

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

**IN THE MATTER**

of the Resource  
Management Act 1991

**AND**

**IN THE MATTER**

of a request by Rolleston  
West Residential Limited for  
a plan change (Private Plan  
Change 73) under the First  
Schedule to the Resource  
Management Act 1991

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

**29 September 2021**

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## 1. INTRODUCTION

- 1.1 These legal submissions are made on behalf of Christchurch City Council (**Council or CCC**) and Canterbury Regional Council (**CRC**) in relation to Private Plan Change 73 (**PC73**) to the Selwyn District Plan (**SDP**), which has been requested by Rolleston West Residential Limited (**RWRL**).
- 1.2 CCC and CRC both made submissions in opposition to PC73, with a number of issues raised that are common to both councils. It is for this reason that a joint case is being presented, with evidence presented by Mr Keith Tallentire dated 20 September 2021.
- 1.3 There are two central concerns for CCC and CRC. These are:
- (a) First, that PC73 does not qualify for consideration under the ‘responsive planning framework’ under the National Policy Statement on Urban Development 2020 (**NPS-UD**); and
  - (b) Second, that PC73 is either inconsistent with or contrary to a number of important policy directions in the Canterbury Regional Policy Statement (**CRPS**).
- 1.4 The evidence provides two different opinions in relation to how the NPSUD and CRPS should interact with each other.
- 1.5 The RWRL position (which is aligned with that of the s42A author, Ms White) is that any inconsistency between PC73 and the CRPS can be “overcome” by Policy 8 of the NPS-UD, based on the significance of the development capacity provided by PC73.<sup>1</sup> CCC and CRC understand this position to rely on the view that the “requirement to give effect to the NPS-UD as a higher order document which prescribes objectives and policies for a matter of national significance ...has primacy over the CRPS”.<sup>2</sup>

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1 At 79, 100.

2 103.4.

- 1.6** CCC and CRC accept that the NPS-UD is a higher order document, but disagree that it should be interpreted as having primacy over the CRPS (and its avoid framework) in this way. More specifically, the case for CCC and CRC is that the NPS-UD and CRPS can be read and applied together, with no reasonable interpretative grounds (or need) for suggesting that the NPS-UD should take precedence over the CRPS. In any event, it is submitted that the suggestion that the NPS-UD can, or should, take precedence in the circumstances is based on an incorrect interpretation of the relevant provisions.
- 1.7** Counsel for CCC and CRC have had the opportunity to review the legal advice prepared by Adderley Head to Selwyn District Council (**SDC**), dated 13 September 2021 (**Adderley Head advice**), which largely supports the interpretation preferred by RWRL.<sup>3</sup> For the same reasons as outlined above, it is submitted that the Adderley Head advice is based on a flawed interpretation that misconstrues the NPS-UD and focusses on select provisions only. These submissions respond to that advice below, where necessary.
- 1.8** It is submitted that characterising this request as a contest between the NPS-UD and CRPS is incorrect, and that the proper approach is to attempt to reconcile these two planning instruments in a manner that accords with the wider statutory context and the hierarchy of planning documents outlined in *Colonial Vineyards*. This is elaborated on further below.
- 1.9** If the RWRL / Adderley Head approach to interpreting and applying the NPS-UD is accepted, the consequence is that the recent Change 1 to the CRPS, and the core urban growth strategy established by the CRPS, will be undermined. This outcome would be completely at odds with the decade of strategic planning undertaken by the Greater Christchurch Partnership (**GCP**), which includes SDC, and the recent housing capacity assessments completed and endorsed by the GCP that informed Change 1 to the CRPS. Against this context, part of which has occurred in a post NPS-UD environment, and the thematic consistency between the

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<sup>3</sup> While the Adderley Head advice, at paragraph 47, chooses not to use the word "primacy", it contends that the responsive planning provisions are "distinctive" from the balance of the NPS-UD provisions, and focuses on the purpose of *those* provisions, rather than assessing the NPS-UD as a whole.

NPS-UD and the CRPS in relation to urban growth, it is submitted that the CRPS framework should not be disregarded in favour of isolated policies in the NPSUD that (properly interpreted) provide an administrative pathway only, which does not direct the enabling of development over and above integrated and strategic planning.

**1.10** In short, it is submitted that:

- (a) there is no sound legal interpretation that requires the 'responsive planning framework' to be given greater weight, or precedence, over a CRPS framework that engages with fundamentally the same subject matter as the NPS-UD;
- (b) evaluating PC73 in a manner that emphasises one set of provisions within the NPS-UD, over others (including those within the CRPS), amounts to an incorrect approach to the interpretation and application of these planning instruments;
- (c) to effectively disregard the significance of the recently approved Change 1 to the CRPS would make it an empty exercise – which cannot be accepted given that it squarely engages with the same urban growth issues, and has been assessed as giving effect to the NPS-UD;<sup>4</sup> and
- (d) the statutory requirement to "give effect" to the CRPS engages the avoid framework established by the CRPS, with all lower order plan change decisions required to conform with that direction.

## **2. RELEVANT STATUTORY FRAMEWORK**

**2.1** The now widely accepted *Long Bay* test for plan changes, which was more recently updated in *Colonial Vineyard Limited v Marlborough District Council*,<sup>5</sup> requires consideration of *all* the relevant issues for the purposes of assessing plan changes, including the "higher order directions" of sections 72, 74 and 76 of the RMA.

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<sup>4</sup> Mr Tallentire, at 42.

<sup>5</sup> *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

**2.2** In this instance, there are relevant issues emerging from the “higher order” planning documents, which includes the NPS-UD and CRPS. In this case, it is accepted that the NPS-UD is the *higher* of the two documents, but submitted that, of itself, this does not demand that greater emphasis or precedence is placed on the NPS-UD in the circumstances.

**2.3** As recognised by the Supreme Court in *King Salmon*,<sup>6</sup> the cascade of planning documents under the RMA are intended to give effect to section 5 and Part 2 of the Resource Management Act 1991 (**RMA**), by giving:<sup>7</sup> (emphasis added)

... substance to its [*the RMAs*] purpose by identifying objectives, policies, methods and rules **with increasing particularity both as to substantive content and locality.**

**2.4** That is precisely the case here, with the NPS-UD providing higher level direction,<sup>8</sup> and the CRPS then providing more particularised regional (and, in particular, sub-regional) direction in relation to similar matters, as well as other relevant policy matters for the purpose of giving effect to other NPS’, and the other requirements of Part 2 of the RMA.

**2.5** There can be no dispute that under section 75(3) of the RMA a district plan ‘must give effect to’ any NPS and any regional policy statement. As highlighted in *King Salmon* it is now well-settled that:

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

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

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

7 At [30].

8 As anticipated by s45, RMA.

- [a] The hierarchy of plans makes it important that objectives and policies at the regional level are given effect to at the district level; and
- [b] The Regional Policy Statement, having passed through the [RMA] process, is deemed to give effect to Part 2 matters.

**2.6** The Supreme Court went on to note that, while the requirement (to give effect) is a strong directive, it is context dependent:<sup>9</sup>

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

**2.7** In this instance, there are a number of relevant directions in both the NPS-UD, and the CRPS, that have varying degrees of directiveness. This is relevant when seeking to reconcile these planning documents, with the nature and expression of the relevant objectives and policies being significant. As acknowledged by *King Salmon*:<sup>10</sup>

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

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9 At [80].

10 At [91].

“give effect to” the NZCPS is intended to constrain decision-makers.

- 2.8** The NPS-UD, as can be expected given its national application, contains a number of directions expressed with a greater degree of abstraction. It is, however, more explicit for Tier 1 local authorities in relation to certain requirements, than for Tier 2 and 3 local authorities (for example, in relation to intensification<sup>11</sup>).
- 2.9** The CRPS, given its regional focus, provides more specific direction on a multitude of resource management matters, including urban growth (particularly that of Greater Christchurch). It is submitted that this is to be expected, given that the CRPS represents the ‘more particularised’ expression of the higher order objectives and policies, and direction on other Part 2 matters (in accordance with the functions of regional councils under section 30 (ie. ss(1)(ba) and (gb)). Of most relevance, the CRPS establishes a highly directive framework for urban growth which is underpinned by long-standing strategic planning work. So long as this framework achieves the outcomes directed by the NPS-UD, there is no reason why it should not be considered a valid approach to giving effect to the NPS-UD.
- 2.10** The Supreme Court observed in *King Salmon*, when considering the regional coastal plan, that it is “obviously important that the regional integrity of a regional coastal plan not be undermined”.<sup>12</sup> It is submitted that the same principle should apply here to the CRPS. This is particularly so given that the CRPS has been amended post NPS-UD, to provide additional development capacity in a manner that implements the NPS-UD requirements. We consider this matter further below, when addressing the CCC and CRC view about the requirements of the ‘responsive planning framework’ when properly understood and interpreted.

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11 Policy 3.

12 At [69].



### 3. PC73 AND WHY IT MATTERS TO CCC AND CRC

- 3.1 PC73 seeks to rezone land that is currently zoned as Living 3 for urban development.
- 3.2 As described in the evidence, there are two areas of land involved, adjoining the western side of Rolleston's existing urban area. The effect of rezoning these areas would be to create two nodes of urban zoning extending beyond the Projected Infrastructure Boundary (**PIB**), as shown on Map A of the CRPS.
- 3.3 This directly engages with the urban growth provisions in Chapter 6 of the CRPS, which establishes – as its dominant purpose - how to provide for urban growth within Greater Christchurch into the future.
- 3.4 Mr Tallentire for CCC and CRC,<sup>13</sup> outlines in his evidence the recent Change 1 amendments to Chapter 6 of the CRPS. In an effort to avoid repetition:
- (a) Change 1 built on existing strategic growth planning by the Greater Christchurch Partnership (and the actions agreed through Our Space<sup>14</sup>), and identified additional land for future urban growth within Greater Christchurch to address identified shortfalls across certain periods (Future Development Areas (**FDAs**)). These FDAs were identified on the basis that they were the most suitable areas for future urban development from a strategic standpoint, if additional land is required to meet medium term needs.<sup>15</sup>
  - (b) Change 1 was supported by an evaluation, by CRC, which (relevantly) assessed the extent to which it would give effect to the NPS-UD. This evaluation determined, and the relevant Minister agreed, that Change 1 would give effect to the NPS-UD.<sup>16</sup>

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13 Paragraphs 41 - 43.

14 Evidence of Mr Tallentire for CCC and CRC, at [41].

15 At [43].

16 At [42].

- 3.5** The end result is that Change 1 is submitted to satisfy the NPS-UD requirement to provide sufficient development capacity, while recognising that the CRPS is allowed by the NPS-UD to manage urban growth in whatever manner it deems to be most appropriate at a sub-regional level.
- 3.6** Against this background, it is submitted that the Commissioner has no reasonable basis to disregard or place lesser weight on this recent change, particularly as it relates to essentially the same subject matter as is now raised through PC73 (ie. the approach to strategic urban growth for Greater Christchurch). It is submitted that it would be inappropriate to do so, given that sub-regional development capacity issues were carefully considered and tested against updated capacity data through the Change 1 process.

#### **4. THE RELATIONSHIP BETWEEN THE NPS-UD AND CRPS**

- 4.1** As discussed above, the NPS-UD and CRPS are both engaged because the subject matter of PC73 is related to urban growth.
- 4.2** When interpreting and applying these documents, case law has established that the correct approach is to read the document as a coherent whole.<sup>17</sup> While we do not understand that principle to be a point of contention, it is submitted that the applicant's evidence – when applying the NPS-UD - has inappropriately placed emphasis on certain provisions over others, and has not sought to read the NPS-UD as a coherent whole.
- 4.3** The NPS-UD contains a number of objectives and policies, all of which work together. While the concept of delivering a well-functioning urban environment appears in multiple places, the NPS-UD does not have one single purpose.<sup>18</sup> Instead, the NPS-UD as a whole provides direction on a number of different components related to urban development generally.

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<sup>17</sup> The Adderley Head advice purports to adopt the orthodox approach to interpretation, at paragraphs 25 to 28.

<sup>18</sup> Objective 1, NPS-UD.

**4.4** The 'responsive planning framework' is also a component of the NPS-UD, and is established by Objective 6 and Policy 8. It is submitted that this mechanism provides a pathway for the consideration of out of sequence plan changes<sup>19</sup> where the development capacity provided can satisfy certain criteria, including that it:

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

**4.5** As explained in Mr Tallentire's evidence, CRC has not yet included any criteria in the CRPS.<sup>20</sup> As a consequence, PC73 will need to be considered against other relevant factors, including those discussed in the Guidance published by the Ministry for the Environment,<sup>21</sup> and the relevant objectives and policies concerning urban growth in both the NPS-UD and CRPS.

**4.6** While the 'significant development capacity' criterion is unique to the responsive planning framework, the other criteria set out in clause 3.8(2) engage with the requirement that urban environments are well-functioning and well-served.<sup>22</sup> These criteria overlap with other NPS-UD objectives and policies (including Objective 6) which indicates that – although the responsive planning framework provides a pathway in certain cases - it remains a part of the wider scheme of the NPS-UD.

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

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

20 Evidence of Mr Tallentire for CCC and CRC, at [33].

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

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

- (a) First, there is nothing expressly stated in the NPS-UD that gives Policy 8 any elevated significance over other objectives or policies. To that extent, CCC and CRC do not accept that this aspect of the NPS-UD should take primacy over any other aspect of the NPS-UD, or indeed over the CRPS framework in relation to urban growth;
- (b) Second, the parent objective for Policy 8 - Objective 6 - puts three different matters on an equal footing, all of which have to be satisfied (note the conjunctive use of “and”). The implication of this is that the responsive planning framework cannot be treated as a process isolated from the remainder of the NPS-UD (for that to be the case, it is submitted that this would need to be expressly stated in the NPS-UD). Instead, local authority decisions affecting urban environments are required in all cases to remain integrated with longer-term infrastructure decisions, and to be strategic across the medium and long term, even when out-of-sequence proposals are being considered.
- (c) Third, the Guidance prepared by the Ministry for the Environment (**Guidance**) is consistent with this interpretation,<sup>23</sup> by noting (emphasis added):

The responsive planning policies **complement** the future development strategy process by recognising urban areas are dynamic and complex systems, which continually change in response to wider economic and social conditions. Local authorities need to anticipate and plan for growth while **remaining open to change and being agile and responsive to development opportunities**.<sup>24</sup>

The responsive planning policy in the NPS-UD limits a local authority's ability to refuse certain private plan-change requests without considering evidence.<sup>25</sup>

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23 We note that the Guidance does not form part of the NPS-UD, is not legal advice and has no legal effect in terms of the application and / or interpretation of the NPS.

24 Guidance, page 3.

25 Guidance, page 3.

The responsive planning policy will reassure the development sector that local authorities will consider opportunities consistently and transparently.<sup>26</sup>

The responsive planning policies seek to ensure flexibility to enable development that may not be currently in council infrastructure plans.<sup>27</sup>

- (d) It is submitted that this Guidance aligns with the interpretation preferred by CCC and CRC, in that it operates as a pathway for the consideration of requests to release land for development capacity out of sequence, but only where it can be demonstrated that early release is warranted on the merits, and in a manner that complements existing strategic planning.
- (e) Fourth, there is nothing stated (either expressly or implicitly) in the NPS-UD to suggest that the responsive planning framework provides innate flexibility for urban development, or that it amounts to a stand-alone merits test for unanticipated development. Instead, it may be considered entirely appropriate – as a means of achieving Objective 6 in a sub-regional context – to develop a restrictive framework that enables growth or provides for responsiveness in certain areas, and restricts growth elsewhere. While the appropriateness of such a framework will depend on the facts and circumstances at hand, it is submitted that for Greater Christchurch it is a valid approach to give effect to the NPS-UD.<sup>28</sup> As a result, the CRPS cannot be said to be non-compliant with the NPS-UD (or Policy 8).
- (f) Finally, if precedence were given to being “responsive” (on development capacity grounds alone), without engaging the other criteria, the end result would be a proliferation of ad hoc (and insignificant and speculative) developments being approved (which the Guidance suggests should be filtered out). This could result in urban growth that is not

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<sup>26</sup> Guidance, page 3.

<sup>27</sup> Guidance, page 5.

<sup>28</sup> The overall objective of the NPS-UD is to ensure that urban environments are well-functioning and that they meet the changing needs of communities, as per Objective 1.

properly integrated, and inconsistent, with existing growth strategies, which would be plainly at odds with the NPS-UD when interpreted as a whole.

- 4.8** In the event that the Applicant argues that the responsive planning framework provides a way to release land for development capacity in a manner that can depart from the CRPS framework (ie. it softens the avoid framework, or allows for inconsistency), it is submitted that this would undermine the intent of the NPS-UD, and also directly fail to give effect to, and therefore undermine, the role of the CRPS itself as a higher-order resource management document.

### **Response to the Adderley Head advice**

- 4.9** The Adderley Head advice, in paragraphs 48 to 67, considers the text of the NPS-UD. We note that this advice, at paragraph 55, has attempted to replicate Objective 6, but amended the structure of that objective and added the word "be" before subclause (c). At paragraph 56, it is suggested that decisions are "to **be** responsive", which uses this additional word. We note that clause (c) of Objective 6 is one of three clauses, all of which are expressed on an equal footing owing to the use of the conjunctive "and". It is not clear whether this extra word has influenced the Adderley Head advice.
- 4.10** After focussing on the wording of Objective 2, and Policy 1(d), which address competition in land development markets, Adderley Head goes on to consider what is meant by the word "responsive". The suggestion is that the reason for responsiveness is to respond to a "housing crisis by increasing land supply in a timely way".<sup>29</sup> Adderley Head go on to note that any concerns about ad hoc development are mitigated by the ample directions within the NPS as to how and what should be considered in making planning decisions".<sup>30</sup>
- 4.11** This comment, however, departs from their advice in paragraph 100, which notes "Also other than in a broad general way, primarily

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<sup>29</sup> At 61, 96 and 97.

<sup>30</sup> At 68.

because of this difference, we do not consider the balance provisions of the NPS-UD are particularly informing on the interpretation of the responsive provisions". With respect, it cannot be both.

**4.12** When the NPS-UD is interpreted as a whole, and the text of Objective 6 and Policy 8 is properly construed, it is clear that the responsive planning framework works as part of the NPS-UD. Indeed, the Guidance describes it as 'complementary'. If the balance provisions have no "informing" role at all, then the checks and balances that Adderley Head rely on to refuse ad hoc development will not fulfil their intended role.

**4.13** At paragraph 97, Adderley Head state that "Planning documents that constrain development to particular locations need to be amended as soon as practicable to allow consideration of alternative development options". With respect, this comment is not supported by any analysis of the NPS-UD, and it relies entirely on a flawed interpretation of the responsive planning framework. This statement is also not supported by the Fact Sheet issued by MfE, which notes that:<sup>31</sup>

"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".

**4.14** While Adderley Head stated that they would not use the word "primacy", this is in effect what they are now supporting, with the requirement to be *responsive* directing changes to planning documents to enable growth in an immediate way, and in a way that is "to an extent unconstrained"<sup>32</sup> by existing planning documents.

**4.15** There is little analysis provided in support of that advice, and it is submitted that it runs counter to the scheme of the NPS-UD, and the framing of Objective 6, which does not require responsiveness on its own, instead requiring that local authority decisions on urban

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<sup>31</sup> At 81.

<sup>32</sup> At 94.

development achieve three important outcomes. It is submitted that Objective 6, clauses (a) and (b) are of equal importance, and underline the need for integrated and strategic decision making, rather than providing a licence for the release of unplanned development capacity on an urgent basis in reliance on a selective reading of the NPS-UD.

**4.16** On balance, the Adderley Head advice seeks to reconcile the NPS-UD and CRPS based on an interpretation of the “purpose of the NPS-UD responsive planning provisions”.<sup>33</sup> It is submitted that this is a flawed approach, when the NPS-UD does not expressly give any precedence to this processing pathway. Furthermore, it is submitted that this approach to interpretation is at odds with established case law regarding the interpretation of RMA documents, notwithstanding that Adderley Head states that this is the approach which has been adopted.<sup>34</sup>

**4.17** As submitted above, the responsive planning framework forms part of the wider scheme of the NPS-UD, and should not be interpreted in isolation. A key reason for this is that the NPS-UD does not make any attempt to cover the field in relation to the multitude of other RMA issues that require consideration as part of planning decisions (for example, section 6 and 7 matters), which fall within the remit of regional and local authorities.

**4.18** It is a significant concern to CCC and CRC that the responsive planning framework is being pitched as a positive or enabling mechanism for urgent urban growth, when it is devoid of any detailed substantive policy direction that engages with these other relevant RMA issues.

**4.19** As a result, it is submitted that the provisions of the CRPS must have particular importance in evaluating any plan change request (or plan review submission), as it the role of the CRPS to synthesise all relevant RMA issues and provide direction on how those issues are to be managed. These directions will continue to be involved where

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<sup>33</sup> For example, at 157.

<sup>34</sup> Adderley Head advice, at 25 to 28



the responsive planning framework is engaged. Put another way, if 'responsiveness' under the NPS-UD was elevated over the CRPS in all cases, that could result in a failure to recognise and properly manage certain resource matters, and depart in a material way from pre-existing strategic planning decisions.

- 4.20** An example of this is in Objective 6.2.1(7), which provides direction to 'maintain the character and amenity of rural areas and settlements'. This aspect, or the importance of establishing a framework that avoids development creep into rural areas, is not recognised in the NPS-UD at all, but is a relevant RMA consideration for local authorities managing the rural land resource. As a result, it is submitted that the Adderley Head advice that meeting and satisfying the NPS criteria will, as a consequence, not cause offence to the core purpose of the CRPS avoid framework cannot be correct.<sup>35</sup> A blanket statement of this nature does not properly reflect or recognise that the CRPS framework has been developed to achieve integrated and strategic growth, while also balancing multiple factors.
- 4.21** In circumstances where the CRPS framework has been developed with a view to managing multiple resource matters and infrastructure decisions, it is submitted that SDC must not overlook its obligation to give effect to that framework, particularly where the NPS-UD and CRPS are not at odds with each other.
- 4.22** While the focus of the NPS-UD is on urban environments, the assessment in this instance cannot ignore or give less weight to the comprehensive policy directions provided by the CRPS, which cover all RMA issues rather than urban growth only. However, even if the CRPS was considered in terms of urban growth only, it is submitted that it achieves the requirements of the NPS-UD by providing sufficient development capacity in appropriate locations, enabling responsive planning within certain areas, and aligning growth with integrated decision-making, and the strategic provision of infrastructure.

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<sup>35</sup> At 156.

**4.23** Finally, and in response to the Adderley Head advice that contends that the CRPS only partially gives effect to, or complies with the NPS-UD,<sup>36</sup> our understanding is that this advice has only sought to reconcile the CRPS with a select set of provisions in the NPS-UD (which includes the responsive planning provisions). This is again a narrow interpretation that incorrectly gives primacy to specific NPS-UD provisions rather than reading the NPS-UD holistically.

**4.24** In much the same way, the Adderley Head advice that applying an “overly literal approach delivers we consider a very unusual if not absurd outcome”<sup>37</sup> is not supported by a wider analysis of the NPS-UD provisions. It is again reliant on Adderley Head’s unsupported assertions as to the purpose of the *responsive planning provisions*.<sup>38</sup> As noted above, it is submitted that there is no reasonable basis to contend that the CRPS framework is not a valid approach to providing for urban development.

## **5. ASSESSING PC73 ON ITS MERITS: DOES PC73 SATISFY THE RESPONSIVE PLANNING FRAMEWORK, AND MEASURE UP AGAINST THE CRPS?**

### **Satisfying the responsive planning framework**

**5.1** Mr Tallentire does not consider PC73 to provide “significant development capacity”, whereas Ms White and Mr Phillips do.

**5.2** In assessing ‘significance’, Ms White appears to have focussed on the scale of the proposal, that is, the potential yield of households. In reliance on Mr Tallentire’s evidence, it is submitted that the scale of the proposal is only one of the factors that influences its significance as a proposal.<sup>39</sup> Regard also must be had to the pace at which the development can occur, and the extent to which the development capacity fulfils an identified demand.

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<sup>36</sup> See for example paragraphs 111 and 129.

<sup>37</sup> At 147.

<sup>38</sup> At 148.

<sup>39</sup> Mr Tallentire, at [60].

- 5.3** On these points, Mr Tallentire's evidence is that the proposal does not meet these requirements and as a result PC73 should not be found to add "significantly to development capacity". As a consequence, SDC should not allow PC73 to be approved in reliance on the responsive planning framework, as a pathway for out-of-sequence development.
- 5.4** The evidence for RWRL raises several concerns with the Housing Development Capacity Assessment undertaken by the CDP, and suggests that it "potentially makes a number of incorrect assumptions as to the potential short-term capacity provided by infill and Greenfield development of currently zoned land".<sup>40</sup> The question for CCC and CRC is whether those concerns assist the Commissioner at all, or whether they should even be considered in this forum.
- 5.5** While concerns may be raised by applicants for their own benefit in this forum, the HDCA (and its outcome) should not be re-litigated through separate plan change requests. This is not the correct forum nor vehicle for doing so. In this context, the HDCA informed the approach to Our Space, which then informed Change 1 to the CRPS, which was evaluated and approved by the Minister. It is natural to expect evidential challenges from landowners outside areas anticipated for urban growth, but the appropriate forum for raising those will be during the next HDCA cycle – which will ultimately inform the longer-term approach to growth for Greater Christchurch.
- 5.6** Finally, Mr Tallentire's evidence is that if PC73 was found to provide significant development capacity, it does not satisfy the requirement to contribute to a well-functioning urban environment, nor satisfy the policy direction taken by the CRPS.

### **The CRPS**

- 5.7** While CCC and CRC accept that a degree of inconsistency with higher order policies may be acceptable, in this case PC73 directly

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40 Mr Phillips, at 69.2

contradicts a highly directive “avoid” framework that cannot be overlooked. This avoid framework has been intentionally developed by the GCP to guide the location of future urban development, so that it achieves a well-functioning urban environment and achieves the other, varied, requirements of Objective 6.2.1.

**5.8** It is a framework that provides for flexibility, but at this stage, that is within the PIB only. Where plan changes are requested for urban development outside the PIB, then there should be questions asked as to how that aligns with the strategic planning decisions of the relevant local authorities.

**5.9** The planning evidence for RWRL concludes that the proposal ‘gives effect to the CRPS’. In reliance on the evidence of Mr Tallentire, it is submitted that this planning opinion cannot reasonably be advanced.

**5.10** Mr Tallentire raises issues with multiple aspects of PC73, including that it:

- (a) will not lead to a compact urban form with high connectivity;<sup>41</sup>
- (b) does not align with the timing and sequencing infrastructure;<sup>42</sup>
- (c) will exacerbate, rather than reduce, the level of commuting to Christchurch City;<sup>43</sup>
- (d) does not support the integration of land use and transport infrastructure;<sup>44</sup> and
- (e) will not support a reduction in greenhouse gas emissions.

**5.11** On balance, Mr Tallentire’s evidence is that PC73 does not satisfy the criteria for the responsive planning framework, and is inconsistent with certain of the relevant CRPS objectives and policies.

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41 Mr Tallentire, at 86.

42 Mr Tallentire, at 91, 92.

43 Mr Tallentire, at 107.

44 Mr Tallentire, at 116.

- 5.12** As a result, it is submitted that PC73 fails on its merits and should be declined.

## **6. PRECEDENT / CUMULATIVE EFFECTS**

- 6.1** If PC73 is approved, on the basis that it satisfies either the NPS-UD or CRPS, it is submitted that this could create a significant precedent, which could give greater weight to other live requests for similar development.
- 6.2** In particular, and with reference to the ‘nodes’ of urban development proposed by PC73, the approval of these will not only be at odds with Objective 6.2.1, but also create a potential for similar proposals to be lodged that will progressively infill the gaps between these two nodes outside the PIB. These flow-on consequences could be significant, and counter to what the NPS-UD is designed to achieve.
- 6.3** At present, the western edge of Rolleston is a clearly legible urban edge. While urban development has jumped across Dunns Crossing Road (between Brookside and Burnham School Road), the development that exists there is varied and distinct from the urban development at Emerson Lane. If PC73 is granted, the area between the two nodes will likely become subject to development pressure, as the ‘next cab off the rank’ for urban growth along this western edge. If the landowners within this area attempt to leverage off PC73’s approval, this is precisely what CCC and CRC are concerned about with these out-of-sequence and unanticipated proposals. Granting one will undermine the PIB and Objective 6.2.1, with the floodgates opened and no principled basis to resist further proposals for similar development.
- 6.4** On a separate point, the evidence of Mr Phillips notes that “rural residential development of the land has not occurred in the 9 years since the land was rezoned and there can be no certainty that if PC73 is declined that the land will delivery any rural residential supply, in spite of its zoning”.<sup>45</sup> It is submitted that this observation should be given no weight, and rather serves to demonstrate the

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<sup>45</sup> Mr Phillips, at 55.

opportunistic approach taken by RWRL here. Had development for rural residential activities commenced at any time over the past 9 years, that would have aligned with the strategic planning undertaken by the GCP. However, the landowner instead has waited for an opportunity to seek greater intensification of residential development. The NPS-UD is being used as the tool that enables this growth, when Objective 6 puts responsiveness on an equal footing with other key factors. It is submitted that if this request is accepted, there will be many other landowners in exactly the same position, leading to further opportunistic proposals for development outside of the PIB.

- 6.5** Cumulative effects are also relevant. Of most concern to CCC and CRC is the potential cumulative impact on strategic planning and infrastructure, with each out-of-sequence request creating additional, and unanticipated, demand for necessary services, roading and public transport, and requiring a redistribution of funding to service unanticipated proposals. This is an issue that will affect not only SDC, but the other GCP member councils and partners.
- 6.6** There is clearly jurisdiction for considering cumulative effects at the plan-making stage,<sup>46</sup> but what is perhaps unique here is that cumulative effects may need to be considered at an individual request level, and in light of the other requests that are in train for SDC. The wider implications of future proposed development is submitted to be a relevant consideration.<sup>47</sup>
- 6.7** Given that the broad objectives of the NPS-UD, including in particular the requirement for integrated and strategic decision making, it is submitted that considering the collective effect of the current requests is warranted. This is particularly so given that each will (if approved) place demand on infrastructure in parallel to, or in competition with, each other.

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<sup>46</sup> *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892, referring to *Dye v Auckland Regional Council* [2002] 1 NZLR 337.

<sup>47</sup> *Brown v Dunedin City Council* [2003] NZRMA 420.

## **7. CONCLUSION**

- 7.1** The Commissioner is obliged to apply the relevant statutory tests. Correctly applied, this will not involve a contest between the NPSUD and CRPS, and giving preference to one over the other.
- 7.2** Giving effect to Chapter 6 of the CRPS demands that PC73 is declined. There is no flexibility to decide otherwise. It is submitted that such an outcome would be entirely consistent with an interpretation of the NPS-UD as a whole, in accordance with well-established legal principles.
- 7.3** Given the context that had led to the inclusion of Map A in the CRPS, and the new FDAs, it is submitted that this outcome is neither unfair nor inappropriate. Chapter 6 provides a tested, and directive, urban growth strategy that aligns with strategic planning decisions at a sub-regional level, and which responds to the multitude of RMA issues relevant to urban growth within Greater Christchurch. In any event, the applicant has elected to take on the risk of pursuing PC73 in the knowledge of the CRPS framework, and bears that risk.
- 7.4** A contingent approval of PC73 pending resolution of a later, consequential change to the CRPS is neither legally available, nor would it be an appropriate option. Even if it was legally possible, it is submitted that it would be inappropriate.
- 7.5** Adopting that approach would involve an approval that is meaningless until another significant statutory decision is adopted by another local authority (CRC), with no certainty that PC73 could ever be implemented. It would also create a significant degree of uncertainty and confusion in that:
- (a) it would create a perception that development of PC73 is appropriate, in circumstances where that development relies on a separate statutory process being completed;
  - (b) it would result in unnecessary and undesirable uncertainty for the community, landowner and SDC;
  - (c) it would create confusion and a precedent for SDC, and other Independent Commissioners / Panels, when

determining the various other requests for plan changes involving a similar context;

- (d) it would fail to satisfy section 75(3) of the RMA; and
- (e) it could be taken as support for a legal interpretation that elevates a procedural pathway in the NPSUD into a merits test, and in a manner which prevails over a clear and directive approach to strategic urban growth and infrastructure for Greater Christchurch.

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

**DATED** this 29<sup>th</sup> day of September 2021



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**J G A Winchester / M G Wakefield**  
Counsel for Christchurch City Council