

**BEFORE THE SELWYN DISTRICT COUNCIL
HEARING BEFORE INDEPENDENT COMMISSIONER**

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Private Plan Changes 81
and 82 (Rolleston) by
Rolleston Industrial
Developments Limited and
Brookside Road Residential
Limited

**LEGAL SUBMISSIONS FOR CHRISTCHURCH CITY COUNCIL AND
CANTERBURY REGIONAL COUNCIL**

9 September 2022



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1. INTRODUCTION

1.1 These legal submissions are made on behalf of Christchurch City Council and Canterbury Regional Council (collectively the **Councils**) in relation to Private Plan Change 81 (**PC81**) and Private Plan Change 82 (**PC82**) to the Selwyn District Plan (**SDP**) (collectively the **Proposals**).

1.2 We note that the Councils presented a case in opposition to the proximate, and declined, Private Plan Change 73 (**PC73**) request, and we note that these submissions address several of the same matters made in the legal submissions¹ presented for the Councils on PC73.

2. SUMMARY OF POSITION

2.1 The Councils have both made submissions in opposition to the Proposals, with a number of common issues raised. It is for this reason that a joint case is being presented, with evidence filed by Mr Marcus Langman (Planning) dated 5 September 2022.

2.2 The central question for the Commissioner is whether the relief sought is the most appropriate zoning outcome for the sites. As a rezoning request, the Proposals need to be evaluated against all relevant policy directives, including those in relation to urban growth. This is not a case where any one aspect will determine the outcome, it requires all relevant policies to be synthesised before the “most appropriate” zoning outcome will reveal itself.

2.3 The Councils’ position is that when the Proposals are evaluated against the relevant statutory planning framework, the Proposals ought to be refused, and the current zoning confirmed.

2.4 In support of this position, the Councils rely on the evidence of Mr Langman, as well as certain aspects of the evidence for SDC.

1 Submissions for CCC and CRC for Plan Change 73, dated 29 September 2021. Available online at: <https://www.selwyn.govt.nz/property-And-building/planning/strategies-and-plans/selwyn-district-plan/plan-changes/plan-change-73,-rezone-approximately-160-hectares-of-living-3-to-living-z-and-business-1,-west-rolleston>.

2.5 As a summary, the Councils hold two central concerns in relation to the Proposals, being that:

- (a) The Proposals do not meet the criteria set out within the 'responsive planning framework' provisions of the National Policy Statement on Urban Development 2020 (**NPS-UD**); and that
- (b) The Proposals are either inconsistent with or contrary to a number of key policy directions in the Canterbury Regional Policy Statement (**CRPS**).

3. WHY ARE CCC AND CRC IN OPPOSITION

3.1 PC81 seeks to rezone approximately 28 hectares of Rural Outer Plains Zone to Living Medium Density (**Living MD**), and PC82 seeks to rezone approximately 110 hectares of Rural Outer Plains Zone to Living MD (collectively, the **sites**).

3.2 As outlined in the evidence, the sites proposed for rezoning are currently greenfield and adjoin the south-western aspect of Rolleston's existing urban area. The effect of rezoning these sites would allow minimum site sizes of 400m², and up to 3 residential units to be established on any site as a permitted activity.

3.3 The rezoning relief sought directly engages with the urban growth provisions in Chapter 6 of the CRPS, which establish the framework for how urban growth should be provided within Greater Christchurch into the future. As outlined by Mr Langman for the Councils,² the Chapter 6 provisions include the now operative Change 1 amendments. In short, noting that these points are canvassed in Mr Langman's evidence:

- (a) Change 1 built on existing strategic growth planning by the Greater Christchurch Partnership (and the actions agreed through Our Space³), and amended Chapter 6 and Map A of the CRPS to identify Future Development Areas (**FDAs**) within the existing PIB in Rolleston, Rangiora and Kaiapoi,

² Evidence of Mr Langman for CCC and CRC, dated 5 September 2022, at 58 - 61.

³ Mr Langman, at 58.

and inserted associated policy provisions which enable land within these areas to be rezoned by the Selwyn and Waimakariri District Councils if required to meet their medium term (10 year) housing needs.⁴

- (b) The FDAs were identified on the basis that they were the *most suitable areas* for future urban development from a strategic standpoint, if additional land is required to meet *medium term* needs.⁵
- (c) The Chapter 6 framework provides for the development of land within existing urban areas, greenfield priority areas (**GPA**), and FDAs (where the circumstances set out in Policy 6.3.12 are met) at a rate and in locations that meet anticipated demand and enables the efficient provision and use of network infrastructure. Urban development outside of these identified areas is to be avoided, unless expressly provided for in the CRPS.

3.4 As the Commissioner will be aware, the sites are not identified as a GPA or FDA, nor is the development of the land expressly provided for in the CRPS.⁶ In addition, the sites were also not earmarked for future urban growth in the notified Proposed Selwyn District Plan.⁷

3.5 As it currently stands, the western edge of Rolleston provides a legible urban edge. Urban development has jumped across Dunns Crossing Road (between Brookside and Burnham School Road), but the development there is varied and distinct from the urban development at Emerson Lane. As the Commissioner will be aware, there is another rezoning request in this area, also on the western side of Dunns Crossing Road, which is currently on appeal to the Environment Court.

3.6 Consistent with their position on PC73, the core concern for the Councils is that allowing these Proposals will further undermine the Chapter 6 framework, be contrary to Objective 6.2.1, and potentially generate increased pressure for growth in this location. The strategic planning and infrastructure impacts will inevitably spiral

4 Mr Langman, at 60.

5 Mr Langman, at 60.

6 Mr Langman, at 62.

7 Proposed Selwyn District Plan. Notified 5 October 2020.

with each out-of-sequence request, with an increasing risk of a loss of integration with the Greater Christchurch Partnership (**GCP**), and other key stakeholder's, strategic planning.

3.7 Urban growth delivery should be strategic and involve key stakeholders, so that there is an integrated approach to the planning and delivery of necessary services, roading and public transport, education, employment opportunities, and alignment with funding. This is what the NPS-UD expressly contemplates, through Objective 6 and the requirement to develop a Future Development Strategy, which is to "inform" the long-term plans, infrastructure strategies, regional land transport plans and other relevant strategies and plans.⁸

3.8 In reality, allowing requests like this will affect not only SDC (by placing immediate demands on infrastructure), but the other GCP member councils and partners who will need to respond to this out-of-sequence growth in some way. The wider implications of future proposed development is submitted to be a relevant consideration.⁹

4. THE STATUTORY FRAMEWORK

4.1 The statutory framework has been traversed in the legal submissions filed on behalf of the Councils in relation to other plan change requests, including before this Commissioner.

4.2 In short, the widely accepted *Long Bay*¹⁰ test for plan changes, which was more recently updated in *Colonial Vineyard Limited v Marlborough District Council*,¹¹ requires consideration of *all* the relevant issues for the purposes of assessing plan changes, including the "higher order directions" of sections 72, 74 and 76 of the Resource Management Act (**RMA**).

4.3 In this instance, there are relevant issues emerging from the "higher order" planning documents, which includes the NPS-UD and CRPS. It is accepted that the NPS-UD is the *higher* document in the

⁸ National Policy Statement on Urban Development 2020, Clause 3.17.

⁹ *Brown v Dunedin City Council* [2003] NZRMA 420, at 20.

¹⁰ *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008

¹¹ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

hierarchy, but submitted that this does not demand that greater emphasis or precedence is placed on the NPS-UD.

- 4.4** As recognised by the Supreme Court in *King Salmon*,¹² the hierarchy of planning documents under the RMA are intended to give effect to Part 2 of the RMA, by giving:¹³ (emphasis added)

... substance to its [*the RMAs*] purpose by identifying objectives, policies, methods and rules **with increasing particularity both as to substantive content and locality.**

- 4.5** That is the case here, with the NPS-UD providing higher level direction,¹⁴ and the CRPS providing more particularised regional (and, in particular, sub-regional) direction in relation to similar (urban growth) matters, as well as other policy direction for the purpose of giving effect to other NPS', and Part 2 more generally.

- 4.6** Under section 75(3) of the RMA a district plan 'must give effect to' any NPS and any regional policy statement, with the implementation of this directive being affected by what it relates to (i.e., it is context dependent, and will draw on the framing of the relevant policy direction).¹⁵ In this instance, there are a number of relevant policy directions in the NPS-UD and the CRPS that have varying degrees of directiveness. This is relevant when seeking to evaluate and reconcile these documents, with the nature and expression of the relevant objectives and policies important.

- 4.7** The NPS-UD, as can be expected given its national application, is the more abstract policy document. It is, however, more explicit for Tier 1 local authorities in relation to certain requirements, than for Tier 2 and 3 local authorities (for example, in relation to intensification¹⁶). This can be contrasted with the CRPS, which provides more specific direction on a multitude of resource management matters, including urban growth (particularly that of

¹² *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38.

¹³ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38, at 30.

¹⁴ As anticipated by s45, Resource Management Act 1991.

¹⁵ *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38, at [80].

¹⁶ NPS-UD, Policy 3.

Greater Christchurch). It is submitted that this is to be expected, given that the CRPS represents the 'more particularised' expression of the higher order objectives and policies, and more refined direction on other Part 2 matters (in accordance with the functions of regional councils under section 30 (i.e., subsections (1)(ba) and (1)(gb)).

- 4.8** As noted above, most relevantly the CRPS establishes a highly directive framework for urban growth which is underpinned by long-standing strategic planning work. So long as this framework achieves the outcomes directed by the NPS-UD, and in circumstances where it is not expressly stated to do otherwise, the Councils submit that there is no reason why it should not be considered a valid approach to giving effect to the NPS-UD.

5. THE SHAPE OF URBAN GROWTH FOR ROLLESTON

- 5.1** If further requests to rezone land outside the GPA and FDAs are approved by SDC (or other Councils), the consequence is that the recent Change 1 to the CRPS, and the core urban growth strategy established by the CRPS (and the GCP), will continue to be undermined.
- 5.2** This outcome would be completely at odds with the decade or so of strategic planning undertaken by the GCP, which includes SDC, and the recent housing capacity assessments completed and endorsed by the GCP that informed Change 1. While the Councils accept that these housing capacity assessments must be frequently reviewed (as per the NPS-UD requirements), and that they cannot be relied on in perpetuity, they were not challenged at that time, and have supported (up until recently) a form of urban growth that has been certain for Greater Christchurch.
- 5.3** In addition, we note that the Rolleston Structure Plan and the SDC PDP are consistent with Map A in Chapter 6 of the CRPS, by not anticipating urban development to the west of Rolleston. While the Applicants have filed evidence, through Ms Lauenstein and Mr Compton-Moen, which contends that the 'only way is west' for

Rolleston, it is not clear that this urban design evidence has fully considered the potential for intensification within Rolleston (as captured by the Projected Infrastructure Boundary), or whether any of the identified constraints can, or should, be overcome in some way to deliver better urban design outcomes in other locations. It is submitted that this evidence is limited in scope, and does not amount to a fully-fledged assessment of potential alternative locations for future growth.

5.4 As outlined in Mr Langman's evidence, he considers that rezoning these sites is inappropriate as it:

- (a) could undermine the timely delivery of other land already identified for planned urban development within the PIB (and the FDAs) that will be reliant on the remaining infrastructure capacity at the Pines WWTP until such time as upgrades are completed and the full range of consents are obtained;¹⁷
- (b) does not support the integration of land use and transport infrastructure, and would impede the maintenance of an efficient and effective transport network;¹⁸ and
- (c) the sites are not currently, nor will be, well-connected to or along transport corridors and will not support a reduction in greenhouse gas emissions.¹⁹

5.5 These observations all work against the appropriateness of the rezoning relief sought, in planning policy and strategic planning terms.

5.6 The Applicant's case is that these Proposals can be considered separately or together, and they contend that consideration should also be given to PC73. SDC has refused PC73, and so to consider that request (favourably) as part of this hearing would be to anticipate the outcome of an extant appeal before the Environment Court. It is submitted that the statutory framework is what the

¹⁷ Mr Langman, at 128.

¹⁸ Mr Langman, at 139.

¹⁹ Mr Langman, at 144 - 145.

Commissioner should be concerned with, with refused rezoning requests sitting outside of that framework.

6. THE NPS-UD

6.1 We have previously made submissions on the NPS-UD and the responsive planning framework provisions. We do not repeat those submissions here, other than to note that:

- (a) While the 'significant development capacity' criterion is unique to the responsive planning framework, the other criteria set out in Clause 3.8(2) engage with the requirement that urban environments are well-functioning and well-served.²⁰
- (b) These criteria overlap with other NPS-UD objectives and policies (including Objective 6) and there is nothing expressly stated in the NPS-UD that gives Policy 8 any elevated significance over other objectives or policies.
- (c) Objective 6 - puts three different matters on an equal footing, all of which have to be satisfied. The implication of this is that while the responsive planning framework provides an administrative pathway, local authority decisions affecting urban growth are required in all cases to remain integrated with longer-term infrastructure decisions, and to be strategic across the medium and long term, even when out-of-sequence proposals are being considered.
- (d) The NPS-UD cannot and should not be interpreted in a manner which suggests that the responsive planning framework provides innate flexibility for urban development.
- (e) If some priority were to be given to being "responsive" (on development capacity grounds alone), without engaging the other criteria, the end result would be a proliferation of ad hoc (insignificant and speculative) developments being approved. This would result in urban growth that is not properly integrated (and potentially inconsistent) with

20 NPS-UD, Objective 1, 3, 6 and 8; Policy 1, 5, 6 and 10.

existing growth plans, which would be directly at odds with the NPS-UD when interpreted as a whole.

- 6.2** Viewed against the recent Change 1 context, which occurred post the NPS-UD, it is submitted that the CRPS framework should not be overlooked in favour of the higher level policy direction in the NPS-UD. Further, the NPS-UD cannot be interpreted in a way that directs the enabling or facilitating of urban growth over and above existing integrated and strategic planning.

7. EVALUATING THE PROPOSALS AGAINST THE NPS-UD

The responsive planning framework

- 7.1** It appears to be common ground that the NPS-UD provides an administrative pathway for plan change proposals. What is at issue is whether the Proposals can satisfy the Policy 8 criteria, and whether they have a pathway in the face of the Chapter 6, CRPS framework.
- 7.2** Given the SDC position to date on the NPS-UD vs CRPS interplay, we have not laboured this point in these submissions. That should not be taken as acceptance of the SDC approach to date, or its interpretation of how those two documents operate in tandem, or relative to each other.
- 7.3** On the responsive planning front, and in terms of quantum, Mr Langman:
- (a) does not consider PC81 to provide “significant development capacity”²¹ (whereas Ms White and Mr Phillips, on the basis of the reasons set out in the economic reports,²² do); and
 - (b) considers that PC82 could provide “significant development capacity” (in terms of quantum).²³

²¹ Mr Langman, at 86.

²² Ms White, Section 42A Report, at 179.

²³ Mr Langman, at 83.

7.4 Where there is an apparent difference of opinion between Ms White and the Applicant's experts, and Mr Langman, is with the weighting of matters that the "significance" component of the criteria should consider:

- (a) Ms White appears to have focussed on the economic justification for the Proposals (ie. the quantum).²⁴
- (b) Mr Langman's evidence instead considers that the economic assessment narrowly focuses on supply and demand in the Selwyn District only, and does not address what is "significant" in the wider context of housing supply as set out in the HCA.²⁵ Mr Langman also considers the other matters identified in the MfE guidelines, including the pace at which the housing development could occur.²⁶

7.5 Of particular concern for Mr Langman²⁷ is that Ms White and Mr Phillips do not appear to have taken into account planned growth within the existing GPAs and FDAs, nor unplanned growth subject to the numerous private plan changes currently before SDC.²⁸ These factors may have had a bearing on the "significance", if it were to be determined based on quantum alone.

7.6 Consistent with the MfE guidelines, it is submitted that Policy 8 does not set up a numbers game alone. If it were the case that an unplanned / unanticipated plan change request were able to rely on the responsive planning framework based on quantum only, then conceivably any proposal of a sufficient scale could make that case and take advantage of the administrative pathway provided. This is not what the NPS-UD was conceived to facilitate, and it is submitted that a wider set of criteria are involved.

7.7 Timeliness / pace of delivery must be relevant, as without an ability to deliver at pace, why would a Council feel obliged to act responsively in relation to any plan change? By way of further explanation, it would be of no use to satisfying any unmet housing

²⁴ Ms White, Section 42A Report at 178 and 179.

²⁵ Mr Langman, at 102.

²⁶ Mr Langman, at 119 and 122.

²⁷ Mr Langman, at 84.

²⁸ Mr Langman, at 84.

demand if the proposed new sites / dwellings cannot be delivered for an indeterminate or uncertain period, or until other complex processes / developments have been concluded.

7.8 If rezoning was allowed on that basis, the effect would be to achieve a rezoning only, but no actual housing capacity. This would have the counter effect to that described by the Applicants experts, by increasing the value of the subject land, and increasing market competition in the meantime. It is submitted for the Councils that the term “significant” has to mean more than only the quantum, or whether there is any potential shortfall, and that pace of delivery must form part of the Commissioner’s consideration.

7.9 In relation to these points, Mr Langman’s opinion is that the Proposals do not satisfy the MfE guidelines and that, as a result, the Proposals should not be found to add “significantly to development capacity”.²⁹ As a consequence, SDC should not allow the Proposals to progress in reliance on Policy 8 of the NPS-UD.

A well-functioning urban environment?

7.10 The second aspect to Policy 8 is, of course, that the Proposals contribute to a well-functioning urban environment. Mr Langman’s evidence³⁰ is that neither PC81 nor PC82 satisfy this requirement of the NPS-UD.

7.11 It is submitted that Ms Whites’ section 42A report, SDC’s urban design evidence, and Mr Langman’s evidence for the Council’s, should be preferred on this matter. While Mr Compton-Moen³¹ and Ms Lauenstein’s evidence³² is that this area is the “logical” location for growth, that evidence relies on specific constraints only, and does not fully evaluate all of the matters that will assist to determine the appropriate shape of future growth in and around Rolleston. The competing evidence is that the Proposals are not well connected with urban Rolleston, will not contribute to a compact urban form, and have poor accessibility.

²⁹ Mr Langman, at 90.

³⁰ Mr Langman, at 141 to 149.

³¹ Evidence of Mr Compton Moen for the Applicants, dated 16 August 2022.

³² Evidence of Ms Lauenstein for the Applicants, dated 29 August 2022.

7.12 As outlined in Ms White's s42A report, other locations are anticipated within the PSDP for future growth, which do align with existing strategic growth planning. It is submitted in reliance on this evidence that the quantum proposed is not enough to overcome these hurdles, and that this aspect of the NPS-UD is not satisfied.

7.13 Finally, we note that the Commissioner does not have a single plan change concerning all of the land to the west of Rolleston on the table. Ms White has recognised this, and (in our submission correctly) observes that the appropriateness of rezoning a wider area of land cannot be addressed through this process (particularly when PC73 was refused at first instance, and remains on appeal now).

8. EVALUATING THE PROPOSALS AGAINST THE CRPS, SDP AND PSDP

8.1 While the Councils accept that a degree of inconsistency with higher order policies may be acceptable, in this case the Proposals directly contradict a highly directive "avoid" direction, and conflict or are inconsistent with other important CRPS policy directions.

8.2 Mr Langman has considered the zoning options available relative to the Proposals, as against the relevant statutory planning framework, in terms of whether they will be effective in terms of assisting Council to carry out its functions. Overall, Mr Langman's evidence is that the Proposals do not sufficiently achieve the relevant CRPS objectives and policies, nor those in the SDP, PSDP or NPS-UD. It follows, that – in his expert view – the relief sought is not the "most appropriate" zoning for the sites.³³

The existence of constraints

8.3 The Councils are particularly concerned about the existence of multiple constraints affecting the sites, which require management through bespoke plan provisions. These constraints have clearly influenced Ms White's recommendation to refuse the Proposals, and

³³ Mr Langman, at 151 and 152.

run counter to the Applicants suggestion that this is the only appropriate location for growth in Rolleston.

8.4 More specifically:

- (a) The evidence of Waka Kotahi is that the development of these sites should be *delayed and/or restricted*, until after necessary upgrades are made to specific intersections, including at State Highway 1.³⁴ These constraints will impact on the timeliness of any delivery of residential dwellings to serve the demand relied on by the Applicants economic evidence, and as a result, the significance of these sites for out-of-sequence release.
- (b) As outlined by Mr England for SDC, the capacity of the wastewater network to - not only service the sites - but also service other planned growth is reliant on the extension of the WWTP to be implemented. Mr England considers that “it is critical that this plan change, specifically PC82, proposal does not cause any reverse sensitivity issues which would obstruct the future Pines consenting and upgrade program or lead to an increase in odour or other complaints relating to the Pines WWTP.”³⁵ The Applicants have responded to these issues by proposing a rule that precludes development until either SDC obtains the relevant approvals to upgrade the WWTP, or by 31 December 2026 (whichever is the sooner). This again demonstrates that the pace of delivery is uncertain, entirely reliant on other infrastructure programmes, and that there is a chance of encouraging growth in an area that is simply not sufficiently serviced at present.
- (c) As noted by Mr Langman in his evidence³⁶ (and as addressed by Mr England and Ms White, for SDC), there is a need for a deferral rule until consented potable water can be made available. While the Applicants experts, Mr Mthamo, disagrees³⁷, this is a matter of concern to SDC and should be closely scrutinised by the Commissioner. If

34 Evidence of Olivia Whyte for Waka Kotahi, dated 5 September 2022.

35 Murray England, ‘*Officer Comments of Murray England*’, dated 18 August 2022, at 98.

36 Mr Langman, at 119.

37 Evidence of Mr Mthamo for the Applicants, dated 26 August 2022.

a deferral rule is required, then this of course will further undermine the suggestion that there can be delivery *at pace* of dwellings.

- (d) The Councils note that the Health Act 1956 requires that all dwellings have an “adequate” supply of potable water, which must not be at risk of being closed off.³⁸ In this case, the Councils are concerned that Mr Mthamo’s proposal, to rely on surplus supply (which may not be available now), as an interim step will not satisfy this enduring requirement. In addition, there is no evidence that Mr Mthamo has considered the impact of the intensification enabled by the variations currently proceeding through the Intensification Streamlined Planning Process, and the effect that they may have on potable water supply within the Rolleston Structure Plan area.

8.5 The collective effect of the restrictions either proposed by the Applicants or recommended by Ms White’s section 42A report,³⁹ make these Proposals “deferred” zonings. This is not a case where the Living MD zone can be accepted as the most appropriate zoning, as important bespoke amendments will be needed on the evidence to defer and delay development until it can be appropriately initiated (if at all). This level of uncertainty is sub-optimal, particularly where there may be other better locations that will reveal themselves through the upcoming wider strategic exercise involving the GCP (or through the Strategic Planning Act processes).

8.6 It is submitted that these constraints, and the other concerns raised in the evidence of Mr Langman and by SDC’s witnesses, should lead to a conclusion that these Proposals will not sufficiently achieve the fundamental policy objectives of the statutory planning framework, and in particular, a well-functioning urban environment.

Relevance of Economics

³⁸ Health Act 1956, s 39.

³⁹ Mr Langman, at 224.

- 8.7** The Councils have not filed economic evidence that directly contests the Applicants own economists. It should not be inferred that this evidence is accepted as to its accuracy, or robustness. In terms of the cost-benefit analysis in particular, the Council's consider that this economic evidence has limited relevance.
- 8.8** There is no dispute that housing is an issue across New Zealand. This is what drove the development of the first NPS-UDC 2016, and now the updated NPS-UD. The current NPS places various requirements on councils, including the preparation of housing development capacity assessments at regular occurrences, and the development of future development strategies. These requirements are an important part of the "strategic" and "integrated" approach to achieving urban growth that the NPS-UD anticipates.
- 8.9** The economic evidence before the Commissioner here is that there is demand for housing in Rolleston, but that does not answer the site-specific question as to whether the PC81 and PC82 sites are appropriate locations for such activities. Economics cannot answer that question on its own, as the statutory framework requires a broader assessment.
- 8.10** The applicable test is what zoning is the "best fit" in terms of the relevant policy imperatives. The relevant objectives and policies of the CRPS or SDP do not require an economic comparison between providing for residential development or allowing the status quo rural zoning to continue. Neither does the NPS-UD prioritise the release of land for residential development, based on a pure cost/benefit analysis.
- 8.11** If Mr Colgrave's approach at paragraph 11.4(a) of his evidence represents the correct test, then that economic evaluation could be repeated for virtually any rural land in the Selwyn District (and across Greater Christchurch more generally), for as long as there is potential unmet housing demand, this can be used to argue for the displacement of rural zoning. Put another way, retaining land as rural will always lose on a cost/benefit analysis, but that is not the silver bullet for the relief sought. Focusing on whether there is net

economic benefit is a convenient argument for the Applicants to make, but should not be given any significant weight in this case.

- 8.12** In terms of Mr Colgrave's evidence on the shortfall numbers, at paragraph 56 he notes that "Table 4 shows that these private plan changes add more than 8,850 dwellings if all are accepted (including the plan changes that comprise this rezoning request). This is significantly less than the long-term supply shortfall of approximately 19,000 to 20,000 dwellings identified in scenarios 2 and 3 above". What he has failed to do is add to his Table 1 the potential feasible capacity provided by the mandatory inclusion of the MDRS in all relevant residential zones, or note that for the long-term, "plan enabled" means that "it is on land **identified** by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy" (but not live zoned). The FDS in this case is Our Space, and the FDAs have been excluded from his assessment because they are not yet live zoned in their entirety.

9. CONCLUSION

- 9.1** The Commissioner is obliged to apply the relevant statutory tests. Correctly applied, this should result in a refusal of the Proposals.
- 9.2** A contingent or interim approval of the Proposals pending resolution of other applications (for example, PC73) is not available, nor would it be an appropriate option. Adopting that approach would require a decision that is meaningless until another decision is made, by either SDC or the Environment Court, with no certainty that the Proposals could ever be implemented.
- 9.3** Although Ms White suggests that a door is open to modify the Proposals, by noting that her position is in relation to the Proposals "in its [the Proposals] current form",⁴⁰ the Commissioner is here to determine what is the most appropriate zoning for the sites, when considered against the relevant statutory framework. While the Applicants may continue to argue for policies and rules that can

40 Ms White, Section 42A Report, at 120, 196, 202, 215, and 219.

address various constraints and issues, the more that occurs the more it is inevitable to draw the conclusion that the sites are not suitable for residential zoning, and that they will not be capable of delivering dwellings at pace (in a significant way).

DATED this 10th day of September 2022



M G Wakefield

Counsel for Christchurch City Council