

In the Environment Court of New Zealand
at Christchurch

I mua i te Kōti Taiao o Aotearoa
I te rohe o Ōtautahi

ENV-2022-CHC-

under: the Resource Management Act 1991

in the matter of: an appeal pursuant to clause 27(1) of the First Schedule
to the Resource Management Act 1991

between: **Rolleston West Residential Limited**
Appellant

and: **Selwyn District Council**
Respondent

Notice of appeal of Rolleston West Residential Limited against
Selwyn District Council's decision on Proposed Plan Change 73 to
the operative Selwyn District Plan

Dated: 28 April 2022

NOTICE OF APPEAL TO ENVIRONMENT COURT

To The Registrar
Environment Court
Christchurch

- 1 Rolleston West Residential Limited (*RWRL*) appeals against the decision of the Selwyn District Council (the *Council*) on Private Plan Change 73 (*PC73*) to the operative Selwyn District Plan.
- 2 *RWRL* is the Applicant who initiated *PC73*. *RWRL* is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (*RMA*).
- 3 *PC73* seeks generally to rezone approximately 160 hectares of land from Living 3 to Living Z. The land is in two separate blocks with one known as the Holmes block containing 87.5 hectares on the west side of Dunns Crossing Road, south of State Highway 1 and north of Burnham School Road (*Holmes Block*), and the other known as the Skellerup Block containing 72.2 hectares on the west side of Dunns Crossing Road between Brookside Road to the north and Selwyn Road to the south (*Skellerup Block*).
- 4 A recommendation to decline *PC73* was made by an independent hearings commissioner, Mr David Caldwell (the *Commissioner*) on 1 March 2022, and was subsequently adopted by the Selwyn District Council on 23 March 2022 (the *Decision*).
- 5 *RWRL* received notice of the Decision on 5 April 2022.
- 6 *RWRL* is appealing the entire Decision to decline *PC73*.
- 7 The reasons for the appeal are as follows:
 - 7.1 *RWRL* considers the Decision does not:
 - (a) promote the sustainable management of natural and physical resources;
 - (b) promote the efficient use and development of natural and physical resources;
 - (c) result in the most appropriate plan provisions in terms of section 32 of the *RMA*; and
 - (d) implement the Council's functions under section 31 of the *RMA*.
 - 7.2 *RWRL* otherwise considers the Decision is contrary to good resource management practice and Part 2 of the *RMA*.

8 Without limiting the reasons above, RWRL:

8.1 Agrees with the reasoning and conclusions in the Decision with regard to:

- (a) Transport effects;
- (b) Servicing and infrastructure capacity;
- (c) Effects on community facilities;
- (d) Density;
- (e) Effects on or from the water race, storm water, and flooding;
- (f) Soils;
- (g) Noise effects;
- (h) Economic effects; and
- (i) Geotechnical and ecological considerations;

8.2 Agrees with the reasoning and conclusions in the Decision with regard to the interpretation of the National Policy Statement on Urban Development 2020 and the Canterbury Regional Policy Statement.

8.3 Disagrees with the reasoning and conclusions in the Decision with regard to:

- (a) reverse sensitivity effects; and
- (b) the form of urban growth

as expanded on below.

Reverse Sensitivity

- 9 The reasoning and conclusions in the Decision applies an overly conservative approach to the issue of reverse sensitivity effects of residential zoning on the Pines Resource Recovery Park (*PRRP*) and the Pines Wastewater Treatment Plant (*PWTP*).
- 10 The Decision was not supported by the expert evidence before the Commissioner including the evidence of the Council's independent expert.
- 11 RWRL proposed a rule requiring a buffer of approximately 600 metres from the composting area of the PRRP. The Council's independent expert agreed. The Council Officer concluded that the potential impact of residential development on the PRRP (and PWTP)

could likely be addressed through additional mitigation measures such as an increase in the extent of the buffer area. The owner of the PRRP sought a 1,000m buffer. The Commissioner failed to turn his mind to whether other mitigation than that proposed by RWRL would be sufficient additional mitigation.

- 12 The Decision did not give sufficient weight to the existing zoning of the Holmes Block which already allows residences in close proximity to the PRRP and therefore incorrectly assessed the change in sensitivity that would result from PC73.
- 13 In assessing the sensitivity of the existing environment the Decision failed to take into account constraints imposed via conditions of consent held by the owner of the PRRP. It wrongly categorised as 'reverse sensitivity effects' complaints that might be received during abnormal or upset conditions when at such times the PRRP would not be operating within the conditions of its own consents.
- 14 In relation to the PWTP the Decision incorrectly categorises as 'reverse sensitivity effects' increased difficulties and costs that the owner of the PWTP might have in unknown and future consenting processes.
- 15 But in any event the Decision fails to place sufficient weight on the rule proposed for PC73 which provides that no residential allotments may be created within 1,500m of the PWTP prior to certification that resource consents for the future upgrade of the PWTP have been obtained.
- 16 The Decision also fails to place sufficient weight on the proffered requirement for no complaints covenants.

The Form of Urban Growth

- 17 The conclusion in the Decision that PC73 would not provide for a compact urban form is wrong.
- 18 The Decision is internally inconsistent as it records concerns about whether or not the plan change would contribute to a well-functioning urban environment, despite ultimately accepting the Council planner's view that *"that the proposal can broadly be considered to contribute to a well-functioning environment."*
- 19 In any event the circumstances that were before the Commissioner have now changed as RWRL now owns or controls rural land abutting the Skellerup block to the south-east and rural land abutting the Skellerup Block to the north-west. Those blocks of land are being actively progressed by RWRL through their own plan change processes known as PC81 and 82.
- 20 Through this appeal and the evidence which will be given in the PC81 and PC82 processes there is significant opportunity to resolve the concerns expressed in the Decision that PC73 would form a

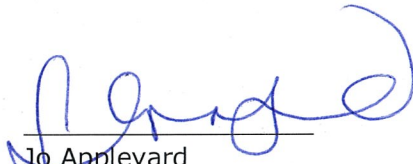
peninsula of residential development adjacent to rural land and that there was a low level of connectivity with Rolleston township.

- 21 The Decision also notes the uncertainty of the rezoning and urbanisation of the PC70 site (being the site immediately east of the Skellerup Block across Dunns Crossing Road which essentially would 'connect' Rolleston residentially zoned land through to the Skellerup Block). RWRL do not agree that this is uncertain. The PC70 site is recognised in planning documents as intended to be urban through:
 - 21.1 being identified as a Future Development Area in the Canterbury Regional Policy Statement; and
 - 21.2 being included within the Urban Growth Overlay of the proposed District Plan.
- 22 Further, since the Decision the Council has released a report on how it proposes to amend the proposed District Plan to provide for the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (the *Amendment Act*).¹ This report expressly proposes that the variation to give effect to the Amendment Act should include the rezoning of the PC70 site (among others) as residential. This provides significantly more certainty for the future of this site and the urban form of Rolleston.
- 23 RWRL seeks that PC73 be approved as set out in the application including changes proffered during the Council hearing as summarised in RWRL's closing submissions attached as 'C', and costs.
- 24 RWRL considers that this appeal would be suitable for mediation or other alternative dispute resolution. In particular:
 - 24.1 On the topic of reverse sensitivity the appeal is capable of resolution with the input of appropriate experts to draft rules which will mitigate any reverse sensitivity effects on the PRRP and PWTP in the manner recommended by the Council Officer in paragraph 505 of the Decision;
 - 24.2 On the topic of urban form there is new information available since the hearing before the Commissioner including that RWRL now owns or controls land proceeding through the PC81 and 82 processes which abuts the Skellerup Block which provides opportunity to resolve the concerns expressed in the Decision about urban form.
- 25 Attached to this notice are the following documents:

¹ Report prepared by Robert Love (11 February 2022) and titled "*Proposed Selwyn District Plan Variation in Response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act*".

- a. a copy of the relevant decision 'A';
- b. a list of names and addresses of persons to be served with a copy of this notice 'B'; and
- c. any other documents necessary for an adequate understanding of the appeal including the closing submissions referred to in 23 above 'C'.

Signed for and on behalf of Rolleston West Residential Limited
by its solicitors and authorised agents Chapman Tripp



Jo Appleyard
Partner
28 April 2020

Address for service of Rolleston West Residential Limited:

Rolleston West Residential Limited
c/- Jo Appleyard / Lucy Forrester
Chapman Tripp
Level 5
60 Cashel Street
PO Box 2510
Christchurch 8140
Email address: jo.appleyard@chapmantripp.com /
lucy.forrester@chapmantripp.com

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch