

Before the Selwyn District Council

under: the Resource Management Act 1991

in the matter of: Proposed Private Plan Change 73 to the Operative
District Plan: Dunns Crossing Road, Rolleston

and: **Rolleston West Residential Limited**
Applicant

Legal submissions on behalf of Rolleston West Residential Limited

Dated: 28 September 2021

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LEGAL SUBMISSIONS ON BEHALF OF ROLLESTON WEST RESIDENTIAL LIMITED

INTRODUCTION

- 1 This hearing will determine a request by Rolleston West Residential Limited (*RWRL*, the *Applicant*) to the Selwyn District Council (the *Council*) to change the Operative Selwyn District Plan (the *District Plan*) to rezone approximately 160 hectares of land currently zoned Living 3 to Living Z in two separate locations on Dunns Crossing Road, Rolleston. These two locations are referred to as the Holmes Block (northern block) and the Skellerup Block (southern block).
- 2 Also known as Plan Change 73 (*PC73*), this plan change would enable approximately 2,100 residential sites and two commercial areas.
- 3 Outline Development Plans (*ODPs*) are proposed for both blocks as part of *PC73*, as well as some bespoke rules related to the site which have either been proposed or agreed by the Applicant as a way to mitigate adverse effects, and otherwise address concerns raised by the Council and submitters through this process.
- 4 These legal submissions:
 - 4.1 Provide an update to changes made on *PC73* since the filing of evidence;
 - 4.2 Consider the responsive planning framework under the National Policy Statement on Urban Development 2020 (*NPS-UD*), particularly in light of the directive nature of the Canterbury Regional Policy Statement (*CRPS*);
 - 4.3 The merits of a strategic planning process as against a private plan change process; and
 - 4.4 Potential reverse sensitivity and upset conditions from the Rolleston Resource Recovery Park (*RRRP*).
- 5 These legal submissions do not repeat the objective and policy interpretation for *PC73* of the District Plan and other Resource Management Act 1991 (*RMA*) documents, which has already been set out in the original application, the Officer's Section 42A Report (the *Officer's Report*), and the evidence of Mr Phillips, except so far as required for the discussion of the main issues below.

CHANGES SINCE THE APPLICATION FOR PC73

- 6 There have been a number of changes made to the proposed rules and ODP since the application for this plan change. These are set out in the evidence of Mr Phillips and the various experts.
- 7 Since the filing of evidence, two additional changes have been proposed as follows:
 - 7.1 One additional cycle/pedestrian has been provided from the Holmes Block to Dunns Crossing Road in the northeast corner as a result of expert witness conferencing between Mr Nicholson, Mr Compton-Moen, and Ms Lauenstein; and
 - 7.2 One additional minor correction to the text of the Township Volume, Chapter C4, Section 4 to correct an error in the Operative Selwyn District Plan regarding the setback distance of the Skellerup Block from the poultry farm. This is elaborated on in Mr Phillip's evidence and summary.
- 8 These changes were in direct response to concerns raised by submitters and the Council and have been accepted by the Applicant.
- 9 We go on to address issues that might otherwise be outstanding.

RESPONSIVE PLANNING UNDER THE NATIONAL POLICY STATEMENT FOR URBAN DEVELOPMENT 2020

- 10 One of the key issues for the Commissioner to decide in this hearing is whether the plan change can be approved, despite the objective in the CRPS which directs that urban development falling outside of the greenfield priority areas is to be 'avoided' (Objective 6.2.1.3).
- 11 We provide a brief summary timeline of the relevant planning instruments at **Appendix 1** for reference.
- 12 The question that is to be asked is how the RPS is to be interpreted in light of the NPS-UD? This is especially so because the RPS contains an "avoid" policy with respect to development outside Map A, yet the later in time, and higher order, NPS-UD contains Objective 6 and Policy 8 which requires a responsive planning approach to out-of-sequence and unanticipated development.
- 13 To answer this question it is helpful at the outset to first cover some basic principles of statutory interpretation especially relating to the hierarchy of planning documents, and the effect of later in time legislation on existing legislation.

Principles of statutory interpretation

- 14 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase.¹
- 15 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):²
 - 15.1 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;
 - 15.2 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;
 - 15.3 the interpretation should not prevent the plan from achieving its purpose; and
 - 15.4 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.
- 16 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise. Where that meaning, however, creates an anomaly, inconsistency, or absurdity (such as is the case here) other principles of statutory interpretation must be considered to help shed light on how a planning document should properly be interpreted. We touch on some of those relevant concepts now.
- 17 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:³
 - 17.1 First, there are documents which are the responsibility of central government. These include National Policy Statements. Policy statements of whatever type state objectives and policies, which must be “given effect to” in lower order planning documents.

¹ The most fundamental principle of statutory interpretation is contained in section 5(1) of the Interpretation Act 1999: “The meaning of an enactment must be ascertained from its text and in light of its purpose”.

² *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 [12].

³ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [10]-[11].

- 17.2 Second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans.
- 17.3 Third, there are documents which are the responsibility of territorial authorities, specifically district plans.
- 18 Therefore, subordinate planning documents, such as a regional policy statement, must give effect to National Policy Statements. This is expressly provided in section 62(3) of the RMA. The Supreme Court has held that the “give effect to” requirement is a strong directive⁴ and that the notion that decision makers are entitled to decline to implement aspects of a National Policy Statement if they consider that appropriate does not fit readily into the hierarchical scheme of the RMA.⁵ The requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.⁶
- 19 Where there is an apparent inconsistency between two documents, particularly where one is a higher order document, the Courts will first seek to reconcile this inconsistency and allow the two provisions to stand together.⁷
- 20 Where two provisions are totally inconsistent (such that they cannot be reconciled in a way that they can be read together), then it is appropriate to look to the doctrine of implied repeal. The doctrine of implied repeal provides that a provision that is later in time, impliedly repeals the earlier provision. It is a doctrine of last resort and should only be applied where all attempts at reconciliation fail.⁸
- The potential inconsistency in the RPS and the NPS-UD**
- 21 The potential inconsistency is between Objective 6.2.1.3 of the RPS and Objective 6 and Policy 8 (and relevant clauses) of the NPS-UD.

⁴ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [80].

⁵ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [90].

⁶ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [91].

⁷ *R v Taylor* [2009] 1 NZLR 654.

⁸ *Taylor v Attorney-General* [2014] NZHC 2225; *Kutner v Phillips* [1891] 2 QB 267 (QB).

22 Objective 6.2.1.3 of the RPS provides:

Recover, rebuilding and development are enabled in Greater Christchurch through a land use and infrastructure framework that: [...]

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

23 It has been decided by case law in relation to some RMA planning documents, that the ordinary meaning of the word 'avoid' means "not allow" or "prevent the occurrence of".⁹ Therefore read literally, the objective provides that decision makers must not allow urban development outside of existing urban areas or the greenfield priority areas identified in Map A.

24 However adopting this interpretation of the RPS would not reconcile the RPS with Policy 8 of the NPS-UD and would lead to the type of problems identified by the Court in *Powell*. Namely, the interpretation would be contrary to the very purpose of the NPS-UD including Policy 8, would prevent the NPS-UD from achieving its purpose and would interpret the word "avoid" in a vacuum and outside the context of reading the RPS and the NPS-UD together.

25 Policy 8 provides that:

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.*

26 A rigid interpretation of the word "avoid" in the RPS inherently prevents local authorities from being responsive in the very way required by the NPS-UD, as it prevents them from even considering the merits of a plan change that might otherwise add significantly to development capacity and contribute to well-functioning urban environments (the criteria for Policy 8 NPS-UD) where these fall outside of greenfield priority areas.

27 The requirement of the NPS-UD, that local authorities be responsive to development capacity meeting certain criteria even if it is unanticipated or out-of-sequence is clearly intended to target

⁹ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [93].

exactly this type of objective in the RPS and to say that the “avoid” policy in the RPS prevents all developments that fall outside Map A would to act in a manner contrary to the specific direction in the NPS-UD.

- 28 This is further affirmed by the Ministry for the Environment’s guide on understanding and implementing the responsive planning policies (the *MfE Guide*) which states that:

“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. [...]

Expected outcomes

The responsive planning policy in the NPS-UD limits a local authority’s ability to refuse certain private plan-change requests without considering evidence. This is because Policy 8 requires local authorities to make responsive decisions where these affect urban environments. Implementing this policy is expected to result in more plan-change proposals being progressed where they meet the specified criteria (see section on criteria below). This will likely lead to proposals being brought forward for development in greenfield (land previously undeveloped) and brownfield (existing urban land) locations, which council planning documents have not identified as growth areas. [...]

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.” [emphasis added]

Reconciling the inconsistency

- 29 It is necessary for decision makers to strive to and reconcile the inconsistency between the two documents. If that is not possible the NPS-UD as the later in time document, and the higher order

document, will have impliedly repealed (or amended) the inconsistent objective of the RPS.

- 30 Implied repeal of the objective in the RPS should be a last resort, and we submit there is just a way the two documents can be reconciled and read together as the Courts expect those interpreting legislation to do.
- 31 In this context, we consider it highly relevant that:
 - 31.1 The NPS-UD provides a clear national level direction to enable development capacity and is therefore a higher order document than the RPS in terms of the resource management hierarchy; and
 - 31.2 The NPS-UD is the most recent in time planning document. While PC1 to the RPS did in part give effect to the NPS-UD this was not in relation to Policy 8 where it was noted more work would be required to give full effect to the responsive planning framework established by the NPS-UD (as discussed earlier).
- 32 In light of this, it is appropriate to 'read down' or 'soften' the interpretation of 'avoid' in the RPS to give effect to the NPS-UD (at least until such time as the RPS gives full effect to the NPS-UD, which we consider would require an amendment to the wording of the objective in the RPS). This would be done by grafting a limited exception onto the objective but only where a development could meet the NPS-UD because it adds significantly to development capacity and contributes to a well-functioning urban environment.
- 33 Therefore, read in light of the NPS-UD, the objective in the RPS should now be read as meaning "*except if otherwise provided for in the NPS-UD, avoid...*"
- 34 Further, the NPS-UD requires local authorities to give effect to it "*as soon as practicable*".¹⁰ This interpretation of the RPS in light of the NPS-UD requires the Selwyn District Council to give effect to Objective 6 and Policy 8 even though the RPS does not yet. This is appropriate given the likelihood that an amendment to the RPS is unlikely to occur for some years.
- 35 Finally, we note that clause 3.8(3) of the NPS-UD requires that regional councils are to include criteria in their RPSs for determining what plan changes will be treated, for the purpose of implementing Policy 8, as "adding significantly to development capacity". This criteria has not yet been added to the RPS and we would expect this

¹⁰ NPS-UD, clause 4.1(1).

to also be covered in ECan's intended review of the RPS which may not be until 2024.

- 36 Nevertheless the absence of criteria does not prevent local authorities giving effect to Policy 8 in the interim and until such criteria is provided, it is appropriate for a decision maker to consider whether a particular plan change would add significantly to development capacity on a case by case basis. This will necessarily involve hearing evidence on that topic from applicants and individual submitters.
- 37 It cannot have been the intention of the NPS-UD which requires Councils to give effect to its provisions "as soon as practicable" to wait until an RPS develops criteria in some years' time. That interpretation would be an absurdity and contrary to the plain meaning of the words. Given the amount of time it took ECan to amend their RPS to be consistent with the NPS-UDC (i.e. after the NPS-UD had been implemented), this is too long for the District Council to wait in order to fulfil its obligations under the NPS-UD to be responsive and to act as soon as practicable particularly in the case of a Council like Selwyn who is in the process of reviewing its District Plan and who is facing rezoning requests from submitters.
- 38 Selwyn District Council would not be giving effect to the NPS-UD 'as soon as practicable' if it was to wait for ECan to develop criteria and in the meantime to refuse to consider requests for rezoning which on the basis of evidence produced clearly adds significantly to development capacity.

The view of the Christchurch City Council and the Canterbury Regional Council

- 39 We understand, from legal submissions filed in other processes by CCC and ECan that these Councils do not agree with our above interpretation and are of the view that:
 - 39.1 Plan changes are required by section 75(3) of the RMA to give effect to both the NPS-UD and CRPS.
 - 39.2 Plan Change 1 to Chapter 6 of the CRPS (*PC1*) gives effect to the NPS-UD.
 - 39.3 There is nothing in the NPS-UD that gives Policy 8 any elevated significance over other objectives and policies.
 - 39.4 The responsive planning framework cannot be treated as a process isolated from the remainder of the NPS-UD.
 - 39.5 The statutory requirement to give effect to the CRPS engages the 'avoid' objective provided by the CRPS, with all plan change decisions required to give effect to this.

- 39.6 The CRPS and the NPS-UD are not at odds with each other, it is entirely appropriate to develop a restrictive framework that enables growth or provides for responsiveness in certain areas, and restricts growth elsewhere.
- 39.7 There may be circumstances that warrant a 'hard line' approach to urban growth. The CRPS achieves a well-functioning urban environment in that it aligns urban growth with the strategic provision of infrastructure.
- 39.8 The NPS-UD does provide a pathway for the consideration of requests to release land for development capacity that are out of sequence but only where it is demonstrated on its merits and in a manner that complements existing strategic planning.
- 39.9 Plan changes outside the projected infrastructure boundary (*PIB*) cannot give effect to the CRPS without an accompanying amendment/plan change to the CRPS so that it is not contrary to the avoid objective in the CRPS.
- 40 We record that we do not agree with this interpretation and note that the Selwyn Council has received its own legal advice (referred to in the evidence of **Mr Baird**) that is of the same (or at least very similar) view we hold.
- 41 We provide the following comments in response to the CCC and ECan legal interpretation:
- 41.1 While we accept that the CRPS as amended by PC1 does to some extent give effect to the NPS-UD. This is at most 'partial effect' as:
- (a) The scope of PC1 was restricted to only include additional land identified in the Our Space 2018-2048 process, initiated under the previous National Policy Statement on Urban Development Capacity 2016 (*NPS-UDC*).
 - (b) Given the NPS-UDC required local authorities only to determine the 'sufficient development capacity' required in the short, medium, and long term, the CRPS (as amended by PC1) could only ever identify the minimum amount of development capacity that is required to be enabled by the NPS-UD. Noting that the NPS-UD now requires 'at least' sufficient development capacity to be provided for.
 - (c) The various Reports prepared by ECan itself on PC1 expressly recognise that:

- (i) the purpose of PC1 is not to identify any additional areas appropriate for future rezoning;
- (ii) the purpose of PC1 is to give effect to Policy 2 and clause 3.7 of the NPS-UD and that therefore this would only give effect to the NPS-UD "in part";
- (iii) PC1 does not purport to give full effect to the NPS-UD given the scope of PC1 under the streamlined planning process;
- (iv) further changes to the CRPS are required in order to fully give effect to the NPS-UD (including the introduction of the criteria required under clause 3.8 NPS-UD);
- (v) 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.

41.2 This legal interpretation does not rely on Policy 8 of the NPS-UD having any particular elevated significance over the other objective and policies in the NPS-UD. All other objectives and policies in the NPS-UD will be relevant in the context of whether a particular plan change achieves the purpose of the NPS-UD and to which it would be appropriate to apply the responsive planning framework to. For example, we consider it unlikely, if not impossible, that there would ever be a situation where a plan change meets the tests in Policy 8, but is contrary or inconsistent with Objective 6. We consider PC73 is also consistent with Objective 6.

41.3 We reject the notion that a 'hard line' approach to urban growth may be warranted under the NPS-UD. This is particularly so when the MfE Responsive Planning Fact Sheet expressly states that *"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."* Map A is such a 'hard line'.

41.4 As such, there is a tension between the CRPS and the NPS-UD which must be resolved in order to meet the requirement to give effect to both of these documents in section 75(3) of the RMA. Our interpretation above, sets out the most appropriate way to reconcile this tension in the way intended by the NPS-UD, being the document that came later in time.

- 41.5 Nowhere in the NPS-UD does it require that responsive planning be undertaken “in a manner that complements existing strategic planning”, with the word ‘complements’ meaning restrained by. And it is not clear how or why CCC and ECan would read this requirement into the NPS, when the NPS-UD is clearly trying to do the opposite.
- 41.6 To assert that plan changes falling outside of the PIB should be accompanied by a change to the CRPS would result in an anomaly or absurdity and could not have been the intention of the NPS-UD. We note that a private developer has no ability to request a change to the CRPS. Under the RMA, the ability to amend an RPS is limited to a Minister of the Crown or a territorial authority.¹¹ This interpretation therefore does not provide an accessible method or solution for reconciling the CRPS with the need to be responsive those plan changes anticipated under Policy 8.
- 42 We understand CCC and ECan are also concerned about precedent and cumulative effects of this interpretation of these planning documents. We do not see how this can be an issue as ultimately, any decision under the responsive planning framework in the NPS-UD must meet the tests in the NPS-UD. Not every ad hoc application outside of the PIB is guaranteed to be successful. All applications will still be subject to a high level of scrutiny on a case by case basis and dependent on evidence as to:
- 42.1 Whether it adds significantly to development capacity;
- 42.2 Contributes to a well-functioning environment; and
- 42.3 Is otherwise consistent with the rest of the NPS-UD and other planning documents (i.e. as these might be amended by the NPS-UD).
- 43 It is therefore entirely appropriate to consider this proposal under the responsive planning framework in the NPS-UD.

Considering the responsive planning framework with respect to this plan change

- 44 Having demonstrated above that the responsive planning framework in the NPS-UD does apply to this particular plan change and that it is not precluded by the avoid objective in the CRPS, we go on to consider whether this particular plan change would meet the tests for this framework.
- 45 It is clear that this plan change is unanticipated by RMA planning documents, and is out-of-sequence with planned land release – if it

¹¹ Resource Management Act 1991, Schedule 1, Part 2, Clause 21.

was anticipated or planned, it would have been identified in Map A of the CRPS. Therefore the responsive planning framework is invoked and a decision maker must take it into account.

Well-functioning urban environment

- 46 Under Policy 8, the test of whether the development would “contribute to a well-functioning urban environment” must be considered.
- 47 A well-functioning urban environment is defined (in minimum terms) in Policy 1 to the NPS-UD and each of these points are covered in the evidence of the various experts on behalf of the Applicant which we will hear over the coming days.
- 48 **Mr Tallentire** in his evidence seems to suggest that with regard to Policy 1(e) the development itself needs to result in a reduction of greenhouse gas emissions. We note, however, that Policy 1 requires that urban environment ‘support’ reductions in greenhouse gas emissions. There is no requirement for the development itself to reduce greenhouse gas emissions. This is covered in more detail in the evidence of **Mr Farrelly**.

Add significantly development capacity

- 49 As noted above, no criteria has been incorporated into the CRPS as to what would constitute adding significantly to development capacity. However, this does not prevent the Commissioner from determining on the evidence produced, what this might mean.
- 50 We note that the MfE Guidance notes that such criteria could include:
- 50.1 Significance of scale and location;
 - 50.2 Fulfilling identified demand;
 - 50.3 Timing of development (i.e. earlier than planned land release); or
 - 50.4 Infrastructure provision.
- 51 The MfE Guidance also notes that the criteria should not undermine competitive land markets and responsive planning by setting unreasonable thresholds and that the criteria should have a strong evidence base.
- 52 The evidence of Mr Jones, Mr Colegrave, Mr Akehurst, Mr Copeland, Mr Phillips, Mr McLeod and Mr Carter in particular demonstrate overwhelmingly that this particular plan change would add significantly to development capacity.

- 53 Mr Tallentire, in his evidence, considers that development capacity must be assessed in relation to Greater Christchurch as the 'urban environment'. He states at paragraph 63 that "*the ultimate development capacity provided by PC73 is significant in the Greater Christchurch context...*" However, he ultimately concludes that the PC73 would not add significant development capacity because:
- 53.1 it would not contribute to a well-functioning, well-connected urban environment (which we touch on above and rely on the evidence of the various experts for);
 - 53.2 sufficient development capacity is already identified to meet expected housing demand over the medium-term; and
 - 53.3 the scale of the development able to be delivered at pace is not significant in relation to the urban environment.
- 54 With regards to the second point, the evidence of Mr Colegrave and Mr Akehurst clearly demonstrates that this is not the case and that Council's capacity assessments are fundamentally flawed (which we note Mr Tallentire does not engage with in much detail). Importantly, we note that clause 3.2 of the NPS-UD requires that for capacity to be 'sufficient' to meet expected demand, it must be 'plan enabled.' Clause 3.4 of the NPS-UD goes on to state that development is 'plan-enabled' for housing if, in relation to the medium term, it is on land zoned accordingly for housing¹² under either an operative or proposed district plan.
- 55 None of the future development areas which were incorporated into the CRPS through the PC1 process, and that the Council includes in their medium term capacity assessment, are therefore plan enabled.
- 56 Further, the evidence of Mr Jones clearly demonstrates that while the Councils, on paper, might believe there is sufficient development capacity, this is certainly not the case on the ground. There is an acute residential house shortage in Rolleston, and more generally in Greater Christchurch. This is evidenced by rising house prices.
- 57 Nevertheless, it is submitted that the NPS-UD does not prevent (but in fact encourages to an extent) the zoning of additional land above what might be considered 'sufficient' development capacity. This is clear from the direction in Policy 2 of the NPS-UD for local authorities to "at all times, provide at least sufficient development capacity..."
- 58 With regard to the scale of the development being able to be delivered at pace, we note that this is only one of the suggested factors that could be incorporated into the criteria for 'adding

¹² I.e. housing use is a permitted, controlled, or restricted discretionary activity.

significantly to development capacity' in the CRPS. It is not required to be a criteria. It is therefore open to the Commissioner to determine the relevance of the deferral proposed by the plan change in this context.

- 59 In our submission, this deferral is not significant (2024 is not very far away), and will still provide for at pace development in the short and medium term. It is also submitted that the sheer number of houses alone mean that this plan change is significant in and of itself irrelevant of pace.
- 60 In any case, we note that the intersection upgrades (which are the basis for the deferral) are only a pre-requisite to the occupation of houses, and not the physical construction of the houses and infrastructure. This means that construction can begin ahead of the intersection upgrade and will enable development to occur expeditiously.
- 61 Finally, we do not agree with **Mr Tallentire** that the significance of a development should be considered as only against the Greater Christchurch urban environment.
- 62 An urban environment is defined so broadly in the NPS-UD that it can encompass a number of varying and overlapping urban environments. For example, in this context, we consider the urban environments of Rolleston, Selwyn, and Greater Christchurch to be of most relevance. Noting that all experts, including Mr Tallentire (as noted above) do accept that the 6.5% total increase in housing for Greater Christchurch that would result as part of the plan change is significant.

STRATEGIC PLANNING PROCESSES V PRIVATE PLAN CHANGES

- 63 My Tallentire asserts that spatial planning exercises should be the preferred option for identifying areas for additional urban development, over separate private plan changes.
- 64 Private plan changes, however, are a perfectly legitimate public process to be used in the enabling of additional urban development. In fact, Policy 8 of the NPS-UD itself specifically recognises this by using the exact words 'plan change'. Policy 8 does not require the Council to be responsive to unanticipated/out-of-sequence significant development capacity when participating in strategic planning processes.
- 65 Private plan changes will not inevitably preclude or inhibit future strategic growth outcomes. As noted above, the responsive planning framework requires a detailed merits analysis against the criteria in the NPS-UD and other relevant planning documents.

Policy 8 does not just open the floodgates to all out-of-sequence development to be approved.

REVERSE SENSITIVITY AND UPSET CONDITIONS FROM THE ROLLESTON RESOURCE RECOVERY PARK

- 66 Mr Boyd in his evidence expresses concerns that upset conditions might occur from the Rolleston Resource Recovery Park (RRRP) resulting in reverse sensitivity effects from residential dwellings on Holmes Block.
- 67 Mr Boyd goes on to reference a number of situations which he believes are good examples of how reverse sensitivity effects have adversely impacted a number of commercial operations. We do not agree.
- 68 We note that the with respect to both the Living Earth composting operation in Bromley and the Gelita Factory in Woolston, both consent holders were breaching the conditions of their consent by allowing offensive and objectionable discharges beyond the site boundary.
- 69 Reverse sensitivity is the vulnerability of a lawfully established land use to complaints from a newly established, more sensitive, land use. However, a land use that is not lawfully established, or creates effects from breaching consent conditions, cannot claim to be suffering from reverse sensitivity effects.
- 70 We note that the Council's consent for the RRRP includes a condition that provides:¹³
- "The discharge shall not cause odour or particulate matter (including airborne pathogens) which is offensive or objectionable beyond the boundary of the property on which the consent is exercised."*
- 71 As such, these 'upset' conditions Mr Boyd is concerned about are likely to be discharge events where the odour is offensive or objectionable beyond the RRRP boundary, in breach of consent. As such, the argument of reverse sensitivity effects occurring in such conditions as raised by Mr Boyd are therefore not valid and it would be entirely appropriate to expect the consent holder to remedy the situation (for example through improvements and upgrades to composting methods).
- 72 The other reverse sensitivity effects referred to in Mr Boyd's evidence refer to noise effects (such as from the Western Springs Speedway, Eden Park, and Christchurch Airport). Reverse

¹³ CRC211594, condition 15.

sensitivity effects from noise are quite distinct from those of odour. Whilst most odour consents usually have a boundary condition noise consents often permit levels of noise beyond the boundary.

CONCLUSIONS AND WITNESSES TO APPEAR

- 73 To conclude, the evidence supports the Commissioner granting this plan change. All concerns and issues raised in the Officer's Report and in submissions have been addressed adequately by the proposed rules package and amended ODP.
- 74 I will now call the following witnesses to speak to their evidence:
- 74.1 **Mr Carter** on behalf of the Applicant;
 - 74.2 **Mr Jones** on real estate;
 - 74.3 **Mr Copeland** on economics;
 - 74.4 **Mr Akehurst** on economics;
 - 74.5 **Mr Colegrave** on economics;
 - 74.6 **Mr Farrelly** on greenhouse gas emissions;
 - 74.7 **Ms Nieuwenhuijsen** on odour;
 - 74.8 **Mr Van Kekem** on odour;
 - 74.9 **Mr McLeod** on infrastructure;
 - 74.10 **Mr Fuller** on traffic;
 - 74.11 **Mr Compton-Moen** on landscape and urban design;
 - 74.12 **Ms Lauenstein** on landscape and urban design;
 - 74.13 **Mr Lewthwaite** on acoustics; and
 - 74.14 **Mr Phillips** on planning.

Dated: 28 September 2021

Jo Appleyard / Lucy Forrester
Counsel for Rolleston West Residential Limited

APPENDIX 1

Document	Time of implementation	Comments
Land Use Recovery Plan (<i>LURP</i>) ¹⁴	Took effect in December 2013 .	<p>A regional planning document prepared under Canterbury Earthquake Recovery Act 2011.</p> <p>It puts land use policies and rules in place to assist the rebuilding and recovery of communities (including housing and businesses) disrupted by the Canterbury Earthquakes.</p> <p>Of most relevance, however, it amended the RPS to include Chapter 6 (Recovery and rebuilding of Greater Christchurch) and identified 'greenfield priority areas'.</p> <p>The LURP introduced the first iteration of what we know as 'Map A' into the RPS.</p>
National Policy Statement on Urban Development Capacity (<i>NPS-UDC</i>) ¹⁵	Took effect in December 2016 .	<p>The purpose of the NPS-UDC was to ensure that councils enabled development capacity for housing and businesses (through their land-use planning infrastructure) so that urban areas could grow and change in response to the needs of their communities.</p> <p>The emphasis of the NPS-UDC was to direct councils to "<i>provide sufficient development capacity and enable development to meet demand in the short, medium, and long term.</i>"¹⁶</p>
Our Space 2018-2048: Greater Christchurch Settlement Pattern	Final report endorsed by the Greater Christchurch Partnership in June 2019 .	<p>This document was expressly prepared to give effect to the NPS-UDC in Greater Christchurch and in particular the provision of "sufficient development capacity". Our Space identified that housing development capacity in Selwyn and Waimakariri is potentially not sufficient to meet demand</p>

¹⁴ <https://dpmc.govt.nz/our-programmes/greater-christchurch-recovery-and-regeneration/recovery-and-regeneration-plans/land-use-recovery-plan>

¹⁵ https://environment.govt.nz/assets/Publications/Files/National_Policy_Statement_on_Urban_Development_Capacity_2016-final.pdf

¹⁶ Refer for example OA2, PA1, PC1, PC3, PC4 of the NPS-UDC.

Document	Time of implementation	Comments
Update (<i>Our Space</i>) ¹⁷		<p>over the medium and long term (10 to 30 years).</p> <p>It was intended that this document then form the basis of changes to Regional and District Planning documents to give effect to the NPS-UDC in a planned and collaborative way across Greater Christchurch.</p> <p>Our Space proposed that Map A of the RPS be amended to include 'Future Development Areas' which would give effect to the NPS-UDC.</p> <p>We note that the Our Space Map A contains a note at the bottom which provides "<i>While it is intended Our Space provides some direction to inform future RMA processes, [this map] is indicative only.</i>"</p>
National Policy Statement on Urban Development (NPS-UD) ¹⁸	Took effect in August 2020.	<p>This national policy statement replaced the previous NPS-UDC.</p> <p>Of particular relevance is the following change in the direction to councils to "<i>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.</i>"¹⁹</p> <p>It also introduced a range of policies and objectives not even contemplated in the NPS-UDC. Of particular note is Objective 6 and Policy 8 (which we consider in more detail below).</p>
Plan Change 1 to Chapter	PC1 made operative July 2021.	PC1 was approved by the Minister for the Environment (the <i>Minister</i>) under the Streamlined Planning Process (which we

¹⁷ <https://greaterchristchurch.org.nz/assets/Documents/greaterchristchurch/Our-Space-final/Our-Space-2018-2048-WEB.pdf>

¹⁸ <https://environment.govt.nz/assets/Publications/Files/AA-Gazetted-NPSUD-17.07.2020-pdf.pdf>

¹⁹ Refer Policy 2, Clause 3.2, Clause 3.3, Clause 3.11, Clause 3.13 of the NPS-UD.

Document	Time of implementation	Comments
6 of the RPS (PC1) ²⁰		<p>explain in more detail in paragraphs 5-23 below).</p> <p>PC1 effectively amends the RPS to include in Map A the Future Development Areas identified in Our Space. Map A as contained in Our Space and PC1 are identical. It also introduced new objectives and policies around the new future development areas.</p> <p>PC1 does not fully give effect to the NPS-UD as it includes only the Future Development Areas from Our Space which only gave effect to the NPS-UDC.</p>

²⁰ <https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-regional-policy-statement/change-chapter-6/>