

**BEFORE HEARING COMMISSIONER
FOR SELWYN DISTRICT COUNCIL**

UNDER the Resource Management Act
1991

AND

IN THE MATTER of Private Plan Change
79 at Prebbleton

APPLICANTS Birchs Village Ltd

Summary of Section 42A Report of Jonathan Clease (Planning)

Dated: 3 May 2023

Introduction

1. My full name is Jonathan Guy Cleese. I am a Consultant Planner at Planz Consultants Ltd in Christchurch and my qualifications and experience are set out in my original section 42A report.
2. This statement summarises my s42a report. It responds to the matters raised in evidence by the applicant's team. It also responds to the planning evidence of Mr Kirk Lightbody on behalf of CCC and Ms Serena Orr on behalf of CRC (both of whom largely agreed with the conclusions reached in my s42a report).

Summary

3. Consideration of this plan change takes place in the context of there being a relatively complex overlapping series of NPS, CRPS, various growth strategies, and recent legislative changes to deliver medium density housing in appropriate locations.
4. In terms of process, this application is to amend the Operative Plan. The Operative Plan will be superseded in due course by the Proposed Plan, with decisions on the latter anticipated in late August. Decisions on Variation 1 to the Proposed Plan are subject to judicial review to the High Court only, however the balance of the Proposed Plan has followed a standard First Schedule process and as such is open to appeal on merit to the Environment Court. As such it is plausible that the Proposed Plan will not be fully settled for some time, and in the interim the Operative Plan will continue to have effect.
5. PC79 in essence asks the question of whether the purpose of the Resource Management Act is better achieved by retaining the site's existing Rural (Inner Plains) Zoning, or by rezoning it to a Living MD Zone and Business 1 Zone, as sought by the plan change proponents.
6. In answering that question, the key matter to consider is whether the proposed change in zone gives effect to two NPS, namely the NPS-UD and the NPS-HPL (assuming the latter NPS is indeed applicable to the application site). In order for the proposal to pass through the policy directions set out in these two NPS, it in turn needs to be demonstrated that:
 - a) 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;
 - b) PC79 is the best option for delivering that capacity;
 - c) The shape, location, and design of the plan change will result in a well-functioning urban environment; and
 - d) The site can be serviced for 3-waters and transport i.e. the capacity can actually be delivered.
7. As set out in the conclusion to my s42a report, I am satisfied that there are no barriers to rezoning generated by the following matters: the absence of significant natural or cultural values; geotechnical ground conditions and vulnerability to natural hazards; soil contamination; stormwater disposal, and water supply.
8. Mr Collins for Council and Ms Williams for the applicant appear to have reached an agreed position regarding transport effects and the need for several staging rules that limit the number of houses able to be developed until necessary improvements to the localised road network have been undertaken.

9. In terms of wastewater conveyancing, Council has always operated on a 'first come-first served' basis. As such, whilst some capacity in the Prebbleton pump station is available in the short term, this capacity will be utilised as PC68 and PC72 are built out. The provision of an additional pump station (or major upgrade), plus potentially a new rising main to the Pines WWTP are not insurmountable engineering challenges, but neither are they cheap pieces of infrastructure to deliver. Ultimately I consider that the lack of such infrastructure is not a reason in itself to decline the plan change as design solutions appear to be available, however it does mean that build-out of the site (to 15 hh/ha density) will not be possible without significant private investment and the necessary time it takes to design, consent, agree funding, and construct such infrastructure.

National Policy Statement – Urban Development ('NPS-UD')

10. The NPS-UD reflects Parliament's concern with housing supply (amongst other matters) and is directive in the steps necessary to help resolve some of the perceived barriers to the timely provision of new dwellings. Policy 8 in my view opens the door to consider urban growth proposals not otherwise anticipated in District/ Regional Plans.
11. In order to pass through the Policy 8 tests for out-of-sequence urban growth areas, PC79 needs to be able to demonstrate 4 matters:

- a) Does it provide significant development capacity? In the absence of any direction in the CRPS regarding what 'significant' might mean in a Canterbury context, I am comfortable that the provision of at least 530 or so dwellings readily meets the 'significant' threshold. This is consistent with the findings on other recent plan changes (including PC72 in Prebbleton) where proposals for fewer than 500 dwellings were found to meet the 'significant' threshold.

I do not consider that additional capacity is *required* (discussed in more detail below), however the NPS-UD has no issue if more than the minimum capacity is provided.

- b) Can it be serviced? In order for the capacity to be deliverable, it has to be able to be serviced. As discussed above, I am satisfied that it is plausible that roading and wastewater upgrades can be completed within a 10 year timeframe such that the proposal will add significant capacity, albeit that it is likely to be towards the latter end of that time period before the necessary infrastructure upgrades are in place and development has been undertaken.
- c) Does it support a reduction in green house gas ('GHG') emissions? This turns on how you compare alternatives. There is an alternative in terms of the existing land use i.e. a reduction in GHG occurs if the land is no longer used for grazing cattle or sheep, with a much smaller reduction if the land is used for cropping. There is a reduction in commuter traffic if the future residents would have in the alternative lived further out in Rolleston (and still worked in Christchurch rather than Rolleston), but an increase if in the alternative they work in Rolleston or chose to live closer to Christchurch in say Halswell. Or chose to own an electric vehicle versus an internal combustion engine. Or chose to install solar power and not LPG (noting that the PC79 rule package neither requires the former nor restricts the latter). Or chose to live in an alternative location in Prebbleton that is better located relative to the Prebbleton town centre. Findings on this matter appear to me to be somewhat fraught based on how the comparisons are made and the degree of speculation as to future transport patterns and modes. On balance the site may result in a reduction in GHG relative to other growth locations further west in Selwyn, but would likely result in an increase relative to alternatives located closer to the centre of Prebbleton or in Christchurch.

Ultimately I find this matter to be finely balanced with no conclusive evidence either way and simply note that the NPS-UD direction is to support a reduction in GHG rather than to require a reduction and as such is less directive than some of the other NPS requirements.

d) Does it result in a 'well-functioning urban environment'.

NPS-UD Policy 1 sets out the minimum qualities that a 'well-functioning urban environment' must have. These criteria are minima rather than the sole determinants. Chapter 6 of the CRPS and the Operative Plan policy framework help to add further detail as to how a well-functioning urban environment might be delivered in Selwyn. As such I consider that matters such as urban form and shape, the degree of connection to existing residential areas, and the degree to which the plan change pushes to the north or south relative to the east or west are necessarily in play when assessing what 'well-functioning' means in the context of Prebbleton.

The site presents as a triangular wedge projecting out into the rural environment. It has minimal direct connection with the existing residential edge, being bounded to the north by a 3ha Orion substation and large rural residential development thereafter. Kakaha Park to the east means that the site is well located relative to public open space. I accept that a large district park is not a rural activity, but neither is it residential or urban in a landscape sense of being dominated by buildings rather than open space. In my view the park, at 20ha in size, functions as a large open space buffer to the southern urban edge of the town, rather than an extension of urban activity per se.

In my view, the site's location only makes sense from an urban form perspective if it forms part of a much larger growth area to the southwest of Hamptons road. This future growth area is shown conceptually in the evidence of Mr David Compton-Moen for the applicant (Appendix 1 (sheet 6)). Mr Compton-Moen acknowledges that due to the presence of a number of rural lifestyle properties, westward urbanisation from the site is likely to be fragmented with a number of 'infill 2' areas shown in Appendix 1 unlikely to be redeveloped. Personally, I consider the NPS-HPL to be a larger constraint on westward expansion than the presence of a number of 4ha blocks – most urban growth areas around the Inner Plains townships have for many years been comprised of the consolidation of 4ha blocks. As it stands, the site is a large projection into the rural area with minimal shared boundaries with the existing suburban/ residential edge of the township, and is likely to remain as such for the foreseeable future with further development to the west speculative at best. Mr Nicholson provides a more detailed assessment of urban form outcomes. As such I consider that it does not result in a well-functioning urban environment and therefore does not pass the NPS-UD Policy 8 tests.

For completeness, I do note that the proposed amendments to the ODP in terms of roading alignment, edge treatment, stormwater basin location, and the additional commentary all assist in improving localised urban design outcomes. They cannot however overcome the fundamental issue with the site's shape and location.

National Policy Statement – Highly Productive Land ('NPS-HPL')

12. The NPS-HPL provides a very directive framework for how urban growth is to be managed. The site is LUC 1 and 2 land, and therefore is deemed to be HPL until such time as the Canterbury Regional Council undertakes a more fulsome mapping exercise. Evidence of any constraints on

the productive use of this land are therefore at best only relevant in terms of inputting into the costs and benefits assessment undertaken as part of clause 3.6(1)(c).

13. I note that there appears to be a degree of conflation between protecting the ability of HPL to be used for primary production, versus whether or not any given landholding is able to operate as a fully self-contained economic farming unit. In my view the NPS-HPL is interested in the former not the later.
14. As an aside, I note that both Mr Victor Mthamo (para. 11(d)) and Mr Everest (paras. 38-46) for the applicant raise concerns about reverse sensitivity from the nearby district park and the limitations that such a sensitive activity might place on productive use of the site for rural activities. Whilst I do not agree that a park is such a sensitive use that reverse sensitivity effects would be generated, if the plan change proponent is indeed finding that reverse sensitivity complaints generated from itinerant park users separated by a collector road are a major constraint to farming activities, then the PC79 site must generate an even greater effect on the farmland to the west and south, as housing is necessarily more sensitive to amenity effects than occasional park users.
15. Since I wrote my s42a report, I have had the benefit of reviewing the legal submissions regarding whether or not the NPS-HPL applies to the Rural (Inner Plains) Zone, or at least does not apply to this specific part of that zone, on the basis that the existing uses of the site have more of a lifestyle than a farming focus.
16. The use of land must necessarily consider the outcomes anticipated for the zone. The Operative Plan has a single rural zone. This one zone has differing minimum density standards to reflect differing landscape outcomes i.e. the Inner Plains part of the Rural Zone has a 4ha minimum, compared with a 20ha minimum in the Outer Plains, and much larger minimums in the more hilly parts of the rural zone.
17. As an 'effects-based' plan, activities are controlled via rules on matters such as noise, odour, and hazardous substances¹ rather than permitted activity lists. Apart from minimum subdivision size, there are minimal differences in the land use rules applying to the Rural (Inner Plains) or Rural (Outer Plains) part of the zone. Across both parts of the Rural Zone:
 - the boarding of animals i.e. kennels or catteries is a restricted discretionary activity (subject to setbacks)²;
 - the expansion of existing piggeries is a controlled activity³, and the establishment of new intensive livestock production is a restricted discretionary activity⁴;
 - the establishment of new dairy farms is permitted (where on land adjoining a milking shed) or otherwise is restricted discretionary activity;
 - the use of audible bird scaring devices is permitted (subject to standards)⁵;
 - the use of blasting is permitted (subject to standards)⁶;

¹ Operative Plan, Rural Volume, Part C, Chapter 9, note 1

² Rule 9.9.1

³ Rule 9.10.1

⁴ Rule 9.10.3,

⁵ Rule 9.15.1

⁶ Rule 9.16.4

- non-rural activities are permitted (subject to limits on size) and are discretionary thereafter⁷;
 - The only activity-based rule difference between the inner and outer plains areas that I am aware of is where over-sized rural industry is a discretionary activity if located in the outer plains and a non-complying activity if located in the inner plains⁸.
18. The rule framework for activities is therefore essentially identical for both the inner and outer plains portions of the Rural Zone, namely it is a framework that provides for a wide variety of rural production and farming activities (subject to meeting various effects-based standards). In my experience Rural Lifestyle Zones in District Plans (and the Living 3 zone in the Operative Plan) have a rule package that is much more akin to what would be expected in a residential zone i.e. rules are designed to maintain residential amenity rather than facilitate rural production.
 19. In summary, the District Plan must give effect to the CRPS. Chapter 6 of the CRPS defines 'rural activities' as including residential activities on sites of 4ha or more, whilst making explicit provision for rural residential development at densities between 0.5ha-1ha in defined areas. Such provision is limited to maintain rural character and rural production values (which are deemed to be maintained on sites of 4ha or more). The District Plan provides for a series of rural residential areas as Living 3 Zones, with the Rural (Inner Plains) Zone to deliver rural outcomes, in alignment with the CRPS.
 20. In my experience the mix of title sizes on the application site is typical of the range found across much of the Rural (Inner Plains) Zone, and indeed across the adjacent Rural Urban Fringe Zone in Christchurch City. A finding that the NPS-HPL does not apply to the use of this specific block based on landuse is therefore likely to be replicable across much of the wider area as the lot size mix is not untypical.
 21. The outcome of the NPS-HPL being unlikely to apply on a case-by-case basis across much of the rural farmland surrounding Greater Christchurch would appear to me to be contrary to the very purpose of the NPS-HPL which is to prevent the further loss of HPL and the 'death by a thousand cuts' fragmentation that has occurred under piecemeal urbanisation. Urbanisation is of course only likely to be an issue in rural locations that surround larger metropolitan centres where a prevalence of smaller rural landholdings is common.
 22. On the basis that the NPS-HPL does apply, then its direction is clear that HPL is to be protected and its urbanisation is to be avoided⁹, unless the three conjunctive tests set out in clause 3.6 are all able to be met.
 23. The first test under clause 3.6 requires there to be a clear shortfall in capacity over the medium term, which I do not consider to be the case. The Formative report uses the Statistics New Zealand 'high' growth projection. It finds that some 420 new houses are required over the coming decade. There is no debate that capacity of some 1,200 houses (equivalent to more than 50% of the existing township) is available over this time period through PC68, PC72, and very modest uptake of medium density opportunities primarily in the greenfield areas. Even if the Formative report and the Statistics New Zealand high growth projections turn out to be too conservative, and growth is double that projected, then sufficient capacity is still available in Prebbleton.

⁷ Rule 9.4.2

⁸ Rule 9.5.2 cf. 9.5.3

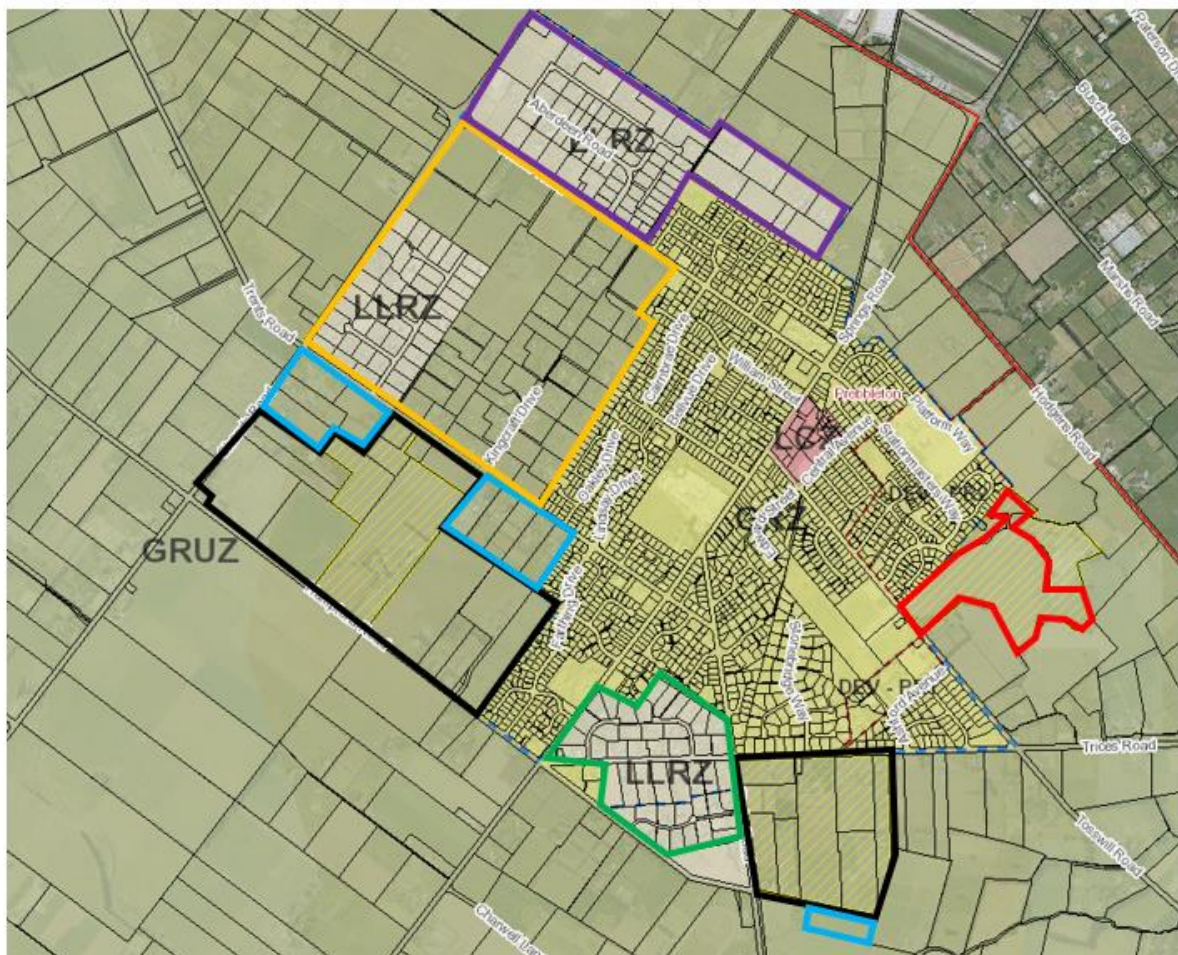
⁹ NPS-HPL Objective 1 and Policy 5

24. For PC79 to pass through the first Clause 3.6 test, the required minimum required capacity has to be found to be treble that determined in the Formative report. Even were three times demand to eventuate, it would only do so at the back-end of the next ten years. Council is required through the NPS-UD to continually monitor uptake, to produce a new capacity assessment every three years, and to respond as necessary. Importantly, Clause 3.6(5) emphasises that only the minimum capacity necessary to make up any medium-term shortfall is to be provided. If there is uncertainty then a precautionary approach is to be adopted where HPL is concerned to ensure no more than the minimum is rezoned. Clarity as to what the 'minimum' is will only able to be determined well into the 10-year cycle, especially where significant capacity is currently available and therefore estimates of future shortfalls are speculative.
25. As an aside, I note that the opportunity for mana whenua to invest commercially in property development is a separate matter to capacity or housing typology considerations. It would legitimately form part of the benefits of the plan change in a s32 assessment along with the benefits of the subdivision design reflecting cultural values, however it is different to the provision of papakāinga housing which in my experience is typically housing that is located on traditional mana whenua landholdings and is for the sole occupation of mana whenua.
26. In the event that a shortfall in medium term capacity is able to be made out, then Clause 3.6(1)(b) requires an assessment of alternatives that demonstrates that there are no other options that would not also result in the loss of HPL. Such alternative options would include areas that are already identified for urban growth through an Urban Growth Overlay in the Proposed Plan, the intensification of areas of large Lot Residential zoning or rural lifestyle blocks, or the rezoning of any small, isolated pockets of rural zoned land remaining following the PC68 and PC72 processes i.e. an assessment of Clause 3.6(2) matters.
27. In order for capacity to be considered in terms of the NPS-UD, it has to be both zoned and serviced. From my reading of NPS-HPL clause 3.6(2) and 3.6(5), the options assessment of potential alternative locations does not require such areas to be already rezoned (as if they were already zoned they would be confirmed capacity rather than an alternative option), rather the options assessment simply needs to consider possible alternative locations where capacity could plausibly be provided within the medium term, whilst minimising the loss of HPL and still delivering a well-functioning urban environment.
28. Potential alternative locations/ options for providing any required shortfall in capacity are shown in Figure 1 below.
29. The below option areas are as follows, with capacity if developed over time to 15hh/ha in greenfield areas, and conservatively only 5hh/ha in large lot areas (were these to be rezoned to enable an increase in density, and accounting for slow take-up), and with base zoning as shown in the Proposed Plan:
- For context PC68 to the west and PC72 to the east are shown in black. These two areas are some 95ha/ 1,425 households (at 15 hh/ha);
 - The area in red is a greenfield area identified in the Proposed Plan as having an Urban Growth Overlay (and therefore is not HPL). The landowners have lodged a submission (V1-0029) on Variation 1 to be zoned for MDRZ – 16.5ha/ 247 households.
 - The area in green is an existing LLRZ area (and therefore is not HPL). The landowners on the northern side of Trices Road have lodged a submission (V1-0070) on Variation 1 to

be rezoned to MDRZ - 12ha/ 60 households. The total area is approximately 25.5ha/ 127 households;

- The areas in Blue are greenfield General Rural Zone (and therefore are HPL). They are residual areas remaining following PC68 and PC72 processes. Given their location they are likely to be able to demonstrate that they are small, discrete areas of LUC 1-3 land that are separated from any large or cohesive area of LUC 1-3 land (NPS-HPL clause 3.4(5)(d)). Rezoning of them would 'square-up' the edges of the township and result in a preferable urban form outcome to PC79. In total they are 22.2ha/ 333 households;
- The area in orange is a mix of LLRZ, 0.5-1ha lifestyle blocks (an 'Existing Development Area' in the Operative Plan), and General Rural Zone. Portions of this area are HPL. In total this area is made up of some 25ha/ 375 households as greenfield General Rural Zone and 81 ha/ 405 households of large lot/ lifestyle development;
- The area in purple is an existing LLRZ (and therefore not HPL) – 52ha/ 260 households.

Figure 1. Alternative capacity options



30. These options collectively provide for some 238.7ha/ 1,747 households over and above the significant capacity already provided by PC68 and PC72. If Mr Colgrave's estimates are found to be correct, it requires an additional capacity of between 255-570 households to be identified. Even if the only areas considered are the intensification of the greenfield land within the Urban

Growth Overlay and the residual land remaining from the PC68 and 72 areas (the red and blue areas), then that still equates to an additional 115ha/ 580 households.

31. In order for PC79 to pass the clause 3.6(3) and (5) tests, all of the above alternative options would need to be shown to be demonstrably implausible. As noted above, Clause 3.6(5) requires that only the minimum HPL necessary to meet any shortfall in capacity is to be rezoned. As such if the Commissioner finds that any of the above alternatives are plausible, then the amount of PC79 to be rezoned must be reduced by the corresponding amount.
32. In the event that three times the capacity estimated in the Formative report is found to be necessary, and that none of the above alternative locations are plausible, then a full assessment of costs and benefits under clause 3.6(1)(c) is necessary. I accept that if the first two NPS-HPL tests are able to be made out, and the NPS-UD test of a well-functioning urban environment is likewise found to be met, then it is likely that the proposal will be able to pass a costs and benefits assessment.
33. As things stand, I do not consider the very clear and directive provisions of the NPS-HPL have been met.
34. Because of my conclusions that the site location and shape does not result in a well-functioning urban environment, Policy 8 of the NPS-UD is also not able to be met. As such the directive policies in the CRPS regarding urban growth locations remain in play, as do the other CRPS policies that help to inform urban growth decisions. In my s42a report I concluded that rezoning the site would not give effect to the CRPS, and likewise was not consistent with a number of policies in the Operative District plan.
35. I therefore continue to recommend that PC79 should be declined.



Jonathan Cleese

Consultant Planner

3 May 2023