

**BEFORE THE INDEPENDENT COMMISSIONER APPOINTED BY THE SELWYN DISTRICT
PLAN**

UNDER the Resource Management Act 1991

**IN THE MATTER of a hearing on Private Plan Change 79 to the
Operative Selwyn District Plan**

AND Lincoln Voice Incorporated

Submitter PC79-0018

STATEMENT OF EVIDENCE ON BEHALF OF LINCOLN VOICE INCORPORATED

28th April 2023

MAY IT PLEASE THE COMMISSIONER:

INTRODUCTION

1. This statement is filed on behalf of Lincoln Voice Incorporated ('Lincoln Voice', submitter PC79-0018) in relation to Private Plan Change 79 to the Operative Selwyn District Plan ('PC79'). This statement of evidence addresses the following matters:
 - i) Background to Lincoln Voice
 - ii) Scope of submission
 - iii) Relief sought by Lincoln Voice
 - iv) Evaluation of whether PC79 meets the criteria for classification as Highly Productive Land.
 - v) Evaluation of whether PC79 meets the tests for urban rezoning under the National Policy Statement Highly Productive Land (NPS-HPL)
2. Lincoln Voice is a community group that currently has a case in front of the Environment Court appealing against the Selwyn District Council decision to accept Private Plan Change 69, located on the rural outskirts of Lincoln. The central focus of Lincoln Voice's appeal is that PC69 is located on highly productive land, and should therefore be subject to evaluation under the NPS-HPL. It is this strong interest in the protection of highly productive land that is the reason behind Lincoln Voice submitting on PC79.
3. This statement of evidence, and any disagreement with the applicants approach and evidence, is based on Lincoln Voice interpreting the NPS-HPL and its clauses and specific wording using the 'plain and ordinary meaning' principle. This approach has been promoted by Chapman Tripp, as the lawyers for the developer of PC69, in their submissions to the hearings panel of Variation 1 and the Proposed District Plan (PDP) of the Selwyn District Council (SDC). In the legal submission¹ to Hearing 2 (General) they reference that:

'When interpreting rules in planning documents, Powell v Dunedin City Council² established that (in summary):

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[https://extranet.selwyn.govt.nz/sites/consultation/PartA/Shared%20Documents/2.%20General%20Hearing/Legal%20submissions/V1-0114%20CSI%20Property%20Ltd%20&%20Rolleston%20West%20Residential%20Ltd%20-%20Legal%20Submission%20\(Residential%20&%20General\).pdf](https://extranet.selwyn.govt.nz/sites/consultation/PartA/Shared%20Documents/2.%20General%20Hearing/Legal%20submissions/V1-0114%20CSI%20Property%20Ltd%20&%20Rolleston%20West%20Residential%20Ltd%20-%20Legal%20Submission%20(Residential%20&%20General).pdf)

² Powell v Dunedin City Council [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in Powell v Dunedin City Council [2005] NZRMA 174 (CA), at [12].

- *the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;*
- *the language must be given its plain and ordinary meaning, the test being “what would an ordinary reasonable member of the public examining the plan, have taken from” the planning document;*
- *the interpretation should not prevent the plan from achieving its purpose; and*
- *if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.*

Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise. Where that meaning, however, creates an anomaly, inconsistency, or absurdity it is at that point that one can turn to more contextual documents (such as a guidance document) to help shed light on how a planning document should properly be interpreted.’

This ‘plain and ordinary meaning’ approach also takes into account the King Salmon case³, through which the Supreme Court found that words in the RMA are to be interpreted with their ordinary meanings, including the word ‘avoid’ in the phrase ‘avoiding adverse effects’. It is also consistent with intent of the Plain Language Act 2022⁴.

4. To assist with reading of this statement we have used the following formats to distinguish our statements in the text, from that quoted from elsewhere. **Text in italics** are direct quotes (with source cited). **Underlined text** are key words or phrases that this submission has chosen to highlight.

SCOPE OF SUBMISSION

3. The National Policy Statement Highly Productive Land (NPS-HPL) defines highly productive land as land mapped by the New Zealand Land Resource Inventory as Land Use Capability (LUC) classes 1, 2 and 3.
4. Plan change 79 is located on land that in its entirety is mapped as comprising of Land Use Capability classes 1 and 2 (LUC class 1-2).
5. The National Policy Statement Highly Productive Land (clause 3.5.7) directs that urban expansion and subdivision should be avoided on LUC class 1, 2 or 3 land that is currently zoned General Rural, and is not identified for future urban development, or subject to a council initiated, or adopted, notified plan change.

³ Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors [2014] NZSC 38.

⁴ <https://www.legislation.govt.nz/act/public/2022/0054/latest/whole.html>

6. Plan change 79 is also located as part of a wider large and geographically cohesive area of land mapped that the NPS-HPL directs should be mapped as highly productive land (clause 3.4.1).

RELIEF SOUGHT BY LINCOLN VOICE.

7. Lincoln Voice seeks that PC79 is declined under the requirements of the NPS-HPL.

EVALUATION OF WHETHER PC79 MEETS THE CRITERIA FOR CLASSIFICATION OF HIGHLY PRODUCTIVE LAND

8. **Evaluation of PC79 under NPS-HPL clause 3.5:** There is general agreement across both the Selwyn District Council s42 author and the applicant's experts that PC79 qualifies as highly productive land, through meeting the criteria of clause 3.5 in the NPS-HPL. We agree with this conclusion.

EVALUATION OF WHETHER PC79 MEETS THE CRITERIA FOR URBAN REZONING OF HIGHLY PRODUCTIVE LAND

9. **Evaluation of PC79 under NPS-HPL clause 3.6:** Proposals to rezone HPL to urban land use are subject to meeting criteria of clause 3.6, which are discussed further below.
10. **Evaluation of PC79 under NPS-HPL subclause 3.6.1(a).** We support the assessment provided in the s42 report that there is already sufficient development capacity in the same locality and market, and therefore PC79 does not meet this test necessary to rezone HPL. This is supported in the March 2023 Selwyn Residential Capacity and Demand assessment report⁵, and the earlier 2021 Greater Christchurch Housing Development Capacity Assessment.⁶
11. We support the s42 report interpretation that in order to fail the subclause 3.6.1(a) test the intent of the NPS-HPL is that the council only needs to demonstrate that sufficient housing development capacity already exists for the short and medium-term.
12. We also note that in the recommendation report⁷ for Private Plan Changes 81 and 82, the independent hearing commissioner, when discussing housing capacity and demand, in the summary for that section (point 77) notes: *'Given the above, I am satisfied that by*

⁵ https://www.selwyn.govt.nz/_data/assets/pdf_file/0018/1763001/Appendix-3-Selwyn-Residential-Capacity-and-Demand-IPI-2023.pdf

⁶ <https://greaterchristchurch.org.nz/news/hca>

⁷ https://www.selwyn.govt.nz/_data/assets/pdf_file/0003/1538148/Recommendation-Report-PC-81-and-82-Final-27-Jan-WM.pdf

means of various processes there is likely to be a strong short term and first half of the medium term supply of residential land in Rolleston being the next 6 – 7 years. Beyond that is less certain, but it is not the responsibility of the Operative District Plan, which is unlikely to have a legal function beyond the next 12-18 months, to enable capacity to meet demand beyond 7 years into the future.'

13. We note that this is consistent with the discussion on **subclause 3.6.1(a)** in the NPS-HPL Implementation Guidance (page 44) that this subclause is only intended to *'support the rezoning of HPL to an urban zone if needed to provide for short term (within next 3 years) and/or medium term (3–10 years) sufficient development capacity as this is required to be zoned for housing and business land for it to be 'plan-enabled' (refer Clause 3.4 of the NPS-UD). Rezoning HPL to an urban zone to provide for long-term development capacity (10–30 years) would not meet this test. This is to avoid the premature loss of HPL to urban rezoning and ensure the maximum amount of HPL remains available for land-based primary production until it is actually needed to be rezoned to provide sufficient development capacity.'*
14. **Evaluation of PC79 under NPS-HPL subclause 3.6.1(b).** We support the assessment provided in the s42 report that there are other reasonably practical and feasible options that are either already providing, or are potentially capable of providing, at least sufficient development capacity in the same locality and market, and therefore PC79 does not meet this test necessary to rezone HPL.
15. Assessment under subclause 3.6.1(b) requires a number of tests to be undertaken, as set out in subclauses 3.6.2 and 3.6.3. We note that the S42 report has not conducted an analysis of the tests under these subclauses, noting at the stage of writing that the applicant had also not conducted such analysis (although we recognise that a substantive body of information on their interpretation has been subsequently supplied by the applicant).
16. Whilst we agree with the s42 report author that PC79 fails on subclause 3.6.1(a), and therefore does not need to be evaluated any further, we consider that the lack of detailed analysis against the tests of subclause 3.6.1(b) is an omission by s42 report author. This should be rectified for the hearing commissioner to be in the position to provide a balanced consideration of the applicant and SDC NPS-HPL evaluations. We note that subclause 3.6.2 is specific that (underline our emphasis): *'In order to meet the requirements of subclause (1)(b), the territorial authority must consider...'*
17. **Evaluation of PC79 under NPS-HPL subclause 3.6.1(c).** We recognise that analysis under this subclause requires substantial evaluation across a number of domains, which is beyond the resources and expertise that Lincoln Voice has available. Our position here is the same as for subclause 3.6.1(b) above, and that the responsibility sits with SDC to provide a detailed evaluation for the hearing commissioner to be in the position to provide a balanced consideration of the applicant and SDC NPS-HPL evaluation.
18. However, it is our interpretation that the intent and direction of clause 3.6 is that any proposed plan changes should be evaluated under a set of comparative tests against other practical and feasible options. Our position is that a robust evaluation under this sub-clause would involve a cost-benefit comparison against other potential options for providing additional housing supply capacity in the same locality and market, or at least

other options adjacent to Prebbleton. It is our view that this would likely show that there would be no relative benefit gain in rezoning PC79 compared to other options, but that as shown in our evaluation under sub-clause 3.6.2(b) the relative cost of losing the PC79 HPL would be higher than other options with lower productive capacity HPL.

19. **Evaluation of PC79 under NPS-HPL subclause 3.6.2(a).** The implementation of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2022 (RMA-EHS) is largely addressing subclause 3.6.2(a), through the Variation 1 changes to the SDC Proposed District Plan. As outlined in the March 2023 Selwyn Residential Capacity and Demand assessment report this will have a significant impact on the supply of housing in Prebbleton, even recognising that the theoretical plan enabled housing capacity may not be reasonably realized and feasible. Never-the-less this report shows that the feasible enabled supply is estimated to be triple the dwelling demand (including a +margin) over the short, medium, and long-term. Clearly PC79 can not be justified as there are a range of reasonably practical options that already exist for providing the required development capacity.
20. **Evaluation of PC79 under NPS-HPL subclause 3.6.2(b).** We recognise that the land surrounding Prebbleton is all mapped as HPL under the transitional definition in the NPS-HPL, limiting the options under this subclause.
21. **Evaluation of PC79 under NPS-HPL subclause 3.6.2(c).** The applicants Versatile soils, Farm Consultant, and Planning reports place a lot of emphasis on arguing that the land at PC79 has a low productive capacity. We disagree with a number of their statements, as outlined below.
22. First, we note that the applicant's experts place a lot of emphasis on trying to justify exemption of PC79 from HPL classification under clause 3.6, by attempting to 'merge in' the intent of clause 3.10 and argue there are a number of 'permanent or long-term constraints' to the productive capacity of land under PC79. We support the s42 report that identifies that clause 3.6 is specifically not mentioned in clause 3.10, and vice versa. The NPS-HPL is clear that consideration of factors mentioned in clause 3.10 are not relevant to the consideration of rezoning HPL under clause 3.6. We submit that only factors specified in clause 3.6 should be allowed to remain considered in the applicant's experts statements, particularly in regard to assessing productive capacity in subclause 3.6.2(c), as defined in clause 1.3.
23. Our position on applicability of clause 3.10 is clearly covered in the NPS-HPL guidance, where the intent of clause 3.10 is discussed on pages 33 to 40. The situation of PC79 is specifically addressed on page 34: *'Clause 3.10 cannot be used as a pathway for urban rezoning if a proposal has not met the requirements of Clause 3.6. If there is justification for land that is subject to a permanent or long-term constraint being zoned urban, then it should be able to pass the tests in Clause 3.6 on its own merits. Essentially, urban rezoning of HPL always has a potential pathway under Clause 3.6'*
24. In the NPS-HPL, productive capacity is defined in clause 1.3 to an assessment of just: *'productive capacity, in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:*

(a) physical characteristics (such as soil type, properties, and versatility); and

(b) legal constraints (such as consent notices, local authority covenants, and easements); and

(c) the size and shape of existing and proposed land parcels'

25. **Evaluation of PC79 under NPS-HPL subclause 3.6.2(c) - legal constraints to productive capacity.** In regard to legal constraints, we are not in a position to evaluate these across the range of potential land parcel options surrounding Prebbleton.
26. **Evaluation of PC79 under NPS-HPL subclause 3.6.2(c) - size and shape of land parcels.** In regard to the size and shape of existing land parcels we note that PC79 is located in a planning zone where land has historically been allowed to be subdivided to a minimum of 4 hectares. Looking at the land parcel layer on the SDC Proposed District Plan map⁸, most of the land around Prebbleton is in similar parcel sizes to that of PC79, so we argue it is not reasonable to claim that PC79 is the best option for future urban development based on the size and shape of land parcels. We do note that there are large areas of land in smaller parcels directly adjacent to the current Prebbleton urban boundary, such as the 'large lot residential zones', that arguably would have a lower productive capacity than the PC79 area.
27. **Evaluation of PC79 under NPS-HPL subclause 3.6.2(c) - physical land characteristics.** First we note that the Versatile Soils report's authors stated experience and expertise is clear that this lies in stormwater, wastewater, irrigation and land rehabilitation engineering. The author's stated experience does not show a high level of experience or applied expertise in key fields related to soil versatility assessment, for example, pedology science, soil physical management, soil quality, land versatility evaluation, and in particular soil survey and LUC assessment.
28. The NPS-HPL Implementation Guide⁹ is clear that such soil survey and LUC skills are needed for soil versatility assessments under the NPS-HPL, stating in the section providing guidance on site-specific assessments through the HPL mapping process on page 64 (underline our emphasis):

'Regional councils have full discretion as to whether they accept third-party, site-specific, detailed mapping information (Clause 3.4(5)(a)) and do not have to accept site-specific assessments provided by landowners as a basis for excluding land parcels from being identified as HPL, as a piece of land may not be LUC class 1–3 but it may form part of a large and geographically cohesive area which necessitates its inclusion in HPL maps. Prior to the consideration or exercise of their discretion, councils should consider whether the site-specific assessments have been authored by professional LUC assessors (see Data sources for HPL mapping) and whether they have adhered to the LUC and soil-survey mapping guidelines.'

⁸ <https://eplan.selwyn.govt.nz/review/property/1571000/1446000/5267000/5137000/0/138>

⁹ <https://environment.govt.nz/publications/national-policy-statement-for-highly-productive-land-guide-to-implementation/>

In the Data Sources for HPL mapping section, guidance is provided on whether an individual should be considered a 'professional' LUC assessor:

'The soil-survey component should be in accordance with the 'New Zealand soil mapping protocols and guidelines'. In order to undertake more detailed mapping, councils should appoint a LUC or soil-mapping professional. When considering whether an individual is a 'professional' LUC assessor, a local authority could consider whether the individual has:

- been on an LUC training course and can produce assessments consistent with the LUC survey handbook for the past three to five years*
- a demonstrated track record and the experience of a LUC assessor in both mapping of soils and NZLRI/LUC, assessments specifically of land within LUC classes 1, 2 and 3 as being highly productive or not.'*

29. This lack of experience in soil and LUC survey may explain the mistakes in interpretation of the soil attributes that are contained in the Versatile soils report, particularly the concerns we raise on the misinterpretation of LUC subclass, soil wetness, and the inherent relative productive capacity.
30. In regard to assessment of physical characteristics, the first step should be to check if there are areas adjacent to Prebbleton that have a lower LUC rating, than the LUC 1 and 2 land of PC79. Manaaki Whenua as the custodian of the LUC provide on their Our Environment website a baseline map of HPL¹⁰, with a further distinction of areas mapped as LUC 1, 2 or 3. This clearly shows that there are large areas of LUC 3 land adjacent to Prebbleton west of Shands Road, between Hamptons and Trents Road, and either side of Blakes Road. LUC 3 land is recognised in the LUC handbook¹¹ as having more limitations, and lower inherent productive capacity, than LUC 1 or 2 land.
31. We note that in the applicant's Versatile soil assessment report the LUC subclass rating is incorrectly stated in points 21 and 22 for the LUC 2 land, which is c.86% of PC79. On the Manaaki Whenua Our Environment website this area is described as LUC subclass 2s, not 2w as stated in the applicant's report. The minor 14% area of LUC 1 land is correctly denoted as LUC subclass 1w. In the LUC, the subscript 'w' denotes a degree of wetness (relative to class 1 soils), and the subscript 's' denotes one or more other potential soil limitations such as structural vulnerability to intensive cultivation, or stoniness, or soil moisture deficit.
32. Based on the incorrect interpretation of the LUC subclass in the applicant's Versatile soil assessment report, in point 22 it is incorrectly claimed that both the LUC class 2 and LUC class 1 land is identified as having *'soil wetness resulting from poor drainage or a high water table, (refer to attachment 2) as the dominant limitation on the sites*

¹⁰ https://ourevironment.scinfo.org.nz/maps-and-tools/app/Land%20Capability/Iri_luc_hpl

¹¹ The handbook is available from the New Zealand Soil Science Society or from the Manaaki Whenua Landcare Research Digital Library

productive capacity.' The description provided on the Manaaki Whenua Our Environment website for the LUC subclass mapped on PC79 does not mention a wetness limitation for the predominant 2s land, and only a 'very slight wetness limitation' below 100cm depth for the minor area of 1w land.

33. This incorrect interpretation of a significant soil wetness limitation at PC79 is further claimed in points 36 and 37. In points 38, 39 and 40 evidence is then provided to show a range of crops adversely affected by poor drainage. This is an incorrect inference as the soils on the site do not have a significant wetness limitation.
34. S-map Online is the NZ soil survey database, providing a range of technical information on the soils at PC79. This indicates only c.10.5% of the area is imperfectly drained Wakanui soils, which have a moderate wetness limitation. The remaining c.90% of the area is moderately well or well drained Templeton soils. Moderately well drained soils are recognised to only have a slight risk of temporal subsoil wetness, which is not seen to be a limitation for most crops in land versatility assessments such as the LUC classification, Soil Versatility Assessment¹² and the NZ Classification of Land for Orchard Crop Versatility¹³.
35. The soil map that underpins S-map Online is that produced during a detailed assessment by the NZ Soil Bureau of the 'Soils and Agriculture of Part Paparua County'. This is one of the more detailed soil survey reports in NZ, being conducted to coincide with the establishment of the Watties factory in Hornby, and contains considerably more specific detail than is possible to convey in S-map Online. A unique aspect of this assessment was to produce a detailed soil map, classified by the horticultural suitability of each soil on an 8 class rating. The Templeton soils that were mapped on PC79 were mapped as class 1A, the highest horticultural suitability. The Wakanui soils were mapped as 1B, the next highest category. In comparison the LUC 3 land on the western boundary of Prebbleton is mapped as Eyre soils, and classed as 2A soils of moderate suitability for horticulture.
36. We note that the LUC map, the soil maps and soil attribute information in S-map Online, and the detailed Paparua County soil report all consistently identify that PC79 has soils of high versatility for a range of crops, with no significant soil wetness limitation. This is in direct contrast to the misinterpretation provided in the applicants versatile soils report.
37. The Paparua County soil report contains detailed description of each soil type, and its physical characteristics. It is noted that the different types of Templeton soils are identified by the depth to gravels and subsoil texture, with the PC79 area mapped as a mixture of Templeton moderately deep (with 45 - 90 cm of soil overlying gravel), and Templeton deep (>90 cm to gravel). The textures were noted as sandy loam to silt loam.
38. Whilst the Paparua County report notes that the productive capacity of soils across the county is limited by '*the lack of adequate rainfall and stored soil moisture*', it clearly states that this varies significantly by soil type. Water balance calculations (table 4 of

¹² Carrick, S.T. 2002: Methodology for soil versatility evaluation in the Southland region. Landcare Research Contract Report: LC0203/013.

¹³ Webb, T.H.; Wilson, A.D. 1995: Classification of land according to its versatility for orchard crop production. *Landcare Research Science Series* 8. 31 p.

report) indicate that the soil moisture deficit over the summer ranged from 30 mm for the Templeton deep soils to 101 mm for the Templeton moderately deep soils, increasing to 141 mm for the shallow Eyre soils. As noted previously, the LUC 3 land on the Western boundary of Prebbleton is dominantly Eyre soils.

39. We note that in the applicant's Versatile soil report the soil moisture deficit section (points 42 - 45) is based on climatic data from the Burnham site, whilst the Paparua County report uses the Lincoln climate station, which is much closer to Prebbleton, and is located at the reference 'type' site for the Templeton soil. The applicants report also does not note the type of soil used to model the soil water deficits, which as shown by the Paparua County report will have a significant impact on the results.
40. In point 44 of the applicant's Versatile soil report it is claimed *'these soil moisture deficits demonstrate the critical need if agricultural productivity on the site is to be maximised'*. However as noted previously the tests under **subclause 3.6.2(c)** is focused on comparing options for *'rezoning different highly productive land that has relatively lower productive capacity'*. To meet the requirements of **subclause 3.6.2(c)** any conclusions around potential soil moisture deficit limitation should be a comparative evaluation against other soils that surround Prebbleton. As shown in the Paparua County report, the LUC 3 land on the western boundary of Prebbleton will have a greater soil moisture deficit, and thus a relatively lower productive capacity to the PC79 land.
41. Considerable emphasis is then given in the applicant's Versatile soils, Farm Consultant, and Planning reports to the difficulties of securing irrigation supply, and using this to justify a 'low' or 'limited' productive capacity. We note that the definition of productive capacity in **clause 1.3** is specific to a comparison of soil physical characteristics, not potential limitations such as water availability. However, we do note that the discussion in the implementation guidance document does mention availability of water as a factor that influences productive capacity. Our 'ordinary meaning principle' interpretation is that where there is a difference between the NPS-HPL and the Implementation guidance, that precedence should be given to the NPS-HPL wording as the base legal wording. Never-the-less to meet the requirements of **subclause 3.6.2(c)** any statements on the potential limitations of water availability should be a comparative evaluation against other soils and land that surround Prebbleton. As shown in the Paparua County report, the LUC 3 land on the western boundary of Prebbleton will have a greater irrigation water demand, and thus a relatively lower productive capacity to the PC79 land.
42. Whilst the Paparua County soil report recognises that summer soil moisture deficits are a production limitation across all soils in the county, it does clearly identify that the Templeton soils have a higher relative productivity and crop versatility, than other soils in the county. The Paparua County report contains specific chapters on landuse across the county, written by local experts from the then Ministry of Agriculture and Fisheries. Chapters cover Agriculture, Horticulture and Forestry, with specific production data for the county, and specific comparison of different soil types. The Templeton soils are consistently rated the best in the county.
43. The Agricultural chapter classes soils into 5 categories for dryland farming, with the Templeton soils classed as ML (Well drained medium and heavy land), noting *'Class ML soils are ideally suited to cash cropping combined with small-seed growing and fat*

lamb production. The main crops grown are wheat, barley, peas, potatoes and oats'. The Wakanui soils were classed as HL (imperfectly and poorly drained medium and heavy land), noting that this land is also intensively farmed *'used mainly for dairying for town milk production, and to a lesser degree for mixed cropping with sheep and cattle'*. The Eyre soils, on the LUC 3 land to the west boundary of Prebbleton, were classed as the lower rating LLe (Well drained light land), noting *'There is very little cropping and it is only on the more productive soils'*. This range of crops is still evident on the land between Lincoln and Prebbleton, including on the land parcels adjacent to PC79, as well as the Kimihia and Plant and Food arable crop research stations.

44. Considerable emphasis is given in the applicant's Versatile soils, Farm Consultant, and Planning reports to justifying a 'low' or 'limited' productive capacity for the PC79 land. This justification uses arguments around constraints of water availability, nutrient leaching limits, land holding size, reverse sensitivity and farm economic viability. However, as noted these factors are not specified as relevant in the definition of productive capacity in **clause 1.3**, and in the tests of comparative analysis of productive capacity in **subclause 3.6.2(c)**. As mentioned previously, if such factors were specified in clause 3.6 tests, they would have to be a comparative analysis with the other land surrounding Prebbleton, to justify that PC79 has a relatively lower productive capacity to other potential options. Further, as mentioned previously, the emphasis on these factors appears to be attempting to 'merge in' the intent of clause 3.10 in clause 3.6, which both the NPS-HPL and the Implementation guidance are specific to separate these clauses, and the nature of the tests under them.
45. We note that the NPS-HPL is clear that its overriding objective is *'HPL is protected for use in land-based primary production, both now and in for future generations'*. Land-based primary production is defined as being agricultural, pastoral, horticultural, or forestry activities. It does not specify that this needs to be limited to high intensity production, high input irrigated systems, or should only be protected if maximum productive capacity can be achieved. Within this context, we argue that much of the applicant's Versatile soils, Farm Consultant, and Planning reports efforts to justify that PC79 has a 'low' or 'limited' productive capacity is not relevant to evaluation under the intent and clauses of the NPS-HPL, and in particular the consideration of whether this area of HPL meets the relative comparative tests for urban rezoning under subclause 3.6. It is clear that PC79 is HPL that has the inherent capability to support a range land based primary production activities, as demonstrated from the current land use, surrounding current land-use, and the expert reports in the Paparua County soil report.
46. **Evaluation of PC79 under NPS-HPL subclause 3.6.3.** No specific evaluation is required under this subclause, as it is written to set the bounds by which the detailed evaluation should be conducted under subclause 3.6.1(b). We do note that Prebbleton also sits adjacent to Christchurch City with a strong rationale that it should be considered as being in the same locality and market as the adjacent suburbs of Halswell, Hornby and Wigram, all of which are also subject to the RMA-EHS enabled increase in feasible housing supply through medium density intensification.
47. **Evaluation of PC79 under NPS-HPL subclause 3.6.5.** We have conducted no specific evaluation under this subclause. We support the assessment provided in the s42 report

that there are other reasonably practical and feasible options that are already providing at least sufficient development capacity in the same locality and market. Whilst we agree with the S42 report author that PC79 fails on subclause 3.6.1a, and therefore does not need to be evaluated any further, we consider if the hearing commissioner considers this is not the case, then SDC is obliged to provide an evaluation under **subclause 3.6.5.**, which is specific that (underline our emphasis): 'Territorial authorities must take measures ...'