

**Before the Selwyn District Council**

**Under** the Resource Management Act 1991

**In the matter** Proposed Plan Change 78; East Rolleston

**Applicant** Urban Estates Ltd

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**Statement by Robin Anthony Schulz in support of submission by Selwyn 564 Ltd**

**Dated** 18 October 2021

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**Nimbus Group (NZ) Ltd**

**7a Birmingham Drive**

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## 1 Introduction

- 1.1 My full name is **Robin Anthony Schulz**. I am a Director and beneficial shareholder of both **Nimbus Group (NZ) Ltd** and the submitter **Selwyn 564 Ltd**
- 1.2 I am a Registered Valuer being registered on 27 July 1975
- 1.3 In the early 1970s I was the Director of Housing and Property for the Christchurch City Council responsible for all Council land, housing and rental accommodation and facilitated the development of the Council significant rental housing portfolio
- 1.4 From 1977 to 1992 I established a successful valuation practice my expertise being in commercial, industrial and residential valuation matters in the South Island.
- 1.5 From 1994 my company Nimbus Group has had a long involvement in the development of Rolleston until the present day (27 years) being the initiator and facilitating the implementation of many of the main planning, infrastructure and social assets of the town
- 1.6 In summary amongst others they comprise the following
  - Consenting, planning, financing and construction of the first centralised sewerage treatment plant commissioned in October 1997
  - Conceiving, implementing and managing Plan Change 60 which enlarged the town's population from 5000 to 14,000 people in around 2000/02 and created the MUL which includes this land the subject of the Plan Change
  - Creation of many of the towns vital infrastructure assets projects being
    - Commercial shopping precincts on the originally zoned Business land.
    - providing land for the Community Centre
    - initiating the coordinated design and construction of sewer and water reticulation to the expanded Township
    - planning, zoning, owning and implementing the BP service station project
    - facilitating with 3 other parties the enhancement of SH 1
    - conceiving, initiating, implementation and management of the Izone Industrial Park including being a Board member of the Selwyn District Council's Izone project committee for 10 years
  - Development of some 3,000 residential allotments within the Rolleston Township in the capacity of owner, shareholder, JV partner, consultant and/or project manager
  - Initiator and main submitter and management of the significant reduction of CIAL noise control corridor of some 125 sq km over Rolleston and Kaiapoi enabling further expansion of both towns

- challenging the Selwyn District Councils Development Contribution policy for connection to the Pines sewerage treatment plant resulting in a reduction of \$80 million in Development Contributions being claimed
- consultant and advisor to many landowners within the Township regarding matters associated with the council and planning matters

- 1.7 In addition to the above interest Nimbus Group has involvement in projects in Central Otago, West Coast of South Island, Christchurch City, Queensland Australia involving viticulture, tourism, residential, industrial, high-rise developments, residential subdivision and planning matters.
- 1.8 My interest in this Plan Change is as a beneficiary of my family interests as shareholder of Selwyn 564 Ltd, the owner of the property at 564 Selwyn Road in addition to ensuring that the development of the total Plan Change area is not inhibited by any cross boundary issues
- 1.9 Selwyn 564 Ltd owns and has settled the purchase of the property

## **2 Scope of submission**

- 2.1 The area contained within PC 78 comprises (now) 13 separate owners
- 2.2 Five of those properties have frontage to an existing legal road the balance 8 properties utilising various mutual rights-of-way for access
- 2.3 By giving effect to the ODP there will be cross boundary issues regarding the provision of roading, sewer, potable water, telecommunications, power (HV and LV), cross boundary severances and numerous other service and legal matters
- 2.4 Notwithstanding some of these properties are now subject to unsettled conditional sale and purchase agreements, the ability to further develop the properties will be highly dependent upon cooperation from all owners albeit the number of owners may be rationalised in time
- 2.5 Given the desire of all parties to achieve the development of the land subject to the Plan Change it is totally prudent that a Developers Agreement be entered into to facilitate the installation and payment of all costs of all services in a fair and equitable manner as is appropriate to obtain a satisfactory outcome to any other cross boundary issues
- 2.6 Therefore the outcome I request is for you as Commissioner to consider imposing a condition when approving the Plan Change (if that is your outcome) to require the Selwyn District Council as a condition of subdivision

and issue of any Resource Consent for land subject to this Plan Change, to require the Resource Consent applicant to enter into a developer's agreement with all affected parties for the provision of all services so as to facilitate their installation and cost sharing and deal with any other cross boundary issues

- 2.7 At worst if you consider you are legally bound not to achieve the above outcome, respectfully I would request you recommend that outcome within any discussion you have on the matter

### **3 Background**

- 3.1 My understanding is that at present there are 13 different registered proprietors related to all the land contained within the Plan Change.
- 3.2 Nine of these properties are subject in some form to conditional sale and purchase agreements to one entity, two additional properties are subject to a sale and purchase agreement to second entity, a single property is not subject to any sale and purchase agreement while the 13<sup>th</sup> property is owned by Selwyn 564 Ltd
- 3.3 The Selwyn District Council prefers to not impose Point Strips within any ODP (see clause 2 of the Councils *"In House Operational Point Strip policy"*. Copy attached.
- 3.4 This is on the basis that the Council considers *"all land owners within the ODP area are deemed to have agreed to provide coordinated and connected developments"* etc (see clause 2 as above)
- 3.5 In respect of this Plan Change application all owners have agreed to coordinate to apply for the Plan Change only. There is no reference within the agreement to coordinate cost sharing and cross boundary issues.
- 3.6 Given the Councils preferences and following discussions with Council Officers it would be prudent and productive to require all owners to enter into such an agreement.
- 3.7 Accordingly I request a mechanism be included within the Plan Change decision to provide for this to occur

**R.A. Schulz**

**18 October 2021**

## In-house Operational Point Strip Policy

Category	Subdivision	Type	Policy
Policy Owner	Group Manager Infrastructure	Approved by	Council 2020
Last Approved Revision		Review Date	

### PURPOSE

Point Strips<sup>1</sup> are generally used to recover an original developer's subdivision costs (as agreed by Council) to provide additional road and other infrastructure that benefits the adjoining land owner/developer when they come to subdivide. By providing the original developer this ability in a controlled manner, this can improve in particular circumstances how adjoining developments are progressively planned and connected together.

There may be very limited circumstances where Council may need to establish a Point Strip to recover specific costs or provide for outcomes beyond what conventional agreements can achieve with Property Owners, and in these cases the provisions of this policy shall apply wherever applicable or appropriate.

Point Strips are usually placed across the end of new road reserve at the boundary of the adjoining land where it is expected any future adjoining development will need to connect to. By having connecting infrastructure already in place like a road, this improves how developments can be efficiently staged and linked across multiple land owners/developments over time.

### ORGANISATIONAL SCOPE

This Policy is managed by the Assets Division who approve the establishment of all Point Strips. Environmental Services staff assist with administrative functions relating to Point Strips as part of the subdivision process.

### THE POLICY

#### 1. Background

Council's involvement with Point Strips is intended to ensure that they are used appropriately and fairly given the likely competing interests of developers. Specifically this will involve Council in:

- approving their creation as part of the developer's subdivision;
- approving the developer's costs which may be recovered;

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<sup>1</sup> Note: The terms Point Strip and Link Strip (as well as occasionally Retention Strip) are sometimes used interchangeably and usually refer to the same concept. However, in some cases strips with a similar appearance are used to prohibit access altogether for property and traffic management reasons, and these may also (confusingly) be referred to by the same terms. These Point Strips have no value.

- establishing the Point Strip arrangement; and
- administering the collection of agreed costs when the adjoining land is developed and access over the Point Strip is required.

Point Strips have the potential to give rise to issues and disputes, and care is needed in both their creation and in their ongoing administration. This relates mostly to the value of the costs sought to be recovered at the time of their payment.

## **2. Approving the Creation of Point Strips**

The use of Point Strips is covered in Councils District Plan Rules.

Council will consider if a Point Strip can be used if requested by a developer through the subdivision consenting process. Alternatives to Point Strips, such as Developer Agreements, shall be used wherever feasible to establish any other cost recovery or cost sharing arrangements. This can include for third party servicing infrastructure eg power or telecommunications supply, or where a Council financial contribution maybe involved.

Point Strips are not to be used within Outline Development Plan (ODP) areas as all land owners within the ODP area are deemed to have already agreed to provide coordinated and connected developments through that type of land rezoning and spatial planning processes. Exceptions may be considered by Council where:

- a developer builds a full width road alongside another land owner's property where the adjoining land owner could otherwise make use of the new road and infrastructure without having contributed to its cost (a "longitudinal "point strip is used); or
- on the boundary of existing living zoned land and unzoned land (which may be rezoned for future development) where it is expected future road and infrastructural connections will be likely needed.
- A specific need has been identified by Council.

In all cases, Point Strips will only be approved where:

- it is reasonable to believe that the development of the adjoining land will require or benefit from roading and infrastructural connections provided to its boundary; and
- the costs which the developer seeks to recover are of a type which is eligible for recovery (see below).

## **3. Approving the Developer's Costs**

Recovery of infrastructure costs will only be eligible for approval for those costs that:

- are for *extra* infrastructure costs (i.e. are over and above what is otherwise required for the original development by way of making connections to the property boundary);
- are for infrastructure which will vest in Council, ie:
  - *Roading*

- *Sewer*
- *Water*
- *Stormwater*

The Council will not approve the recovery of land costs or those associated land value betterments from that considered attributable to the development or from the infrastructure and connections provided. Exceptions may be considered in limited circumstances where any land provides roading connections further to what an ODP or similar structure planning document may reasonably require. Any land costs agreed to be eligible by Council shall be valued on an undeveloped land basis.

Where a Point Strip has been agreed to be used, the developer must provide for Council's approval a valuation of eligible costs sought to be applied to it. Such valuations must include a schedule of quantities and prices certified by a suitably qualified engineer or quantity surveyor. This shall be provided at the following stages of the development;

- at Council Engineering Approval for any works based on a best estimate of quantities and rates at that time;
- on application for Section 224 Certificate RMA approval by Council based on actual contract quantities and rates.

As part of Council's approval, it may require that the valuation(s) be checked by an independent infrastructural valuer appointed by the Council at the developer's cost.

#### **4. Establishment of Point Strip Arrangements**

In order to give effect to a Point Strip arrangement provided for in a subdivision consent:

- a formal Point Strip Agreement must be entered into;
- a consent notice must be registered against the title to the Point Strip; and
- the Point Strip must be transferred to the Council ownership in fee simple title.

The Point Strip Agreement on the Council's required form is to be entered into between Council and the developer establishing the Point Strip. The Agreement shall provide that Council as owner of the Point Strip will not grant the owner of the adjoining land access to roading and other infrastructure connections across the Point Strip until that owner pays the Council the "Agreed Sum" recorded in the Agreement (those costs assessed in Section 3. above). The Council must then pay this on to the original developer and approve the vesting of the Point Strip into public ownership once these transactions are complete.

Further notable aspects required by the Point Strip Agreement are:

- The Agreed Sum will not be Consumer Price Index adjusted as the original developer has the immediate benefit of the development and the Agreed Sum relates to depreciating infrastructural assets that the adjoining developer is eventually paying for that will not be new.
- Any dispute as to the Agreed Sum or the terms of the Point Strip Agreement at the time of payment will be decided by the Council with no rights of claim against the Council. The Council provides to resolve any disputes that may arise between the parties efficiently and fairly noting it has no direct financial and pecuniary interest.
- The Point Strip Agreement will lapse after ten (10) years following issue of the Section 224 certificate. This may be extended up to a total twenty (20) years by

Council at its discretion in special circumstances, such as the Agreed Sum is of a high value and/or any adjoining development is not likely to occur within ten (10) years.

- All Council costs to establish and administer the Point Strip including legal fees will be payable by the original developer up until the time it is no longer required or lapses.
- A consent notice shall be registered against the Point Strip as part of the original developer's subdivision process. This ensures that the existence of the arrangement is recorded on the title to the Point Strip. A LIM note will also be placed on the adjoining owners land referencing the existence of the Point Strip on its common boundary.

## **5. Delegation**

The implementation of this policy is delegated to the Group Manager Infrastructure.

### **Related Policies Procedures and Forms:**

- Point Strip Policy
- Point Strip Internal Management Processes
- The District Plan