

Before the Selwyn District Council

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*under:* the Resource Management Act 1991

*in the matter of:* Proposed Private Plan Change 80 to the Operative District Plan

*and:* **Two Chain Road Limited**  
*Applicant*

Opening legal submissions on behalf of the applicant

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Dated: 20 October 2022

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## OPENING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANT

### INTRODUCTION

- 1 This hearing will determine private plan change 80 (*PC80*), a request by Two Chain Road Limited, a subsidiary of Carter Group Limited (the Applicant), to the Selwyn District Council (the *Council*) to change the Operative Selwyn District Plan (the *District Plan*) to rezone approximately 98 ha of rural land in Rolleston to Business 2A Zone (being equivalent to an industrial zoning).
- 2 PC80 includes an ODP and a tailored rule set which have either been proposed or agreed by the Applicant as a way to mitigate adverse effects, and to address concerns raised by the Council and submitters through this process as set out in the evidence of **Ms Seaton**.
- 3 These legal submission set out the key legal considerations as we see them relevant to PC80, including:
  - 3.1 The relationship between the Canterbury Regional Policy Statement (the *CRPS*) and the National Policy Statement on Urban Development 2020 (the *NPS-UD*);
  - 3.2 The recently released National Policy Statement on Highly Productive Land 2022 (the *NPS-HPL*); and
  - 3.3 The no complaints covenant sought by the New Zealand Defence Force (*NZDF*).

### THE NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020 AND THE CANTERBURY REGIONAL POLICY STATEMENT

- 4 The first issue we address is the interaction between the CRPS and the NPS-UD.
- 5 The CRPS, in summary, directs that urban development falling outside of the greenfield priority areas shown in Map A is to be 'avoided'.<sup>1</sup>
- 6 This was raised in the submission of Environment Canterbury (*ECan*). *ECan*'s submission goes on to acknowledge that planning decisions must now also give effect to the NPS-UD, and the responsive planning framework provided under Policy 8.

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<sup>1</sup> CRPS, Objective 6.2.1.3

- 7 Policy 8 of the NPS-UD provides:

*Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

- (a) unanticipated by RMA planning documents; or*
- (b) out-of-sequence with planned land release.*

- 8 At previous hearings, which the Commissioner was also involved in, ECan argued that Policy 8 of the NPS-UD could not be relied on to enable the rezoning of land outside of the greenfield priority areas because of the strong directives in the CRPS.

- 9 It does not appear ECan are making the same argument here. But for completeness, we say:

9.1 The NPS-UD and the CRPS are able to be read together in a way that reconciles the apparent inconsistencies between the two documents;

9.2 To do so, the NPS-UD must be given more weight as a clear national level direction which is both a higher order document, and later in time, than the CRPS (noting that the CRPS will in its next review have to give effect to the NPS-UD);

9.3 It is appropriate to 'read down' or 'soften' the interpretation of 'avoid' in the CRPS to give effect to the NPS-UD (at least until such time as the CRPS gives full effect to the NPS-UD, which would require an amendment to objective 6.2.1.3 in the CRPS). This is done by grafting a limited exception onto the objective where a development could meet the NPS-UD because it adds significantly to development capacity and contributes to a well-functioning urban environment. Therefore, read in light of the NPS-UD, the objective in the RPS should now be read as meaning "except if otherwise provided for in the NPS-UD, avoid..."

- 10 The rezoning of the PC80 site is unanticipated by RMA planning documents and out-of-sequence with planned land release. Therefore, to be capable of grant under Policy 8 of the NPS-UD, it must be demonstrated that rezoning would:

10.1 firstly, add significantly to development capacity; and

10.2 secondly, contribute to a well-functioning urban environment.

- 11 There can be no doubt that the rezoning of this 98 ha site will add significantly to development capacity for the district and the region. It is a substantial area. This is demonstrated by the evidence of **Ms Hampson, Mr Carter, Mr O'Styke, and Mr Staite**.
- 12 In terms of contributing to well-functioning urban environments, this is evidenced by **Mr Compton-Moen, Ms Lauenstein, Mr Fuller, and Mr Farrelly**.
- 13 PC80 would add significantly to development capacity and would contribute to well-functioning urban environments, and is therefore capable of grant despite the avoid directives in the CRPS.

#### **THE NATIONAL POLICY STATEMENT ON HIGHLY PRODUCTIVE LAND 2022**

- 14 The NPS-HPL came into force on 17 October 2022. It generally provides a framework for the avoidance of urban development on land considered 'highly productive', with some limited exceptions.
- 15 Regional Councils are required to map highly productive lands within their regions no later than 3 years after the commencement date of the NPS-HPL.<sup>2</sup> In the meantime, land is considered to be highly productive if at the commencement date of the NPS-HPL:<sup>3</sup>

##### 15.1 it is:

- (a) zoned general rural or rural production; and
- (b) LUC 1, 2, or 3 land; but

##### 15.2 is not:

- (a) identified for future urban development; or
- (b) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

- 16 At the commencement date, the PC80 site:

- 16.1 was zoned 'inner plains', which is a rural zoning (noting that the inner plains zone was notified as general rural zone under the proposed plan process);

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<sup>2</sup> NPS-HPL, clauses 3.4 and 3.5.

<sup>3</sup> NPS-HPL, clause 3.5(7).

- 16.2 comprised approximately 18 ha of LUC 3 class soils (*LUC 3 Land*) on the eastern edge of the site; and
  - 16.3 was not identified for future urban development; and
  - 16.4 was not subject to a Council initiated or adopted notified plan change to rezone.
- 17 The LUC 3 Land within the site is therefore 'highly productive land' for the purposes of the NPS-HPL.

**The objectives and policies**

- 18 The objectives and policies of the NPS-HPL relevant to this application are set out below:

**Objective:** *Highly productive land is protected for use in land-based primary production, both now and into the future.*

**Policy 1:** *Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.*

**Policy 2:** *The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.*

**Policy 4:** *The use of highly productive land for land-based primary production is prioritised and supported.*

**Policy 5:** *The urban rezoning of highly productive land is avoided except as provided in this National Policy Statement.*

**Policy 8:** *Highly productive land is protected from inappropriate use and development.*

**Policy 9:** *Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*

- 19 These are borne in mind as we move through the other clauses, and in particular the exceptions provided to the various policies.
- 20 It is clear that the NPS-HPL does not seek to provide absolute protection of highly productive land, nor does it specify that there should be no loss of highly productive land within a region or district.<sup>4</sup>

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<sup>4</sup> NPS-HPL, s 32 evaluation report, at p 6.

**Clause 3.6: Restricting urban rezoning of highly productive land**

- 21 PC80 proposes to rezone the LUC 3 land urban (noting that 'urban' is defined in the NPS-HPL as including all industrial zones<sup>5</sup>). Clause 3.6 therefore applies to PC80.
- 22 Clause 3.6 provides a pathway for the urban rezoning of highly productive land, where:<sup>6</sup>
- (a) the rezoning is required to provide sufficient development capacity to meet demand for business land to give effect to the NPS-UD; and
  - (b) there are 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; and
  - (c) the environmental, social, cultural, and economic benefits of rezoning outweigh the long-term costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
- 23 Further, territorial authorities must take measures to ensure that 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.<sup>7</sup>
- 24 We step through each of these subclauses below.
- (a) Is the rezoning required to provide sufficient development capacity to meet demand for business land to give effect to the NPS-UD?***
- 25 The NPS-UD requires Councils to, at all times, provide at least sufficient development capacity to meet expected demand for business land over the short term, medium term, and long term.<sup>8</sup>
- 26 In order to be 'sufficient' to meet the expected demand for business land, the development capacity provided by Councils must be:<sup>9</sup>

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<sup>5</sup> NPS-HPL, clause 1.3(1).

<sup>6</sup> NPS-HPL, clause 3.6(1).

<sup>7</sup> NPS-HPL, clause 3.6(5).

<sup>8</sup> NPS-UD, Policy 2.

<sup>9</sup> NPS-UD, clause 3.3(2).

26.1 plan-enabled, which means:<sup>10</sup>

- (a) in relation to the short term, it is on land zoned for business use in an operative district plan;
- (b) in relation to the medium term, either (a) applies, or it is on land that is zoned for business use in a proposed district plan;
- (c) in relation to the long term, either (b) applies, or it is on land identified by the local authority for future urban use or urban intensification in a future development strategy (or other relevant plan or strategy).

26.2 infrastructure-ready, which means:<sup>11</sup>

- (a) in relation to the short term, there is adequate existing development infrastructure to support the development of the land;
- (b) in relation to the medium term, either (a) applies, or funding for adequate development infrastructure to support development of the land is identified in a long-term plan;
- (c) in relation to the long term, either (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).

26.3 suitable to meet the demands of different business sectors including for commercial, retail, or industrial uses (particularly with regard to location and site size);<sup>12</sup> and

26.4 meet the expected demand plus the appropriate competitiveness margin.<sup>13</sup>

- 27 **Ms Hampson's** evidence demonstrates that the current Council demand modelling for industrial land shows insufficient industrial capacity to meet long term demand. **Mr Foy's** peer review of the economic evidence appears to agree with this conclusion.

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<sup>10</sup> NPS-UD, clause 3.4(1).

<sup>11</sup> NPS-UD, clause 3.4(2).

<sup>12</sup> NPS-UD, clause 3.28 and 3.29.

<sup>13</sup> Being 20% for the short and medium term, and 15% for the long term; NPS-UD, clause 3.22.

- 28 The rezoning is therefore required in order to provide sufficient development capacity to meet business demand to give effect to the NPS-UD as development capacity for business land (and more specifically industrial land) is not currently 'sufficient' into the long term as defined by the NPS-UD.

***(b) Are there 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?***

- 29 The NPS-HPL goes on to provide that development capacity is 'within the same locality and market' if it:<sup>14</sup>
- 29.1 is in or close to a location where a demand for additional capacity has been identified through a Housing and Business Assessment (*HBA*) (or some equivalent document) in accordance with the NPS-UD; and
  - 29.2 is for a market for the types of business land that is in demand (as determined by the HBA in accordance with the NPS-UD).
- 30 The most recent business capacity assessment undertaken by the Greater Christchurch Partnership was the Business Development Capacity Assessment dated March 2018 (*BDCA 2018*). There has been no further publication of sufficiency results by Council.<sup>15</sup>
- 31 As demonstrated by the evidence of **Ms Hampson**, the BDCA 2018 is out of date and is likely to have under-estimated long-term demand for industrial land in Rolleston, and therefore overstated long-term sufficiency of industrial land.
- 32 We further note that the BDCA 2018 was prepared under the previous National Policy Statement on Urban Development Capacity 2016. Therefore, the BDCA 2018 was not prepared or determined in accordance with the NPS-UD, as it was prepared prior to that NPS even coming into existence.
- 33 Where an HBA for a particular locality/market has not been prepared in accordance with the NPS-UD, it is necessary to look to other information and evidence to demonstrate whether:
- 33.1 the location is close to a location where a demand for additional capacity has been identified; and

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<sup>14</sup> NPS-HPL, clause 3.6(3).

<sup>15</sup> Evidence of **Ms Hampson**, at [14].



33.2 the market is for a market for the types of business land that is in demand.

34 In terms of location, this goes to what is defined as the 'urban environment' under the NPS-UD. An 'urban environment' is defined so broadly in the NPS-UD that it can encompass a number of varying and overlapping urban environments.<sup>16</sup> For example, in this context, the urban environments of Rolleston, Selwyn, and Greater Christchurch will be of differing degrees of relevance.

35 Here, the urban environment of Rolleston is the most relevant, as Rolleston is a key activity centre, the main industrial hub for Selwyn, and is serviced by two key rail lines. An industrial operator looking to establish in Rolleston is unlikely to look much further. To look further to Selwyn or Greater Christchurch would not be appropriate as the industrial zones within these urban environments are clearly not within the same 'locality' as Rolleston.

36 In terms of the market, the evidence of **Ms Hampson, Mr O'Styke, and Mr Staite** all demonstrate that there is a specific market for this particular type of business land, particularly in this location.

37 We turn now to whether there are other reasonably practicable and feasible options for providing this development capacity within the same locality and market while achieving a well-functioning urban environment.

38 In terms of what is to be considered 'reasonably practicable and feasible', the s 32 evaluation report for the NPS-HPL is of some assistance in that it recognises that:<sup>17</sup>

38.1 Case law on the term 'reasonably practicable' has emphasised this is not an absolute, but rather an objective test that must be considered in an overall weighing exercise.<sup>18</sup>

38.2 While clause 3.6(2) requires the consideration of whether the following might be reasonably practicable options:

(a) greater intensification in existing urban areas;

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<sup>16</sup> NPS-UD, clause 1.4(a): "urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

(a) is, or is intended to be, predominantly urban in character; and

(b) is, or is intended to be, part of a housing and labour market of at least 10,000 people"

<sup>17</sup> NPS-HPL, s 32 evaluation report, at p 75-76.

<sup>18</sup> *Royal Forest and Bird Society of New Zealand Incorporated v Whakatane District Council* [2017] NZEnvC 51.

- (b) rezoning of land this is not highly productive land as urban; and
- (c) rezoning different highly productive land that has a relatively lower productive capacity.

These three options can be discounted if they are not 'feasible' and/or do not achieve a well-functioning urban environment. Just because one of the options is available does not mean that the proposed urban rezoning cannot proceed.

38.3 Well-planned urban growth on the urban edge and on highly productive land will generally be preferred over sporadic urban development on non-highly productive land away from urban centres with less cohesion, accessibility, diversity and so on.

39 We attach at **Appendix 1**, a map of the various constraints applying to development in Rolleston. This demonstrates that there are no other reasonably practicable and feasible options for providing further industrial land, noting that:

39.1 It would not result in a well-functioning urban environment to rezone any land south of State Highway 1 (SH1) industrial. This highway, along with the rail corridors provides a 'hard' urban boundary separating urban residential, commercial and community growth to the south of SH1, and industrial to the north.<sup>19</sup> For many reasons, it simply would not be appropriate to rezone any land south of SH1 as industrial.

39.2 To the east and north of the existing IZone and Midland Port are large continuous areas of LUC classed 2 and 3 soils. These are likely to be more productive than the LUC 3 Land in question, given the size of those sites, and the constraints that exist for the PC80 site (as set out in more detail below).

39.3 The PC80 site is located west of the IZone. There is other land west of the IZone which could well be utilised for industrial zoning (which is not highly productive land, or at least contains less highly productive land than the LUC 3 Land). However, using only that land would not result in a well-functioning urban environment as it would result in a 'gap' or 'pocket' between SH1 and any proposed industrial zone of rural zoned land surrounded on three sides by urban zoning.

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<sup>19</sup> Evidence of **Ms Lauenstein**, at [24].

***(c) Do the costs outweigh the benefits?***

- 40 The benefits of PC80 from an environmental, social, cultural, and economic have been set out extensively in the application and the evidence on behalf of the Applicant.
- 41 In terms of the environmental, social, cultural, and economic costs of the rezoning associated with the loss of highly productive land for land-based primary production, the evidence of **Mr Mthamo, Mr Turner, and Mr Everest** demonstrates that the costs of this loss would not be significant as the LUC 3 Land within the PC80 site has a number of long-term constraints that means it could not be used for economically viable land-based primary production for at least 30 years (discussed in more detail below).
- 42 The benefits therefore outweigh the costs, and substantially so.

**Clause 3.10: Exemption for highly productive land subject to permanent or long-term constraints**

- 43 In coming to the conclusions above on clause 3.6, it is helpful to look at the exemption in clause 3.10 to inform the clause 3.6 analysis. Particularly around what can be considered another reasonably feasible option, consideration of land that has relatively lower productive capacity, as well as with regard to the costs/benefits analysis.
- 44 For the clause 3.10 exemption to apply, the following criteria must be met:
- (a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and
  - (b) the subdivision, use, or development:
    - (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and
    - (ii) avoids fragmentation of large and geographically cohesive areas of highly productive land; and
    - (iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and
  - (c) the environmental, social, cultural, and economic benefits of rezoning outweigh the long-term costs associated with the loss of highly productive land for

land-based primary production, taking into account both tangible and intangible values.

- 45 We have described the costs and benefits and their proportionate weight at paragraphs 40-42 above.
- 46 With respect to (b), the evidence of **Mr Mthamo** and **Mr Everest** demonstrates that PC80 will avoid significant loss of productive capacity in the district (including cumulative), avoid fragmentation, and avoid reverse sensitivity effects on surrounding land-based primary production.
- 47 We go on to consider the permanent or long-term constraints, and economic viability of the site.

***Permanent or long-term constraints, and economic viability of the site***

- 48 The NPS-HPL provides that in order to satisfy a territorial authority of the requirement in (a), an applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options<sup>20</sup> that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):

- 48.1 alternate forms of land-based primary production;
- 48.2 improved land-management strategies;
- 48.3 alternative production strategies;
- 48.4 water efficiency or storage methods;
- 48.5 reallocation or transfer of water and nutrient allocations;
- 48.6 boundary adjustments (including amalgamations); and
- 48.7 lease arrangements.

- 49 The evidence of **Mr Mthamo** and **Mr Everest** both demonstrate that there are two key long term (and most likely permanent) constraints that apply to the land:

*Soil moisture deficits and irrigation availability*

- 49.1 **Mr Mthamo** in his evidence has set out the soil moisture deficits for the site and has estimated the likely volumes of irrigation that would be required.

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<sup>20</sup> Refer to paragraph 38 above also for guidance on what is 'reasonably practicable'.

49.2 Both **Mr Mthamo** and **Mr Everest** note that the Selwyn-Waimakariri Groundwater Zone is over allocated, making any new applications to take groundwater for irrigation prohibited activities under the Canterbury Land and Water Regional Plan (CLWRP). Further, to obtain a consent to transfer existing irrigation water rights to another location would be difficult and require the acquisition of a consent that is double the annual volume required for the irrigation of the site.<sup>21</sup>

49.3 **Mr Everest** suggests the only way it might be possible to obtain irrigation water is from the Central Plains Water irrigation scheme (CPW). He notes based on his experience this option would only be available if the whole of the PC80 site was proposed to be irrigated (i.e. not just the LUC 3 Land).<sup>22</sup>

49.4 Neither **Mr Mthamo** nor **Mr Everest** consider that this constraint is likely to change over the next 30 years, particularly given:

- (a) climate change induced increases in irrigation water demand; and
- (b) the increasing shortages in irrigation consents available for transfer due to the demand for these and the fact that no new consents for irrigation purposes are being granted within the zone.

*Nutrient discharge constraints*

49.5 The second constraint identified by both **Mr Mthamo** and **Mr Everest** relates to the restrictions in the CWLRP in relation to nutrient discharges.

49.6 Selwyn-Te Waihora catchment is zoned as over allocated with respect to nutrient losses. The CLWRP requires that baseline nutrient budgets be established based on the farming activities of a particular site during the period 2009-2013. Future nitrogen leaching rates under the CLWRP are required to not exceed the baseline rates and where these already exceed 15 kg N/ha/year, further reductions are required.

49.7 **Mr Mthamo** goes on to demonstrate how reductions in nitrogen application reduces crop yield somewhat significantly, and therefore revenue.

49.8 For the blocks making up the PC80 site, productivity has always been low. Therefore, the baseline nitrogen leaching

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<sup>21</sup> Evidence of **Mr Mthamo**, at [57.2].

<sup>22</sup> Evidence of **Mr Everest**, at [14].

rates are also very low. This in turn restricts the productivity and yield of the PC80 site. **Mr Everest** also states that higher LUC classified soils require more nutrients to produce the same output as lower (i.e. better) classified soils. And that by allowing intensification of those classes of land over the other, more productive classes, has the effect of constraining productivity growth for the catchment.<sup>23</sup>

49.9 **Mr Everest** notes that CPW may have nutrient load available, but that this is allocated on a case by case basis (with dryland conversion generally granted a relatively conservative nutrient allocation). There is significant uncertainty as to whether this would ever be allocated to this particular site.

49.10 Neither **Mr Mthamo** nor **Mr Everest** consider that this constraint is likely to change over the next 30 years, particularly given the current observable issues with nutrient concentrations in groundwater are primarily from activities dating between the 1970s and early 2000s, with the effects of the more recent intensification (1980s to present) manifesting over the next several decades such that, if anything, limits on nutrient use and allocation are likely to become stricter in the future.

50 Other constraints identified by **Mr Mthamo** and **Mr Everest** as either permanent or long-term are reverse sensitivity effects and fragmentation. Both of which are themselves recognised as potential constraints on land-based primary production in the NPS-HPL itself.

51 With respect to fragmentation, it is unlikely that ECan would even map the LUC 3 Land as highly productive when it comes to undertaking the mapping contemplated under the NPS-HPL because it does not form part of a larger and geographically cohesive area and is separated from other larger and cohesive highly productive land by both natural and non-natural boundaries.<sup>24</sup> **Mr Mthamo** will elaborate on this point in his summary.

52 We now move onto demonstrate that these permanent or long-term constraints on the land mean that land-based primary production on the LUC 3 Land would not be economically viable for at least 30 years. This is covered by the evidence of **Mr Everest**. In his view, 'economic viability' for a farming business must be able to:

52.1 remunerate the owners of the land (if they are owner operators) equivalent to the weighted average salary of employees in the agricultural sector, scaled pro rata based on

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<sup>23</sup> Evidence of **Mr Everest**, at [25].

<sup>24</sup> NPS-HPL, cl 3.4.

the amount of time required to run the “farm”. The average remuneration for agricultural employees in the 2022 Federated Farmers – Rabobank Farm Remuneration Report is \$67,567; and

52.2 generate a Return on Capital (RoC) acceptable for the class of country. On flat land in Canterbury, RoC should be at least 4.0%.

53 **Mr Everest** considers a number of different farm systems that might establish on the site and has prepared financial budgets for these.<sup>25</sup> This is done on the (uncertain) assumption that CPW irrigation water could be made available, and therefore that the entire PC80 site is being farmed. These systems were chosen so as to demonstrate the most likely profitable systems that could feasibly establish on the site (i.e. based on what might be allowed given the expected nutrient budgets).

54 **Mr Everest** found (noting his assessment has been refined in his summary) that while some of options would remunerate the owners above the required threshold, none of the options generate a high enough RoC to be economically viable. In coming to this conclusion, Mr Everest has considered whether economic viability could be addressed through the reasonably practicable options listed in paragraph 48 above.

#### **Conclusion on NPS-HPL**

55 In summary, the LUC 3 Land included in PC80 is able to be rezoned to urban under clause 3.6 of the NPS-HPL in order to provide sufficient development capacity while achieving a well-functioning urban environment.

#### **NO COMPLAINTS COVENANTS**

56 The NZDF has requested that a no complaints covenant be imposed on the PC80 land to protect the Burnham Military Camp (the *Camp*) from reverse sensitivity effects.

57 The Applicant’s position is that no complaints covenants are not required. **Mr Lewthwaite** comments on this in more detail in his summary of evidence.

58 We note that at the time the Camp was designated, the noise effects from activities at the Camp would have been deemed appropriate to the adjoining land uses (which included residential uses).

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<sup>25</sup> Evidence of **Mr Everest**, at [31]: irrigated livestock and arable; irrigated apples; irrigated grapes, and dryland livestock and arable.

- 59 The closest point of the Camp to PC80 is approximately 1km away. This is substantially further than a significant amount of sensitive residential activities already established in and around the vicinity of the Camp. Between the Camp and PC80 is Christchurch Men's Prison which is also a sensitive activity and would experience greater noise effects from the Camp than PC80. There is simply no evidence that reverse sensitivity effects will arise from the establishment of PC80, particularly given the far less sensitive nature of industrial activities than residential activities and the noise that these industries create themselves.
- 60 In the absence of any evidence demonstrating a reverse sensitivity effect there is no basis on which the Commissioner can impose a covenant.<sup>26</sup> This is a condition that would have to be proffered by the Applicant and which in the face of the expert evidence of the Applicant and the Council is not appropriate.

### **CONCLUSION**

- 61 PC80 on the weight of the evidence, should be granted. All concerns and issues raised in the Officer's Report and in submissions have been addressed by the now proposed rules package and amended ODP.
- 62 We note there are very few areas of difference or disagreement between the Council and the Applicant.

### **Witnesses to appear**

- 63 The Applicant calls the following witnesses in support of PC80:
- 63.1 **Mr Carter** on behalf of the Applicant;
- 63.2 **Mr Everest** on agriculture and primary industry;
- 63.3 **Mr Mthamo** on water supply and versatile soils;
- 63.4 **Mr Staite** on real estate;
- 63.5 **Mr O'Styke** on real estate;
- 63.6 **Mr Blackmore** on traffic modelling;
- 63.7 **Mr Fuller** on traffic;
- 63.8 **Mr Lewthwaite** on noise;
- 63.9 **Mr Farrelly** on greenhouse gas emissions;

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<sup>26</sup> RMA, s 108AA(1).



- 63.10 **Mr Taylor** on ecology;
- 63.11 **Mr McLeod** on infrastructure and servicing;
- 63.12 **Mr Compton-Moen** on urban form and landscape;
- 63.13 **Ms Lauenstein** on urban form;
- 63.14 **Ms Hampson** on economics;
- 63.15 **Mr Turner** on real estate; and
- 63.16 **Ms Seaton** on planning.

Dated: 20 October 2022

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Jo Appleyard / Lucy Forrester  
Counsel for Rolleston Industrial Developments Limited and Brookside Road  
Residential Limited

**APPENDIX 1 – ROLLESTON CONSTRAINTS MAP**



