

**BEFORE THE SELWYN DISTRICT COUNCIL
HEARING BEFORE INDEPENDENT COMMISSIONER**

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of a request by Trices Road
Rezoning Group for a plan
change (Private Plan
Change 72) under the First
Schedule to the Resource
Management Act 1991

**LEGAL SUBMISSIONS FOR CHRISTCHURCH CITY COUNCIL AND
CANTERBURY REGIONAL COUNCIL**

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1. INTRODUCTION

- 1.1 These legal submissions are made on behalf of Christchurch City Council (**Council or CCC**) and Canterbury Regional Council (**CRC**) in relation to Private Plan Change 72 (**PC72**) to the Selwyn District Plan (**SDP**), which has been requested by the Trices Road Rezoning Group (**TRRG**).
- 1.2 CCC and CRC both made submissions in opposition to PC72, with a number of issues raised that are common to both councils. It is for this reason that a joint case is being presented, with evidence presented by Mr Marcus Langman dated 21 January 2022.
- 1.3 PC72 raises two central concerns for CCC and CRC. These are:
- (a) First, that the request does not qualify for consideration under the ‘responsive planning framework’ under the National Policy Statement on Urban Development 2020 (**NPS-UD**); and
 - (b) Second, that PC72 is either inconsistent with or contrary to a number of important policy directions in the Canterbury Regional Policy Statement (**CRPS**).
- 1.4 The evidence presents two different opinions in relation to how the NPS-UD and CRPS should interact with each other:
- (a) The TRRG position (which aligns with that of the s42A author, Mr Clease) is that any inconsistency between PC72 and the CRPS can be “overcome” by Policy 8 of the NPS-UD, based on the significance of the development capacity provided by PC72.¹ CCC and CRC understand this position to rely on the opinion that the “greatest weight goes to the newest and higher order planning document, the NPS-UD, when assessing the merits of PC72”.²

1 Evidence of Fiona Aston at [15], [103].

2 S42A Report at paragraph [14].

- (b) CCC and CRC acknowledge that the NPS-UD is a higher order document, but disagree that it should be interpreted as having primacy over the CRPS (and its avoid framework) in this way. The case for CCC and CRC is that the NPS-UD and CRPS can be read and applied together, with no reasonable interpretative grounds (or need) for suggesting that the NPS-UD should take precedence over the CRPS. In any event, it is submitted that the suggestion that the NPS-UD can, or should, take precedence in the circumstances is based on either an incorrect or overly narrow interpretation of the relevant provisions.

- 1.5** It is submitted that instead of painting this issue as a contest between two documents, the proper approach is to attempt to reconcile the NPS-UD and CRPS in a manner that accords with the wider statutory context and the hierarchy of planning documents outlined in *Colonial Vineyards*. This is elaborated on further below.
- 1.6** If TRRG's approach and interpretation was to be preferred, the consequence would be that the recent Change 1 to the CRPS, and the core urban growth strategy established by the CRPS, will be undermined entirely. This would occur by opening the door for unanticipated development that departs from pre-existing strategic infrastructure decision-making, and which would result in a departure away from the intensification drive that the Chapter 6 framework is designed to achieve. This outcome would be at odds with the decade of strategic planning undertaken by the Greater Christchurch Partnership (**GCP**), which includes SDC, and the recent housing capacity assessments completed and endorsed by the GCP that informed Change 1 to the CRPS.
- 1.7** Against this context, part of which has occurred recently in a post NPS-UD environment, and the thematic consistency between the NPS-UD and the CRPS in relation to urban growth, it is submitted that the CRPS framework should simply not be disregarded in favour of isolated policies in the NPS-UD that (when properly interpreted) provide an administrative pathway only, which does not

direct any substantive decision, or the enabling of development over and above integrated and strategic planning.

1.8 In summary, it is submitted that:

- (a) there is no sound legal interpretation that requires the ‘responsive planning framework’ to be given greater weight, or precedence, over a CRPS framework that engages with fundamentally the same subject matters as the NPS-UD;
- (b) evaluating PC72 in a manner that emphasises, or focuses on, the responsive planning provisions of the NPS-UD, over others (including those within the CRPS), amounts to an incorrect approach to the interpretation and application of these planning instruments;
- (c) to effectively disregard the significance of the recently approved Change 1 to the CRPS would make it an empty exercise – which cannot be accepted given that it squarely engages with the same urban growth issues, and was assessed as giving effect to the NPS-UD;³
- (d) the statutory requirement to “give effect” to the CRPS (which is relevant for the statutory decision to be made here) engages the avoid framework established by Chapter 6 of the CRPS, with all lower order plan change decisions required to conform with that direction; and
- (e) the outcome that CCC and CRC are supporting here is submitted to not be at odds with the intensification themes present in the NPS-UD, CRPS and now the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**RM Amendment Act**). If anything, the legislation and higher order policy documents collectively support reduced opportunities for speculative greenfield expansion, in order to make better use of available capacity within brownfield areas and achieve meaningful intensification and the benefits that derive from that.

3 Refer evidence of Mr Langman, at [55].

2. RELEVANT STATUTORY FRAMEWORK

- 2.1 The now widely accepted *Long Bay* test for plan changes, which was more recently updated in *Colonial Vineyard Limited v Marlborough District Council*,⁴ requires consideration of all the relevant issues for the purposes of assessing plan changes, including the "higher order directions" of sections 72, 74 and 76 of the RMA.
- 2.2 For PC72, there are relevant issues emerging from the higher order planning documents, which includes the NPS-UD and CRPS. These issues must all be considered and evaluated, as part of the decision-making exercise.
- 2.3 As recognised by the Supreme Court in *King Salmon*,⁵ the cascade of planning documents under the RMA are intended to give effect to section 5 and Part 2 of the Resource Management Act 1991 (**RMA**), by giving:⁶ (emphasis added)
- ... substance to its [*the RMAs*] purpose by identifying objectives, policies, methods and rules **with increasing particularity both as to substantive content and locality**.
- 2.4 Applying that layering here, the NPS-UD provides higher level direction,⁷ and the CRPS then provides more particularised regional (and, in particular, sub-regional) direction in relation to similar matters, and a number of other core policy matters. The other matters are required in order to give effect to other NPS', and the other statutory requirements of Part 2 of the RMA. In this way, the CRPS is naturally a broader policy document, and must be read as a whole.
- 2.5 As required by section 75(3) of the RMA a district plan 'must give effect to' any NPS and any regional policy statement. *King Salmon* has settled the law in relation to this term, by confirming:

4 *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

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

6 At [30].

7 As anticipated by s45, RMA.

“Give effect to” simply means “implement”. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it. As the Environment Court said in *Clevedon Cares Inc v Manukau City Council*:

[51] The phrase “give effect to” is a strong direction. This is understandably so for two reasons:

[a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and

[b] The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.

2.6 The Supreme Court went on to note that, while the requirement (to give effect) is a strong directive, it is context dependent:⁸

...The implementation of such a directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

2.7 In this instance, as outlined in the planning evidence, there are a number of relevant policy directions in both the NPS-UD, and the CRPS, that vary in terms of their directiveness. This is relevant when reconciling these planning documents, with the nature and expression of the relevant objectives and policies being significant. As acknowledged by *King Salmon*:⁹

... the scheme of the RMA does give subordinate decision-makers considerable flexibility and scope for choice. This is reflected in the NZCPS, which is formulated in a way that

8 At [80].
9 At [91].

allows regional councils flexibility in implementing its objectives and policies in their regional coastal policy statements and plans. Many of the policies are framed in terms that provide flexibility and, apart from that, the specific methods and rules to implement the objectives and policies of the NZCPS in particular regions must be determined by regional councils. But the fact that the RMA and the NZCPS allow regional and district councils scope for choice does not mean, of course, that the scope is infinite. The requirement to “give effect to” the NZCPS is intended to constrain decision-makers.

- 2.8** The NPS-UD contains a number of provisions that are expressed with a greater degree of abstraction. This is to be expected from a policy document that applies nationwide. It is, however, more explicit for Tier 1 local authorities in relation to certain matters, than for Tier 2 and 3 local authorities (for example, in relation to intensification¹⁰).
- 2.9** In contrast, the CRPS (a regional document), provides more specific direction on a multitude of resource management matters, including urban growth (particularly within Greater Christchurch). This is to be expected given that the CRPS represents the ‘more particularised’ expression of the higher order objectives and policies, and as it provides direction on other Part 2 matters that are not covered expressly in NPS (in accordance with the functions of regional councils under section 30 (ie. ss(1)(ba) and (gb)). Of most relevance, the CRPS establishes a highly directive framework for urban growth which is underpinned by long-standing, collaborative strategic planning work. So long as this framework achieves the outcomes sought by the NPS-UD, it is submitted that there should be no reason why it cannot be considered a valid approach to giving effect to the NPS-UD.
- 2.10** In circumstances where the CRPS has been amended post the NPS-UD coming into force, in order to provide for additional development capacity to implement the NPS-UD requirements, care must be taken not to undermine the intent of this more

10 Policy 3.

particularised, regional document. We consider this matter further below, when addressing the CCC and CRC view about the requirements of the ‘responsive planning framework’, when properly understood and interpreted.

3. PC72 AND WHY IT MATTERS TO CCC AND CRC

- 3.1** PC72 seeks to rezone land that is currently zoned as Rural Inner Plains Zone to a combination of Living Z and Living 3, in order to provide for a combination of urban and rural residential development.
- 3.2** As described in the section 42A report, the site consists of 28.7ha located on the southern boundary of Prebbleton township. The effect of rezoning this area would be to allow Living Z zoning to extend beyond the Projected Infrastructure Boundary (**PIB**), as it is shown on Map A of the CRPS.
- 3.3** This directly engages, and in fact conflicts, with certain, urban growth provisions in Chapter 6 of the CRPS.
- 3.4** Mr Langman for CCC and CRC,¹¹ outlines in his evidence the recent Change 1 amendments to Chapter 6 of the CRPS. To briefly summarise:
 - (a) Change 1 builds on existing strategic growth planning by the Greater Christchurch Partnership, implementing agreed actions in Our Space and supports the requirement in the NPS-UD for local authorities to provide at least sufficient development capacity to meet expected demand for housing and business land over the short, medium and long term.¹²
 - (b) Through Change 1, Future Development Areas (**FDAs**) were identified within the existing PIB, and associated policy provisions were inserted to enable land within these

¹¹ Paragraphs [54] - [57].

¹² At [54].

areas to be rezoned by SDC (or others) if required to meet medium term housing needs.¹³

- (c) Change 1 was supported by an evaluation, completed by CRC, which (relevantly) assessed the extent to which it would give effect to the NPS-UD. This evaluation determined, and the relevant Minister agreed, that Change 1 would give effect to the NPS-UD.¹⁴

3.5 The end result is that Change 1 is submitted to satisfy the NPS-UD in terms of providing sufficient development capacity, while recognising that the CRPS is allowed to manage urban growth in whatever manner it deems to be most appropriate at a sub-regional level.

3.6 Against this background, it is submitted that the Commissioner has no reasonable basis to either disregard, or place less weight, on this recent change (as recommended by Ms Aston), particularly as it relates to essentially the same subject matter as is now raised through PC72 (ie. the approach to strategic urban growth for Greater Christchurch). We also note that weighting is not, strictly speaking, the relevant test, as the requirement is to 'give effect to' the CRPS.

4. THE RELATIONSHIP BETWEEN THE NPS-UD AND CRPS

4.1 As discussed above, the NPS-UD and CRPS are both engaged because the subject matter of PC72 is urban growth.

4.2 When interpreting and applying documents of this nature, case law has established that the correct approach is to read the document as a coherent whole.¹⁵ While we doubt this legal test will be challenged, it is submitted that the applicant's planning evidence places inappropriate emphasis on certain 'responsive' provisions over others, and does not seek to read and apply the NPS-UD as a coherent whole. That evidence also provides speculative, and potentially erroneous, commentary in an attempt to support the preferred interpretation.¹⁶

¹³ At [56].

¹⁴ At [55].

¹⁵ The Adderley Head advice purports to adopt the orthodox approach to interpretation, at paragraphs 25 to 28.

¹⁶ Refer Ms Aston's evidence, at paragraphs 83 and 84.

4.3 The NPS-UD contains a number of objectives and policies, all of which work together. While the concept of delivering a well-functioning urban environment appears in multiple places, the NPS-UD does not have one single purpose.¹⁷ Instead, the NPS-UD as a whole provides direction on a number of different components that relate to urban development.

4.4 The 'responsive planning framework' is one component of the NPS-UD, and is established by Objective 6 and Policy 8. As noted above, this mechanism provides an administrative pathway for the consideration of out of sequence plan changes,¹⁸ where the development capacity provided by the change can satisfy certain criteria. These criteria include that it:

- (a) would contribute to a well-functioning urban environment; and
- (b) is well-connected along transport corridors; and
- (c) meets the criteria set and included in a regional policy statement, that determine what plan changes will be treated as adding significantly to development capacity.

4.5 As explained in Mr Langman's evidence, CRC has not yet included any criteria in the CRPS.¹⁹ As a consequence, PC72 will need to be considered against other relevant factors, including those discussed in the Guidance published by the Ministry for the Environment,²⁰ and the relevant objectives and policies concerning urban growth in both the NPS-UD and CRPS.

4.6 While the 'significant development capacity' criterion is unique to the responsive planning framework, the other criteria set out in clause 3.8(2) engage with the requirement that urban environments are

17 Objective 1, NPS-UD.

18 RMA, s43AA defines "change" as one either proposed by a local authority under clause 2, or requested under clause 21, of Schedule 1.

19 Evidence of Mr Langman for CCC and CRC, at [77].

20 Understanding and implementing the responsive planning policies:
<https://www.mfe.govt.nz/sites/default/files/media/Towns%20and%20cities/Understanding-and-implementing-responsive-planning-policies.pdf>;
Responsive Planning Fact Sheet:
<https://www.mfe.govt.nz/sites/default/files/media/Towns%20and%20cities/Responsive-Planning-Factsheet.pdf>.

well-functioning and well-serviced.²¹ These criteria overlap with other NPS-UD objectives and policies (including Objective 6) which indicates that – although the responsive planning framework provides a pathway - it remains part of the wider coherent scheme of the NPS-UD.

4.7 There are several reasons why CCC and CRC support this interpretation:

- (a) First, there is nothing expressly stated in the NPS-UD that gives Policy 8 any elevated significance over any other objective or policy. To that extent, CCC and CRC do not accept that this component of the NPS-UD should or could take primacy over any other aspect of the NPS-UD, or indeed over the CRPS framework in relation to urban growth;
- (b) Second, the parent objective for Policy 8 - Objective 6 - puts three different matters on an equal footing, all of which have to be satisfied (refer the conjunctive use of “and”). The implication of this is that the responsive planning framework cannot be treated as a pathway isolated from the remainder of the NPS-UD (for that to be the case, it is submitted that this would need to be expressly stated in the NPS-UD). Instead, local authority decisions affecting urban environments are required in all cases to remain integrated with longer-term infrastructure decisions, and to be strategic across the medium and long term, even when out-of-sequence proposals are being considered.
- (c) Third, there is nothing stated (either expressly or implicitly) in the NPS-UD to suggest that the responsive planning framework provides, or directs, innate flexibility for urban development, or that it amounts to a stand-alone substantive test for unanticipated development. Instead, it may be considered entirely appropriate – as a means of achieving Objective 6 in a sub-regional context – to develop and implement a restrictive framework that enables growth or provides for responsiveness in certain

21 NPS-UD, Objective 1, 3, 6 and 8; Policy 1, 5, 6 and 10.

areas, and restricts growth elsewhere. While the appropriateness of such a framework will depend on the facts and circumstances at hand, it is submitted that for Greater Christchurch it is a valid approach to give effect to the NPS-UD.²²

- (d) Lastly, if precedence were given to being “responsive” (on development capacity grounds alone), without engaging the other criteria, the end result would be a proliferation of ad hoc (and potentially insignificant and speculative) developments being granted. This could result in urban growth that is not properly integrated, and inconsistent, with existing growth strategies, which would be plainly at odds with the NPS-UD when interpreted as a whole.

4.8 The evidence for the Applicant argues that the responsive planning framework provides for an “immediate and significant response to land supply constraints, where certain criteria are met”.²³ With reference to the language used in Policy 8 of the NPS-UD, what is required is responsiveness, if certain criteria are met. There is no direction that any response be “immediate or significant”. It is submitted that responsiveness can come in many forms, but that the statutory and legal tests must be respected. As discussed further below, any response to an out-of-sequence proposal should align with the balance of the NPS-UD, and give effect to the CRPS.

4.9 In her evidence, Ms Aston refers to the legal opinion prepared by Adderley Head, external lawyers for Selwyn District Council. She agrees that the “NPS-UD specifically recognises and provides for an exception or legitimate departure from restrictive objectives such as the CRPS Objective 6.2.1”.²⁴ CCC and CRC have previously expressed their disagreement in relation to this conclusion.

4.10 In order to briefly outline the reasons why:

²² The overall objective of the NPS-UD is to ensure that urban environments are well-functioning and that they meet the changing needs of communities, as per Objective 1.

²³ Ms Aston, at 84.

²⁴ Ms Aston, at [132].

- (a) The Adderley Head advice seeks to reconcile the NPS-UD and CRPS based on an interpretation of the “purpose of the NPS-UD responsive planning provisions”.²⁵ It is submitted that this is a flawed approach, when the NPS-UD does not expressly give any precedence to this administrative pathway. Put another way, there is nothing in the NPS-UD that results in Policy 8 empowering “exceptions” or “legitimate departures” from any other restrictive provisions in this way.
- (b) The Adderley Head advice provides little analysis in support of the conclusion reached, and it is submitted that the eventual conclusion runs counter to the scheme of the NPS-UD, and the framing of Objective 6, which does not require responsiveness on its own, instead requiring that local authority decisions on urban development achieve three important outcomes.
- (c) It is therefore submitted that Objective 6, clauses (a) and (b) are of equal importance, and underline the need for integrated and strategic decision making, rather than providing a licence for the release of unplanned development capacity on an urgent basis in reliance on a selective reading of the NPS-UD.
- (d) The responsive planning framework forms part of the wider scheme of the NPS-UD, and should not be interpreted in isolation.

4.11 It is a significant concern to CCC and CRC that the responsive planning framework is continually being pitched as a positive or enabling mechanism for urgent urban growth, when it is essentially devoid of any detailed substantive policy direction that engages with other relevant RMA issues (for example, section 6 and 7 matters, which fall within the remit of regional and local authorities).

4.12 It is submitted that the provisions of the CRPS must have particular importance in evaluating any plan change request (or plan review submission). This is because it is the statutory role of the CRPS to

²⁵ For example, at [157].

synthesise and provide direction on all relevant RMA issues, rather than a selection of issues only (or single, as per the NPS-UD). These CRPS directions will continue to be involved where the responsive planning framework is engaged. Put another way, if 'responsiveness' under the NPS-UD created an exception over the CRPS in all cases, that could result in a failure to recognise and properly manage certain resource matters, and depart in a material way from pre-existing strategic planning decisions.

4.13 An example of this is in Objective 6.2.1(7), which provides direction to 'maintain the character and amenity of rural areas and settlements'. This aspect, or the importance of establishing a framework that avoids development creep into rural areas, is not recognised in the NPS-UD at all, but is a relevant RMA consideration for local authorities managing the rural land resource.

4.14 In circumstances where the CRPS framework has been developed with a view to managing multiple resource matters and infrastructure decisions, it is submitted that Council decisions must not overlook the obligation to give effect to that framework, particularly where the NPS-UD and CRPS are not directly at odds with each other.

5. ASSESSING PC72 ON ITS MERITS: DOES PC72 SATISFY THE RESPONSIVE PLANNING FRAMEWORK, AND MEASURE UP AGAINST THE CRPS?

Satisfying the responsive planning framework

5.1 Mr Langman does not consider PC72 to provide "significant development capacity", whereas Mr Cleese and Ms Aston do.

5.2 In assessing 'significance', Mr Cleese appears to have focussed on the scale of the proposal, that is, the potential yield of households.²⁶ Mr Langman disagrees that the yield sought will be significant, based on an assessment against Greater Christchurch or even Selwyn.

26 S42A Report, at [163].

- 5.3** In reliance on Mr Langman's evidence, it is submitted that ahead of the inclusion of the criteria under 3.8(3) in the CRPS, the MfE guidance on the responsive planning policies provides quantitative and qualitative factors to determine what constitutes significant development capacity.²⁷ For example regard must also be had to how development infrastructure will be provided, and the extent to which the development capacity fulfils an identified demand.²⁸
- 5.4** Mr Langman's evidence suggests that the criteria yet to be developed by CRC will engage with demand, typologies and needs, and any assessment of significance in the meantime should directly consider these aspects.²⁹ Mr Langman considers Mr Cleese's conclusion that PC72 passes the 'significant' threshold to be problematic because it is not based on the Greater Christchurch context and fails to take into account planned growth in existing Greenfield Priority Areas and Future Development Areas, and the unplanned growth subject to the numerous private plan changes currently before SDC.³⁰ Added to that is the RM Amendment Act, which will inevitably result in plan changes that add to the existing capacity within urban areas.
- 5.5** Mr Langman's evidence is that, given the above context, the contribution made by the primary relief sought cannot be reasonably considered to amount to significant development capacity.³¹
- 5.6** For completeness, Mr Langman's evidence is that even if PC72 was found to provide significant development capacity (which he disagrees with), it will not satisfy the requirement to contribute to a well-functioning urban environment, nor satisfy the policy direction taken by the CRPS.
- 5.7** If approximately 300 dwellings are all that is required to navigate through the Policy 8 criteria, then it cannot be said that the NPS-UD will be effective at filtering out of small, speculative proposals. Instead, there will be a progressive approval of ad hoc

²⁷ Mr Langman, at [84](e).

²⁸ MfE, National Policy Statement on Urban Development 2020 - responsive planning fact sheet.

²⁹ Mr Langman, at [144].

³⁰ Mr Langman, at [77] - [78].

³¹ Mr Langman, at [80].

developments, that will put further pressure on existing infrastructure and that will not, of themselves, provide realistic solutions that can achieve well-functioning urban environments. It is submitted that when considered on any measure, there is nothing significant at all about this proposal to warrant responsiveness.

The CRPS

- 5.8** While CCC and CRC accept that a degree of inconsistency with higher order policies may be acceptable, in this case PC72 directly contradicts a highly directive “avoid” framework that cannot be overlooked. This avoid framework has been intentionally developed by the GCP to guide the location of future urban development in a post-earthquake environment, so that it achieves a well-functioning urban environment and achieves the other, varied, requirements of Objective 6.2.1.
- 5.9** It is a framework that does provide for flexibility, but at this stage, that is within certain areas only. Where plan changes are requested for urban development outside those areas, then there should be questions asked as to how they align with the strategic planning decisions of the relevant local authorities.
- 5.10** The planning evidence for TRRG acknowledges that there is a “fundamental inconsistency” with the requirement to avoid urban development outside of Map A of Chapter 6, but states that this is not fatal to PC72 as Objective 6.3.1 is “totally at odds” with the NPS-UD direction.³² In reliance on the evidence of Mr Langman, and the submissions already made, it is submitted that this planning opinion cannot reasonably be supported.
- 5.11** There is no rational explanation in the TRRG evidence, or the s42A report, that explains how and why the CRPS is ‘totally at odds’ with the NPS-UD, and there is a realistic possibility that an avoidance framework like that in the CRPS can be justified on section 32 grounds. Given the lack of any express provision in the NPS-UD that gives elevated importance to Policy 8, it cannot be said that little, if

32 Ms Aston, at [131].

any weight should be given to the “avoid” direction in Objective 6.2.1. It remains part of the statutory scheme, and must be applied accordingly as per the legal tests.

5.12 In terms of the substantive policy direction provided by the CRPS, Mr Langman identifies issues with multiple aspects of PC72, including that it:

- (a) will not lead to a compact urban form with high connectivity;³³
- (b) does not align with the timing and sequencing infrastructure;³⁴
- (c) will exacerbate, rather than reduce, the level of commuting to Christchurch City;³⁵
- (d) does not support the integration of land use and transport infrastructure;³⁶ and
- (e) will not support a reduction in greenhouse gas emissions.³⁷

5.13 These issues demonstrate clear inconsistency with relevant objectives and policies of the CRPS. As a result, Mr Langman concludes that PC72 does not satisfy the criteria for the responsive planning framework under the NPS-UD, that Ms Aston is therefore not in a position to rely on Policy 8 as justification for overcoming the clear inconsistencies with the CRPS (which we say is not possible in any event), and that the PC72 fails on its merits in terms of the Living Z relief.

6. PRECEDENT / CUMULATIVE EFFECTS

6.1 If the primary relief sought by PC72 is approved, it is submitted that this could create a significant and important precedent.

6.2 There is an additional plan change request in train to the south-west corner of PC72. If PC72 is granted, development pressure is likely to mount in relation to PC79, as the ‘next cab off the rank’ for urban

³³ Mr Langman, at [143] – [147].

³⁴ Mr Langman, at [126 – [127].

³⁵ Mr Langman, at [130].

³⁶ Mr Langman, at [133] – [139], [153] – [154].

³⁷ Mr Langman, at [156] - [159].

growth to the south of Prebbleton. If the proponent for PC79, and indeed other landowners within this area attempt to leverage off PC72's approval, this is precisely what CCC and CRC are concerned about with these out-of-sequence and unanticipated proposals. Granting PC72 will, on its own, undermine Objective 6.2.1, with the floodgates opened and no principled basis to resist further proposals for similar development (either in Selwyn, or other districts).

6.3 Cumulative effects are also relevant. Of most concern to CCC and CRC is the potential cumulative impact on strategic planning and infrastructure, with each out-of-sequence request creating additional, and unanticipated, demand for necessary services, roading and public transport, and requiring a redistribution of funding to service unanticipated proposals. This is an issue that will affect not only SDC, but the other GCP member councils and partners.

6.4 There is clearly jurisdiction for considering cumulative effects at the plan-making stage,³⁸ but what is perhaps unique here is that cumulative effects may need to be considered at an individual request level, and in light of the other requests that are in train for SDC. The wider implications of future proposed development is submitted to be a relevant consideration.³⁹

6.5 Given that the broad objectives of the NPS-UD, including in particular the requirement for integrated and strategic decision making, it is submitted that considering the collective effect of the current requests is warranted. This is particularly so given that each will (if approved) place demand on infrastructure in parallel to, or in competition with, each other.

7. CONCLUSION

7.1 The Commissioner is obliged to apply the relevant statutory tests. In our submission, when these are correctly applied this will not

³⁸ *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892, referring to *Dye v Auckland Regional Council* [2002] 1 NZLR 337.

³⁹ *Brown v Dunedin City Council* [2003] NZRMA 420.

involve a contest between the NPSUD and CRPS, and giving preference to one over the other.

- 7.2** Giving effect to Chapter 6 of the CRPS demands that PC72 is refused. There is no flexibility to decide otherwise. This outcome would be entirely consistent with an interpretation of the NPS-UD as a whole, in accordance with well-established legal principles.
- 7.3** Given the context that had led to the inclusion of Map A in the CRPS, and the new FDAs, it is submitted that this outcome is neither unfair nor inappropriate. Chapter 6 provides a robust, directive, urban growth strategy that aligns with strategic planning decisions at a sub-regional level, and which responds to the multitude of RMA issues relevant to urban growth within Greater Christchurch. In any event, the applicant has elected to take on the risk of pursuing PC72 in the knowledge of the CRPS framework, and bears that risk.
- 7.4** A contingent approval of PC72 pending resolution of a later, consequential change to the CRPS is neither legally available, nor would it be an appropriate option. Even if it was legally possible, it is submitted that it would be inappropriate.
- 7.5** Adopting that approach would involve an approval that is meaningless until another statutory decision is adopted by another local authority (CRC), with no certainty that PC72 could ever be implemented. It would also create a significant degree of uncertainty and confusion in that:
- (a) it would create a perception that development of PC72 is appropriate, in circumstances where that development relies on a separate statutory process being endorsed;
 - (b) it would result in unnecessary and undesirable uncertainty for the community, landowner and SDC;
 - (c) it would create confusion and a precedent for SDC, and other Independent Commissioners / Panels, when determining the various other requests for plan changes involving a similar context;
 - (d) it would fail to comply with section 75(3) of the RMA; and

- (e) it could be taken as support for a legal interpretation that elevates a procedural pathway in the NPS-UD into a substantive / merits test, and in a manner which prevails over a clear and directive approach to strategic urban growth and infrastructure for Greater Christchurch.

7.6 The only other option available would be to recommend to SDC that it request a change to the CRPS, but as noted above, that will not provide any substantive outcome as it relies on a statutory decision by SDC that is not within the scope of clause of clause 10 of Schedule 1.

DATED this 26th day of January 2022



M G Wakefield

Counsel for Christchurch City Council