

Before the Independent Commissioner
Appointed by the Selwyn District Council

Under	the Resource Management Act 1991
In the matter of	a hearing on Plan Change 79 to the Operative Selwyn District Plan
	Birchs Village Limited
	Proponent

Legal submissions in reply on behalf of Birchs Village Limited

11 May 2023

Solicitor:
Alex Booker
Anderson Lloyd
Level 3, 70 Gloucester Street, Christchurch 8013
PO Box 13831, Armagh, Christchurch 8141
DX Mail: WP20309
P + 64 3 379 0037 | f + 64 3 379 0039

**anderson
lloyd.**

May it please the Commissioner:

- 1 This right of reply addresses matters arising out of the hearing held on 2-3 May 2023.
- 2 It focuses on whether PC79 will achieve a well-functioning urban environment, the applicability of the National Policy Statement – Highly Productive Land 2022 (**NPS-HPL**) and (if it applies) whether Clause 3.6 has been met, as well as addressing other matters of clarification arising through the hearing.
- 3 It is submitted what is being offered through PC79 needs to be carefully considered against the National Policy Statement-Urban Development 2020 (**NPS-UD**) and the NPS-HPL, particularly due to PC79 responding to expected demand for housing which is unique in its density and features of its location:
 - (a) PC79 provides for urban development where Māori values will be incorporated into the process, design and layout. There will be Māori investment. There will be prioritisation of Māori ownership of homes (provided through first opportunities to purchase and progressive land ownership for individuals). There will be provision of land for mana whenua¹ to develop housing and/or community facilities to meet their needs. Any margins made on development go back to Te Rūnanga o Ngāi Tahu for distribution, an organisation which exists to grow and develop Ngāi Tahu whanau members to be culturally able and well-connected to their Ngāi Tahu community. Ngāi Tahu Property, as the future developer, consider there is a need and demand for this type of housing.
 - (b) Mr Christie referred (orally) to PC79 being able to target genuine medium density development² and a different typology of housing (i.e. entry level housing, where attention and focus has been put on the cultural relationship with land and its surrounds). He referred (orally) to this provision being enabled through PC79's large contiguous land holding³, and adjacency with the Kakaha Park, cycleway and bus stops. This variety of housing is not otherwise provided for in Prebbleton, where Mr Christie considered there to be a scarcity of available land. By contrast the "Prebbleton market has always been extremely popular but generally attracts wealthier and older

¹ Ngāi Tahu Tuāhuriri and Te Taumutu Rūnanga were referred to in this respect by Mr Christie.

² Minimum of 15 h/h. Refer later in my submission to the notified minimum density targets of 12 h/h in Variation 1 PSDP for PC68 and 72 areas (not 15 h/h as suggested by the Reporting Officer).

³ Mr Jones considers that to have a significant land holding, such as the applicants, where control over the majority of the land is achieved in Prebbleton is rare (Mr Geddes, Appendix 3).

owner occupier buyers (and larger more expensive homes) with few first home buyers"⁴.

- (c) Ngāi Tahu Property has confirmed feasibility. They have an approved business case and funding in place, and are ready to commence development. The location is greenfield, but PC79 proposes to reuse up to 10 residential lifestyle lots of varying sizes by removing houses and structures⁵. The evidence from the Proponent demonstrates there are no infrastructure barriers with commencing development in the short-term, and there is ample time (and a willingness to work with Council and other developers) to integrate PC79 into infrastructure decisions⁶. Mr Clease accepts PC79 can be serviced within the 10 year short-medium term period⁷.
 - (d) Planning decisions must contribute to well-functioning urban environments which enable people to provide for their social, economic and cultural wellbeing. This requires as a minimum a variety of homes that meet the needs of different households and that enable Māori to express their mana⁸. Planning decisions must take into account the principles of Te Tiriti o Waitangi in relation to urban environments. Guidance on what this means in practice is set out in Policy 9, where specifically the Council must, when preparing RMA planning documents, take into account the values and aspirations of iwi for urban development⁹.
- 4 The Officer's Report (and supporting technical reports) makes no reference to this finer grain housing need and lack of typology choice in Prebbleton, instead focussing on plan-enabled or options for future possible-plan enabled housing numbers without any reference to the feasibility of actually developing these areas. He downgrades the cultural importance of PC79 to "mana whenua being able to

⁴Mr Geddes, refer Appendix 3 and 4 (for current sales and valuation comments from Mr Jones and Mr Tears).

⁵ It is noted that if the Sheafs and Frasers remain unwilling to be part of the comprehensive urban development, the ODP has been designed to exclude key infrastructure and connectivity from these properties. As indicated at the hearing, the Proponent welcomes further discussions with these parties. An offer has been made to purchase Mr Fraser's property.

⁶ Discussions have commenced with respect to other developers and Council in this regard. The Council has confirmed the planning and financial process is underway for wastewater so the PC79 timing is appropriate in that it can be factored in these decisions. I appeared representing PC79 at the Annual Plan hearing this week to ensure infrastructure aspects are addressed (including future wastewater capacity in Prebbleton).

⁷ Summary of Section 42A Report of Jonathan Clease, at [11(b)].

⁸ Objective 1, Policy 1(a) NPS-UD.

⁹ Objective 5 (applies to planning decisions, such as PC79), and Policy 9 NPS-UD assists with the interpretation of Objective 5.

invest commercially in property development". As a result, in my submission, the Officer makes a recommendation of decline that is not justified on the evidence.

Matters of reply

5 I address the following matters of reply:

- (a) Matters which are considered by the Council as counting against PC79 contributing to a well-functioning urban environment;
- (b) The applicability of the NPS-HPL, responding to new content from CCC and CRC legal submissions;
- (c) If it is found the NPS-HPL applies – Clause 3.6;
- (d) Clarification of matters raised by submitters;
- (e) Whether the CRPS (change 1) gives effect to the NPS-UD 2020;
- (f) How the Medium Density Residential Standards (**MDRS**) fits within the Operative Selwyn District Plan (**OSDP**); and
- (g) Changes to the Living MD1 provisions, ODP and narration.

Well-functioning urban environment

6 As will be demonstrated below, the reasoning provided by the reporting officers to say PC79 would not contribute to a well-functioning urban environment is not substantiated. Greater weight should be placed on the Proponent's evidence.

7 For completeness, I note that Mr Clease considers it is required to be demonstrated that "the shape, location and design of the plan change will result in a well-functioning urban environment".¹⁰ I disagree. The NPS-UD requires that planning decisions *contribute to a well-functioning urban environment*¹¹.

Accessibility

8 Mr Nicholson considers PC79 to have a low-moderate level of accessibility due to the walkability and the cycle trail:

- (a) The Little River Rail Trail is downplayed by referring to some parts of it *through the existing township* of Prebbleton as not providing an attractive or

¹⁰Summary of Section 42A Report of Jonathan Clease (Planning), at [6(c)].

¹¹ Policy 1, Policy 8 NPS-UD.

high amenity cycle route¹². It is submitted this is the existing environment and does not affect accessibility.

- (b) PC79 is said to have poor walkability to the town centre based on a distance which is between 1.5-2.5km. Ms Lauenstein considers these are still acceptable walking distances within an urban context. Mr Compton-Moen has provided a visual illustration of the acceptability of these distances in other main commercial centres such as Rolleston and Lincoln¹³. Walkability to other nodes (such as the local business area in PC79 and Kakaha Park) was not addressed.

9 Ms Lauenstein considers a real assessment of accessibility to include a more holistic assessment as required by Policy 1 NPS-UD – i.e. having good accessibility for all people *between housing, jobs, community, services, natural spaces, and open spaces* including by way of public or active transport. A detailed assessment of this has been provided in her evidence and this should be given significant weight. Mr Nicholson supports that the ODP provides a comprehensive and connected network of primary and secondary roads, pedestrian and cycling paths and green links, and that the proposed secondary roads and green links would give access to the commercial area for PC79 residents¹⁴.

10 Mr Lightbody (planner for CCC) acknowledged (orally) accessibility to employment nodes from Prebbleton into Christchurch is very high. This was also included in the reasoning provided as justification for including Prebbleton in Variation 1 PSDP¹⁵:

- (a) The Medium Density Residential Standards (MDRS) apply only to the settlements of Rolleston, Lincoln and Prebbleton as "the main settlements in the District with the highest growth pressures"; and
- (b) "when taking into consideration the definition of "urban environment", and assessing Prebbleton's estimated current population exceeding 5,000 people, its proximity to the housing and labour market of Christchurch City, and its location along key transport routes, it was determined that Prebbleton meets this definition and should be included as part of this Variation".

¹² Summary Statement Mr Nicholson, at [5.1].

¹³ Ms Lauenstein at [166]-[168], and DCM Graphic Attachment pages 7, 8, 9.

¹⁴ Summary Statement Mr Nicholson, at [2.1].

¹⁵Section 32 analysis, Variation 1: Page 1, and Page 7, page 30:
https://www.selwyn.govt.nz/__data/assets/pdf_file/0009/1055934/Section-32-Report.pdf

Greenhouse gases

- 11 Mr Clease considers there is no conclusive evidence either way, but acknowledged the NPS direction is to *support a reduction* rather than require a reduction¹⁶.
- 12 There is evidence before you called specifically on this matter. Mr Farrelly also addressed orally some advantages/uniqueness of PC79, including the density (15 hh/ha), which is part of a bigger picture to *support a reduction* of greenhouse gases, accessibility to cycling and public transport routes, and being close to Christchurch City. He referred to the increased uptake of e-bikes and e-scooters and that the access to a cycleway well connected to a metropolitan area for e-mobility modes was a unique characteristic.

Direct connection to urban form

- 13 Mr Clease and Mr Nicholson attempt to reduce the direct connection with the existing urban form through words like "*minimal direct connection with the existing urban edge*" due to being "*bounded to the north by a 3ha Orion substation*". Mr Nicholson says "*what is evident from Figure 2 is that PC79 is a residential outlier from the existing urban form that has limited adjacency with the wider township*"¹⁷. Neither acknowledge the land subject to the Orion substation is residential zoned land¹⁸. The OSDP zones this land Living 3¹⁹. In fact, Mr Nicholson on his map goes as far as excluding this area from his existing urban in Figure 2 "Prebbleton Existing", despite its zoning.
- 14 Mr Clease considers the Kakaha Park "*functions as a large open space buffer to the southern urban edge of the town, rather than an extension of urban activity per se*"²⁰. While Kakaha Park contains sports fields (rugby, football, cricket). It's clear it is more than just a large open space. It contains a bike track linked to the Rail Trail, dog park and casual recreation (such as diverse play/native planting to explore). As publicly stated by Council staff, Kakaha Park is designed as a unique park which seeks to "*give people a space to make their own fun and enjoy nature*" and "*most importantly though, parks and reserves provide a space for people to enjoy nature, socialise and play – all of which helps people's mental and physical*

¹⁶ Summary of Section 42A Report of Jonathan Clease (Planning), at [6(c)].

¹⁷ Summary Statement Hugh Nicholson, Figure 2.

¹⁸ <https://www.oriongroup.co.nz/assets/Uploads/FY19-maps-of-anticipated-expenditure-and-network.pdf>

¹⁹ I note for completeness, it is not clear whether he has discounted the availability of land for development by removing this incorrectly.

²⁰ Summary of Section 42A Report of Jonathan Clease (Planning), at [6(d)].

health and wellbeing and strengthens community."²¹ It is submitted, the dog exercise area is an example of how this area extends urban activity. Mr Fraser and Mrs Sheaf both confirmed the huge popularity of the dog reserves and fields in answers to questions from the Commissioner. Mrs Sheaf confirmed that there was no other dog park in Prebbleton. As Ms Lauenstein stated (orally), she considers the park is for Prebbleton, and to service the urban environment, and has been laid out (with carparking and removal of vegetation) which has created a "drastic change" to the environment.

- 15 To support his position Mr Nicholson refers to three other open spaces in "*small towns that function effectively and safely in rural environments with a low number of residential neighbours*". The examples in minor townships like Doyleston (342 people²²) and Little River (279 people²³) are simply not comparable, and do have residential activity on parts of the park's edges. The Ohoka Domain (493C Mill Road) in Ohoka is also not comparable. All of these areas have low population densities and likely lower number of users. Further I observe Ohoka Domain is notified in the Waimakariri District Plan as zoned as open space, with a settlement zone adjoining the majority of two sides (north and west), large lot residential to the east, and one Rural Lifestyle Zone block (4ha) to the south.²⁴ There is a dental clinic and community hall across the road (to the north), and a service station and a dairy (northwest adjoining on the other side of the road), all of which are likely to provide some passive surveillance.
- 16 It is also evident that PC79 (if approved, and when developed) and Kakaha Park will together contribute to a well-functioning (unmistakably) urban environment. This is demonstrated in the visual presentation by Mr Compton-Moen. Mr Nicholson supports the ODP provision for a commercial area opposite the carpark for Kakaha Park with safe pedestrian/cycle crossing point on Birchs Road²⁵. As you know, a recommendation must be made on the evidence before you, and references to conclusions made in PC72 do not account for the relationship of PC79 with the Park (as it wasn't part of the consideration at that time).
- 17 PC79 has been designed as a self-contained development²⁶ connecting to the existing urban form on two edges along Hamptons and Birchs Road. These street edges are identified for urban use and include pedestrian/cycle crossings. The

²¹ <https://yoursay.selwyn.govt.nz/birchs-rd-park>; and <https://www.stuff.co.nz/the-press/news/mid-canterbury-selwyn/126654755/work-starts-on-new-canterbury-nature-reserve-and-sports-park>

²² 2018 New Zealand census.

²³ 2018 New Zealand census

²⁴ https://waimakariri.isoplan.co.nz/draft/property/9902/0/225?_t=property

²⁵ Summary Statement Hugh Nicholson at [2.1] (aspects of the ODP supported).

²⁶ Albeit future proofed.

boundaries with rural neighbours have a landscaped strip to reduce the potential for reverse sensitivity. All of these aspects of the ODP are supported by Mr Nicholson²⁷. It is submitted the combination of these factors outweigh the consideration placed on "shape" of the site. The shape does not define the experience along Birchs Road (or Hamptons Road). This was visually demonstrated by Mr Compton-Moen. Or when envisaging the anticipated residential outcomes planned for the area (such as the residential zoning of PC72).

- 18 As I set out in my opening legal submissions NPS-UD Policy 1 and 8 does not require a development to have a square urban form to be part of a well-functioning urban environment.

Prebbleton as a service township

- 19 Mr Nicholson refers to Prebbleton being a "service township" to support his view that service townships have a single commercial centre²⁸. He goes on to say "*in my opinion, the evolution from a service township with a single village centre to a larger polycentric town should be part of a more considered growth strategy and spatial plan rather than happening through ad hoc private plan changes*"²⁹.
- 20 It is submitted this has already occurred, and has been initiated by the Council. The "up-zoning" of Prebbleton from a service township is proposed with the notification of Variation 1 to the PSDP, and has the support of its consultant Formative (Mr Yeoman's company)³⁰. Prebbleton's commercial area is notified to be upgraded from a Local Centre to a Town Centre Zone, to bring it in line with Rolleston and Lincoln which were notified as having Town Centre Zones in the PSDP³¹.
- 21 It is submitted the notification of Prebbleton in PSDP Variation 1 gives effect to Objective 3 in that the District Plan enables more people to live in areas of urban environment in which: there is a high demand for housing, relative to other areas within the urban environment. This is an RMA planning document (i.e. a District

²⁷ Summary Statement Hugh Nicholson at [2.1] (aspects of the ODP supported).

²⁸ Summary Statement Mr Nicholson, at [3.9].

²⁹ Summary Statement Mr Nicholson, at [3.10].

³⁰ https://www.selwyn.govt.nz/__data/assets/pdf_file/0019/1052902/Prebbleton-Town-Centre-Zoning-Economic-Assessment-Derek-Foy.pdf

³¹ Town Centre Zone has one objective "TCZ-01 – the Town Centre Zone is the primary focus for commercial activities within the District and provides a diverse range of commercial activities along with recreation, cultural and community activities and civic services, with associated residential activity".

plan with rules which have immediate legal effect) that has given effect to the RMA-Enabling Housing Supply Amendment (**RMA-EHS**), and NPS-UD³².

NPS-HPL – does it apply?

- 22 In my opening legal submissions³³ I considered the NPS-HPL does not apply to PC79 as the nearest equivalent zone in the National Planning Standards for the PC79 site is a Rural Lifestyle Zone (and therefore PC79 does not trigger Clause 3.5(7)(a)(i) NPS-HPL).
- 23 Counsel for CCC and CRC, when presenting legal submissions, considered that (despite PC79 applying to this particular site) you need to look at the zone as a whole across the District. That is, the entire Rural Inner Plains zone needs to be considered equivalent to only one of the zones specified in the National Planning Standards (**NPS**).
- 24 I have already addressed this in legal submissions on the OSDP. Further, in relation to this additional point raised, I note:
- (a) This is a private plan change process which necessitates consideration of the existing environment of the PC79 Site and whether the existing zone or the proposed zone is more appropriate;
 - (b) Clause 3.5(7) refers to assessing a particular parcel of land ("*to land that*"), and necessitates consideration of whether the PC79 land is highly productive land;
 - (c) The first set of NPS included a structure and form for plans (District, Regional and combined), definitions³⁴, and included a list of zone names and descriptions³⁵ for mandatory inclusion in plans;
 - (d) It is common existing zones in (dated) operative plans do not reflect the zones provided in Zone Framework Standard. This is exactly the reason the NPS were created, to address variance up and down the country and provide consistency across all plans. Indeed, Mr Cleese identifies that the OSDP has a single rural zone³⁶ whereas there are three rural zones provided in the

³² Policy 6(a) NPS-UD.

³³ Opening legal submissions, from [32].

³⁴ RMA, section 58G.

³⁵ Refer Table 13: <https://environment.govt.nz/assets/publications/national-planning-standards-november-2019-updated-2022.pdf>

³⁶ Mr Cleese at [16]. It is noted for completeness that references to the CRPS do not assist in interpretation as the CRPS has not been reconsidered since the NPS were released, and does not yet comply with it (including incorporating the definitions as required).

Zone Framework Standard. PC79 is an area on an urban fringe that is predominantly residential lifestyle land and it simply does not reflect the zone descriptions provided for the two other rural zones.

- (e) The time to consider the appropriateness is at the plan change stage. The Proponent is required to carry out an assessment for the nearest equivalent zone for the PC79 area, an assessment which applies to the PC79 area only, not the entire Inner Plains Zone.
- (f) For completeness, I record I am aware Council has received advice (as part of the Selwyn District Plan review) that it is very difficult to operate 4 hectares economically with mainstream farming systems and that generally they are utilised as rural lifestyle properties³⁷.

25 I also note the case referred to by Counsel is distinguishable as it relates to a different stage in the planning process and different factual circumstances. *Balmoral Developments (Outram) Limited*³⁸ applies to land where decisions had been made on the Dunedin City Council second generation plan (2GP) where no party contested that the seven rural zones in the 2GP (as decided) were equivalent to either rural general or rural production zones.

26 Concerns were raised by the Reporting Officer that if the Commissioner was to find the PC79 site is Rural Lifestyle Zone that this would be contrary to the very purpose of the NPS-HPL which is to prevent the further loss of HPL. Although he concedes that this is only likely to be an issue in rural locations surrounding large centres. It is submitted Mr Cleese's concerns are overstated:

- (a) The NPS-HPL is clear that the references to Highly Productive Land are to land which is identified LUC 1, 2, or 3 and are zoned general rural or rural production. General Rural and Rural Production are (by definition) areas used predominantly for primary production activities, including intensive indoor primary production and activities that rely on the productive nature of the land and intensive indoor primary production;
- (b) The NPS-HPL specifically excludes the Rural Lifestyle Zone areas from what is to be considered as highly productive land in Clause 3.5(7).
- (c) Therefore, any reference to the Highly Productive Land in the objectives and policies in the NPS-HPL must be considered in this context. It doesn't relate

³⁷https://www.selwyn.govt.nz/_data/assets/pdf_file/0007/353347/Rural-Zone-Density-and-Minimum-Lot-Size-Farm-Advisory-Review-of-Options.pdf

³⁸ *Balmoral v Dunedin City Council* [2023] NZEnvC 59

to all LUC 1, 2, 3 land which can enable primary production, as suggested by Mr Clease. It is clear from the description of Rural Lifestyle Zone, land can contain LUC 1, 2, 3 soils and enable primary production to occur but still not be considered as subject to the NPS-HPL.

- (d) As set out in my opening submissions, one of the issues the NPS-HPL seeks to address is the cumulative loss of rural land for rural lifestyle purposes as it causes "*fragmentation of productive land, resulting in irreversible land use change*". For the PC79 site this has already occurred and finding that the NPS-HPL does not apply is not "contrary to the very purpose of the NPS-HPL" as suggested by Mr Clease, it is simply acknowledgement of the existing situation.

27 The irony of Mr Clease's position is he later suggests that a large contiguous 16.5ha LUC 1 block of land (with one owner) that is currently being used predominantly for primary production activities could be an alternative residential capacity option³⁹. I address this later in my reply.

28 For the purposes of applying the evidence to determine the equivalent zoning, the evidence before you is that the area in PC79 is used predominantly for a residential lifestyle within a rural (albeit changing) area. While primary production may still be *enabled*, we heard evidence that the land is not currently being used predominantly for primary production activities and nor will it be used in this way due to financial and legal restraints. For example,

- (a) The Sheafs referred to their property as an older property containing a house, gardens and trees;
- (b) Mr Sutton presented (orally) and stated he definitely doesn't use his land for primary production, and that with a value of \$2.5M it was simply impossible to do things such as grow strawberries. He had previously used the property for a poultry farm,⁴⁰ but now sees PC79 is a logical progression of the township given the Park;
- (c) We were provided with an email from the Dixons during the course of the hearing (dated 30 April 2023) in response Mr Fraser's suggestion that their land is good farming land. The email states the property has been used for

³⁹ This block is outlined in red on Figure 1 of his Summary Statement.

⁴⁰ It is noted for completeness that a poultry farm is not considered to be land based primary production under the NPS-HPL (as it is not reliant on the soil resource of the land).

many years (20 years prior to 2006) as a racehorse training facility and that it has never been a productive farming block⁴¹.

- (d) Mr Fraser talks about purchasing his land as a bare block with no buildings or trees for residential living and bringing his family up close to schools and other amenities in a rural environment.

29 To clarify (in response to a comment at the hearing), the Table 5-3⁴² in Ms Konigkramer's evidence which summarises current uses includes information provided by the landowners of 144 Birchs Road, 160 Birchs Road, 176 Birchs Road, 212 Birchs Road, 212A Birchs Road, 214B Birchs Road. Ms Konigkramer did not speak with Mr Fraser and has marked his property with an asterisk (**information not confirmed), so relies on observations from his neighbours and reading his detailed submission.

If it is found the NPS-HPL applies – Clause 3.6

- 30 In my submission, it is clear that the NPS-HPL should not apply to PC79 area, and loss of productive soils is a matter which needs to be considered as a potential environmental effect.
- 31 In the event you make a finding otherwise, Clause 3.6 has been assessed in detail by the experts, and addressed in my opening legal submissions. I address additional matters arising during the hearing below.

Clause 3.6(1)(a)

- 32 Clause 3.6(1)(a) requires:

The urban rezoning is required *to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020*.

- 33 Mr Clease frames this question as "where there is a clear need for additional housing capacity in Prebbleton of some 500 dwellings over the next ten years over and above existing supply"⁴³. In my submission this is not the question to be answered. Mr Clease also considers there is no debate that capacity is available through the short-medium term through PC68 and PC72. I disagree. It is accepted that there is *plan-enabled development capacity*, but it is not accepted that this development capacity otherwise meets the definition of "sufficient":

⁴¹ This has been captured in the Social Impact Assessment through previous correspondence with the owner.

⁴² Page 17, Social Impact Assessment attached to evidence of Ms Konigkramer.

⁴³ Summary of Section 42A Report of Jonathon Clease (Planning), at [6(a)].

- (a) The Council must provide sufficient development capacity *at all times* in its district to meet *expected demand* for housing: in existing *and new urban areas*; and for both standalone dwellings and attached dwellings; and (relevant here) in the short and medium terms.
- (b) To be "sufficient" means to be plan-enabled, infrastructure ready, feasible *and* reasonably expected to be realised, and meet the expected demand plus the appropriate competitive margin⁴⁴.
- (c) The NPS-UD allows a Council to work out what is feasible and reasonably expected to be realised using any method but it is clear that landowner intentions and developer intentions (and future landowner and developer intentions) can form an important part of this assessment⁴⁵, as is what is reasonably expected to be realised in different circumstances (such as existing and new areas, and typologies of dwellings⁴⁶).
- (d) Feasible in the short term or medium term is defined in the NPS-UD as *"commercially viable to a developer based on the current relationship between costs and revenue"*.
- (e) If there is an insufficiency in the short term the Council needs to zone more capacity within the OSDP⁴⁷; and for the medium term it would need to provide new development opportunities zoned in the OSDP or PSDP⁴⁸.

34 With respect to Prebbleton's demand and supply:

- (a) Mr Colegrave estimated Prebbleton's short to medium term demand as 10% of Mr Yeoman's districtwide figure of 12,550. That 10% share was just above Prebbleton's long-run (22-year) average share of district growth of 9%.
- (b) Mr Yeoman's considered that Mr Colegrave's demand range of 10% to 12.5% of the district total was unlikely, because it had been achieved only twice in recent times. In my submission, that is incorrect. As set out by Mr Colegrave, Prebbleton captured more than 10% of district growth nine times in the last 22 years. Accordingly, Mr Yeoman's comments on the plausibility of these demand projections are unjustified and little weight should be provided to them.

⁴⁴ NPS-UD, Clause 3.2(2).

⁴⁵ NPS-UD, Clause 3.26(2)(b)(c).

⁴⁶ NPS-UD, Clause 3.26(4).

⁴⁷ NPS-UD, clause 3.4(1)(a)

⁴⁸ NPS-UD, clause 3.4(1)(b)

- (c) For completeness, it is also noted that Mr Yeoman's low share of 3% allocated to Prebbleton results from his taking the average only over the past three years (2019 to 2022), when, as we have heard, Prebbleton had virtually no new sections to absorb growth⁴⁹. In my submission this is an unreliable (and potentially misleading) way to determine the townships' long-term growth potential, so it should be given no weight.
 - (d) With respect to supply, Mr Yeoman's did not address the numerous issues identified by Mr Colegrave in his evidence with Mr Yeoman's capacity estimates. In my submission, these are fundamental errors that erode any confidence in the conclusions reached by Mr Yeoman. Mr Yeoman estimates capture only plan-enabled capacity, but they tell us nothing about the corresponding feasible or likely to be realised figures. The evidence provided by the Proponent demonstrates that these will be far lower than what is plan enabled.
 - (e) Mr Yeoman accepts the limitations to determining feasibility⁵⁰ in his model, and that there some instances where capacity is not feasible (referring to Mr Colegrave) but in the Prebbleton area he considered most capacity is located in greenfield and he considers the issues of overestimation are comparably small⁵¹. This was addressed in the evidence of Mr Colegrave, and spoken to at the hearing and include the inherent difficulties in agreeing and executing a unified development vision for the two recently operative plan change areas, 68 and 72, which have 15 and 7 landowners each (respectively). Of those 22 owners, three have prior development experience, and their land holdings equate for less than 10% of the land in PC68 and PC72 combined.
 - (f) Mr Colegrave confirmed (orally) that he is talking about a short fall in the short-term horizon, the OSDP.
- 35 Specifically with respect to feasibility, it is also critical to acknowledge the market conditions that were discussed in response to the Commissioner's questions during the hearing. Currently, feasibility is extremely challenging due to high costs, low sales prices, and skyrocketing interest rates. These conditions are also set out in

⁴⁹ Mr Jones provided comment that section sale numbers have been low due to supply (and not demand), and the Prebbleton market has always been extremely popular with buyers, and more so with the opening of the Southern motorway Ryan Teeaar provided comment that due to the very buoyant national residential property market from 2019 through to early 2022, sections (when available) in Prebbleton have sold very quickly. Individual sections have been auctioned and any new stages within developments have been sold out immediately via deadline ballot indicating the lack of supply during these times. (Mr Geddes, Appendix 3).

⁵⁰ Mr Yeoman, at [35].

⁵¹ Mr Yeoman, at [37].

Mr Yeoman's evidence⁵². It is submitted that at the same time, planning gains created by the two plan changes will attract significant tax if those gains are realised over the short term⁵³. It appears that to avoid those taxes and wait for feasibility to improve, land banking is a clear and obvious strategy for PC68 and 72 landowners. It is submitted, there is strong incentive for PC68 and 72 landowners to landbank over the short to medium term until development feasibility recovers. Consequently, it is uncertain whether those areas will provide much supply, if any, for some time. The same reasoning can apply to alternative urban infill examples addressed by Ms Lauenstein, and later in reply.

- 36 These matters directly affect the sufficiency of the development capacity over the short and medium term, whether the Council is providing sufficient development capacity *at all* times, and whether more development capacity is required to provide sufficient development capacity to meet demand for housing.
- 37 Putting aside the numbers, as I set out in my opening submissions, PC79 proposes a unique culturally focussed urban development. In addition, dwelling typologies are not reasonably expected to be realised in any other circumstances in Prebbleton (such as existing urban areas⁵⁴) or with other developers in the short term. There is an expected demand and need for this housing. You heard during the hearing that Ngāi Tahu have an approved business case, and are funded to commence the development of PC79, if successfully rezoned. What is needed is the certainty of a rezoning to proceed to finalise land contracts and commence detailed design.

Clause 3.6(1)(b)

- 38 This clause requires there to be *no other reasonably practicable and feasible options* for providing *at least sufficient development capacity* within the *same locality and market* while *achieving a well-functioning urban environment*.
- 39 The following definitions apply:
- (a) Reasonably practicable has been discussed in RMA law. "Practicable" has been held to mean "possible to be accomplished with known means or resources" and synonymous with "feasible", being more than merely a possibility and including consideration of costs involved and other matters of practical convenience. The obligation to do something which is "reasonably practicable" is not absolute, but is an objective test which must be

⁵² Mr Yeoman, at [14].

⁵³ If the land has been rezoned, an owner may be required to pay capital gains tax if they have held the property for less than 10 years as a property developer.

⁵⁴ NPS-UD, Clause 3.26(4).

considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances⁵⁵.

- (b) Feasible takes the definition provided in the NPS-UD.⁵⁶ Feasible means commercially viable to a developer based on the current relationship between costs and revenue. As mentioned above it is critical to acknowledge the market conditions and that feasibility is extremely challenging for both individuals and property developers due to high costs, low sales prices, and skyrocketing interest rates.

40 Mr Clease says to meet clause 3.6(1)(b) it must be shown "PC79 is the best option for delivering that capacity" and this clause "requires an assessment of alternatives that demonstrate that there are no other options that would also result in the loss of HPL". He also considers the options he has provided for greater intensification in existing urban areas needs to be shown as "demonstrably implausible". My preference is to use the words of the Clause 3.6(1)(b). It is noted that the options provided by Mr Clease do not consider whether they are "reasonably practicable and feasible". He has just put them out there for the Proponent to respond to. He has not considered costs involved and other matters of practical convenience such as whether infill could be achieved, a landowner or developer's willingness to develop (as oppose to simply seek to upzone their land), and the age or location of the existing houses or whether ultimately taking this approach would achieve a well-functioning urban environment for Prebbleton.

41 First, it is submitted there are no other reasonably and practicable options for providing for the expected demand catered for by PC79. It is reliant on a contiguous large landholding and the open space and connectivity provided by Kakaha Park to achieve the density and typology proposed, and provides for expression of mana unique to this developer in Prebbleton. As Mr Christie stated (orally) to secure the affordability and typology of housing, there is a need for the density. As the Proponent's evidence demonstrates the larger contiguous landholding is also required to achieve a well-functioning urban environment. To put it another way, no one else is catering for the demand that PC79 is (i.e. there is no *other market*)⁵⁷

⁵⁵ *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [51].

⁵⁶ Clause 1.3(3) NPS-HPL.

⁵⁷ Clause 3.6(3)(b) requires that the development capacity (of which alternatives are being considered for) to be in the same locality and market (i.e. a market for the types of dwelling that is in demand).

for this typology of housing in the locality of Prebbleton).⁵⁸ It is not able to be achieved within any of the areas provided by Mr Clease.

42 Second, the most comparable landholdings to achieve the most comparable market typology are PC68 and PC72, which have already been considered within the development capacity figures. Mr Clease considers these areas could provide for 1425 households at 15 h/h on 95ha of land. They are currently only required to have 12 h/h as a minimum (so a lesser density) both under the OSDP and Variation 1 to the PSDP (as notified). These figures do not appear to allow provision for stormwater (attenuation or disposal):

(a) **PC68 Site** - The ODP and narrative as notified by SDC with Variation 1 requires minimum of 12 h/h, 1500m² sections along the length of Shands Road, higher density areas are to be focused on primary roads (which cross six properties)⁵⁹: The underlying structure of these areas is four large landholdings of between 8-15 ha and two 4ha blocks. The ODP requires existing dwellings and buildings to be taken into account when investigating subdivision layout and design⁶⁰ (of which there are 20 existing residential units with associated gardens and accessory buildings).

(b) **PC72 Site** - The ODP and narrative as notified by SDC with Variation 1 requires minimum of 12 h/h. The ODP allows for existing dwellings and related curtilage /garden areas integrated in the final layout (of which there are nine houses).⁶¹ The underlying structure of this area includes one 8ha block, and two 4ha blocks.

43 As noted above, the PC68 and 72 areas have already been factored into the calculations of development capacity so are not options to be considered for Clause 3.6(1)(b), and Clause 3.6(2). The reason I record them is because we heard evidence during the hearing from experts on the challenges to feasibility of these plan-enabled landholdings, and these landholdings have larger underlying land parcels.

⁵⁸ As stated in opening, it is clear from the references in the recent Selwyn Residential Capacity and Demand – IPI 2023 (Appendix 3, Section 42A Report), and through its incorporation in Variation 1 to the PSDP that Prebbleton is a market and locality required to give effect to the medium density residential standards (Confirmed also in the evidence of Mr Colegrave, at [52] and [106]). The alternatives need to be within the same locality and market.

⁵⁹https://www.selwyn.govt.nz/__data/assets/pdf_file/0004/1055938/Appendix-1-Variation-to-Private-Plan-Change-68-Prebbleton.pdf

⁶⁰https://www.selwyn.govt.nz/__data/assets/pdf_file/0011/927191/Appendix-D-Outline-Development-Plan-Narrative.pdf

⁶¹https://www.selwyn.govt.nz/__data/assets/pdf_file/0007/1055941/Appendix-4-Variation-to-Private-Plan-Change-72-Prebbleton.pdf

- 44 These challenges become even more apparent when the parcels are smaller with more landowners and with new houses, gardens and curtilages and accessways. Multiple owners, means not everyone may be able to or want to develop at the same time, this can lead to a delayed and or disjointed development process (i.e. pockets of undeveloped land), as well as resistance from owners who don't want the road or stormwater on their area of developable space. In addition, based on current RV (with existing home and curtilage) and that these areas are generally less than ten years old the land price is significantly higher than if it was bare on development (like PC79). It is submitted, a more feasible outcome will be owners with large lots may develop site by site with only 1 or 2 additional allotments over a longer period of time, which can create issues for connectivity and provision of infrastructure.

Officer Report alternative options

- 45 Third, Ms Lauenstein has considered the feasibility of the development of the urban infill areas, and this is **attached** to this reply. She considers that the only infill areas that would be suitable for MDRS development of some 12 hh/ha are the smaller blue areas in Figure 1 of the Officer's Report. She considers the Orange NW area could be developed to LLRZ, but as this is a different typology it is not considered as a reasonably practicable and feasible alternative within the same market.
- 46 Ms Lauenstein assessment acknowledges legal restraints to developing land with the yellow, green and purple areas to one household per allotment. These apply unless all landowners sign off, or a court order is obtained⁶². I have **attached** identification of these areas.
- 47 I'd further note, if you're considering Clause 3.6(2) it is because urban rezoning is required to provide sufficient development capacity to meet the demand (to meet the requirement of the NPS-UD). Therefore, to be "sufficient" the reasonable practicable and feasible options need to be able to be plan enabled, infrastructure ready, feasible and expected to be realised, none of the alternative sites proposed are plan enabled, all would require a plan change for rezoning if the are to occur in the OSDP. There is a question as to scope of additional areas for rezoning as was discussed during the hearing. I agree with Mr Cleese that it's plausible that the PSDP may not be fully settled for some time⁶³.

⁶² There are two routes that can be taken to extinguish a restrictive covenant from the title – either by agreement between the parties or by court order. By going down the agreement route, each party affected by the covenant will need to provide their consent to the removal and sign an Authority and Instruction form authorising registration of the removal via LINZ. These forms need to be witnessed by a lawyer, accountant or justice of the peace. If consent from all affected landowners is unable to be obtained, then a landowner who is bound by the covenant may make an application to the court for an order under sections 316 and 317 Property Law Act 2007 (PLA) to extinguish the covenant.

⁶³ Officer's Report – reply, at [4].

Area in red

- 48 This area has already been considered as being "available in the long term" in the Formative Report.⁶⁴ It is a 16.5ha LUC 1 contiguous landholding with one owner, currently being used for predominantly rural production. This site is not identified on Map A of the CRPS as part of the existing urban area. This site was identified as RRS9 in the Rural Residential Strategy 2014 and anticipated to have a residential yield of 44 rural residential lots, although the developable area of this site has been recently reduced to allow for stormwater reserves and the waterways surrounding it to have sufficient space for the management of stormwater.
- 49 The land has been notified as General Rural, subject to an urban growth overlay in the PSDP and Variation 1. This requires a future plan change to demonstrate a new zoning is more appropriate than the existing zone and there are no unacceptable effects (including on its LUC 1 soils).
- 50 The Officer's Report notes that the landowner has lodged a submission on Variation 1 seeking MDRZ. He calculates development capacity as 16.5ha at 15/hh or 247. The submission seeks less than this 12 h/h, and its unclear what area will be needed for stormwater so this yield suggested seems unlikely to be achieved.
- 51 I am aware other districts which are scaling back and reconsidering their future urban areas to protect soils which are LUC 1, 2, and 3. There is no certainty that a decision maker will consider it more appropriate to develop a large land holding of LUC 1 land earmarked for future urban some time ago. So even if the development is considered feasible, it is far from certain that it will be plan-enabled in my submission so cannot be considered a reasonably practicable (as per the RMA definition) and feasible option. The land is zoned Inner Plains (Rural) in the OSDP and there is no scope to change the OSDP to provide for this land in the short term.

Blue areas – PC68

- 52 These are smaller landholdings in area (10 landowners), but make sense that they will be potentially developed for residential activity sometime. However, they are not currently reasonably practicable or feasible solutions as an alternative to PC79. Ms Lauenstein considers these areas in more detail.
- 53 In the two areas adjacent to PC68 were identified in the PC68 as not being included "because the owners of the individual properties within these blocks have chosen not to be part of the request for rezoning", PC68 identified these areas as containing two established businesses (and associated infrastructure) and proposed to design the subdivision layouts in the vicinity with larger lots near these

⁶⁴ Page 11.

activities. Both of these businesses and two other landowners submitted in opposition to PC68.⁶⁵

- (a) Blue West – Trents Road west – In this area is 4 owners on 2.4ha, 2ha, 2ha and 3.19 ha. On the corner of Trents and Springs Roads is Morgan and Pollard, a company which specialises in landscape architecture and construction as well as grounds maintenance and raising and selling ready trees.
- (b) Blue East – Trents Road east - In this area there are 4 owners on 5 land parcels of 2 hectares. On one property, opposite Kingcraft Drive is a wholesale nursery with concentrated development of greenhouses set back from the road);

54 While these areas could be plan enabled in future to 15 h/h and considered as part of PC68 they will also have the same challenges of feasibility and being able to realised as PC68, discussed earlier in this reply.

55 Blue South - the Kakaha Park block is a small area of land adjoining the park, and on its own is unable to provide a large volume of housing. Ms Lauenstein considers that subject to stormwater and geotechnical input, this area should be able to provide a reasonably high density of 12-15 HH/ha (i.e. some 24-30 houses). The density might be slightly reduced as a result of being a “dead end” with limited ability for a through road. She considers this area is also ideal for a second primary school. There will still be the same challenges to feasibility, as stated above, in (at least) the short term.

Clause 3.6(1)(c)

56 The Officer's Report accepts PC79 will likely pass the cost-benefits analysis if clause 3.6(1)(a) and (b) are made out⁶⁶.

Clause 3.6(5)

57 The Council must "take measures" to ensure the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment. I have provided references to the evidence which specifically address this from a developer, urban design, economics and planning perspective in my opening legal submissions. Of note, a parcel of LUC 1 land was removed from the ODP, and Ms

⁶⁵ Pollards, Somerfield, Che, and Bowman:

<https://extranet.selwyn.govt.nz/sites/consultation/PC68/SitePages/Documents.aspx#InplviewHashe1877e92-e473-45d6-a6dc-fae9719e0998=FolderCTID%3D0x012001>

⁶⁶Summary Statement Mr Cleese, at [32].

Lauenstein addresses how the layout has been condensed in a compact manner while still providing the necessary connectivity, accessibility and open space to support the denser living environments⁶⁷.

- 58 The natural hydrological processes of the site have been integrated into the layout and allow Māori cultural values that are embedded within the land form to be revealed, respected and expressed. The blue and green network creates the natural spatial skeleton for this to occur and provide opportunities for Kaitiakitanga to be actively integrated into the development. The larger overland flow path physically manifests as a boundary to the development and a space for the treatment of all surface water runoff.

Submitters

- 59 The Applicant provides the following clarification in response to submitters concerns not already addressed.

Sam Smith

- 60 Mr Smith challenges the idea that small parcels of agricultural land and are commercially viable, but confirmed in response to questions from the Commissioner that his operation was reliant on irrigation. He did not disclose if there was any profit from his operation that would provide for a return on capital he has invested in the land and machinery, or whether he employed anyone else.
- 61 Mr Smith discussed crop options including blueberries, strawberries, raspberries, other berries, herbs, flowers and micro greens. Without irrigation, the highly productive crops described by Mr Smith are not viable⁶⁸.
- 62 Mr Everest provided evidence that annual crops such as salad green or other table vegetables typically have a higher nutrient loss rate than low intensity lifestyle farming⁶⁹. He confirmed orally that while individual land holders of less than 5ha (for horticulture) or 10ha (for agriculture) are not required to comply with nutrient discharge allocations within the CLWRP, it is important to consider that the Selwyn-Te Wahora nutrient allocation zone (PC 1) is already considered over allocated for nutrients. More generally Mr Everest spoke to his concern that encouraging productive intensification of small, unregulated lots, could cumulatively

⁶⁷ Ms Lauenstein, at [77].

⁶⁸ Mr Everest, at [17(b)] considers PC79 has only enough water to irrigate 1.9 hectares of the eligible 27 hectares.

⁶⁹ Mr Everest, at [51 (b) (i)].

compromise the productivity of larger established operations in the long term to compensate for the small lots.

Mr Fraser

- 63 Mr Fraser provided his evidence in advance and it has been addressed in detail by the experts. He regularly referred to a neighbouring operation (which holds an irrigation consent) as an example for use of land-based primary production. The fundamental difference between the evidence of Mr Everest and Mr Mthamo, compared with Mr Fraser, is that Mr Fraser considers water will be available in 20-30 years.
- 64 Presuming water was available, Mr Fraser's suggested crops relied on rotations (broad beans and process peas), room for machinery, and an agreement across numerous property owners (for a lease). Mr Broadway (another land owner who has also lived on the land for over 40 years) considered it difficult to grow crops due to the small paddocks to accommodate them, and machinery requires reasonably sized paddocks) and with PC79 being made up of different owners it is extremely difficult to get them to agree on anything for the whole area to be farmed.
- 65 Mr Everest (in response to a question from the Commissioner) considered that when considering a 30-year timeframe, you need to look back to look forward to look back. He considered we have never historically seen residential settings convert back to farming. That's the starting point. When he then considers the current planning requirements (Te Mana o Te Wai challenges, overallocated water and nutrients in zone) and technologies we have currently have available, as well as the permanent change due to the Kakaha Park. He confirmed orally he really struggles to see how this particular block of land will shift back from residential to productive agricultural.

Lincoln Voice

- 66 Matters raised were addressed by Mr Mthamo in the hearing, and have been included in evidence. In his summary statement Mr Everest confirms that his assessment has been done pursuant to Clause 3.6 NPS-HPL (and does not rely on Clause 3.10).

Does the CRPS (change 1) gives effect to the NPS-UD 2020?

- 67 The applicability and consistency of PC79 has been dealt with in detail in the evidence. In terms of matters arising through the hearing:
- (a) Counsel for CRC considers that the CRPS gives effect to the NPS-UD 2020 (through Change 1). It is clear that the CRPS does not deliver on the NPS-

UD and this has been publicly stated so. In its report to the Minister on Change 1 of the CRPS in 2021 it is stated at [132-133]:

Environment Canterbury is currently formulating criteria in response to clause 3.8(3) to determine what plan changes are considered significant in a Greater Christchurch and Canterbury context, to be advanced through a separate RMA process. The Greater Christchurch Partnership is considering the significance criteria in the first half of the 2021 calendar year.

*When notified and subsequently adopted in the CRPS these provisions will clarify how NPS-UD Policy 8 will be interpreted at a regional level and determine what changes might be required to existing policy provisions, including those in Chapter 6. **In the meantime, we recognise that the NPS-UD is a higher order document under the RMA and decision makers assessing plan changes will need to consider the implications of such national direction alongside the policies contained in Chapter 6...***

We do not consider that any amendments are required in response to submissions that consider there to be insufficient flexibility and a fixed and non-contestable rural/urban boundary, as work is underway to progressively implement the new national direction set out through the NPS-UD. This includes changes to the district plans, the completion of a new capacity assessment and future development strategy, and the CRPS review.

- 68 The CRC Planner Ms Orr accepted in response to a question from the Commissioner that in terms of PC79. It is a matter of weight to be placed on the documents in light of their recency and directiveness.
- 69 The Commissioner raised that alongside Objective 6.2.1 is a very directive Objective 6.2.2 regarding urban form and settlement patterns, which requires amongst other matters to encourage the "sustainable" and "self-sufficient" growth of Prebbleton. I agree, and this was addressed in the original assessment of Ms Elford, who considered that allowing the population to increase in response to demand is consistent with "self-sufficiency" of the township, and that a greater population base also increases demand for commercial uses and services in close proximity.⁷⁰
- 70 It is also particularly important to consider "sustainability" (Objective 6.2.3). It is submitted that PC79 is directly consistent with this objective as it provides for a quality living environment incorporating good urban design (noting the support from Mr Nicholson for the ODP layout), retains values of importance to tāngata whenua,

⁷⁰https://www.selwyn.govt.nz/_data/assets/pdf_file/0007/844693/Appendix-14-Assessment-of-CRPS-Objectives-and-Policies.pdf, page 3.

provides a range of densities and uses, and the ODP anticipates and provides for a healthy, environmental sustainable, functionally efficient and prosperous community.

- 71 On this basis, while there is an inconsistency with Objective 6.2.1, it is submitted that the rezoning of PC79 can be read in a manner which is consistent with the other directive policies of the CRPS (particularly Objective 6.2.2(5)), especially when considered alongside the NPS-UD. Similar reasoning has been provided by Selwyn District Council which considers rezoning land in Prebbleton and Lincoln via Variation 1 to the PSDP is consistent with the CRPS⁷¹, as a direct response to your finding in PC72 (which was not appealed by CRC and CCC on this basis).

MDRS fit within the OSDP

- 72 The Commissioner queried the fit of the proposed zone into the Operative District Plan.
- 73 PC79 application includes analysis of the relevant sections of the RMA 1991; the NPS-UD; NPS and the CRPS. It has concluded the inclusion of the new Living MD1 zone is, in line with the intent of the RMA-EHS⁷².
- 74 For context, it is also noted and as referenced in the Section s42A report there are two components to the Variation 1 to include the MDRS: one for the PSDP and one through the OSDP. The changes to the OSDP (Variation 1 Part B) have been noted as amendments to approved plan changes to PC68, PC69, PC71, PC72, PC73, PC75, PC76, PC78. Clause 34 of Schedule 12 of the RMA requires that Council notify a variation to those changes to a relevant residential zone or a new residential zone, that were notified before the commencement date of the RMA-EHS but where decisions had not been notified, are to be varied to incorporate the MDRS, as required by s77G(3) RMA-EHS⁷³.
- 75 A Section 32 Analysis of this has been prepared by Council⁷⁴, inclusive of the Appendix 8: Proposed Amendments to Selwyn District Plan⁷⁵ and Appendix 9: Provisions in the Operative District Plan replaced by the MDRS and supporting objectives and policies⁷⁶. The amended provisions are considered to be consistent

⁷¹ https://www.selwyn.govt.nz/__data/assets/pdf_file/0009/1055934/Section-32-Report.pdf. Page 75.

⁷² Page 100 of Section 32 Report Part A and Part B Variation 1

⁷³ Page 89 of Section 32 Report Part A and Part B Variation 1
https://www.selwyn.govt.nz/__data/assets/pdf_file/0009/1055934/Section-32-Report.pdf

⁷⁴ https://www.selwyn.govt.nz/__data/assets/pdf_file/0009/1055934/Section-32-Report.pdf

⁷⁵ https://www.selwyn.govt.nz/__data/assets/pdf_file/0011/1055945/Appendix-8-Proposed-Amendments-to-Selwyn-District-Plan.pdf

⁷⁶ https://www.selwyn.govt.nz/__data/assets/pdf_file/0003/1055946/Appendix-9-Provisions-in-the-ODP.pdf

with the structure of the OSDP and will see the incorporation of a new zone which meets the requirements of the MDRS as Living MD1. This is the zone which aligns with what is proposed for PC79 and will essentially allow it to be aligned with the other Prebbleton plan changes going through the same process under the OSDP.

- 76 The section analysis completed by Council has given consideration to the relevant sections of the RMA 1991; the NPS-UD; NPS and the CRPS. It has concluded the inclusion of the new Living MD1 zone through variations to PC's 68, 69, 71, 72, 75, 76, and 78 are appropriate and will align the zoning of these areas with that of the relevant township and will enable additional housing to be built, in line with the intent of the RMA-EHS⁷⁷.
- 77 The RMA-EHS requires inclusion of specified objectives, policies and rules in district plans⁷⁸, and these have been included in Living MD1 for PC79 and should be given significant weight.

Changes to the provisions, ODP and narrative

- 78 The following additional changes have been made in response to matters raised during the hearing to the provisions, ODP and narrative:
- (a) Additional wording regarding transportation (that has been agreed between the transport experts) in the event funding does not materialise in the current expected timeframes;
 - (b) Wording amendments in the ODP on the advice of Ms Lauenstein and Mr Everest to strengthen aspects regarding reverse sensitivity with respect to edge treatment to rural areas. Ms Lauenstein addressed in response to the Commissioner's question that the design has included the positioning of greenspaces, meaning there are no concerns of the residential uses creating reverse sensitivity effects for the Park. It is noted that Mr Nicholson supports boundaries with rural neighbours having a landscaped strip to reduce the potential for reverse sensitivity. Adjoining landowners to the south include the Broadways who submitted in support of PC79, and the Lims (51ha) who did not lodge a submission on PC79. Adjoining landowners to the east (the Smiths) did not lodge a submission, and the Gilmores sought to have their land included, or alternatively a boundary setback.
 - (c) Additional provision for superlots in the ODP (this wording has been agreed between Mr Clease and Ms Elford);

⁷⁷ Page 100 of Section 32 Report Part A and Part B Variation 1

⁷⁸ RMA, Schedule 3A, Clause 6.

- (d) Additional restrictions on the commercial area (that has been agreed between Mr Colegrave and Mr Yeoman) which provides for a reduced commercial area (2500m²), no GFA cap, and no supermarket; and
- (e) ODP graphic – reduced commercial area, and addition of another pedestrian crossing on Hamptons Road (as recommended by Mr Nicholson).

79 We have also **attached** an ODP which includes the property boundaries across the ODP area. The intention was always for the key infrastructure aspects to be able to be provided without reliance on other submitters properties (whilst still including these properties overall). Some adjustments have been made to the green spine to ensure this.

Conclusion

80 In my submission PC79 can and should be recommended for approval, subject to the agreed changes to the provisions, ODP and narrative.

81 The comprehensive evidence has demonstrated that Commissioner will be making a planning decision which:

- (a) contributes to a well-functioning urban environment which *enables all people* and communities to *provide for their social, economic and cultural wellbeing*, and for their health and safety, now and into the future.
- (b) *improves housing affordability* by supporting competitive land and development markets.
- (c) will enable more people to live where *the area is near a centre zone* with many employment opportunities (Christchurch) and *there is a high demand for housing in the area*, relative to other areas in the urban environment.
- (d) demonstrates that *urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities and future generations*.
- (e) takes into account the principles of Te Tiriti o Waitangi in relation to urban environments and the values and aspirations of iwi for urban development.
- (f) is *integrated with planning and funding decisions* (the wastewater capacity is currently being considered), *strategic over the medium term and long term* (i.e. provision for urban activity connecting with a strategic community asset, like the Park).

- (g) is *responsive* to a proposal which would supply significant development capacity and assist the Council to provide required sufficient development capacity *at all times*.
- (h) *contribute to well-functioning urban environments* which requires as a minimum a *variety of homes that meet the needs of different households and that enable Māori to express their mana*.


82 It is also been demonstrated that PC79 is consistent with the exemptions in NPS-HPL (if it is found to apply).

A handwritten signature in black ink that reads "A Booker". The signature is written in a cursive, flowing style.



Alex Booker
Counsel for Birchs Village Limited

Appendix 1 – Prebbleton land within Figure 1 of the Officer's Report (reply) with restricted development covenants

GREEN AREA:

Land Covenant or Consent Notice	Record of Title	Location	Development restricted
Fencing and land covenant – 5107207.8	14861, 14862, 14863, 14864, 14865, 14866, 14867, 14868, 14869, 14870, 14871, 14872, 14873, 14874, 14875, 14876, 14877, 14878, 14879, 14880, 14881, 14882, 14883, 14884.		<p>Clause 1(a)(i) – restricted to one dwelling per lot.</p> <p>No expiry date, so applies in perpetuity.</p>

YELLOW AREA:

Land covenant or consent notice	Record of Title	Comments	Development restricted
Land covenant 11417599.9	864675, 864676, 864677, 864678, 864679, 864680, 864681, 864682, 864683, 864684, 864685, 864686, 864687, 864688, 864689 ,864690, 864691, 864692, 864693, 864694, 864695, 864696, 864697		<p>Clause 2.7(m) – the lot owner shall not construct any more than one dwelling to be used as a residence.</p> <p>Only five sections remain vacant.</p> <p>Covenant expires 1 January 2028.</p>
Land covenant 7350416.1	229219, 299221, 299222		<p>Clause.1 1A – shall not erect on the land any dwelling except a private dwelling house of noit less than 240m².</p> <p>Not dated so applies in perpetuity.</p>

PURPLE AREA:

Land covenant or consent notice	Record of Title	Comments	Development restricted
<p>Consent notice – 7776441.11</p>	<p>396097, 396098, 396099, 396100, 396101</p>		<p>No dwellings are permitted in certain areas.</p> <p>The minimum average lot size of 1.5 ha – which effectively prevents any further subdivision.</p> <p>No expiry date.</p>
<p>Land covenant – 7796462.1</p>	<p>396097, 396098, 396099, 396100, 396101, 396102, 396103.</p>		<p>Clause 1.2 – shall not erect more than one dwelling.</p> <p>Applies in perpetuity.</p>

<p>Consent notice – 10814456.3</p>	<p>749870</p>		<p>This lot is a development lot – no contributions for services have been paid and any application for future subdivision will be required to make the appropriate connections.</p> <p>No expiry date.</p>
<p>Consent notice – 7366639.8</p>	<p>295590, 362962</p>		<p>No dwellings may be located in certain areas within 150m of the chicken sheds.</p> <p>No expiry date.</p>