properly therefore, the Applicant's experts have undertaken their analysis on the basis of the current residential zoning of the Foodstuffs' land.
- 1.8 Primarily, these submissions seek to address the key legal issues arising out of this Request. In particular, they address the responsive planning framework under the National Policy Statement on Urban Development 2020 (NPS UD) in light of the Canterbury Regional Policy Statement (CRPS). In summary, these submissions conclude the Council must be responsive in its approach to considering plan changes such as PC71 which will add significant development capacity, and should do so in line with the provisions of the higher order, NPS UD. To the extent earlier in time, subordinate documents such as the CRPS and the District Plan are inconsistent with the provisions of NPS-UD, the latter should prevail.
- 1.9 Other related matters are addressed in these submissions, including matters such as the meaning of significant development capacity and the appropriate urban environment against which to assess significance.

2 STATUTORY FRAMEWORK

- 2.1 *Colonial Vineyards*³ is typically cited as providing an appropriate summary of the framework against which plan changes should be tested:
- (a) A district plan change should be designed to accord with and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.
 - (b) A district plan change must give effect to any national policy statement, national planning standard and operative regional policy statement.
 - (c) Each proposed objective is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.
 - (d) The policies are to implement the objectives, and the rules are to implement the policies.
 - (e) Each proposed policy or method is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objective of the district plan by:
 - (i) Identifying other reasonably practicable options for achieving the objectives;
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

³ *Colonial Vineyards v Marlborough District Council* [2014] NZEnvC 55

- (iii) summarising the reasons for deciding on the provisions
 - (f) In making a rule, the territorial authority must have regard to the actual or potential effects on the environment.
- 2.2 Given the present context i.e. the NPS-UD post-dating both the RPS and the Operative District Plan, and as discussed in more detail below, care must be taken to ensure prescriptive objectives and policies within these subordinate documents are not interpreted or applied in such a manner as to prevent private plan applications being considered on their merits. As such, the requirement to variously give effect to or implement such provisions must be read or interpreted in this light.

3 PRINCIPLES OF INTERPRETATION

- 3.1 The Commissioner will of course be familiar with these principles, as summarised in *Powell v Dunedin City Council* [2005],⁴ and more recently in *Simons Pass Ltd v Mackenzie DC* [2020]:⁵
- (a) 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;
 - (b) 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;
 - (c) the interpretation should not prevent the plan from achieving its purpose; and
 - (d) 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.
- 3.2 Therefore, the ordinary meaning of words is a starting point. In circumstances where a plain ordinary meaning of the word creates an anomaly, inconsistency or absurdity, the other principles of interpretation must be taken into account in order to determine the proper interpretation of a provision.
- 3.3 Within the present context, the hierarchy of planning instruments under the RMA is of particular relevance. The effect of this hierarchy is that subordinate documents must "give effect to" higher order documents, with national policy statements sitting at the summit of the hierarchy.
- 3.4 The meaning of "give effect to" has been settled by the Supreme Court in *Environmental Defence Society v New Zealand King Salmon* [2014] - it is a strong directive.⁶ The notion

⁴ *Powell v Dunedin City Council* [2005] NZRMA 174.

⁵ *Simons Pass Ltd v Mackenzie District Council* [2020] 22 ERNZ at paras [25] – [35].

⁶ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [80].

that decision makers are entitled to decline to implement aspects of an NPS if they consider that appropriate, does not fit readily into the hierarchy.⁷

- 3.5 Where there is an 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.⁸ Indeed, decision-makers are under an obligation to make a "thoroughgoing attempt to find a way to reconcile" conflict.⁹
- 3.6 As a last resort the doctrine of implied repeal would be applied if inconsistencies cannot be reconciled.¹⁰
- 3.7 The timing of when particular documents are released is also of relevance. That is, in my submission the later in time and higher order NPS UD should be considered as the most up to date expression of the purpose and principles of the Act.

4 THE KEY ISSUE

- 4.1 Reduced to its simplest form, the key legal issue raised in submissions and evidence is whether or not the responsiveness provisions of the NPS-UD can be reconciled with Chapter 6 of the Canterbury Regional Policy Statement (CRPS).

- 4.2 The Responsiveness provisions can be found in Objective 6 (c) and Policy 8 in the NPS, which read:

Objective 6: *Local authority decisions on urban development that affect urban environment are:*

(c) Responsive, particular in relation to proposal that would supply significant 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.

- 4.3 Implementation of Objective 6 (c) and Policy 8 is described in 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.

⁷ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [90].

⁸ *R v Taylor* [2009] 1 NZLR 654.

⁹ *Royal Forest & Bird v Bay of Plenty Regional Council* [2017] NZHC 3080 at [38].

¹⁰ *Taylor v AG* [2014].

(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.

4.4 The "contest" is between the above provisions and the prescriptive objectives and policies of Chapter 6 which entrench a "hard limit" approach to urban development in Greater Christchurch out to 2028.

4.5 This hard limit is set out in the following objectives and policies of Chapter 6 of the RPS:

Objective 6.2.1 Recovery Framework

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

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

Objective 6.2.2 Urban form and Settlement pattern

The urban form and settlement pattern of Greater Christchurch is managed to provide sufficient land for rebuilding and recovered 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...

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;

....

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.

Policy 6.3.5 Integration of land use and infrastructure

Recovery of Greater Christchurch is to be assisted by the integration of land use development and infrastructure by:

4. Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A...

- 4.6 The Commissioner will be aware of the history behind Chapter 6, including its insertion in December 2013 into the RPS via s 27 of the Canterbury Earthquake Recovery Act 2011. A number of parallel avoidance provisions were inserted into Selwyn District Plan at the same time, including urban growth objectives B4.3.3 and Policy B4.3.1.
- 4.7 Without wishing to dwell on the history behind Chapter 6, it is a matter of fact that its content, including the prescribed settlement pattern in Map A, were never tested against the purpose and principles of the RMA. Instead, its main focus (quite understandably) was on achieving the recovery purposes of the Canterbury Earthquake Recovery Act 2011 for the period 2013-2028. In contrast, the predominant focus of the NPS-UD prepared under the RMA, is the housing market. So, while the RPS may provide a "*foundation for future growth*"¹¹, it is the higher order document which fully articulates how growth in the housing market is to be enabled through a range of planning decisions and processes.

Background to NPS-UD, its development & the Minister's Decision

- 4.8 An understanding of the background to the NPS-UD assists in an evaluation of the key issue.
- 4.9 The full rationale behind its development by both the Ministry for the Environment and Ministry for Housing and Urban Development can be found in: *Planning for Cities – A discussion document on a Proposed National Policy Statement on Urban Development* (August 2019) (the Discussion Document).
- 4.10 The Ministers' opening message confirms housing and urban development is a priority for the Government. It points to a "*startling array*" of indicators that there is a problem and, as a consequence there is a need for urban land and housing markets to work better and be more competitive by significantly increasing the number and type of development opportunities in the market.

This Government has made housing and urban development a priority. Everyone in New Zealand deserves healthy, secure and affordable homes that provide access to jobs, education, amenities and services. When performing well our cities can contribute to the

¹¹ Objective 6.2.2 RPS

well-being of residents, and raise living standards for all. Our cities need to be able to adapt and respond to the diverse and changing needs of all people, whānau, communities and future generations, and function within environmental limits.

However, a startling array of indicators in housing and urban development tells us we have a problem: severe housing unaffordability, falling home ownership, increased hardship and homelessness, increased household debt, intergenerational inequality, congestion, poor transport choice and urban pollution.

It is clear our urban land and housing markets need to work better and be more competitive. We need to significantly increase the number and type of development opportunities in the market, and ensure future growth benefits our towns and cities.¹²

4.11 The Discussion Document refers to existing:

"... urban land markets that do not enable housing development to keep up with growth and ensure land is affordable...; and the need: to remove unnecessary restrictions on development to allow growth up (eg, higher density housing near existing services and infrastructure) and out (eg, well connected houses in greenfield areas with good infrastructure)".¹³

4.12 In respect of greenfield growth, the Discussion Document speaks to the need for a more responsive planning system:

Providing for further greenfield development

Summary of the proposal

To meet growth requirements local authorities may need to provide for growth out as well as up. An important part of this work is to ensure outward development is managed in the best way possible to deliver quality urban environments, while being responsive to development beyond areas planned for.

The Government is considering provisions in the NPS-UD that would direct local authorities with major urban centres in their jurisdiction to consider plan change requests for urban development in locations that are out of sequence (eg, locations that are identified for future urban development but are dependent on land release sequence), or outside of areas identified for urban development where particular conditions are met. For example, where this development would support good urban outcomes, environmental effects could be adequately managed, and the full costs of development (including on the wider network) could be met. These conditions are not intended to override or replace the consideration of environmental effects through a usual plan change process – those considerations must still take place.

¹² Planning for Successful Cities – p.7

¹³ Planning for Successful Cities – p.8

Rationale

Local authorities signal where they are planning on enabling the future development of the urban area through local plans (eg, holding zones like the future urban zones in Auckland) or through non-statutory processes like spatial planning. These plans and processes often signal where urban development can occur once certain conditions are met, such as the provision of trunk infrastructure and other amenities that support urban areas.

The proposed NPS-UD recognises the value of having well-integrated and coordinated growth areas. This is encouraged through the FDS requirements. However, the proposed NPS-UD also recognises that urban areas are dynamic and complex systems that are continually changing in response to wider economic and social change. As much as cities need to anticipate and plan for growth, they must also remain open to change and be responsive to demand.

One challenge with the current planning system is that it is not responsive enough to changing circumstances or opportunities. Existing urban boundaries or planned land release sequences are sometimes defended to encourage a particular urban settlement pattern, or to manage infrastructure costs. The proposed NPS-UD is seeking to support the UGA's objective to provide a system that is more open and responsive to new urban development opportunities in the areas where they are most needed.

The intention is that these plan changes for urban development are (or will be) well connected to jobs and amenities through transport choice (especially by public or active transport) and that the onus to provide infrastructure (including wider network considerations) should not fall on the local authority when not provided for by their long-term plan and/or development plan process. [My Emphasis]

- 4.13 Following public input on 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 was released in July 2020 (the Decision).¹⁴
- 4.14 Chapter 12 of the Decision addresses Responsive Planning. It analyses the submissions received on an example "greenfield" policy. It records that the majority¹⁵ of submitters opposed the policy arguing that it would undermine the intent of the NPS, in particular the requirement to prepare future development strategies.
- 4.15 A "key issue" identified with the example policy was:
- *In response to policies seeking to enhance responsiveness in the private plan change process, local authorities may instead entrench hard urban growth boundaries in their regional policy statements (RPSs) that are not subject to private plan changes.*

¹⁴ <https://environment.govt.nz/assets/Publications/Files/Recommendations-and-decisions-report-NPS-UD-final.pdf>

¹⁵ Opponents of a responsive policy included the Christchurch City Council.

- 4.16 The conclusions reached in the Decision on the appropriateness of a responsiveness policy were:

Responsiveness policy

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 both to 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. Significance would be determined by councils and could include development capacity significant to Māori that contributes to a well-functioning urban environment and has the necessary transport connections.

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. [My emphasis]

- 4.17 Both the Discussion Document and the Decision are explicit in directing that the purpose behind a responsiveness policy is to ensure plan changes (greenfield included) which would add significantly to development capacity must have the ability to be considered on merit. They cannot be rejected as is urged by CRC and CCC simply because they do not align with current plans.
- 4.18 In my submission the position of CRC/CCC is blatant attempt on those parties' behalf to undermine the clear intent of the responsiveness provisions of the NPS, and to instead entrench the hard urban limit approach in Chapter 6. As will be obvious from the documents identified above and from an interpretation of Policy 8 itself, this is precisely the type of conduct or mischief which the responsiveness provisions were promulgated to overcome.
- 4.19 Put simply, it is submitted that a proper interpretation of the prescriptive CRPS policies in light of the NPSUD is that they can no longer act as an unresponsive veto or barrier to the assessment of private plan changes of the type which local authorities must have particular regard to (i.e they must be given genuine attention to).
- 4.20 Policy 8 is very specific in requiring local authorities to be responsive to "unanticipated" or "out of sequence" plan changes that provide significant additional capacity. Policy 8 is a

gateway which facilitates the processing of such applications and enables their merits to be tested on all relevant fronts.

4.21 Policy 8 should of course be read in the context of the purpose behind the NPS-UD which has been developed to address the Government's stated priority to address the housing market and the "startling array" of issues that are so obviously present.

4.22 This purpose is given expression in the objectives and policies of the NPS, and include:

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.

Policy 1: *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum: have or enable a variety of homes that:*

(a) meet the needs, in terms of type, price, and location, of different households; and

(b) enable Māori to express their cultural traditions and norms; and

(c) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

(d) 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

(e) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(f) support reductions in greenhouse gas emissions; and 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.

- 4.23 The above objectives and policies speak to the enablement of social and economic wellbeing and to planning decisions improving housing affordability. They refer to the need **at all times** to meet the demand for housing.

- 4.24 There are various methods within the NPSUD which direct how the above objectives and policies are to be implemented. On this point, I agree with the opinion provided by Adderley Head to the Council on 13 September 2021, an opinion with which the Commissioner will be familiar. This opinion seeks to categorise the temporal nature of the different planning decisions/processes required under the NPS:

46. While we would not use the word primacy, we do not consider the responsive planning provisions should be seen as being distinctive from the balance provisions. As well the responsive planning provisions are engaged now while other NPS provisions have a much longer time frame for action. We consider this point links with the purpose of those responsive provisions which we see as in part to make planning decisions now in a manner that urgently seeks to address the housing crisis.

47. The responsive provisions deal with planning decisions taken now, seeking to deal expeditiously with land supply issues, more expeditiously than standard planning processes. The balance provisions of the NPS-UD are different and relate to a range of future action steps delivered following a plan review process.

- 4.25 The above submissions neatly encapsulate how the responsiveness provisions are to be regarded as a more agile tool for responding to urgent land supply issues. This is in contrast to strategies and plans which by their very nature can take many years to develop.

CRC/CCC Suggested Approach To Reconciliation

- 4.26 Mr Langman advances two solutions which he says reconciles the NPS with the prescriptive, hard urban limit, objectives and policies of the CRPS. The solutions involve two alternative procedural pathways, one of which is for the District Council to request a change to the RPS. The other is an application for a local authority to seek a declaration to the Environment Court under s 80 of the RMA. In respect of the latter option, one must rhetorically ask why neither the CRC nor the CCC has taken this step to date?
- 4.27 Regardless, there is nothing in the NPS-UD which suggests that approval of private plan change applications should be contingent on an individual local authority undertaking a parallel process of requesting a change to the CRPS. Rather as is explicit from the Discussion Document and the Decision referred to above, and is clear from Policy 8, private plan change applications must be considered on their merits. It should not need repeating

that the private plan change mechanism has been a feature of the RMA since its inception, and is a mechanism specifically recognised in Policy 8.

Basis for Approval Of PC71 Under NPSUD

4.28 It is fully acknowledged that were you to determine as a starting point that PC71 provides significant additional capacity, that does not necessarily mean the Request must be approved under the NPS-UD.

4.29 In addition to providing significant additional capacity, Policy 8 requires you to consider whether or not PC71 contributes to a well-functioning urban environment.

4.30 Policy 6 mirrors the above in requiring decision-makers to have particular regard to, relevantly:

(c) The benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)

(d) Any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity.

4.31 A comprehensive assessment of PC71 has been undertaken by expert witnesses on behalf of the Applicants. Overall, this assessment concludes that PC71 gives effect to the relevant objectives of the NPS-UD. It's contribution to a well-functioning urban environment stems principally from its very advantageous location, such that development of the land will maintain a compact, and consolidated, urban form for Rolleston.

Does the RPS give effect to the NPS-UD?

4.32 The position of the CRC/CC appears to be that Chapter 6 of the RPS gives effect to the NPS-UD. The basis for this position appears to be the addition, via Change 1 to the RPS, of the Future Development Areas (FDA) in Rolleston and Rangiora, together with Policy 6.3.12.

4.33 Mr. Langman refers in support of that proposition to the recommendation report to the Minister for the Environment, which includes an evaluation of how Change 1 would give effect to the NPS.¹⁶

4.34 Respectfully, this is a very selective analysis of the relevant document: *Appendix 5 – Legal and Statutory Framework – compliance with the requirements of relevant national direction and the RMA (including section 32AA Evaluation report)*.

4.35 Appendix 5 specifically acknowledges Change 1 is **not** intended to give full effect to the NPS UD:

¹⁶ Evidence of Marcus Langman, at para 54

62. *The Proposed Change does not purport to, and nor it is 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 progressed through the streamlined planning process and within the timeframes available.*

65. *Some submitters have sought that the Proposed Change go further in order to give effect to the responsive planning approach of the NPS-UD and that comprehensive change to the CRPS policy framework is required now to enable the 'flood' or private plan change requests to respond to and implement the NPS-UD.*

66. *Further changes to the CRPS are anticipated in order to fully give effect to the NPS-UD, including the introduction of criteria as to what would add significantly to development capacity and contribute to well-functioning urban environments so that local authority decisions affecting urban environments are responsive to plan changes in accordance with Policy 8 of the NPS-UD. This work is being undertaken now, and in the meantime, any private plan change requests will need to be considered in light of the NPS-UD. More comprehensive changes to the policy framework in the CRPS will be considered as part of the full review of the CRPS scheduled to commence in 2021.*

- 4.36 It is accepted that the requirement to include criteria in the RPS has to be completed "as soon as practicable". In the circumstances, it would have been prudent of the CRC to have promulgated criteria on significant development capacity at the earliest available opportunity. This is particularly the case given explicit knowledge that the responsiveness provisions of the NPS-UD would feature in the context of not only the private plan changes lodged to date, but also in the proposed district plans for both Selwyn and Waimakariri Districts.
- 4.37 Even while accepting the express "as soon as practicable" wording contemplates that some flexibility as to timing should be tolerated, the NPS is very directive as to the requirement on behalf of regional councils i.e. they **must** include the criteria required by Policy 8. It is now approximately 18 months since the NPS was gazetted and objectively regarded, the lack of any obvious progress on this matter is difficult to justify.
- 4.38 That aside, as will no doubt have been explained in all other private plan change hearings, FDA's do not equate to either short or medium term "*plan enabled capacity*", as that term is defined in Clause 3.4 of the NPS-UD:

3.4 Meaning of plan-enabled and infrastructure-ready

(1) Development capacity is plan-enabled for housing or for business land if:

(a) in relation to the short term, it is on land that is zoned for housing or for business use (as applicable) in an operative district plan

(b) in relation to the medium term, either paragraph (a) applies, or it is on land that is zoned for housing or for business use (as applicable) in a proposed district plan

(c) in relation to the long term, either paragraph (b) applies, or it is on land identified by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy.

- 4.39 From the above, the responsibility in practice for providing short to medium term capacity falls squarely on the shoulders of territorial authorities such as (in the present case) the Selwyn District Council who are responsible for the preparation, review and implementation of district plans. Relevantly, it is noted that the PSDP as notified has been constrained by the hard limit approach of the RPS.
- 4.40 Furthermore, there are many reasons why simply identifying land within a Regional Policy Statement as either a Greenfield Priority Area (GPA) or FDA fails to provide certainty that the same land will crystallise into zoning, or indeed that further steps (subdivision, titling, engineering marketing etc..) will be taken to develop the land to provide housing capacity. These reasons are touched upon in Ms Aston's primary evidence. They include landowners not harbouring any ambition to rezone or develop, and intervening events which affect the viability and/or appropriateness of rezoning land within a GPA/FDA.¹⁷ Further, given that FDA's are subject to contestable plan change processes, there is no guarantee rezoning will not be opposed, such as is the case here for the FDA component of the PC71 land. Even if approved, appeals may follow thereby significantly delaying or, worst case, preventing a rezoning.
- 4.41 Related to this, zoning should never be confused with the volume of sections available at any one time to meet demand – see *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 196 at [113]:
- "There is also a wider resource management issue here which is that it is important not to confuse zoning with the quantity of sections actually supplied. Land may be zoned residential but that does not mean it is actually assisting to meet the quantity of sections demanded. Only sections for sale can do that. There is no direct relationship between the number of sections theoretically able to be cut out of land zoned residential and the number of sections actually on the market at any one time especially when — as in Wanaka — there are very few landowners with land zoned for residential activities."*
- 4.42 The above is consistent with previous (undisputed) evidence from on the ground real estate experts such as Mr. Sellars (PC78) who identified a significant area of land (233 ha) within Rolleston either already zoned for residential use or within an FDA that, for a range of reasons, could only be considered as providing potential long term capacity.
- 4.43 As a final point, it is noted that the FDA's have been identified as potentially suitable areas for development out to 2028. This is of course less than the requirement to provide plan enabled capacity in the medium term (3-10 years).

¹⁷ An example in the Greater Christchurch context can be found in *Equus Trust v Christchurch City Council* High Court, Christchurch, 21/2/2017, CIV-2016-409-606, Cull J

Does the Operative Plan Give Effect to the NPS UD? Does it Contain Provisions that need to be reconciled with the Responsiveness Provisions of the NPSUD?

- 4.44 As noted above, there are a number of prescriptive provisions in the District Plan that essentially mirror the avoidance objectives and policies of the CRPS. For the reasons set out above, such provisions should also not be considered as a veto to a private plan change.
- 4.45 The Operative Plan of course pre-dates the NPS by some considerable time. With the exception of the provisions inserted via the LURP in 2013, there does not appear to have been any significant changes to the framework for urban growth in the intervening years.
- 4.46 In my submission, there are several areas in which the Operative District Plan does not give effect to the higher order NPS. These include, but are not necessarily limited to:
- a. A failure to enable all people and communities within affected urban environments (Rolleston included) to provide for their economic wellbeing both now and in the future (Objective 1). This failure has consistently been demonstrated by undisputed evidence which refers to the lack of land availability, which has contributed in a significant way to a dramatic increase in levels of unaffordability.
 - b. Similarly, the Plan does not enable more people to live in areas of the District (a wider urban environment) where there is a high demand for housing (Objective 2). At the present point in time, it is the market through property developers which are seeking to achieve this Objective.
 - c. Related to this failure to give effect to the enabling aspects of the above Objectives, it follows that the District Plan does not have or enable a variety of homes which meet the needs of different households (Policy 1 a(i)) and fails to provide for a competitive market in urban environments such as Rolleston (Policy 1 (d)). Furthermore, it is evidence that the District Plan does not: *"...provide at least sufficient development capacity to meet expected demand for housing ... over the short term, medium term and long term (Policy 2)"*. This is a requirement that must be met at all times and a requirement which applies to existing and new urban areas (Subpart 1 –*Providing Development Capacity*, Clause 3.2).
- 4.47 It may be suggested that the above shortcomings could be addressed in the current proposed District Plan review however, it is common knowledge that the PDP does not rezone any additional land for housing development. Further, its development remains a significant work in progress, and should therefore be accorded little weight.

5 OTHER MATTERS

What is the Urban Environment against which to assess capacity? Will PC71 provide significant development capacity?

- 5.1 As with other plan changes, an issue has been raised by Mr. Langman as to the correct "urban environment" against which to assess the contribution towards capacity. This issue

of course arises as a direct consequence of the current failure to date on CRC's behalf, to give effect to the NPS-UD by introducing appropriate criteria into the RPS. Absent those criteria, it is appropriate for a decision-maker to determine, whether a particular plan change would add significantly to development capacity on a case by case basis.

- 5.2 The NPS-UD definition of "urban environment" is as follows:

Means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- (a) *Is, or is intended to be, predominantly urban in character; and*
- (b) *Is, or is intended to be, part of a housing and labour market of at least 10,000 people.*

- 5.3 Rolleston Township comfortably meets the above definition, its population being well in excess of the 10,000 threshold.

- 5.4 Both CRC & CCC submissions on PC71 argue that proper "urban environment" against which significant additional capacity should be assessed is the Greater Christchurch area. Ms White in her s 42A report disagrees with this position and Ms Aston will refer to the matter in some detail in her summary and response.

- 5.5 In reality, the term "urban environment" can include Rolleston, Selwyn District (as a whole) and Greater Christchurch. The NPSUD does not determine which the urban environment to apply is. However it is noted that the obligation to provide at least sufficient development capacity at all times falls on not just the Regional Council, but also the Selwyn District Council. This suggests that in addition to an approach which defines the meaning of "urban environment" in plain, ordinary terms, an interpretation of the same word as including the Selwyn District is equally legitimate.

- 5.6 Mr. Ballingall's expert opinion is that the number of dwellings enabled by PC71 will provide a significant contribution towards the housing market in Selwyn. Ms Aston also analyses this issue in the context of relevant MFE Guidance and concludes that PC71 will provide significant additional capacity.

Precedent & Cumulative Effects

- 5.7 Mr. Langman's opinion at Paragraphs [8] and [64] is that approval of this plan change could set a precedent for subsequent decision-making without fully considering the cumulative impacts of other requests.

- 5.8 As a matter of law, the issue of precedent does not arise in the context of private plan changes. In *Canterbury Fields*,¹⁸ the Environment Court stated:

¹⁸ *Canterbury Fields Management Limited v Waimakariri District Council* [2011] NZEnvC, at [96].

Precedent is thus linked to the integrity of the Plan as it would apply to a resource consent application. This being a proposed plan change, the integrity of the planning instruments are addressed by statutory provisions and the need to be consistent with the plan's objective and policies.

...Again the issue of [cumulative effects] is better dealt with in terms of whether the new rules and methods implement the policies and objectives of the Plan, and give effect to the operative regional policy statement

- 5.9 *Canterbury Fields* of course pre-dates the NPS-UD and accordingly, the Court's findings regarding consistency with/giving effect to higher order provisions needs to be considered in that light. Applied to the present context therefore, to the extent that any issue of precedent or cumulative effect may arise, it can be resolved on a finding that the plan change in question achieves the relevant planning framework.

Enabling Act

- 5.10 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (The Amendment Act) came into force on 16 December 2021. A very simple description of the Amendment Act is that it focuses on removing existing barriers towards intensification by directing Tier 1 local authorities to undertake amendments to their plans to provide for this form of development. A process (Intensification Planning Instrument or IPI) is included within the Amendment Act to achieve this outcome.

- 5.11 In the Commissioner's Procedural Minute of 10 January 2022, you concluded at para [12]:

I agree that there is nothing in the Amendment Act that suggests that decisions on plan changes be delayed to await new evidence of the likely outcome of future and uncertain Council variation processes. The Amendment Act provides for those plan change processes to continue ahead of Council embarking on and notifying its IPI and variations.

- 5.12 Although the above conclusion was in the context of reopening already closed hearings, the reference to the "*future and uncertain Council variation process*" remains apt in the present circumstances. That is to say, it is difficult to conclude with any certainty as to the implications of the forthcoming variation.

- 5.13 Mr. Ballingall has referred to a desktop cost benefit analysis of the then Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill undertaken by his colleagues at Sense Partners, the conclusion being that there is unlikely to be a significant degree of uptake of MDRS opportunities within the Selwyn District, certainly in comparison to Christchurch City. Add to this unlikelihood, the development process for the Amendment Act highlighted other external factors, in particular restrictive covenants that may ultimately prevail over any opportunities that may be made available to intensify urban locations within the District.

- 5.14 Ultimately, the existence of the Amendment Act does not change the requirement in the NPSUD for the Council to be responsive to plan changes that add significantly to development capacity.

6 NOISE CONTOUR AFFECTED LAND

- 6.1 Why is development of this land unanticipated?

- 6.2 In her primary evidence, Ms Aston states:¹⁹

"...The current rural zoning of part of the PC71 site appears to be based on one factor only – that is the location of the land under, or within the same cadastral land holding, as land under the current, and outdated, noise contour

- 6.3 Therefore, the noise contour formed the basis for the settlement pattern at Rolleston which excludes this land. The relevant objective and policies which support this pattern are set out above and include, of course the blanket policy of avoiding noise sensitive activities within the airport noise contour (6.3.5.4):

4. Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A...

- 6.4 Consistent with the position advanced above with respect to other prescriptive objectives and policies in the CRPS, it is submitted that this blanket avoidance policy needs to be evaluated in light of the provisions of the NPSUD. It should not as urged to you by CIAL, be determinative of the outcome, as this would render an analysis of the application on its merits meaningless.
- 6.5 It is also submitted that, consistent with sound resource management practice, decisions on the merits of a plan change application should be based on the best available information.
- 6.6 With respect to the portion of land affected by the current 50 dBA Ldn Contour (the 50 Contour), the best available information demonstrates the analysis underpinning this Contour is out of date, inaccurate and therefore, entirely unreliable. The best available information also supports a clear conclusion that the land will **not** be affected either by the level of movements anticipated in 2008 (175,000 by 2040-2045), or indeed the revised "*ultimate runway capacity*" figure of 200,000 used as the basis for remodelling the contours.

¹⁹ Evidence of Fiona Aston at para 114.

- 6.7 Respectfully, it does not take an aviation expert to understand the projections for aircraft movements which fed into the 2008 contour modelling exercise, have proven over time to be wildly inaccurate. That is, the level of growth in aircraft movements predicted by CIAL in developing the Contour has quite simply failed to materialise. To the contrary, there has been a sharp decline, followed by a gradual levelling out of aircraft movements. Further, it does not take an aviation expert to understand other factors affecting the existing Contour line including flight paths, have been subject to significant change in the intervening years.
- 6.8 As a consequence, there is no evidence future homeowners will have their amenity affected to such an extent that this will lead to complaints against the Airport, should the land in question be developed for housing. As such, the concept of reverse sensitivity which underpins the prescriptive policy approach in 6.3.5.4 will simply not materialise. CIAL's witnesses do not provide any probative evidence which would lead you to a different conclusion, rather they simply rely (Mr. Bonis in particular) on a policy based on outdated technical analysis. In the context of Policy 6.3.5.4, it is submitted that the information establishes development of the site will not: *"... affect the efficient operation, use, development appropriate upgrading and safety of... the Airport"*.
- 6.9 Ms Aston describes the remodelling process undertaken by CIAL which has taken over 3.5 years to finalise. The analysis is up to date and includes exhaustive testing of different scenarios by a wide range of experts engaged by CIAL.
- 6.10 The initial approach taken by the Applicants towards the noise contour issue was essentially one of appeasement towards CIAL. A deferred zoning was adopted in light of the, then information as to the prospects of the contour lines moving. Subsequently, a review of the remodelled contours has led to a significantly greater level of certainty and refinement of the Applicant's approach, which Ms Aston will refer to in more detail in her summary.
- 6.11 In essence however, a deferred zoning remains an option, although it is now suggested this deferral be removed as soon as the upcoming peer review report confirms the 50 Contour no longer applies to any of the PC71 land. As an alternative and based on current information, the affected land can be rezoned now with a consenting mechanism in place which ensures the status/ implications of the contours can be addressed at the subdivision stage. Various, this could include either a non-complying activity or restricted discretionary activity consent, with the preference being the latter given the single issue nature of the contour.
- 6.12 Evidence on behalf of the Applicant is that either of these options would equate to a more responsive approach in the current housing crisis context than retention of a rural zoning would which at the same time ensure the interests of the Airport are appropriately safeguarded.

7 CONCLUSION

- 7.1 In order to address a Government priority, the intention of the responsiveness requirements of the NPS-UD are to, amongst other:

- enable responsiveness in planning decisions;
- improve competition in land markets; and
- accelerate land supply.

7.2 Approval of PC71 is directly consistent with the above intentions. Requesting that it be declined on the basis of prescriptive policies in a subordinate documents simply renders them meaningless, and simply perpetuates the existing housing crisis.

7.3 As the evidence will demonstrate, approval of PC71 will provide significant additional capacity. It will result in a consolidated and compact urban form for Rolleston, and will contribute to a well-functioning urban environment.

8 WITNESSES

8.1 The following witnesses will be called on behalf of the Applicants:

- (a) Phil Kennard – Company Representative;
- (b) Will Salmond – Servicing;
- (c) John Ballingall – Economics;
- (d) Lisa Williams – Traffic;
- (e) Victor Mthamo – Versatile Soils/ Water Supply/ Flooding;
- (f) Nicole Lauenstein – Urban Design; and
- (g) Fiona Aston- Planning.

G J Cleary

08 February 2022.