

BEFORE THE SELWYN DISTRICT COUNCIL

Under the Resource Management Act 1991

In the matter of Proposed Plan Change 72 to the Operative Selwyn
District Plan: Prebbleton

And Trices Road Rezoning Group (The Applicant)

LEGAL SUBMISSIONS ON BEHALF OF THE TRICES ROAD REZONING GROUP

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MAY IT PLEASE THE COMMISSIONER

INTRODUCTION

- 1 This hearing will determine a request by the Trices Road Rezoning Group (**TRRG**) to change the Operative Selwyn District Plan to rezone approximately 28.7 hectares of rural land (**the Site**) on the southern boundary of Prebbleton to residential zone Living Z (or such other of the less preferred options as considered appropriate).
- 2 Based on a minimum density of 12 households per hectare, Plan Change 72 (**PC72**) will enable between 295 and 320+ residential sites (including some medium density lots), dependant on which residential zone (or combination of zones) is preferred. Outline Development Plans (**ODPs**) have been prepared for two of the options – Living Z (**LZ**) and Living 3 (**L3**) zoning across the Site¹. No changes are proposed to the existing rule framework.
- 3 These legal submissions address the following:
 - 3.1 Provide an update on the changes made to PC72 since notification – 30 June 2021;
 - 3.2 Assessment of PC72 against the legal framework;
 - 3.3 Consider the responsive planning framework under the National Policy Statement on Urban Development 2020 (**NPS-UD**);
 - 3.4 Merits of a strategic planning process as against a private plan change process;
 - 3.5 Implications of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021;
 - 3.6 Brief comment on:
 - 3.6.1 Greenhouse gas emissions;
 - 3.6.2 Stormwater assessment (as it relates to the Drinnan submission);
 - 3.6.3 Scope to include the Drinnan Block within PC72; and
 - 3.6.4 Response to Ministry of Education evidence.
 - 3.7 Conclusions and introductions of the relevant witnesses and experts that will be providing evidence on behalf of TRRG at the hearing.

CHANGES TO THE ODP SINCE NOTIFICATION

- 4 In response to submissions received and the s42A Report, the following changes have been made to the ODP:
 - 4.1 The preferred option has been updated to provide for LZ zoning with no L3 component.
 - 4.2 Consequential removal of the landscaping strip along the Birch's Road frontage – necessary to accommodate LZ zoning.

¹ Evidence of Pauline Fiona Aston (Planning), dated 14 January 2022; Evidence of Carl Alexander Fox (Survey) dated 14 January 2022 at Appendix A3.

- 4.3 The west-east road has been extended to the eastern neighbouring boundary to improve vehicle connectivity through the site to the undeveloped (but understood to be ear-marked for development) land to the east.
- 4.4 Removal of previously identified areas of medium density housing – although the ODP narrative confirms this mix in housing typology is required within the site. We note also that some medium density housing is necessary to achieve the 12/hh/ha target.
- 4.5 Amendment or inclusion of additional reserve/pedestrian/cycle linkages.
- 5 In addition, the ODP narrative has been updated to accommodate the above listed changes to the ODP.²
- 6 We discuss the effects of these amendments in more detail below, and the proposed changes have been addressed in detail in the TRRG expert evidence.
- 7 Where relevant the TRRG technical experts have been in communication with their Council counterparts post lodgement of the TRRG evidence to confirm that the amendments identified to the ODP and narrative (and approach taken to modelling) address the concerns and recommendations contained in the s42A Report. Any issues that remain outstanding will be addressed in the presentation of evidence, including summary statements, in the coming days.

LEGAL FRAMEWORK

- 8 The generally accepted guidance for considering a plan change is set out in *Colonial Vineyard v Marlborough District Council*.³ In summary, a plan change must be determined having regard to the requirements of sections 31, 32 and 72 – 76 of the RMA. Therefore, the following will need to be considered:
 - 8.1 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.⁴
 - 8.2 A district plan change must give effect to any national policy statement, national planning standard and operative regional policy statement.⁵
 - 8.3 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.⁶
 - 8.4 The policies are to implement the objectives, and the rules are to implement the policies.⁷
 - 8.5 Each proposed policy or method is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan by;

² Evidence of Pauline Fiona Aston (Planning), dated 14 January 2022, Appendix A, 14 January 2021

³ [2014] NZEnvC 55 at [17]; adopted in respect the consideration of AUP provisions in *Cabra Rural Developments Limited v Auckland Council* [2018] NZEnvC 90 at [279]; and *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2018] NZEnvC 67 at [159]

⁴ Ibid, sections 72 and 74.

⁵ Ibid, section 75(3).

⁶ Ibid, sections 74(1) and 32(1)(a)

⁷ Ibid, section 75(1)(b) and (c).

- 8.5.1 identifying other reasonably practicable options for achieving the objectives; and
- 8.5.2 assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
- 8.5.3 summarising the reasons for deciding on the provisions.⁸
- 8.6 In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.⁹
- 9 Ms Aston has provided a comprehensive section 32 evaluation as part of the original application and has updated that within her evidence¹⁰ to address the changes made to PC72 since notification. Ms Aston confirms her position that the proposal is considered to be the most appropriate, efficient and effective means of achieving the purpose of the Act.¹¹
- 10 Ms Aston further concludes that PC72 will:
 - 10.1 Efficiently and effectively support the growth of Prebbleton;
 - 10.2 Supports a consolidated and compact urban form to Prebbleton;
 - 10.3 Promotes the social economic and cultural well-being of current and future residents of Prebbleton;
 - 10.4 Meets the objectives and policies of the relevant planning documents (except where they are 'out of step' with and do not give effect to the NPS-UD);
 - 10.5 Is the most appropriate planning outcome for using the land in a manner that promotes the purpose and principles of the RMA; and
 - 10.6 Supports the Council in carrying out its functions under Section 31 of the RMA¹².

Section 42A Report

- 11 Ms Aston and the Council Reporting Officer largely agree that PC72 will contribute to a well-functioning urban environment, however the Council Reporting Officer made some recommendations which required further response from TRRG (summation only):
 - 11.1 PC72 is progressed as LZ, rather than a combination of LZ and L3;¹³
 - 11.2 The ODP is amended to include the Drinnan land south of Hampton's road;¹⁴
 - 11.3 The need for further modelling of the Birchs/Springs Road intersection to confirm that the additional traffic generated by PC72 will not have an unacceptable effect on the safety and level of service experienced at this key intersection;¹⁵

⁸ Ibid, section 32(1)(b).

⁹ Ibid, section 76(3)

¹⁰ See Note 2 at Appendix C

¹¹ See Note 2 at [149]-[157]; Notified Application dated 28 June 2021 at Appendix 11 at [17];

¹² See note 2, at [16]

¹³ See Note 2 at [28]; Evidence of Nicole Lauenstein (Urban Design), 14 January 2022 at [63]-[69]

¹⁴ Evidence of Nicole Lauenstein (Urban Design), 14 January 2022 at [70]

- 11.4 The ODP narrative should identify that “the Trices Road, Birchs Road and Hamptons Road frontages are to be upgraded to an urban standard in accordance with the Engineering Code Practice”;¹⁶
- 11.5 The ODP be amended to show an extension of the primary east/west road to the eastern boundary of PC72;¹⁷
- 11.6 The ODP be amended to include additional cycling routes within PC72 including shared pedestrian and cycling facilities on the Trices Road and Hampton Road frontages, along with a safe crossing point over Trices Road in proximity to Stonebridge Way;¹⁸
- 11.7 The ODP and narrative be amended to strengthen the site’s connectivity and the functionality of the permitter roads for cycling and walking.¹⁹
- 11.8 Further discussion with the Ministry of Education regarding demand on educational facilities.²⁰
- 12 We have footnoted where the respective TRRG experts have responded to the above requests within their evidence, including where the Council recommendations have not been accepted.
- 13 It is unclear whether the Council Reporting Officer’s support for PC72 as contributing to a well-functioning urban environment was conditional on all of the above recommendations being taken up by the applicant. In any case, the evidence presented by the TRRG experts thoroughly addresses and concludes that there is no doubt that PC72 meets all limbs of Policy 1 NPS-UD.

Evidence of Submitters

- 14 The evidence of Mr Langman filed on behalf of the two Councils²¹ identifies further areas of disagreement which have been summarised within his paragraphs 5(a)-(h). We do not repeat those concerns here. We acknowledge that a key issue for the Commissioner to resolve in this hearing is the treatment NPS-UD 2020 and the Canterbury Regional Policy Statement (**CRPS**) in light of the ‘avoid’ policy contained within Policy 6.2.1.3. We address this issue under ‘Responsive Planning under the NPS-UD’ below.
- 15 The evidence of Mr Stewart²² on behalf of the Drinnans raises two further issues;
 - 15.1 Stormwater Assessment; and
 - 15.2 Scope to include the Drinnan Block within PC72.
- 16 The evidence of Ms Lepoutre²³ acknowledges further consultation undertaken with the Ministry of Education (**MoE**) and seeks insertion of an additional assessment matter into

¹⁵ Evidence of Lisa Marie Williams (Traffic), dated 13 January 2022 at [24]-[32]

¹⁶ See Note 2 at Appendix A

¹⁷ See Note 2 at Appendix A; See Note 14 at [34]

¹⁸ See Note 2 at Appendix A; See Note 14 [35]-[37]

¹⁹ See Note 13 at [71] - [86]

²⁰ See Note 2 at [171]

²¹ Environment Canterbury and Christchurch City Council

²² On behalf of G & J Drinnan

²³ On behalf of the Ministry of Education

section C12.1 Subdivision and a new Policy B4.3.68 to embed the requirement for consultation with MoE at the time of subdivision.

- 17 Response to the evidence presented by submitters is addressed both within these submissions and within summary statements to be presented by the TRRG experts at hearing in accordance with the directions contained in Minute 1.²⁴

RESPONSIVE PLANNING UNDER THE NPS-UD

- 18 The NPS-UD came into force on 20 August 2020, replacing the former National Policy Statement on Urban Development Capacity 2016 (NPSUDC). Ms Aston describes the purpose of the NPS-UD as:²⁵

“The tenor of the NPS-UD is for Councils to ensure there are well-functioning urban environments, and minimum impediments to the urban development market functioning competitively. This means, providing there are no significant adverse effects, erring on the side of oversupply rather than undersupply, enabling development in a range of appropriate locations, and providing opportunities for different housing typologies.”

- 19 We acknowledge that the conflict between the CRPS and NPS-UD has been subject to considerable debate in recent plan changes²⁶ and with respect to the Strategic Direction and Urban Growth chapters hearings on the proposed Selwyn District Plan Review. Where useful, and to avoid duplication, we refer to documentation or submissions that have been filed as part of those earlier hearings.

Principles of Statutory Interpretation

- 20 We agree with legal submissions prepared by Chapman Tripp in relation to PC69 (reproduced in summary at paragraphs 20 – 22 below) that:

- 20.1 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase;²⁷ and
- 20.2 When interpreting rules in planning documents, *Powell v Dunedin City Council*²⁸ established that:
- 20.2.1 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;
- 20.2.2 the language must be given its plain and ordinary meaning, the test being “what would an ordinary reasonable member of the public examining the plan, have taken from” the planning document;
- 20.2.3 the interpretation should not prevent the plan from achieving its purpose; and

²⁴ Minute 1 Proposed Plan Change 72 to the Operative Selwyn District Plan Directions of the Commissioner, 1 December 2021

²⁵ See Note 2 at [85]

²⁶ For example, see Plan Change 63 and Plan change 67

²⁷ Section 5(1), Interpretation Act 1999

²⁸ *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at 1[2]

20.2.4 If there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

- 21 Therefore, the starting point is that words shall be given their plain meaning, except in situations as outlined within Powell. Where a plain interpretation, however, creates an anomaly, inconsistency, or absurdity, other principles of statutory interpretation must be considered to assist in interpreting the wording.
- 22 It is widely accepted that the RMA provides for a three-tiered management system – national, regional and district. This establishes a ‘hierarchy’ of planning documents:²⁹
- 22.1 First, there are documents which are the responsibility of central government. These include National Policy Statements, which must be “given effect to” in lower order planning documents.
- 22.2 Second, there are documents which are the responsibility of regional councils, namely Regional Policy Statements and Regional Plans.
- 22.3 Third, there are documents which are the responsibility of territorial authorities, specifically District Plans.
- 23 Subordinate planning documents, such as a Regional Policy Statement (**RPS**), must give effect to higher order National Policy Statements. The obligation for an RPS to maintain consistency with higher order planning documents is found within section 62(3) of the Act:

A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement, a New Zealand coastal policy statement, or a national planning standard

- 24 In our submission, if an RPS fails to achieve section 62(3) of the Act, then a decision maker must interpret that document with caution. This goes to the both the weight and validity of a planning document. We submit that in such circumstances where there is fundamental inconsistency with a higher order document, it is appropriate to consider whether the circumstances in *Powell* will arise. This requires detailed assessment of whether a strict interpretation of the CRPS is consistent with the purpose of the NPS-UD, and in particular, the responsive planning provisions. We submit that adopting a strict interpretation of ‘avoid’ would place primacy on the CRPS, rather than acknowledging its place in the regulatory hierarchy.

Inconsistency between the CRPS and the NPS-UD

- 25 The inconsistency between the CRPS and NPS-UD arises within the wording of the following policies:

- 25.1 Policy 6.2.1.3 of the RPS provides:

“avoids urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS;”

- 25.2 Policy 8 of the NPS-UD which provides that:

Policy 8: *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development*

²⁹ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [10]-[11]

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.*

26 Under plain interpretation, the wording of ‘avoid’ means “not allow” or “prevent the occurrence of” as discussed in *Environmental Defence Society v New Zealand King Salmon*³⁰. However, strict interpretation in this circumstance would effectively render it impossible for a consent authority to grant a plan change outside of the identified development areas (as identified on Map A).

27 In our submission, where provisions in the CRPS have not given effect to the NPS-UD, those must be considered incomplete/invalid, or otherwise read in a manner that is consistent with the NPS-UD. This is the approach described in *Powell*.

28 To apply Policy 6.2.1.3 without ‘reading it down’ would pre-empt any substantive assessment of an application. We consider that approach to be fundamentally inconsistent with the concept of responsive planning. Where a consent authority has competing obligations under the NPS-UD to implement ‘responsive planning’ measures, such a hard-line interpretation is not appropriate. Therefore, we consider it appropriate to ‘read down’ or soften Policy 6.2.1.3 in the CRPS in a manner that gives effect to the NPS-UD.

29 The incompatibility of the ‘hard line’ approach is demonstrated in the MfE Guide which states that:³¹

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

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

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

The identified areas must give effect to the responsive planning policies in the NPS-UD and therefore should not represent an immovable line. Council policies, including those in regional policy statements relating to out-of sequence development, will need to be reviewed and, in some cases, amended to reflect the responsive planning policies of the NPS-UD. For example, a hard rural urban boundary without the ability to consider change or movement of that boundary would not meet the requirements of the responsive planning policy.

[emphasis added]

30 We acknowledge that this is guidance only, however such documentation has recently been given weight by the Court in *Eden-Epsom Residential Protection Society Inc v Auckland City*

³⁰ [2014] NZSC 38 at [93].

³¹ MfE Fact sheet, Responsive Planning - [Responsive-Planning-Factsheet.pdf \(environment.govt.nz\)](https://www.environment.govt.nz/responsive-planning-factsheet.pdf)

Council.³² Due to the lack of jurisprudence in relation to the NPS-UD, we submit that the MfE guidance documents should be carefully considered.

31 Mr Langman states that the only matter missing within the CRPS at this point is the clause 3.8 criteria which will guide the assessment of what constitutes “significant development capacity”.³³ We submit that the inconsistency between the documents is much greater than that. As discussed within the MfE guide, Policy 6.2.1.3 is the exact type of policy that the NPS-UD is attempting to cure through the responsive planning provisions. Amendment to Policy 6.2.1.3 will require consideration of whether the ‘hard-line’ approach remains appropriate. This is a much more fundamental deficiency than Mr Langman acknowledges. If the CRPS is to fully give effect to the NPS-UD, then a ‘quick fix’ insertion of the criteria within Clause 3.8 of the NPS-UD will not suffice.

32 Mr Langman places some weight on the importance on Plan Change 1. As outlined in Ms Aston’s evidence, Plan Change 1 had a very narrow purpose, and made no attempt to be fully compliant with the NPS-UD.³⁴ The amendments made within Plan Change 1 should be recognised and treated as, at most, ‘partially implementing’ the NPS-UD. Additionally, we note that the report prepared by the Canterbury Regional Council to the Minister on Plan Change 1 expressly recognised that:³⁵

32.1 the purpose of PC1 is not to identify any additional areas appropriate for future rezoning;

32.2 the purpose of PC1 is to give effect to Policy 2 and clause 3.7 of the NPS-UD and that therefore this would give effect to the NPS-UD “in part”;

32.3 PC1 does not purport to give full effect to the NPS-UD given the scope of PC1 under the streamlined planning process;

32.4 further changes to the CRPS would be required in order to fully give effect to the NPS-UD (including the introduction of the criteria required under clause 3.8 NPS-UD); and

32.5 further work to the CRPS is currently being undertaken and in the meantime, any plan change requests will need to be considered in light of the NPS-UD.

33 Mr Langman provides a progress update on the status of amendments designed to comply with the NPS-UD:³⁶

CRC has initiated but not yet completed work to formulate and include such criteria in the CRPS in response to clause 3.8(3). When developed these criteria will, to my understanding, guide the determination of what constitutes ‘significant development capacity’ in a Greater Christchurch and Canterbury context.¹⁹ Given the criteria are not yet operative, the plan change cannot achieve criterion (b)(iii) above, and it is my evidence that the plan change does not achieve (b)(i) or (b)(ii).

34 Quite simply, the timeline to complete the amendments required to give effect to the NPS-UD remains uncertain, and under Mr Langman’s approach any unanticipated development

³² *Eden-Epsom Residential Protection Society Inc v Auckland City Council* [2021] NZEnvC 82 at [15].

³³ Evidence of Marcus Hayden Langman, dated 21 January 2022 at [84]

³⁴ See Note 2 at [135]

³⁵ Report to the Minister for the Environment on Proposed Change 1 to Chapter 6 of the CRPC, March 2021. ([Report to Minister](#))

³⁶ See Note 33 at [40]

remains entirely at the mercy of the CRPS. In the meantime (until the CRPS is updated), a consent authority would not have access to the responsive planning provisions within the NPS-UD when making their decisions.

- 35 Mr Langman's solution is for other others (plan change applicants and/ or the Council) to seek amendment to the CRPS (notably, amendments to the CRPS can only be progressed under Schedule 1 at the instigation of Minister or territorial authority under section 60(2) RMA), or refer the matter to the Environment Court under section 82(2).³⁷ Neither approach provides a practical mechanism to respond to the extreme pressure for additional land and housing stock that is being experienced on the ground in the Selwyn District. The purpose of the NPS-UD is to respond to New Zealand's housing crisis is as a matter of urgency and any further delay in delivering on this outcome, is in our submission, unacceptable.
- 36 Further, we do not agree that the CRPS requires amendment in order to use the responsive planning framework as intended. We consider, that despite the absence of criteria in the CRPS, there exists enough guidance (including the MfE guidance documents) and (1) and (2) of 3.8 of the NPS-UD to reconcile the tension between the two documents.

Recommended Approach

- 37 Ms Aston discusses the relationship between the CRPS and NPS-UD in some detail. She concludes that:

*In my opinion, greatest weight when assessing the merits of PC72 goes to the newest and higher order planning document, the NPS-UD 2020 and its direction for flexibility, providing at least sufficient development capacity for the short, medium and long term is achieved, and responsiveness to unanticipated proposals which add significant development capacity, and contribute to well functioning environments, as is the case with PC72.*³⁸

- 38 It is our submission that Ms Aston has appropriately assessed the relationship between the two documents, and it is appropriate to place greatest relevance and weight on the NPS-UD rather than the CRPS. While the CRPS is a key document demanding due consideration, policy 6.2.1.3 should not be treated as determinative as suggested by Mr Langman.

Significant Additional Development Capacity

- 39 As discussed above, the CRPS has not yet been updated to provide clarity on what constitutes significant development capacity. Therefore, an applicant must approach this assessment with a level of practicality. Ms Aston describes the process:³⁹

In the absence of regional council direction, the question of what constitutes significant development capacity is to be assessed on a case-by-case basis, on the evidence.

- 40 Ms Aston's approach is consistent with the guidance provided by MfE, which identifies the following criteria (summary only).⁴⁰

1. Significance of scale and location;

³⁷ Ibid at [81]

³⁸ See Note 2 at [73]-80] and [128]-[137]

³⁹ Ibid at [89]

⁴⁰ [Understanding and implementing responsive planning policies \(environment.govt.nz\)](https://environment.govt.nz/understanding-and-implementing-responsive-planning-policies/)

For example, is the size of the development (in terms of housing numbers) large enough to make a substantial contribution to the housing bottom lines and housing needs that have been identified through housing and business development capacity assessments or other evidence?

2. Fulfilling identified demand;

the market will signal where there is a future demand for housing and business land.

3. Timing of the development

Whether the development can be delivered at pace. If a development is proposed to occur earlier than planned for in council planning documents, it needs to be shown there is a commitment to, and capacity available, for delivering houses and businesses within this earlier timeframe

4. Availability of infrastructure.

The extent to which the proposal demonstrates viable options for funding and financing infrastructure required for the development.

[emphasis added]

- 41 We note that the MfE guidance is consistent with the requirements within Subpart 3, Clause 3.11 of the NPS-UD to use 'evidence and analysis' when changing plans in ways that affect the development of urban environments.
- 42 In this regard, Mr Colegrave and Mr Sellars have provided the Commissioner with the most up to date evidence on housing capacity and demand. Importantly, the MfE guidance does not require an assessment of significant additional development capacity against Greater Christchurch – and this makes sense given the impracticalities of presenting a proposal that provides significant additional capacity at a Greater Christchurch scale.
- 43 The position is succinctly outlined by the Council Reporting Officer:
- “would create a bar that is implausibly high, such that the pathway provided by Policy could never be used, which is clearly not the intent of the national direction”.⁴¹*
- 44 Mr Langman relies on the July 2021 Housing Capacity Assessment (2021 HCA) as justification for why PC72 is not needed to address the required development capacity in Selwyn District as directed by the NPS-UD.⁴² Mr Colegrave's evidence carefully outlines his criticisms of the July 2021 HBA as he considers it to significantly underestimate demand and overestimate feasible supply for a variety of reasons.⁴³
- 45 Mr Colegrave's assessment is that there will be a significant shortage of supply in the Greater Christchurch portion of the District across all three timeframes set by the NPS-UD – 1,432 households (short term); 7,496 (medium term) and 19,857 – 25,251 (long term, with the range depending on whether the Rolleston FDA are counted as contributing to development

⁴¹ S42A report at [163]

⁴² See Note 31 at [88]-[89] and [101]

⁴³ Evidence of Fraser Colegrave (Economics), dated 14 January 2022, at Appendix A

capacity, and the development density (12.5 or 15 hh/ha) in the FDA). In this context, Mr Colegrave considers that PC72 will provide a significant contribution to housing supply:⁴⁴

“To put the supply boost in context, I note that the 320 new lots provided would increase likely short-term district supply by 13%, and medium term by 7%. I consider this a material contribution, especially from just one development.”

- 46 In addition, Mr Sellars has undertaken an analysis of the land and housing markets in Prebbleton. His conclusions are concerning, identifying only 3 sections available for sale in Prebbleton (at time of drafting evidence)⁴⁵, and only 44 sections being potentially available for sale through piecemeal development.⁴⁶ In such context, any development will present a significant contribution to housing supply within Prebbleton.
- 47 The lack of supply within Prebbleton is also reiterated within the Evidence of Mr Jones, who again identifies a distinct lack of supply within the Prebbleton market, describing it as ‘*non-existent*’.⁴⁷ Mr Jones identifies the distinct lack of supply as major driver behind the significant increase in housing prices.⁴⁸
- 48 When assessing whether the proposal meets that standard of ‘Significant Additional Development Capacity’ we commend to you the complimentary evidence of Mr Colegrave, Mr Sellars, Mr Jones and Ms Aston over that of Mr Langman.

Will PC72 contribute to well-functioning urban environments?

- 49 A well-functioning urban environment is defined within Policy 1 of the NPS-UD, and each of the relevant limbs is considered and assessed within the evidence of the TRRG experts. In particular, Ms Aston has provided a comprehensive assessment of whether PC72 will contribute to well-functioning urban environments. Consistency with Policy 1 is largely an evidential question that goes to the merits of PC72. On this basis, we rely on the evidence of the various TRRG experts.
- 50 Mr Langman does not consider PC72 to provide for a well-functioning urban environment in accordance with Policy 1, “*as it could compromise investment in intensification by continuing urban sprawl into greenfield areas.*”⁴⁹ Mr Langman considers:
- 50.1 PC72 to be inconsistent with policy 1(d) – ‘limit as much as possible adverse impacts on the competitive operation of land and development markets’.
- 50.2 It has not been demonstrated that the proposal will contribute to targets that seek a ‘sinking lid’ of greenfield development and an increase in intensification as expressed in CRPS Objective 6.2.2.
- 51 It is worth noting that Mr Langman has made this assessment based on the assumption that the 2021 HCA is accurate, and that there is no identified demand within the Selwyn District.⁵⁰ In contrast, the evidence of Mr Colegrave, Mr Sellars and Mr Jones all demonstrate an identified demand for housing – it does not follow that in a market desperate for housing

⁴⁴ Ibid at [82]

⁴⁵ Evidence of Gary Russell Sellars (Valuation), dated 14 January 2022 at [7.16]

⁴⁶ Ibid at [7.15]

⁴⁷ Evidence of Christopher Francis Jones (Real Estate) dated 14 January 2022 at [19]

⁴⁸ Ibid at [25]

⁴⁹ See Note 31 at [86]

⁵⁰ Ibid at [88]

supply, that PC72 could create adverse effects for market competition. Ms Aston's evidence provides a comprehensive response to this concern.⁵¹

- 52 Ms Aston's evidence also dedicates much time to the consideration of Objective 6.2.1 and 6.2.2 of the CRPS.⁵²

MERITS OF A STRATEGIC PLANNING PROCESS AGAINST A PRIVATE PLAN CHANGE PROCESS

- 53 Mr Langman considers that the merits of PC72 and its request for urban levels of development would be better considered in conjunction with and subsequent to a broader assessment of the desirability of additional urban growth in and around Prebbleton. Mr Langman's preference is to wait until the spatial planning process catches up.⁵³
- 54 Private plan changes are a perfectly legitimate public processes to be used in the enabling of additional urban development. In fact, Policy 8 of the NPS-UD specifically recognises this by using the exact words 'plan change'. We can find nothing within the NPS-UD that places primacy on the use of strategic planning (or even District Plan review process) ahead of a private plan change process. Policy 8 has been inserted to ensure that a pathway for responsive planning is enabled. To wait on strategic planning processes will result in unknown delays – which cannot be tolerated in a housing market where demand has long outstripped supply. We re-iterate that even under the responsive planning provisions a comprehensive assessment must be made against the merits of the proposal and whether it contributes to a well-functioning urban environment. There is no risk of flood-gates being opened.

Cumulative Effects

- 55 Mr Langman places much weight on the potential for cumulative effects, raising the issue several times within his evidence.⁵⁴ We submit that the broader strategic assessment described by Mr Langman (i.e by utilising future strategic planning processes to assess PC72 in the context of other plan changes and broader infrastructure management) is effectively a cumulative effects assessment.⁵⁵
- 56 We acknowledge that cumulative effects can be relevant to plan change applications,⁵⁶ however, this needs to be assessed in the context of whether a proposal is the most appropriate way to achieve the objectives and policies of the plan.
- 57 The relevance of cumulative effects for a plan change was discussed in *Canterbury Fields Management Ltd v Waimakariri DC*⁵⁷ where the Court identified that the concepts of precedent and cumulative effects which arise in the context of resource consent applications are not relevant to plan change requests. The case concerned a plan change request which sought to rezone land from rural to residential and the Regional and District Councils opposed the plan change on the basis of possible precedent and cumulative effects of the rezoning on the receiving environment. The Court held that these aspects would be more relevantly considered in terms of whether the plan change would implement the policies and objectives of the plan.

⁵¹ See Note 2 at [115] – [120]

⁵² Notified Application documents, dated 28 June 2021 at Appendix 13

⁵³ See Note 31 at [90]

⁵⁴ See Note 31 at [5],[64],[125],[133],[134] and [149]

⁵⁵ Ibid at [64]

⁵⁶ *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892 at [140] and Resource Management Act 1991, section 76(3)

⁵⁷ *Canterbury Fields Management Ltd v Waimakariri DC* [2011] NZEnvC 199 at 1–[3] and [93]–[97],

- 58 Canterbury Plains adopts the reasoning of Judge Whiting in *Bell Farms Limited and Another v Auckland City Council*:⁵⁸

“Precedent is thus linked to the integrity of the Plan as it would apply to a resource consent application. This being a Proposed Plan Change, the integrity of the planning instruments are, addressed by the statutory provisions and the need to be consistent with the plan’s objectives and policies.”

- 59 *Wallace Group Ltd v Auckland Council* adopted the approach in *Canterbury Fields* and ultimately held:⁵⁹

“I agree with the generality of that statement. I find that each and every district plan method, including mapping, will invariably derive from the hierarchy of instruments and provisions (regional and district) above it, and it is hard to conceive of any one circumstance not standing significantly on its own when assessed for appropriateness within the hierarchy...I consider that the apparent need for HNZ to pray in aid a concern about precedent is to illustrate how long a bow it has had to draw in making the current claim. I also agree with the Appellant that in addition to the proceeding being very site-specific, any future challenge of the sort that concerns the Corporation would fall to be determined on its own merit.”

- 60 The broader strategic assessment requested by Mr Langman is a request to undertake a district wide cumulative effects assessment. It is not possible or appropriate for an applicant to undertake such an assessment in the context of a private plan change. Ms Aston has correctly grounded her assessment in the objectives and policies of the relevant statutory documents and considered whether PC72 is the most appropriate way to achieve the relevant objectives of the statutory documents. There is no need to attempt to assess PC72 at the scale suggested by Mr Langman.

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

- 61 Mr Langman places significance on the potential impact of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Housing Enabling Act**).
- 62 TRRG filed a submission on the Housing Enabling Act because the draft Bill sought to have all Plan Changes withdrawn if a hearing had not been completed by 20 February 2022 (copy of the joint submission attached as Appendix A to these submissions). This necessitated the haste in which PC72 has proceeded to hearing. Subsequently, amendments were made to the Housing Enabling Act to ensure that a process was available to ensure that plan changes lodged and filed prior to commencement of the Act had a pathway to be progressed.
- 63 Relevantly, the Housing Enabling Act provides at clause 34 that with regard to private plan changes that have not incorporated the new density standards, and have not received a decision at the time of commencement (21 December 2021), the local authority must notify a variation to that plan change at the same time it notifies its Intensification Planning instrument (**IPI**) to incorporate the new standards on or before 22 August 2022.
- 64 We submit that the Housing Enabling Act is an enabling piece of legislation, and while there will be inevitable changes through the IPI above, it would be premature to predict that process, or predict its outcomes. To consider the implications of the Housing Enabling Act ahead of the

⁵⁸ *Bell Farms Limited and Another v Auckland City Council* [2011] NZEnvC37, at para [107]

⁵⁹ *Wallace Group Ltd v Auckland Council* [2017] NZEnvC 106 At [39]-[41]

Council's IPI would be speculative and theoretical as there is no certainty that increased density developments are feasible and reasonably expected to be realised particularly in the context of Selwyn.

- 65 Mr Langman considers that Mr Colegrave should update his assessment to incorporate the MDRS provisions.⁶⁰ With respect we disagree, as the effect of the Medium Density Residential Standards is appropriately assessed during the IPI process and we do not consider that there is anything within the NPS-UD that imposes requirements on the Commissioner to undertake or require additional evidence on housing supply and demand.
- 66 Attached to these submissions as Appendix B is Minute of Commissioner Caldwell⁶¹ that confirms (in the context of several West Melton and Rolleston plan changes) that determinations on plan changes may proceed in advance of the Council IPI process to come. We submit that the same approach ought to be adopted in the determination of PC72.

Urban Environment

- 67 Mr Langman raises the issue that Prebbleton fits within the definition of 'urban environment'.⁶² While we agree that Prebbleton is part of the 'Greater Christchurch' area as defined within Table 1 of the NPS-UD, that does not necessarily mean that is the only urban environment that applies. We consider that the definition of 'urban environment' is capable of comprising more than one environment and should be assessed in the particular factual context. In the context of a private plan change, there may several urban environments to be considered (i.e the Greater Christchurch as defined by Table 1, Selwyn District, or even smaller environments such as Prebbleton, Rolleston or West Melton).
- 68 Specifically in this context, Prebbleton, did not have a population of more than 5,000 at the time of the 2018 Census and it is therefore possible that the Housing Enabling Act will not apply to residential zones within Prebbleton. Again, this will only be determined during the IPI process. On this issue, we agree with the summation provided by the Council Reporting Officer.⁶³

Greenhouse gas emissions

- 69 Mr Langman has raised concern that PC72 does not demonstrate how the proposal will contribute to reduced greenhouse gas emissions, which is a requirement for a well-functioning urban environment.
- 70 We note that Ms Aston provides her assessment of this issue at [123] – [126] of her evidence. In addition, the evidence of both Mr Sellars and Mr Jones confirm that as sections have been exhausted within townships such as Prebbleton, Rolleston and Lincoln, the result is that purchasers have settled further from Central Christchurch, in locations such as Leeston, Darfield or even Rakaia. Mr Jones confirms that he does not consider central Christchurch to be an equivalent substitute for Prebbleton housing stock.
- 71 Ms Williams also confirms that there are existing public transport routes that can be increased in accordance with demand (acknowledging that management of public transport is the

⁶⁰ See Note 31 at [5.g]

⁶¹ Minute of Commissioner David Caldwell relating to Procedural Matters Arising from the Resource Management (Enabling Housing Supply and Other Matters) Act. 10 January 2022

⁶² See Note 31 at [107]

⁶³ Section 42A Report at [41]

responsibility of Council which sits outside PC72) thus delivering and a corresponding reduction in greenhouse gas emissions overtime.

- 72 We note the specific wording of Policy 1(e) of the NPS-UD: *support reductions in greenhouse gas emissions*. The word ‘support’ is important as it acknowledges the practicalities of being able to demonstrate a reduction in greenhouse gas emissions when enabling housing development with the related and unavoidable construction footprint. It is submitted that the NPS-UD intentionally adopts a lower standard of ‘support reductions’ rather than the more onerous standard of ‘demonstrate reductions’.
- 73 In this context, we consider the benefits of developing additional capacity within existing townships (and preventing purchasers moving further abroad) to be consistent with the requirements within policy 1(e) of the NPS-UD. This is consistent with the reasoning of the Council Reporting Officer.

Drinnan submission

Stormwater assessment

- 74 The Drinnans’ are concerned that the development of PC72 will place a requirement on them to enable stormwater disposal across their property. Mr Blakie, has confirmed within his evidence that design solutions are available to ensure that pre and post development flows will remain the same⁶⁴ and that an outfall on the Drinnan land is one of several options considered. Mr Blakie will respond to the evidence of Mr Stewart in his summary statement.

Scope to include Drinnan land

- 75 We have reviewed the legal advice appended to the evidence of Mr Stewart. The TRRG maintain a neutral position in relation to including the Drinnan land within the PC72 ODP. Quite simply, if the Drinnan’s wish to include their site, then it falls to them to put their case forward. This position is consistent with the Further Submission filed by TRRG (FS298) on the Drinnan’s rezoning submission on the proposed Selwyn District Plan. The TRRG further submission supported the inclusion of the Drinnan land subject to robust evidential assessment being provided, as is required to support any rezoning proposal⁶⁵.
- 76 The TRRG experts have not been engaged (and therefore their technical reports have not considered the implications of) the potential inclusion of the Drinnan land within the PC72 proposal. It is submitted it would be inappropriate for the Commissioner to rely on conclusions of the TRRG experts as reached in the PC72 technical reports to fulfil the evidential requirements for rezoning of the Drinnan land.

Ministry of Education

- 77 We acknowledge receipt of the evidence filed by Karen Lepoutre on behalf of the MoE, received 26 January 2022. Our legal submissions will formally respond to the Ministry’s evidence at the hearing, and Ms Aston will address the submission in more detail within her summary statement during the course of the hearing.

CONCLUSIONS AND EXPERT WITNESSES


- 78 To conclude, the TRRG evidence supports the grant of PC72. It is submitted that all concerns and issues raised in the s42A Report and in submissions have been addressed adequately by the amended ODP and narrative.

⁶⁴ Evidence of Lindsay Marshall Blakie (Stormwater), 14 January 2022 at [10](f) and [11](d)

⁶⁵ Appendix 18, Information to be submitted with a plan change request, Operative Selwyn District Plan

- 79 The combined evidence of the TRRG experts confirm PC72 to be an excellent development proposal that contributes to the well-functioning urban environment of both Prebbleton and the wider Selwyn district.
- 80 I will now call the following witnesses to speak to their evidence:
- 80.1 Fraser Colegrave (Economics)
 - 80.2 Gary Sellars (Valuation)
 - 80.3 Chris Jones (Real Estate)
 - 80.4 Fiona Aston (Planning)
 - 80.5 Carl Fox (Survey)
 - 80.6 Lindsay Blakie (Stormwater and Flooding)
 - 80.7 Sean Finnigan (Contaminated Soil)
 - 80.8 Lisa Williams (Traffic)
 - 80.9 Nicole Lauenstein (Urban Design)

26 January 2022

A handwritten signature in blue ink, appearing to be 'Katherine Forward' or 'Derek McLachlan', with a stylized, cursive script.

Katherine Forward/ Derek McLachlan

Counsel for the Trices Road Rezoning Group