

SELWYN DISTRICT COUNCIL

HEARING OF PROPOSED PLAN CHANGE 72

THE TRICES ROAD REZONING GROUP

**Report and recommendations by Hearing Commissioner Paul
Thomas**

30 March 2022

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- 1. Commissioner’s Recommended Outline Development Plan Narrative and Plan.**
- 2. Recommendations on Submissions**

1.INTRODUCTION

1.1 PROCEEDINGS

- 1 Pursuant to instructions from the Selwyn District (SDC) I was appointed as the sole Hearing Commissioner to hear and consider Proposed Plan Change 72 (PC72). As such I am required to recommend to the Council decisions on whether the proposed plan change should be declined, approved or approved with modifications and consequent on that to recommend decisions on submissions to the Plan Change.
- 2 For that purpose I conducted a hearing of the details of this Plan Change and related submissions. Directions regarding the exchange of evidence and conduct of the hearing were issued to all parties on 29 November 2021. The hearing commenced at the Selwyn Health Hub in Rolleston on Monday 31st January 2022 and continued during Tuesday 1st February adjourning at 2.00 pm on that day.
- 3 Minute 2 confirmed that the proponents reply was to be received in writing by 11th February. After reviewing that material I formally closed the hearing on 16th February by way of Minute 3.
- 4 I undertook an inspection of the plan change area after the first day of the hearing.
- 5 In preparing this report I have chosen not to specifically record all of the evidence we received, nor do I record an analysis of all of the evidence. The report however does consider all the relevant evidence for each principal issue and any other areas where changes to the provisions have been proposed.

1.2 THE PROPOSED PLAN CHANGE

- 6 PC 72 essentially seeks to enable the coordinated residential development of an area of 28.7 hectares located on the southern boundary of Prebbleton township. The land is bounded by Trices Road, Birches Road and Hamptons Road. The Plan Change requestor is the existing landowners who have formed a group called “The Trices Road Rezoning Group.”
- 7 The Plan Change seeks to change the zoning of the land and insert an Outline Development Plan into the District Plan. The notified proposal is to rezone the majority of the site Living Z apart from 2.8 ha on the Birches Road which was proposed to be Living 3. The Plan Change does not seek to alter any objectives, policies or rules in the District Plan.
- 8 The Plan Change request included less preferred options stemming from the section 32 evaluation of alternatives. These were to rezone the entire site Living Z, or Living 3A or Living 3 in that order of preference.
- 9 The land concerned currently has a mixture of rural residential and small farmlet activities which involve 9 dwellings and associated gardens and accessory buildings.

The land adjoins the residential zone of Prebbleton to the north and to the west is land zoned Living 3 (rural residential).

- 10 Importantly to the south of the site is a 22 ha block of land which has been designated for a Council Sportsground. This is currently under staged construction and will provide several sports fields, bike tracks, areas of native bush and stream and a dog park. The facility is to serve Prebbleton as well as overflow from Lincoln. The Christchurch to Little River Rail Trail includes Birchs Road where the trail is on the east side of the road.
- 11 The Outline Development Plan (ODP) is an important part of the Plan Change and is the mechanism used in the District Plan for the structure and framework for areas of urban growth. The notified ODP shows north south and east west road connections with shared pedestrian and cycle paths, stormwater basins in the south east and local bush reserve in the north.

1.3 SUBMISSIONS

- 12 PC 72 was publicly notified for submissions on 9 June 2021. A total of 50 submissions were received, with subsequently one further submission.
- 13 There were no late submissions.
- 14 There is one submission where the question of scope arises. This is by GM and J Drinnan who own land adjacent to the plan change area to the southeast. It forms an L shape with the part south of Hamptons Road extending to the edge of the new sportsground and a larger area to the east of the plan change area. The scope issue relates to the part of their submission that seeks that the area of the land extending to the park be added to the Plan Change and zoned Living Z with consequent amendments to the ODP. This is a principal issue so I address this in a specific section below.
- 15 The section 42A report records that 17 submissions support the Plan Change, 7 offer conditional support and or sought amendments to the plan change and 4 are opposed.
- 16 There are also further submissions from 13 parties. There were no issues with the status of the further submissions.
- 17 The section 42A report was prepared by Mr Jonathan Cleave a planning consultant employed by PLANZ Ltd. He identified the key matters to be addressed arising from submissions and from assessing the Plan Change to include:
 - (a) Land suitability
 - (b) Infrastructure servicing
 - (c) Traffic and transportation

- (d) Urban design
- (e) School capacity
- (f) Environmental nuisance and construction effects.

2. RELEVANT STATUTORY CONSIDERATIONS AND RELATED LEGAL ISSUES

18 The relevant statutory consideration that I must consider in making my recommendations were considered in the section 42A report, the opening submission for TRRG and the submissions for Canterbury Regional Council / Christchurch City Council. In Greater Christchurch the statutory considerations have been extended by plans prepared under Canterbury Earthquake Recovery Act (CER Act), in this case principally being the Land Use Recovery Plan.

19 As stated in the submissions the summary of the matters required to be considered in *Long Bay – Okura Great Park Soc Inc v North Shore City Council (A078/08)* was updated in *Colonial Vinyard v Marlborough District Council (NZEnvC 55)* as follows:

20 **A General Requirements**

1. *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.*
2. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.*
3. *When preparing its district plan (change) the territorial authority shall:*
 - a. *Have regard to any proposed regional policy statement;*
 - b. *Give effect to any regional policy statement.*
4. *When preparing its district plan (change) the territorial authority must also:*
 - a. *Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations, and to consistency with plans and proposed plans of adjacent territorial local authorities.*
 - b. *Take into account any relevant planning document recognised by an iwi authority, and*
 - c. *Not have regard to trade competition*
5. *A district plan (change) must state its objectives, policies and rules (if any) and may state other matters.*

B Objectives [the section 32 test for objectives].

6. *Each proposed objective in a District Plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.*

C Policies and methods (including rules) [the section 32 test for policies and rules]

7. *The policies are to implement the objectives, and the rules (if any) are to implement the policies.*
8. *The provisions of the proposal are to be examined, and quantified if practicable, assessing their efficiency and effectiveness, against reasonably practicable options for achieving the objective taking into account:*
- a. The benefits and costs of the environmental, economic, social and cultural effects anticipated from the provisions, including economic growth and employment; and*
 - b. The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

D Rules

9. *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.*

- 21 Section 32AA also requires me to undertake further evaluation in the event that I recommend changes to the content of the Plan Change.

3. THE HEARING

- 22 I do not intend to summarise all the evidence presented to the hearing in this recommendation report. Instead, I will analyse the evidence presented under each of the Principal Issues. The section below does, however, record the witnesses who appeared at the hearing. Expert evidence which had been made available to all parties in accordance with the hearing directions was taken as read. Witnesses presented a summary of the evidence and supplementary material at the hearing. In accordance with Minute 1 the plan change proponent being the Trices Road Rezoning Group (TRRG) appeared first followed by submitters and then the Council s42A report witnesses.

- 23 The full order of appearance was as follows:

For TRRG.

- Opening legal submissions from Ms Katherine Forward
- Evidence of Mr Carl Fox on Services
- Evidence of Mr Lindsay Blakie on Stormwater
- Evidence of Mr Fraser Colegrave on Economics via Zoom.
- Evidence of Ms Lisa Williams on Transport.
- Evidence of Mr Gary Sellers on Valuation.
- Evidence of Mr Chris Jones on Real Estate
- Evidence of Ms Nicole Lauenstein on Urban Design.
- Evidence of Ms Fiona Aston on Planning.

24 For the Ministry of Education

- Evidence of Ms Karin Lepoutre by Zoom

25 For Canterbury Regional Council and Christchurch City Council.

- Legal submissions from Mr Mike Wakefield by Zoom
- Evidence of Mr Marcus Langman on Planning.

26 For GM and J Drinnan

- Evidence of Mr Stuart Fletcher.
- Attendance of Mr Grant Drinnan.

27 For Selwyn District Council

- Evidence of Mr Murray England on Three Waters.
- Evidence of Mr Mat Collins on Transport by Zoom.
- Evidence of Mr Hugh Nicholson on urban Design
- Evidence of Mr Jonathan Clease on Planning.

4. THE PLANNING CONTEXT

28 The planning context of this proposed plan change is somewhat complex and consequently I will outline some parts of the jigsaw in this section before addressing in more detail the issues that arise in the principal issues sections below.

29 Firstly, it is important to stress that this is a proposed change to the Operative Selwyn District Plan. This is being pursued at the same time that the review of the

District Plan is progressing, in the form of the Proposed District Plan, through its process of hearing submissions to the Plan. The Proposed District Plan will replace the current Operative Plan at the conclusion of that process. If this Plan Change is approved it will, therefore, have a reasonably short lifespan unless carried through into the Proposed District Plan.

- 30 The site is not proposed in the Proposed District Plan to be zoned residential. TRRG is, therefore, in parallel with this process, pursuing submissions to the same effect through the Proposed District Plan process. However, that decision will be made by the District Plan Review Hearing Panel quite independently from this hearing process.
- 31 There are currently some 15 other private plan changes being pursued through similar processes at this time. They are largely to provide for additional urban residential growth and include proposals at Rolleston, West Melton, Lincoln and of course Prebbleton. There are two other Plan Change requests located in Prebbleton. These are PC 79 located south of the TRRG site and PC 68 on the west side of Prebbleton. Hearings of submissions on these Plan Changes have yet to be held.
- 32 One hearing has been completed and the Recommendation Report issued which is Plan Change 67 at West Melton and heard by Commissioner David Caldwell. A copy of that report was appended to the proponents Closing Legal Submissions.
- 33 The Regional Planning Context is also important. The Canterbury Regional Policy Statement (CRPS) includes a Chapter on Recovery and Rebuilding of Greater Christchurch which was included in the CRPS through the Land Use Recovery Plan (LURP). Unlike most Regional Policy Statements this included policies to give effect to a particular urban form identifying the location and extent of growth areas to support recovery. The growth areas were called Greenfield Priority Areas for Residential and Business. This drew on the previous Urban Development Strategy (UDS) prepared as far back as 2007. The growth areas are shown on Map A of the CRPS.
- 34 These growth areas are all now largely developed. It included some limited growth in Prebbleton. Following the release of the National Policy Statement on Urban Development Capacity a review of the land use framework for Greater Christchurch was undertaken and a report published in July 2019 called *“Our Space 2018-2048 Greater Christchurch Settlement Pattern Update”*.
- 35 This recommended that additional greenfield growth land be released in Rolleston and Rangiora and Kaiapoi to be called Future Development Areas (FDAs). This then led to Change 1 to the CRPS which incorporated the necessary changes including identifying the FDAs on Map A. This plan change to the CRPS was processed through

the Streamlined Planning Process and approved by the Minister for the Environment. No additional growth was allocated in this process to Prebbleton.

- 36 During this period the National Policy Statement on Urban Development Capacity was replaced with the National Policy Statement on Urban Development 2020 (NPS UD). The provisions of the NPS UD are highly relevant to this matter and will be discussed in detail later. However, at this point it is important to reference Policy 8 which requires *“local authority decisions to be responsive to plan changes that would add significantly to development capacity and contribute to well functioning urban environment, even if the development capacity is:*

(a) Unanticipated by RMA planning documents; or

(b) Out of sequence with planned land release. “

- 37 It is the existence of this policy that has triggered the multiple private plan changes in Selwyn District as it is seen as providing a pathway for proposals beyond that identified on the CRPS Map A. This pathway exists specifically for plan changes, arguably to a greater degree than through the process of the District Plan Review.
- 38 The other current game changer is the recent Amendment to the Act requiring the amendment to District Plan to put in place the proposed new Medium Density Residential Standards (MDRS). The consequences for this plan change is that if any recommendation to approve the plan change is accepted by the Council, a variation to the plan change will be required to insert the MDRS to the plan change before the decision on the plan change can be notified. The variation is required to be notified at the same time as notifying the MDRS for the rest of the Plan but does not merge with it. It is required to be processed through the Intensification Streamlined Planning Process. The variation will need to be notified prior to 20 August 2022. As there are no policy or rule changes sought in this Plan Change the changes inserted into the Living Z zone will apply. The inevitable consequence of this is that if this report recommends approval of the plan change there will then be considerable delay before any decision on it can be publicly notified.

5 THE SCOPE OF THE PRINCIPAL ISSUES

- 39 There are a range of Principal Issues extending from site specific development planning matters and the content of the Outline Development Plan through to the more strategic planning issues at a regional level. I have determined that in this case a bottom up approach is preferred allowing the merits of the specific form of the development to be addressed before the proposal is then tested against wider Regional and National higher order documents.

- 40 Consequently, I will address the principal issues dealing with infrastructure and transport first, then urban form issues including the possible extension south before looking at the important issues associated with higher order documents. However, before dealing with this I will address one procedural matter that I specifically raised with Ms Forward during the hearing.
- 41 At the commencement of the hearing I sought clarification that I had scope to amend the proposal to zone all the area Living Z instead of part Living Z and part Living 3. This is because the change is reliant on the notification of the Plan Change including explicitly a range of options for zoning in addition to a “Preferred Option”.
- 42 Clause 26 of Schedule 1 is very clear that where a local authority accepts a plan change request it is then required to prepare the plan change in consultation with the requester and then notify the change within 4 months of agreeing to accept the request.
- 43 In this case the Council has simply adopted the request in the form that it was presented and notified it for submissions. Consequently, all the options presented in the plan change request have followed through to the public notification. I consider that it is open to the Council to simply notify the plan change in the form presented in the request although it could be argued that a plan change is a specific proposal and not a range of options despite the obligations of Section 32. In essence something of a procedural short cut has been taken but I do not consider that any party is prejudiced by that course of action. As Ms Forward says at para 37 *“It has been clear from day one that the TRRG proposal could take various forms – including Living Z zoning over the entire site.”* I also note that the Christchurch City Council submission opposed the plan change on the grounds that it was not delivering on a sufficient level of density and sought 15 dwellings per hectare. While this is at odds with Mr Langman’s evidence that seeks Living G across the entire area, the change to Living Z across the whole area does result in overall higher density.
- 44 While I consider that there is a procedural aspect that Council should have given greater attention to I do not consider that it hampers my jurisdiction to hear and recommend on the Plan Change. The options were clearly signalled and indeed many submitters expressed their preference for a lower density option. I therefore find that the full Living Z option recommended for Selwyn District Council in the Section 42A report is within the scope of recommendations available to me.

6. THE PRINCIPAL ISSUES – EFFECTS ON THE ENVIRONMENT

6.1 PROVISION OF THREE WATERS SERVICES

- 45 Expert evidence on three water was provided for the proponent by Mr Carl Fox, Mr Lindsay Blakie on stormwater and for Council Mr Murray England. In terms of water

supply Mr England's evidence was that the Prebbleton Water Supply provides untreated deep groundwater to the community from 5 bores however a further two bores are consented but not yet drilled. The maximum consented water take from the scheme is 1,576,800 m³ per year. Over the past 5 years the maximum demand has been 703,919 m³ per year. There is, therefore, ample supply to accommodate the level of growth associated with this plan change.

- 46 Master planning has also been undertaken for expected future growth over the next 30 years and Mr England reported that funding provision for this has been made in the 2021-31 Long Term Plan. I note that this is somewhat at odds with the Proposed District Plan which makes no provision for growth at Prebbleton. Water supply is, therefore, clearly not a constraint to this proposed urban growth.
- 47 Similarly, there is agreement that the land can be serviced with wastewater. Prebbleton wastewater is treated and disposed of at the Pines Wastewater Treatment Plant located at Rolleston. Mr England advised that the plant is currently at or near capacity but upgrades are currently underway and additional upgrades planned and budgeted for. A rising main will pump wastewater from the plan change area westward along Hamptons Road approximately 1.4 km to the intersection of Hamptons and Springs Road. At this point, a gravity sewer will convey wastewater to the recently installed wastewater pump station at 612 Springs Road.
- 48 This pumpstation has a peak design pumping rate of 101 litres per second and has been designed to meet the needs of the area within the existing township boundary. Consequently, there is currently limited capacity for additional urban growth. However, Mr England's evidence was that additional pumping capacity can be installed within the existing pump station to increase the maximum flow rate to 136 litres per second. At the Pines Wastewater Treatment Plant Mr England has confirmed that the plant is designed to be progressively upgraded to accommodate a population of 60,000 with plans to double that capacity being prepared. The plant is currently serving a population of 42,000 to 45,000.
- 49 Mr Langman in his planning evidence has expressed a concern regarding the cumulative impact that the current suite of private plan changes could have on the wastewater network and treatment capacity potentially affecting the Future Development Areas in Plan Change 1 to the CRPS.¹ It is important to stress that my role in this case is to make a recommendation on one specific plan change only. However, in doing so I can have regard to any of the other plan changes that have reached a point of recommendation. At this stage that is limited to Plan Change 67 at West Melton. The recommendation report for that Plan Change by Commissioner

¹ Para 118. EIC M Langman.

Caldwell was filed by the proponent as part of the Closing Submissions. I note his finding that he was satisfied that planning and budgeting for necessary upgrades to the Pines Plant was sufficiently in place to be confident that the land associated with PC 67 could be serviced. I am also satisfied that wastewater servicing is not a constraint to approving this plan change.

- 50 Stormwater evidence was presented by Mr Blakie who provided a report with the plan change request. The proposed outline development plan includes two connected stormwater management areas in the south east quadrant of the site. These will provide first flush treatment of the first 25mm of rainfall and attenuation of storm events up to and including the 60 hour duration 50 year event. Roads will be used as secondary flow paths with the primary roads being designed to convey the 10% AEP event.
- 51 Mr England's evidence for the Council is that this is appropriate and will be subject to further investigation and design through the consenting and engineering approval processes. He is satisfied that the approach will achieve hydraulic neutrality in relation to peak flows from the site.
- 52 Mr Blakie also provided evidence that there was potential to reduce the SMA footprint with soak holes where ground conditions permit and rain attenuation tanks elsewhere.
- 53 The principal contested issue relates to the flow path from the SMA across neighbouring land and then connecting with a drain on the eastern side of the property which then flows into Crosslands Drain. This land is owned by the Drinnans and Mr Fletcher gave planning evidence in relation to this matter. The Drinnans are concerned about the effects of increases in stormwater flows from the developed land being reliant on what is little more than a swale across their property. Mr Fletcher argued that the construction of a driveway across the pathway for this water had effectively diverted existing flows such that any historical rights have been extinguished. A principal concern is that this issue is not parked for later consideration which results in requirements for them to accommodate stormwater across their property with consequent possible effects on future opportunities. A legal question arises as to whether or not an easement would be required for this conveyance.
- 54 The Drinnans also have a preference for an alternative location adjacent to Hamptons Road which they consider would have less effects on their property.
- 55 Mr England for the Council acknowledged this concern and recommended that, while an easement is not required at this stage, the ODP should expressly refer to this issue and the need to confirm and secure a legal outfall from the development.

- 56 The issue at contest here revolves around the principle of “natural servitude”. It was Mr Blaikie’s evidence that the right to the stormwater outfall relies on the principal of natural servitude, and that as the run off will be below existing peak discharge rates this right is protected.
- 57 I requested that this be further addressed in the proponents Closing Submissions and I am grateful for the attention that has been given to this matter. Ms Forward states that the doctrine has been explained by the High Court as “ *allowing a higher owner in the natural use of the higher land, to concentrate and discharge on the lower land water that would otherwise flow there.*” ² There are three limitations on this right as follows:
- The higher owner cannot through any form of development alter the flow on to the lower land causing injury to that land.
 - The water cannot be concentrated so as to increase appreciably the burden on the lower land by altering the volume and velocity of the water flowing onto the lower land causing damage to the lower land which would not have been caused by the natural flow.
 - Introduction of water that is not part of the natural surface water of the higher land is not permitted.
- 58 The owner of land with the right to natural servitude is not required to obtain a legal easement to protect and use that right.
- 59 Ms Forward submissions relating to applying these principles are that the right is protected because the stormwater will be attenuated so that the discharge will be at or below existing peak discharges.
- 60 With respect I am not sure this is sufficient. Firstly, the doctrine as explained by the High Court is limited to the “natural use” of the higher land. It seems to me that development in accordance with a Living Z zone which has changed from the Inner Plains Rural Zone does not represent “natural use” of the land.
- 61 Secondly, the nature of the development of the land means that there is increased run off resulting from less permeable surface areas. The attenuation is expected to ensure that the peak discharge ie velocity is no greater than current. However, it is highly unlikely that the overall volume will remains similar, even if there are some soakage pits used.
- 62 However, the volume and velocity condition is dependant on their being some evidential damage or injury to the land. This is most likely to be at least initially in

² Para 50 Closing Legal Submissions TRRG.

the form of erosion of soil and damage to land productivity. This of course could be addressed by conveying the discharge by buried pipe.

- 63 As stated above Mr England recommended that this issue be flagged in the narrative of the ODP. Notwithstanding the above, the closing submissions accept this recommendation and propose the following additional wording:

(a) *Detailed stormwater solutions, including stormwater outfall location are to be determined in collaboration with the Council at subdivision stage and in accordance with Environment Canterbury requirements.”³*

- 64 This wording explicitly raises the matter of outfall location. Ultimately the natural servitude issue is a property law matter and not a matter for the District Pan. The proponents will not be able to discharge water to the Drinnans property unless they have the legal right to do so and it is also authorised by way of resource consent. The two are related but separate. At this point in the process it is important that I am satisfied that stormwater is capable of being managed in a sustainable manner and without consequential adverse effects. The technical evidence supports this conclusion and further design work will be undertaken ahead of the subdivision stage of the process. However, Mr England has recommended that the sentence in the ODP include reference to “legal” stormwater outfall. While this is not strictly necessary it would serve as something of a reminder to address this matter at the appropriate time. I consequently recommend that the word legal is inserted so that the additional words read “*including legal stormwater outfall location*”.

6.2 TRAFFIC AND TRANSPORTATION

- 65 Expert evidence on traffic and transportation matters was presented by Ms Lisa Williams for the proponent and Mr Mathew Collins for the Council. The essential features of the ODP are:

- (a) North south and east west primary roads.
- (b) The extension of the east west road to the eastern edge of the site to future proof for further urban growth in this location
- (c) Both primary roads have shared pedestrian cycle path within the road corridor.
- (d) There are additional of road shared cycle pedestrian paths including through the stormwater management area.

³ Para 47 Closing Legal Submissions TRRG.

- 66 In response to the Mr Collins recommendations some changes have been made to the narrative of the ODP. The remaining issues are relatively minor but are addressed below.
- 67 Firstly, Mr Collins recommends that the ODP graphic show the provision of cycling facilities along the Trices Road and Hamptons Road frontages in addition to the narrative additions now proposed and including showing a safe crossing of Trices Road near Stonebridge Way. The issue here seems to be a matter of consistency of convention regarding ODP graphics versus narrative than any different position between the experts.
- 68 The position of Ms Williams as expressed in the closing legal submissions is that the additional annotation on the ODP Plan is not necessary, nor is it consistent with other ODP conventions in the Operative District Plan. I have briefly looked at a sample of Outline Development Plans in the Operative Plan. I find there is a wide range of forms of ODP, however, few seem to incorporate specific within road reserve improvements other than perhaps landscape strips. In essence, I am satisfied that the amended narrative is sufficiently clear and additional annotation on the Plan is not needed.
- 69 Secondly, Mr Collins considers that a shared path should be provided along the entire Hamptons Road frontage. The amended ODP, however, only provides it west of the north south road. I consider that, as Hamptons Road is a no through road, there are different circumstances to Trices Road with limited traffic at the eastern end suitable for on street cycling. Basically, I consider that extension of the shared path is not required unless the land to the south of Hamptons Road is added to the Plan Change. I address that later in this report.
- 70 Thirdly, Mr Collins sought that the narrative include a requirement to provide minor safety improvements to the Trices Road / Birchs Road intersection prior to any new intersection or vehicle access being formed onto Trices Road. Both Ms Williams and Mr Clease consider this is best addressed through the subdivision consent process. The proponent has sought to include the words, *“At the time of subdivision the need for and nature of minor safety improvements at the Trices Rad / Birchs Road intersection will be considered in consultation with Selwyn District Council.*
- 71 I consider this is sufficient for the purpose of the ODP. The subdivision consent will be able to address this in more detail depending on staging of development and impose specific consent conditions.
- 72 Finally, in response to Mr Langman’s concerns about cumulative effect on the wider transport network, both transport witnesses agree that this is best assessed at a District and Regional level and indeed is beyond my jurisdiction in relation to this

Plan Change. The Proposed District Plan process and indeed the signalled Regional Spatial Plan process will provide opportunity for consideration of wider issues. In the interim I note Mr Collins conclusion that modelling of an additional 10,000 dwellings in Selwyn results in little change to traffic levels on the key arterials of Shands Road and Springs Road.

6.3 URBAN FORM AND DESIGN

- 73 Urban design evidence was presented by Ms Nicole Lauenstein for the proponent and Mr Hugh Nicholson for the Council. Both agree that the introduction of the new Birchs Road Park has changed the context for the site. Previously identified as a suitable rural residential location, they both agree that it is now a highly suitable location for Prebbleton to grow to close the gap between the township and new urban boundary created by the park.
- 74 They agree on the ODP structure with a notable change being an additional continuous pedestrian cycle connection running north south using the stormwater management area in the south east quadrant of the site and the local road network in the north east quadrant of the site. This was shown on Appendix 1 to the evidence summary of Ms Lauenstein. For the record the closing submissions included amended wording for the ODP narrative but not a final ODP plan including the additional north south pedestrian cycle connection. This was subsequently requested during preparation of this report.
- 75 I also note that the closing submissions record that the urban design witnesses, subsequent to the hearing, agreed that the Hamptons Road shared path should be on the south side of the road fronting the Park to avoid driveway crossings. Such matters will be able to be designed and confirmed through the subdivision process. This will include integration of landscape design with the shared path links.
- 76 Importantly both urban design witnesses also agree that a minimum net density of 12 households per hectare is appropriate in this location providing as Mr Nicholson put it *“the benefits of modest increase in density while supporting the existing character of the Prebbleton ‘village’.”*

6.4 PROVISION OF COMMUNITY FACILITIES

- 77 The Ministry of Education submitted on the Plan Change seeking the ability for further consultation with the applicants regarding provision for accommodating school facilities within the Plan Change area. Ms Karin Lepoutre gave evidence in support of the submission.
- 78 Clearly there is a concern that significant growth at Prebbleton, where there are in total three private plan changes under consideration, could lead to the need for an

additional primary school. Ms Lepoutre, however, could not provide any modelling to inform whether the PC 72 site alone would trigger the need for additional land.

- 79 The proponent has agreed to amend the ODP to include an expressed requirement for consultation with the Ministry at the time of subdivision. By that time the status of the other Plan Changes will be more certain. However, the wider Regional Spatial Plan is also a vehicle to match capacity and growth to future needs.
- 80 Ms Lepoutre also sought that this requirement be extended to a matter of discretion in the subdivision rules. However, such a change is largely unnecessary given the proposed wording of the ODP. School locations are important to community dynamics and do need careful consideration and early planning. However, I am also conscious that the Ministry can advance a Notice of Requirement to designate land for an additional state or state integrated school at any time and this of course can be within a new growth area if that is the optimal location. The PC 72 land is a relatively small area of 28 hectares but could still potentially accommodate a school site. I consider that by identifying the issue in the ODP that is an appropriate check reminder to consider this matter at the time of subdivision if action has not been taken earlier.
- 81 I have not addressed the loss of high versatile soils as a Principal Issue, but for completeness I should clarify why, particularly as the issue is raised in a number of submissions. In short I agree with Mr Cleese that this is a matter to be taken into account in terms of the suitability of the location and the Section 32 benefits and costs. However, in this case the Class 1 and Class 2 soils lost is a relatively small proportion of the site and must be traded off against the wider urban form and design merits. While as a single plan change I am not in a position to evaluate this site against other growth alternatives overall I do not consider that the loss of versatile soil is sufficient to make the land unsuitable for residential development.

6.5 EXTENSION SOUTH TO INCLUDE THE DRINNAN LAND

- 82 A clear principle issue at the hearing was whether the plan change area could, and should, be extended to include the block of land south of Hamptons Road and sitting between PC 72 and the new Birchs Road Park.
- 83 The area of land involved is just part of the property owned by the Drinnans being an area of 2.2 hectares with potential for 26 to 30 allotments.
- 84 There are two important aspects to this submission firstly the merits of the extension and secondly whether it passes the legal tests of being within scope of the Plan Change.

- 85 In terms of information supplied, there is a clear contrast between the level of investigation and assessment undertaken for the extension as compared with the Plan Change. Water supply, wastewater and stormwater management while unlikely to present major barriers have not been confirmed as appropriate. Roding similarly is unlikely to present substantial issues but as stated in Mr Fletchers evidence has not been assessed by a roding engineer and evidence presented.
- 86 Both urban design experts, when commenting on this submission, consider that provision of a shared path connection from the route through the PC 72 stormwater management area to the Park is important.
- 87 I also consider that the interface with the Park is an important design issue and is a matter that would need to be addressed within the Outline Development Plan.
- 88 I accept that it is not appropriate for this area of land to remain Inner Plains Rural given its size and form located between PC 72 and the Park. While, in principle, there appears to be general acceptance of development of this land for residential activities there remain issues to be resolved before it can be incorporated into the ODP for PC 72.
- 89 I note that the Drinnans do have a submission to the Proposed District Plan to change the zone of land to enable residential development and I consider this is the appropriate forum to resolve the remaining issues and advance this matter. This, of course, is dependent on the Hearing Panel also favourably determining the TRRG submission in parallel with this Plan Change.
- 90 The second matter relates to scope. The Drinnans obtained a legal opinion on scope which was provided with Mr Fletchers evidence. In addition, Mr Fletcher concluded that the submission is within scope as the *“property is more logical than not to be included, particularly given the changes to the surrounding area and that no other parties outside of the plan change process will be impacted by the inclusion of the land.”*⁴
- 91 Mr Fletcher in the first part of his conclusion has effectively conflated the merits argument with the scope argument. In other words, his argument is that the extension has merit, therefore it is within scope. However, that is not the way in which the Courts have established and applied the tests as is recognised in para 11 of the legal opinion.
- 92 The legal opinion by Andrew Shulte of Cavill Leitch Ltd draws, as would be expected, on the chain of authorities stemming from the High Court in Clearwater Christchurch City Council and then Palmerston North City Council v Motor Machinists Ltd.

⁴ Para 6.14 EIC S Fletcher.

- 93 The legal opinion recognises that there are a number of ways of applying the first Clearwater test as follows:
- (a) whether the submission raises matters that should have been addressed in the section 32 evaluation report. If so the submission is unlikely to fall within the ambit of the plan change.
 - (b) Whether the management regime of a particular resource is altered by the plan change. If not then a submission seeking a new management regime is unlikely to be on the plan change
 - (c) Whether the zoning extension is incidental or consequential to the zoning change.
- 94 I am also aware that there are other more recent cases that have refined particularly the first of these tests but it is not necessary to add to this aspect.
- 95 The legal opinion concludes that as the management regime for the Drinnan land would be changed it is unlikely to be on PC 72. I agree with that assessment.
- 96 However, it then goes on to conclude that the exception of “incidental and consequential” changes applies in this case because it is a “relatively modest amendment”.
- 97 In this case the land involved amounts to 2.2 hectares of farmland which is separated from PC 72 by Hamptons Road and will have an important interface with the new Park. 2.2 hectares does not qualify in my assessment as incidental. Further, any consequential aspect is more about the consequences of the Park than PC 72.
- 98 I, therefore, conclude that the submission does not pass the first Clearwater test.
- 99 In relation to the second natural justice test I agree that the principal affected parties are the TRRG and The Council. These parties have had the opportunity and have commented on the merits of the extension during the hearing process. I, therefore, conclude that the second test is passed.
- 100 However, as the first test was not achieved I find that the submission is not on the plan change and, notwithstanding my comments on the merits, it cannot be accepted.
- 101 In summary, I find that the submission is not on the plan change and therefore must be declined. However, the planning status of this land does need to be addressed and while there is merit in principle for residential zoning there is additional information required. I encourage the Drinnans to pursue this further through the Proposed District Plan hearings.

7. STATUTORY DOCUMENTS

7.1 THE RELATIONSHIP BETWEEN THE NPS UD AND CRPS

- 102 A critical issue for this hearing is the relationship between the Canterbury Regional Policy Statement (CRPS) and the NPS UD. This is addressed in the s42A report by Mr Jonathan Clease, the legal submissions by Ms Forward for the proponent and evidence of Ms Fiona Aston, and the legal submission by Mr Wakefield and planning evidence of Mr Langman jointly for Canterbury Regional Council and Christchurch City Council.
- 103 Mr Wakefield referred to the well established principle that statutory documents of this nature must be read as a whole. I accept that principle fully. However, in applying such documents various parts or provisions will be more relevant and applicable than others. Context is important and can lead to giving certain more relevant matters greater weight over others.
- 104 Mr Wakefield and Ms Forward refer to the hierarchy of plans under the Act whereby a Regional Policy Statement must give effect to a National Policy Statement (section 62(3)) and a District Plan must give effect to both any Regional Policy Statement and National Policy Statement.
- 105 Ms Forward submits that if there is an inconsistency between NPS and RPS then greater weight should be given to the NPS. Mr Wakefield submits that there is no inconsistency and that the CRPS provides a regionally specific application of the NPS. There are a number of issues at foot here. Firstly does the CRPS, as amended by Change 1 provide at least sufficient development capacity to meet expected demand for housing land over the short, medium and long term. Secondly, is the directive approach of the CRPS to urban growth compatible with the requirements of the NPS.
- 106 A separate matter is whether PC 72 gives effect to the NPS UD and within that whether the Plan Change qualifies for consideration through Policy 8 of the NPS UD. Clearly the interconnections between NPS UD and CRPS must be had regard to in findings regarding giving effect to those documents.

7.2 SUFFICIENT DEVELOPMENT CAPACITY AND CHANGE 1 TO THE CRPS

- 107 The CRPS was amended in March 2021 by Change 1. Ms Forward submitted that Change 1 has a very narrow purpose and made no attempt to be fully compliant with the NPS UD. Change 1 was advanced through the Streamlined Planning Process which resulted in a report to the Minister For The Environment dated March 2021.
- 108 I note that the purpose of the Proposed Change is clearly stated at para 22 of that report as follows:

In summary, the purpose of the Proposed Change is to:

a. Give effect to Policy 2 and clause 3.7 of the NPS-UD and enable sufficient land in Greater Christchurch to be rezoned for the medium term (10 years) and identified for the long term (30 years) to meet the needs of existing and future communities, by identifying and enabling additional development capacity for housing in greenfield growth areas within the Projected Infrastructure Boundary shown on Map A in Chapter 6 of the CRPS, in Rolleston, Rangiora and Kaiapoi; and

b. Provide flexibility for Selwyn and Waimakariri District Councils to consider rezoning land within the Projected Infrastructure Boundary to meet medium term housing demands as part of their district planning processes, where a sufficiency shortfall is identified through a housing development capacity assessment.

- 109 Change 1 implements the outcomes of Our Space 2018-2048 which was adopted in 2019. I note that the purpose above refers to rezoning land within the Projected Infrastructure Boundary. Mr Cleese explained at the hearing that the concept of the Projected Infrastructure Boundary went as far back as to the 2007 Urban Development Strategy (UDS). This strategy predates the Canterbury Earthquakes but was speedily put in place after the earthquakes through the Land Use Recovery Plan and consequent insertion of Chapter 6 Recovery and Rebuilding of Christchurch in the CRPS.
- 110 Mr Cleese also advised that the genesis of the Greenfield Priority Areas were the short and medium term growth proposals in the UDS and the Projected Infrastructure Boundary was the planned extent of long term growth. Whether this has any direct relationship with infrastructure provision is unclear. Indeed, the whole technical basis for the Projected Infrastructure Boundary (PIB) remains unclear yet it remains from 2007 to 2022 the key driver of urban growth planning for Greater Christchurch.
- 111 I have looked back at the UDS and find no clear rationale for the PIB in that document. However, Ms Astons evidence also helps clarify that the PIB was in fact first introduced in the 2007 Change 1 to the CRPS which was heard and decisions issued in 2009. There were a number of appeals to the Environment Court but these were extinguished and superseded by the Land Use Recovery Plan which refers to the PIB and added further greenfield priority areas in Christchurch City.
- 112 The lack of technical assessment of the PIB is supported by the comments in Mr Langman's evidence at footnote 20 where he states *"The PIB was inserted into the LURP as the indicative area reflecting local authority strategies that were required to be prepared after amendments to the LGA 2002 in 2014. My understanding is that these areas were indicative only and had little planning input as to the suitability of the land for urban development, which would take place at a later date."*

- 113 This status seems very much at odds with the justification of policies that seek to avoid any form of development outside of the PIB.
- 114 The PIB remains on Map A in the CRPS and as stated above was the key driver for the Future Development Areas included in Change 1 to the RPS. Indeed, it determined the scope of Change 1 and submissions seeking additional growth areas were rejected on the basis of this scope.
- 115 Despite this, Mr Langman confirmed there are no policies, or even policy explanations, in Chapter 6 of the CRPS that refer to or explain the basis of the PIB. It simply appears on Map A. Clearly, this rather obvious deficiency could have been addressed through Change 1 but wasn't.
- 116 At Prebbleton development is either completed or under construction up to the limit of the PIB. However, it appears that no specific consideration of further growth at Prebbleton was considered in Our Space and consequently Change 1. Notably, the Birchs Road Park, which is a major factor in the urban form merits of PC 72, was proposed in 2015. Change 1 to the RPS was commenced in 2020. There was, therefore, a significant period for this to be recognised as a material change in circumstances and to be considered in Change 1.
- 117 Given that we are to apply "the ordinary meaning of words" when interpreting plans and policy statements, it would reasonably be expected that the PIB was based on critical service or transport infrastructure capacity thresholds. However, that does not seem to be the case, at least not currently at Prebbleton, because the agreed evidence to this hearing is that water and wastewater capacity is available as is road network capacity.
- 118 This is all the more serious when it is lined up against the policies that rely on Map A which of course includes a requirement to avoid urban development outside of the areas identified on Map A, a policy which Mr Langman described at para 51 of his evidence as "deliberately strict".⁵
- 119 The tabled memo from Mr Ben Baird, a policy analyst at Selwyn District Council, helpfully sets out the history of policy development and future planned work. He describes the Our Space spatial pattern as an "interim" measure ahead of several current work programmes underway including Greater Christchurch 2050, Urban Growth Partnership, Mass Rapid Transit Indicative Business Case and a Greater Christchurch Spatial Plan. He states at para 38 that the development of any future strategic work within SDC is dependant on the outcomes of the Greater Christchurch Spatial Plan.

⁵ Para 51 EIC M Langman

- 120 This process was also addressed in the legal submissions of Mr Wakefield and evidence of Mr Langman with the key message being that PC 72 is premature and should await the outcome of the Spatial Plan.
- 121 This position, of course, is dependant on their being sufficient interim capacity enabled to meet the requirements of the NPS UD.
- 122 Mr Baird’s memo also seeks to explain at para 69 why the Council, which of course is a member of the Greater Christchurch Partnership, has provided most of the new capacity for growth around Rolleston. This includes supporting the hierarchy of centres, is consistent with previously signalled future growth areas through the PIB, will support improvements in the Rolleston town centre and help promote the efficient use of infrastructure including transport.
- 123 The proponent presented a range of evidence on the demand and capacity for residential land including the assessments informing Change 1 to the CRPS.
- 124 Mr Fraser Colegrave presented evidence on the need for the plan change at a District level. He provided helpful background on the recent growth of Prebbleton which has doubled its population in the last ten years from 2510 in 2010 to 5020 in 2021. This has been enabled through four Outline Development Plan areas which are in the Operative District Plan. These are located to the north east and west of Prebbleton contrasting with PC 72 which is to the south.
- 125 His evidence was that one of the ODP areas is fully developed with the rest in varying stages of completion. In addition, a Summerset retirement village is currently under construction on the former Meadow Mushrooms site which is central to Prebbleton and a further BUPA retirement village is under construction within ODP Area 4. A new village centre development is also under construction.
- 126 Selwyn continues to be one of the fastest growing territorial authorities in New Zealand and Mr Colegrave’s evidence was that Statistics New Zealand expects this to continue to 2048.
- 127 The latest Housing and Business Capacity Assessment produced by the Greater Christchurch Partnership is dated July 2021. It assessed that at 15 households per hectare there is a surplus supply in Selwyn in the short term of 1864, and medium term of 4961 but a shortfall in the long term. These figures include the Future Development Areas that have been included in the Regional Policy Statement through Change 1, but are yet to be enabled through the District Plan.
- 128 The key points of Mr Colegrave’s evidence are:
- (a) There is benefit of providing additional capacity beyond “sufficient” capacity in terms of competitive markets.

- (b) The Future Development Areas are not yet plan enabled.
- (c) The forecast demand of 900 dwellings per annum over the short term and 850 over the medium term are significantly lower than recent building consent volumes.
- 129 Mr Colegrave also has issue with the methodology adopted in relation to feasible capacity of the Future Development Areas being applied at 100%, low profit margins on house construction, and further anomalies leading to overstating of development capacity.
- 130 With adjustments made to account for the issues above Mr Colegrave estimates a shortfall of 1432 in the short term and 7496 in the medium term based on 15 households per hectare and including the Future Development Areas.
- 131 At the more local Prebbleton level, Mr Colegrave quotes the memo from Ben Baird which was provided with the s42A report. This shows that for West Melton and Prebbleton there is a medium and long term capacity of 181 and medium demand of 1859 and long term 5530.
- 132 In terms of current supply, it is the evidence of Mr Colegrave and Mr Sellars that there are very few, if any, sections currently available in Prebbleton and the remaining developments not yet complete all have sales secured for the sections.
- 133 Mr Sellars evidence provided detailed analysis of the Prebbleton Market which he concluded was *“a dysfunctional market where there is virtually no current supply or choice with uncompetitive market practices being adopted by vendors and extreme price escalation.”* His evidence was that price escalation is greater in Prebbleton than other parts of the regional market reaching a level of 100% in the past 12 months.
- 134 It is notable that the popularity of Prebbleton clearly increased markedly with the closure of the Meadow Mushrooms factory which had an extensive odour history.
- 135 Mr Langman commented on Mr Colegrave’s evidence but the Regional Council and City Council did not present any technical evidence on the Housing and Business Capacity Assessment addressing the technical issues raised, other than to note that the HBA had been peer reviewed.
- 136 The principal position adopted by Mr Langman was that Change 1 to the CRPS has put in place Future Development Area which are sufficient to meet short and medium term demand. In Selwyn this planned growth is limited to Rolleston. In response to this Mr Sellars commented *“The townships of Prebbleton and Lincoln are quite different to Rolleston in terms of urban density, rural location, setting and property prices. In my opinion purchasers of residential property in these two*

townships would be unlikely to consider Rolleston as an alternative. Therefore I do not consider the locations and housing typologies are interchangeable between Prebbleton / Lincoln and Rolleston.”

137 The third expert witness for the proponent in this area was Mr Christopher Jones who is a real estate agent trading in the Selwyn District. He further supported the position that the supply of sections in Prebbleton is “non existent”, with little immediate prospect of new sections in the foreseeable future without further plan changes.

138 I am satisfied on the evidence presented that the supply of new sections in Prebbleton has been exhausted. It is a location of high popularity which has good accessibility to Key Activity Centres in Halswell and Hornby and well as the KACs in Selwyn. PC 72 will provide approximately 300 potential sections for development. However, given the multi ownership position, there remains some risk that not all parts of the development move forward at the same pace. The extreme market position, however, provides material incentive.

139 Notwithstanding the above, regard must still be had to the policy framework for Selwyn and Greater Christchurch and I address this in later sections.

7.3 THE OPERATIVE SELWYN DISTRICT PLAN

140 Section 32(1)(b) requires examination of whether the proposed plan change provisions are the most appropriate way of achieving the District Plan objectives. There are several objectives and policies specific to the form and development of Prebbleton township itself. There are also objectives and policies addressing urban form and residential amenity generally.

141 Mr Clease notes **Objective B4.3.3** and **Policy B4.3.1** which seek that within the Greater Christchurch area, new residential development is contained within existing zoned areas or priority areas identified within the CRPS. In essence these provisions give effect to the CRPS direction regarding growth areas. I explore this matter in depth in the following sections.

142 The applicant provided an assessment of the proposal against the District Plan’s objectives and policies which Mr Clease generally agreed with and noted that:

- **Objective B4.3.6** seeks to ensure that Living Z areas achieve an average net density of at least 10 households per hectare;
- **Objective B3.4.4** and **Policy B4.3.6** seek that the growth of townships achieves a compact urban form where practical;

• **Policies B4.3.7 and B4.3.8** require the provision of an ODP and the identification (as appropriate) of principal roads, stormwater and parks, integration or upgrades with infrastructure, and any other methods necessary to protect important features;

• **Objective B.3.4.5** seeks that urban growth provide a high level of connectivity within the development and with adjoining land areas and will provide suitable access to a variety of forms of transport.

143 I agree that PC 72 is in line with these provisions.

144 The District Plan also contains two specific policies that guide the direction of growth in Prebbleton. These *two policies are as follows:*

Policy B4.3.64 seeks to “encourage land located to the east and west of the existing Living and Business zones, being those Living and Business zones that adjoin Springs Road, which is located as close as possible to the existing township centre as the first preferred areas to be rezoned for new residential development at Prebbleton, provided sites are available and appropriate for the proposed activity”.

Policy B4.3.65 seeks to “discourage further expansion of Prebbleton township north or south of the existing Living zone boundaries adjoining Springs Road”.

145 I agree that PC72 aligns with both these policies. It does not result in a north or southward expansion along Springs Road. It is located to the east of the existing Living 3 zone to the west of Birchs Road and is located as close as possible to existing suburban areas.

146 I also agree with Mr Cleese that there is no requirement for me in this recommendation to consider the Proposed Selwyn District Plan. That will be separately considered through the Proposed Plan hearing process.

7.4 CANTERBURY REGIONAL POLICY STATEMENT

147 The discussion above focusses on the narrow and interim nature of Change 1. It raises some rather fundamental concerns about the foundations of growth planning and the PIB. I consider that this does colour how the District Plan should give effect to Objective 6.2.1 (3) which seeks to specifically “avoid urban development outside of existing urban areas or greenfield priority areas for development unless expressly provided for in the CRPS.”

148 I note that Ms Aston as part of the Plan Change request at Appendix 13 provides her evaluation of the proposal against relevant policies in the CRPS. In this regard I note that alongside Objective 6.2.1 which is very directive is Objective 6.2.2. This is headed “Urban form and settlement pattern” and requires the management of the urban form and settlement pattern to “provide sufficient land for rebuilding and

recovery needs and set a foundation for future growth, with an urban form that achieves consolidation and intensification of urban areas, and avoids unplanned expansion of urban area , by” amongst other matters “encouraging sustainable and self sufficient growth of the towns of Rangiora, Kaiapoi, Woodend, Lincoln Rolleston and Prebbleton and consolidation of the existing settlement of West Melton.”

- 149 This objective, therefore, requires “sustainable and self sufficient” growth of Prebbleton.
- 150 The very next objective being 6.2.3. has the heading “sustainability” and can reasonably be interpreted as stating the tests for sustainability that should be applied to the limb of Objective 6.2.2 quoted above.
- 151 In that regards I am satisfied on the evidence presented that:
- (a) PC 72 provides for quality living environments incorporating good urban design.
 - (b) PC 72 retains one area of special amenity and has no areas of historic heritage value.
 - (c) No values of importance to tangata whenua have been identified
 - (d) PC 72 provides for a range of densities.
 - (e) PC 72 is healthy, environmentally sustainable, functionally efficient and prosperous.
- 152 So if PC 72 meets the sustainability test, the other test is self sufficiency. Given there is currently no future growth provided for in Prebbleton then growth that provides a strong connection with new park facilities and a strong southern edge has accessibility to public transport and two key Activity Centres can reasonably be regarded as self sufficient growth that achieves consolidation of the Prebbleton township.
- 153 So the inherent conflict in giving effect to the CRPS is that the evidence is that Map A does not provide for future growth of Prebbleton and, therefore, in this case Objective 6.2.1 is in direct conflict with Objective 6.2.2. Consequently, I do not consider that inconsistency with Objective 6.2.1 is an absolute bar to a recommendation in favour on PC 72. I reach that finding solely on the content of the CRPS before giving consideration to the NPS UD which I now address.

7.5 NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020

- 154 I agree with Mr Wakefield’s submission that determination of whether a Plan Change is giving effect to the NPS UD requires consideration of all relevant elements of the NPS. The NPS UD places clear requirements on both regional policy statements and district plans. Both Canterbury Regional Council and Selwyn District

Council are classed as Tier 1 local authorities. Ms Aston provided an updated assessment of the NPS UD as an Appendix to her evidence and the legal submissions and evidence of Mr Langman and Mr Cleese are also important.

- 155 *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.* This objective incorporates parts of Section 5 of the Act and can be seen as Mr Wakefield submitted as the overall purpose of the NPS UD. Its application however links closely to policy 1 which states:

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

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

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

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

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

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

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

(e) support reductions in greenhouse gas emissions; and

(f) are resilient to the likely current and future effects of climate change.

- 156 I am satisfied that PC 72 will enable a variety of homes. It is required to meet a density of 12 households per hectare and this will include some medium density housing. The future insertion of the Medium Density Residential Standards will also enable higher densities of development and more variety.
- 157 The location is within cycling distance and even walking distance to two Key Activity Centres which are also major employment centres. The location is adjacent to a new sizeable park development. Further, the evidence is that additional land supply is essential to the recovery of a competitive land market for housing. Given the level of accessibility it can reasonably be expected to support reductions in greenhouse gas emissions and, subject to detailed stormwater design, is not subject to any future hazards. I find that PC 72 gives effects to Objective 1 and Policy 1.

- 158 Objective 2 requires this decision to support competitive land and development markets. The evidence on this is compelling and PC 72 supports this objective.
- 159 Objective 3 is:
- 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.*
- 160 The site is close to employment centres and there is a very high demand for housing. While there is bus public transport there is also potential to improve services. This Objective only requires “one or more” to apply. PC 72 gives effect to this Objective.
- 161 Alongside this Objective is Policy 2 which states: *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.*
- 162 This aspect is clearly in dispute. The evidence in relation to Change 1 to the RPS and the evidence of Msrs Colegrave, Sellars and Jones is very evident that there is demand at Prebbleton that is not being met and that this cannot be expected to be met by increased supply in Rolleston. Clearly PC 72 with a modest supply of 300 lots, where none are currently available, will assist in both the Regional Council and District Council meeting this requirement. I also note that this Policy refers to “at all times”. It is, therefore, not acceptable to argue that this matter should await the development of a Spatial Plan and then full review of the CRPS.
- 163 Mr Wakefield has argued at para 2.9 of his submissions that “*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.*” However, the evidence is that Policy 2 is not being achieved, consequently the current CRPS framework is not a valid approach at this time.
- 164 Objective 4 is *New Zealand’s urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.*
- 165 PC 72 provides appropriately for the amenity of the location and adopts high quality urban design. Its relationship to Birchs Road Park likely distinguishes it from other

proposed plan changes being processed. From an urban design angle the agreed evidence is that PC 72 is not simply appropriate, it is necessary.

166 Objective 5 relates to Treaty of Waitangi principles which is a requirement of the Act in any case, however, no considerations in this regard have been raised with me.

167 Objective 6 is as follows:

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

(a) integrated with infrastructure planning and funding decisions; and

(b) strategic over the medium term and long term;

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

168 There is always some risk with private plan changes that they are not adequately integrated with funding and other strategies. However, in this case there are no material infrastructure funding implications and in a local sense the link with the Park means that the proposal has strategic merit. Alongside this, is that this decision is “responsive”. The use of the term particularly means that irrespective of whether PC 72 amounts to significant development capacity the decision must still be responsive in the sense of fully assessing and evaluating a proposal on an evidence basis.

169 This objective lines up with Policy 8 which was the subject to considerable submissions and evidence.

170 Policy 8 states:

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.

171 Private plan changes are often unanticipated in a strategic sense and may be considered out of sequence if there is a planned staging of land release for development. However, it may also be that the opportunity has not been identified and considered in the local authority planning.

172 I have already found that PC 72 does contribute to a well functioning urban environment.

- 173 In terms of the applicable ‘urban environment’ Mr Langman considered this should be the Greater Christchurch area, while Mr Cleese and Ms Aston consider that this should be considered in the context of Selwyn Inner Plains townships. Importantly urban environment is defined in the NPS UD 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 urban in character; and
 - (b) Is or is intended to be, part of a housing and labour market of at least 10,000 people.
- 174 Prebbleton is a township of 5020 people resident in 2021. It is urban in character. It is part of a wider housing and labour market that includes Central Christchurch and the centres of Lincoln and Rolleston in Selwyn District. Importantly the definition refers to *“any area”* and *“part”* of a housing and labour market. The relevant area that is urban in character is Prebbleton. There remains a rural separation between Prebbleton and the Hornby / Halswell areas. Consequently, I find that the relevant urban area is Prebbleton.
- 175 Mr Colegrave advised that there are 1500 occupied dwellings in Prebbleton and PC 72 is expected to yield 300 dwellings. That would be an increase of 20%. I consider that is a significant addition to Prebbleton’s development capacity. I also consider it is all the more significant because of the current state of land supply.
- 176 Mr Langman’s position that the urban area is Greater Christchurch is clearly not correct because the entire area of Greater Christchurch is not *“intended to be urban in character”*.
- 177 Clause 3.8 of the NPS UD states *“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 sub clause (3).; and*
- 178 Sub clause 3 to 3.8 requires every regional council to 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.
- 179 Mr Langman confirmed that that had yet to be done. It is not for me to determine what those criteria should be beyond what is stated in the NPS UD. However, I am satisfied for the purpose of this matter that an increase in development capacity of 20% is at least significant.

- 180 As stated previously, I am also satisfied that PC 72 will contribute to a well functioning urban environment and is sufficiently well connected along transport corridors.
- 181 It is clear that further review of the CRPS to give full effect to the NPS UD is required and the process leading up to that review is underway. This will necessarily include a review of the objectives and policies of Chapter 6 and the strict directive approach of Objective 6.2.1. The NPS UD requires land use planning to be strategic but also responsive. A new policy balance will need to be achieved. I have already discussed the inherent conflict between Objectives 6.2.1 and 6.2.2. Mr Wakefield and Mr Langman express the view that approving PC 72 will undermine the core urban growth strategy established by the CRPS. However, it is clear that that core strategy has largely been completed. A review of the CRPS is underway, a new strategy is required with an approach that gives effect to the NPS UD.
- 182 The CRPS contains a more detailed land use strategy than other Regional Policy Statements. This tracks as far back as 2007 and provided the basis for the clear and certain response to post earthquake recovery and rebuilding. Mr Langman commented that the approach is an example of what the review of the Resource Management Act has found to be lacking in other parts of the country ie a clear land use strategy. I largely agree, but the framework of the NPS UD and the need to continue to respond to housing capacity challenges means that a more flexible and responsive approach is required. For example, the MFE issued guidance on 'Understanding and implementing the responsive planning policies' states that future development strategies may identify where development is to occur but should not "represent an immovable line."
- 183 Further, I disagree with Mr Wakefield that the proper approach is to "attempt to reconcile the NPS UD and RPS in a manner accords with the wider statutory context". It is clear that Change 1 amounts to only partial implementation of the NPS UD with "interim" measures. It is appreciated that review of the CRPS is not an overnight task, however, the objectives and policies of the NPS UD cannot be disregarded because they have not yet been addressed in the CRPS.
- 184 A further key argument in Mr Langman's evidence and referred to earlier is that the Spatial Plan should be completed before PC 72 is determined. Given the compelling evidence on development capacity at Prebbleton and the overall merits of the form of residential development in this location, I do not accept that such delay is justified. Indeed, as Mr Nicholson commented at the hearing, the merits of PC 72 are such that it is most unlikely that it would not feature in any future Spatial Plan. As it is, this plan change will be subject to some delay due to the requirements for a variation to add in the Medium Density Residential Standards.

185 I therefore find that PC 72 gives effect to the requirement of the NPS UD. PC 72 also gives effect to Objectives 6.2.2 and 6.2.3 of the CRPS. PC 72 does not give effect to Objective 6.2.1 however I give this less weight in the overall evaluation because it is not a sustainable form of objective under the NPS UD.

6. EVALUATION AND RECOMMENDATIONS

186 In section 2 of this report I identified the statutory considerations that I need to consider. The proponent accepted ahead of the hearing that the originally proposed Living G area should be changed to Living Z in accordance with the recommendations of the s42A report. I agree with that change.

187 In addition, the hearing process has refined some of the Outline Development Plan proposals resulting in a high level of agreement between experts.

188 I have made recommendations on a minor wording change in relation to the Drinnans concerns on stormwater. Beyond that, I have found that the Drinnans submission to extend the area of land zoned for development is beyond the scope of the plan change but does need to be addressed through the Proposed District Plan hearing process.

189 I have considered in some detail the principal issues around the CRPS and NPS UD and have concluded that PC 72 gives effect to the NPS UD and should be given more weight than Objective 6.2.1 which is being reviewed.

190 In terms of Section 32, the proposal does not include any new objectives or any changes to the objectives in the Operative District Plan. The section 32 assessment provided with the Plan Change Request at para 5 describes the stated purpose of PC72 as *“to change the zoning of the application site in the Operative District Plan from Rural Inner Plains to Living Z and Living 3 residential zones in a controlled and managed way through a development Plan (Prebbleton Outline Development Plan 5) and by adopting, as far as possible, the Operative District Plan planning zones and subdivision, activity, and development standards”*

191 Section 32AA requires a further evaluation of any changes made as a consequence of this recommendation report from that publicly notified.

192 This requires further consideration *“Whether the Provisions in the Proposal are the Most Appropriate way to Achieve the Objectives?”* Notably in this case the Plan Change Request proposed a preferred option but evaluated three alternative options for consideration. Mr Cleese considers each of these options in terms of best fit with the operative District Plan policy framework in his s42A report along with retention of the rural zone and the Christchurch City Council submission seeking a minimum

density of 15 households per hectare. This includes the outcome recommended in Mr Langman's evidence which was to rezone the entire site Living 3.

- 193 In terms of retention of the rural zone I agree with Mr Clease and Ms Aston that given that this site has long been identified as suitable for rural residential development, the current shortage of land for housing in Prebbleton and the important Park connection, this option is not considered the most appropriate way to achieve the objectives of the Plan.
- 194 These factors also weigh against the Living 3 option which fails to use suitable land efficiently. Mr Langman argues that this should be the option adopted to ensure a supply of rural residential land. But he then points to the CRPS policy 6.3.9 (7) which states that rural residential areas should not be regarded as in transition to full urban development. A Living 3 zone applied now could easily result in a Spatial Plan recommendation for full residential and effectively could result in a significant lost opportunity.
- 195 I agree with Mr Clease that the build-out of available land, combined with the directions in the NPS UD and the park development are all material changes in both the policy framework and the physical environment since the site was identified for rural residential development. He reports that a key driver of the rural residential strategy was to locate very low density development in township edge locations where rural residential dwellings would form a transition or edge to the rural area. This edge outcome is now able to be better provided by the development of the new 22 hectare park which establishes a large and permanent edge to the southern side of Prebbleton. The urban design advice is firmly against the Living 3 option.
- 196 Importantly the proponent adopted Mr Clease recommendation that all the site be zoned Living Z and presented their evidence on that basis. I agree that full Living Z is more efficient than leaving the Tuff block Living 3 when there is no resource management justification to do so. As Mr Clease points out if the Tuffs wish to retain their current lifestyle block then they are free to do so.
- 197 This is the principal change arising from this process other than refinements to the Outline Development Plan which do not fundamentally alter the Plan Change.
- 198 The Preferred option was Option 2 in the s32 assessment submitted with the Plan Change Request. In terms of the matters considered in the section 32 the change to include the Tuff Block as Living Z will have the following consequences in terms of costs and benefits:
- Reduced servicing costs with stormwater infrastructure shared over a great yield.
 - Increased development contributions.

- Greater traffic generation but with no associated adverse effects.
- Potentially an additional 20- 30 units of housing stock.
- Removal of one additional shelterbelt.
- Enables overall density minimum of 12 households per hectare.

199 In terms of efficiency and effectiveness it will provide overall a more efficient use of land and is a logical extension to the township with established lower density to the east and park to the south. Overall, it is an efficient and effective small contribution to the challenges of the NPS UD.

200 In relation to density, I also note that a density minimum of 15 households per hectare was sought as secondary relief by CCC. The proposal is for a minimum net density of 12 households per hectare, and is therefore consistent with the CRPS, which only requires a minimum net density of 10 household units per hectare in greenfield areas in the Selwyn District. Mr Cleese notes that a density of 12 hh/ha is the standard minimum density that has been applied to recent Living Z greenfield areas in the District Plan. This will include some medium density housing and clearly the overall density is increased with the change to the Tuff Block.

201 I note Mr Cleese comment that a density of 12hh/ha does represent an increase in density relative to other recent housing developments in Prebbleton and that it is not appropriate to further increase this given the subdivision complexities of exiting dwellings.

202 In terms of effectiveness I also note that the existing Living Z framework with Outline Development Plan is a well established approach that has proven to be effective and I do not consider there is a need at this late point in the life of the operative plan to start exploring different models.

203 In terms of Part 2 I agree with Mr Cleese that there are no section 6 matters in play and that the proposal is an efficient use of natural and physical resources (s7(b)). Servicing for this site can be achieved without compromising the ability to service other growth areas. Connectivity has been improved during the course of the hearing and adopted in this recommendation. As a result, I am satisfied that the provisions achieve the requirements of the maintenance and enhancement of amenity values (s7(c)) and the maintenance and enhancement of the quality of the environment (s7(f)).

204 As a result, I am satisfied that PC 72 as now recommended is in accordance with the statutory considerations that apply.

205 I consequently recommend as follows:

1. That Selwyn District Council approve PC 72 to zone the land shown in the ODP Plan in Appendix 1 Living Z.
2. That the Operative Plan Maps be amended accordingly and the Outline Development Plan Map and narrative attached as Annexure 1 be inserted into the Operative District Plan.

A handwritten signature in blue ink, appearing to read 'Paul Thomas', is positioned above the printed name.

Paul Thomas

30 March 2022

ANNEXURES

- 1. Commissioner's Recommended Outline Development Plan Narrative and Plan.**
- 2. Recommendations on Submissions.**

ANNEXURE 1

Commissioner's Recommended Outline Development Plan Narrative and Plan.

Prebbleton Outline Development Plan – Area 5.

Context

This Outline Development Plan (ODP) covers an area of 28.7ha bounded by Trices Road to the north, Birchs Road to the west and Hamptons Road to the south (the Site). The Site is contained by residential land to the north, rural land to the east, large lot residential to the west, and the Birchs Road Park to the south of Hamptons Road.

Land Use and Density

A minimum net density of 12 households per hectare (approximately 320hh) shall be achieved, averaged over the Site.

The Living Z (LZ) zone allows for a range of lot sizes, which responds to the context of the surrounding area and supports variety in dwelling styles and diversity in housing typologies including medium density developments.

The ODP provides suitable locations for medium density housing. These will be appropriately located within the Site and adjacent to:

- high amenity open green space that assists in providing a sense of scale, connectivity, and accessibility
- low traffic, high amenity street environments
- primary road corridors with high amenity cycling, pedestrian and /or public transport facilities
- stormwater management areas (SMAs)/ utility reserves

Medium density areas are not specifically shown on the ODP and are to be identified as part of detailed design at subdivision stage. This is to allow for sufficient flexibility and the ability to respond to technical roading and services related matters.

The ODP allows for existing dwellings and related curtilage /garden areas integrated in the final layout if this is required. Larger lots, within the scope of the LZ zone, may be required adjacent to areas where existing trees and or dwellings are retained to allow for slightly larger setbacks avoiding shading. Any reduction in density resulting from this integration can be offset by an increase in medium density areas, or by identifying larger sites retaining existing dwellings and related garden areas as future development areas, provided at subdivision stage, it can be illustrated how these sites can be further subdivided to achieve an average density of 12 hh/ha. Consent notices on these larger site titles may be imposed to require future potential subdivision at this ultimate required density.

At the time of subdivision, consultation with Ministry of Education will consider whether it is appropriate and necessary for any land to be provided for education purposes within the Site, and the appropriateness of any amendments to the ODP to accommodate this.

Open Space, Recreation, and Community Facilities

Two public open spaces are included within the site to add amenity to the neighbourhood, give relief for more compact residential clusters, and provide residents with the opportunity for recreation.

A small neighbourhood reserve is located on the north south primary road just south of Trices Road. This will provide long-term protection for a group of established, specimen trees and will function as the 'green gateway' into the Site. It will also offer a 'spatial break' and casual meeting place for the community.

The SMAs in the south-east of the Site create similar focal points, albeit much larger in scale. The SMAs main purpose will be a utility reserve however the ephemeral nature of these means that they are dry for most of the year and will double as temporary recreational space.

Access and Transport

The arrangement of movement corridors will ensure the proposed future development is:

- integrated with the surrounding context
- anticipates future connection as required
- provides appropriate internal connectivity within the Site.

The roading network is focused around a direct north-south and a direct east-west primary road to facilitate access to the Site and connections to the neighbourhood.

The main north-south route connects Trices Road with Hamptons Road creating a link for vehicles, pedestrians and cyclists between the township and Birchs Road Park. It includes a separate shared pedestrian cycle way to facilitate a separation of these traffic modes and a safe environment for all users.

The second major connection runs east-west through the Site directly linking Birchs Road to future possible residential development to the east of the Site. This route also includes a separate shared pedestrian cycle way.

Birchs Road provides alternative walking and cycling options (including the Rail Trail) to the town centre and the local primary school and will give easy access to the existing public transport route between Lincoln and Christchurch City providing a good alternative to commuting by car.

Further connectivity within the Site and to immediate neighbours is provided through additional local roads (to be confirmed at detail subdivision stage) to all desirable destinations such as the neighbourhood reserve and the SMAs. These roads will provide safe on road cycling options and footpaths to complete the pedestrian and cycle friendly environment. A finer grained connectivity to the surrounding areas is provided via local roads and pedestrian and cycle paths:

- two additional potential road connections to Trices Road
- one additional potential road connection to the east
- one additional shared pedestrian / cycle path (off road) connection to Hamptons Road
- one additional shared pedestrian / cycle path (off road) connection to Birchs Road.

The overarching road layout creates the key connectivity through the Site and integrates new residential development into the existing neighbourhood and wider Prebbleton development pattern along established movement corridors. It provides a variety of different access points into the Site and delivers a well laid out distribution network for the Site with a clear road hierarchy and logical movement patterns. It avoids the creation of vehicular shortcuts through the Site whilst focusing on a high amenity, permeability, and safety for non-vehicular users.

Pedestrian and Cycling Network

Cycling and walking are provided for by a mix of separate dedicated shared cycle and pedestrian paths within the road reserve, and off-road cycle and pedestrian paths through reserve and SMAs. Within the local street network cyclists can safely share the road with vehicles due to the lower traffic movements and introduction of traffic calming measures. The combination of the pedestrian and cycle provisions allow a safe and enjoyable journey through the residential areas to the sporting and recreational facilities in Birchs Road Park, the neighbourhood reserve, SMAs, neighbouring residential areas, and links to existing pedestrian and cycle paths, including the Rail Trail and cycleway to Prebbleton Domain via Stonebridge Way. The main north-south road connection may present an opportunity to re-route the Rail Trail through the Site subject to consultation with relevant parties and appropriate design at subdivision stage.

A shared pedestrian / cycle path will be provided on Hamptons Road along the Birchs Road Park frontage between the Birchs Road intersection and the main north-south road connection.

A shared pedestrian / cycle path will be provided on Trices Road along the entire frontage that abuts the Site. A safe crossing is to be provided on Trices Road near Stonebridge Way. Any shared pedestrian / cycle path between private properties is to be of a minimum 10m width with provision for amenity landscaping planting and controls on fencing height and permeability.

Road frontage upgrades

The Trices Road, Birchs Road and Hamptons Road frontages are to be upgraded to an urban standard in accordance with the Council's Engineering Code of Practice. All frontage upgrades are to be developed in consultation with SDC and where suitable provide direct access to properties.

At the time of subdivision, the need for and nature of minor safety improvements at the Trices Road / Birchs Road intersection will be considered in consultation with Selwyn District Council.

Edge treatment – Rural

Edge treatment of rural style fencing and additional landscaping to the eastern boundary will provide an appropriate visual screen and rural character. This is to be addressed via developer covenants at subdivision stage.

Edge treatment - Rail Trail

Where properties have a direct interface with the rail trail and /or a shared pedestrian / cycle way passive surveillance and sightline are to be considered for safety reasons. This is to be addressed via developer covenants at subdivision stage.

Edge treatment – Reserves

The current fencing rules as contained in the Council Fencing Guide will provide appropriate levels of passive surveillance where properties share a boundary with a reserve.

Servicing

The Site can be serviced by connections into the existing Council services for water and sewer. Allotments will be serviced by a gravity network which in turn will require a new pumpstation.

The stormwater management system is designed to achieve hydrologic neutrality, i.e. peak flows post development match pre-development peak flows. The use of SMAs best achieves that; it has the added advantage of being designed to provide an open recreation space with walkways and appropriate plantings to add to the amenity and quality of the environment within the development. The stormwater system design takes into account the nature of flooding through the Site.

Detailed stormwater solutions, including legal stormwater outfall location, are to be determined in collaboration with the Council at subdivision stage and in accordance with Environment Canterbury requirements.

ANNEXURE 2

Recommendations on Submissions.