

Before the Selwyn District Council

under: the Resource Management Act 1991

in the matter of: Proposed Private Plan Changes 81 and 82 to the
Operative District Plan: Dunns Crossing Road, Rolleston

and: **Rolleston Industrial Developments Limited** and
Brookside Road Residential Limited
Applicants

Opening legal submissions on behalf of the Applicants

Dated: 7 September 2022

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OPENING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANTS

INTRODUCTION

- 1 This hearing will determine a request by Rolleston Industrial Developments Limited and Brookside Road Residential Limited, subsidiaries of the 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 138 hectares of currently rural (outer plains) land to Living MD and Business 1 (Local Centre) as follows:
 - 1.1 The plan change application by Rolleston Industrial Developments Limited to rezone approximately 28 hectares of rural land in Rolleston to Living MD (*PC81*); and
 - 1.2 The plan change application by Brookside Road Residential Limited to rezone approximately 110 hectares of rural land in Rolleston to Living MD and Business 1 (*PC82*);together, the *Plan Changes*.
- 2 The Plan Changes provide a unique opportunity to the District for a comprehensive and integrated development that will result in good urban form outcomes, in the only appropriate location for growth in Rolleston. The rezoning of these Plan Changes, and together with others, will ensure that house prices remain stable in the context of the current housing crisis.
- 3 An ODP and tailored rule set has been provided for both Plan Changes which have either been proposed or agreed by the Applicant as a way to mitigate adverse effects, and otherwise address concerns raised by the Council and submitters through this process as set out in the evidence of **Mr Phillips**.
- 4 These legal submissions set out the context of the applications and cover the legal issues that arise, including:
 - 4.1 Growth in Rolleston;
 - 4.2 The plan change 70 (*PC70*) land and its relevance;
 - 4.3 The plan change 73 (*PC73*) land and its relevance;
 - 4.4 Delay for future processes to provide for urban growth;
 - 4.5 The reverse sensitivity (odour) issue; and

- 4.6 The responsive planning framework established by Policy 8 of the National Policy Statement on Urban Development 2020 (the *NPS-UD*).
- 5 These Plan Changes are being heard together as their locations (west of Dunns Crossing Road) inherently relate to one another. However, these plan changes are not dependent on one another and, as evidenced, each one is capable of being granted on its own merits in that each of the Plan Changes achieves:
- 5.1 an appropriate and acceptable level of connectivity with Rolleston and a compact urban form; and
- 5.2 a well-functioning urban environment in terms of the NPS-UD.
- 6 A note is made that whilst PC81 and PC82 stand on their own merits, the issues of connectivity and urban form will be significantly enhanced if PC81 and PC82 are considered together with PC73 and other existing and planned areas to form a comprehensive, integrated and compact urban form along the western edge of the existing township. The ability of the Commissioner to consider PC81 and PC82 in the context of PC73 is also covered in these submissions.

GROWTH IN ROLLESTON

- 7 Selwyn's population has grown exponentially in recent times. It is one of New Zealand's fastest growing regions over the last 25 years, second only to Queenstown, with a growth of nearly 3.5 times the national average of 1.6% per annum over that period.¹
- 8 Rolleston is the largest town in Selwyn District, containing approximately one third of the District's population. Between 2001 and 2021, Rolleston's annual average growth rate was 11.4% - significantly higher than the overall population growth rate for the Selwyn District over that same period of 4.9% per annum.² Notably, in more recent times between 2018 and 2021, the population has increased by around 34%.
- 9 It is the evidence of **Mr Sellars** and **Mr Jones** that while the residential land market in Selwyn has slowed since the particularly inflated and frantic market we were seeing last year that resulted from a supply and demand imbalance, there remains a healthy and relatively high demand for residential land in Rolleston.
- 10 This growth and demand is highly significant in the context of the Plan Changes. Growth and demand in Rolleston does not appear to

¹ Evidence of **Mr Colegrave** at [20].

² Evidence of **Mr Akehurst** at [27].

be slowing down anytime soon. That raises the question as to the most appropriate direction for Rolleston to grow.

- 11 The Rolleston Structure Plan (the *Structure Plan*) was developed in 2009 and its purpose was to identify areas for residential growth into the future all the way out to 2075. The evidence of **Mr Compton-Moen** and **Ms Lauenstein** is that the Structure Plan is significantly outdated and the areas identified for growth have almost all but been developed or are in the process of development.
- 12 We note that the evidence of **Mr Sellars** considers that the new medium density standards³ are unlikely to result in an increase of capacity through intensification of the existing housing stock, with an overall limited impact on Selwyn urban areas. And in any case the evidence of **Mr Sellars** and **Mr Jones** is that there would be a limited market for medium-high density in Rolleston, and Selwyn more generally.
- 13 It is also the evidence of **Mr Jones** and **Mr Sellars** that there is specific demand in Rolleston for the type of sections proposed by these Plan Changes.⁴ People buying in Rolleston are specifically attracted to the township as it provides larger sections and lower density living – these same people would not otherwise be looking to purchase high density housing in Christchurch Centres.
- 14 As such, growth will need to be enabled through greenfield development outside of the areas identified in the Structure Plan which has been overtaken by growth and demand. The Applicant has undertaken significant investigations, on the advice of its various experts and advisors, as to the best direction for growth in Rolleston.
- 15 The map produced in Appendix 1 of **Mr Compton-Moen's** evidence, and reproduced as *Figure 1* below, represents a visual analysis of these investigations.

³ As introduced by the Resource Management (Enabling Housing and Other Matters Amendment Act 2021.

⁴ Evidence of **Mr Jones** at [22]-[27] and **Mr Sellars** at [78].

PC70 LAND

- 18 It is also important when considering the context of the PC81 and PC82 land to consider the status of the land subject to PC70 on the opposite side of Dunns Crossing Road to PC81.
- 19 *Figure 2* below shows the location of various plan changes along Dunns Crossing Road, Rolleston.

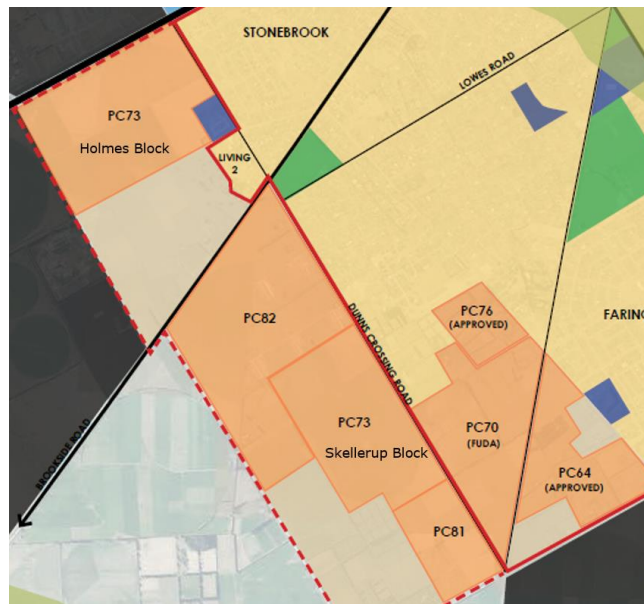


Figure 2: Locations of plan changes in and around Dunns Crossing Road

- 20 Whilst currently zoned rural, PC70 will inevitably (and imminently) be zoned residential as:
- 20.1 It is identified as an area for growth in the Structure Plan;
 - 20.2 It is identified in the Canterbury Regional Policy Statement as a Future Urban Development Area (FUDA);
 - 20.3 It is the subject of a plan change (albeit that has been put on hold); and
 - 20.4 The site has now been referred by the Minister for the Environment on 17 June 2022 to the fast track consenting process⁵ but a full consent application is yet to be received by the panel.
- 21 There is considerable certainty that the PC70 site will in the near future be developed residentially. We note the developer that owns

⁵ Under the COVID-19 Recovery (Fast-track Consenting) Act 2020, refer Schedule 54 'Faringdon Oval'.

the land has a good track record for completing subdivisions in the District. We understand that Council officer's concur with this view.

THE PC73 LAND

- 22 PC73 is a private plan change initiated by the Applicant to rezone approximately 160 hectares of land currently zoned Living 3 to Living Z in two separate locations on Dunns Crossing Road, Rolleston. The location of PC73 (comprising of the Holmes and Skellerup Blocks) relative to the Plan Changes is shown in *Figure 2* above.
- 23 On 1 March 2022, Commissioner Caldwell released his recommendation to decline PC73 on the basis of:⁶
- 23.1 Form of urban growth (particularly in relation to Skellerup Block); and
- 23.2 Reverse sensitivity effects on the Pines Wastewater Treatment Plan (*PWTP*) and the Pines Resource Recover Park (*PRRP*) in relation to Holmes Block.
- 24 The Applicant appealed that decision on 28 April 2022. No interested parties joined the appeal. The Applicant and the Council are currently engaged in mediation over the two issues above. The full Council needs to approve any resolution of the urban growth issues.
- 25 PC81 and PC82 are not dependent on the outcome of PC73 however, as the evidence shows, being able to consider PC81 and PC82 together with PC73 results in a resolution to the urban form issues identified in the PC73 decision. Therefore the Commissioner's views not only on the merits of PC81 and PC82 alone on their own merits, but as part of a resolution of the issues raised in the PC73 decision are likely to influence the Council's decision making on the mediation process.
- 26 One of the key issues that resulted in the decision to decline of PC73 was the form of urban growth, where the Commissioner said:

"I am of the view that relying on what may or may not happen in the surrounding environment in the future to assess the urban form creates some difficulties. It is uncertain. The lodging of PC81 and PC82, and Mr Thomson's [planner at the time for PC82] evidence for his clients in relation to their development intentions, is relevant in illustrating landowner intentions. However, any future development between the two PC73 blocks

⁶ Recommendation of Commissioner Caldwell on PC73 dated 1 March 2022 at [510].

or otherwise abutting them, will be subject to separate processes and assessment. To give weight to what may or may not happen in the future would, in my view, be unduly speculative.”⁷

“Mr Nicholson acknowledged that if the adjacent rural land is to be rezoned, then the proposed ODP would allow the Skellerup Block to become more connected in the future but he was concerned that this reliance on the rezoning of adjacent rural land meant the Applicant was effectively pre-supposing the preferred direction of urban growth for Rolleston and the outcome of future rezoning processes with adjacent rural land. I accept Mr Nicholson’s evidence and again note what I consider to be the reliance by the Applicant’s witnesses on what may or may not happen in the future to the surrounding rural land.”⁸

“Plan changes are of course an entirely appropriate way of addressing growth, and a method that is expressly anticipated by the NPS-UD. I am addressing the merits of this plan change as it stands. I do not consider it would be appropriate for me to place any reliance on a future environment incorporating, for example, the PC81 and PC82 sites. Those are of course subject to a separate process. I cannot place any weight on what may or may not happen on the land subject to those plan changes, or indeed other land to the west of Dunns Crossing Road.”⁹

- 27 Obviously the information before the Commissioner in this hearing is very different to what was before Commissioner Caldwell as the Applicant itself now owns the land covered by PC81 and PC82 and the plan changes are well advanced. The uncertainty and “undue speculation” that the Commissioner was concerned about are removed.
- 28 That is not to say that PC73 must be approved for these Plan Changes to be approved. The Plan Changes currently before the Commissioner can and do stand in their own right and are not dependent on any particular outcome for PC73.

THE INFORMATION BEFORE THE COMMISSIONER AT THIS HEARING

- 29 As is clear from the excerpts of the decision above, the Commissioner for PC73 was reluctant to place any weight on other future and in his view speculative processes regarding development in and around PC73. The Commissioner therefore accepted **Mr Nicholson’s** view that the two areas subject to PC73 were “in

⁷ At [271].

⁸ At [473].

⁹ At [509].

essence peninsulas which do not contribute to a compact urban form."¹⁰

- 30 The most essential of these to the urban form of PC73 was the uncertainty around PC81 and PC82. At the time of the hearing of PC73, PC81, and PC82 were not owned by the Applicant. This has now changed. The Applicant now owns all of the land comprising PC73, 81, and 82 – almost the entire length of the West of Dunns Crossing Road.
- 31 **Ms Lauenstein's** evidence states there are significant advantages to the land being held in single ownership in terms of urban form outcomes. She says this is a rare opportunity for comprehensive and integrated development in one ownership.

DELAY FOR FUTURE PROCESSES

Some future strategic planning document?

- 32 In PC73 and again in his evidence for this hearing, **Mr Nicholson** has stated his view that growth of Rolleston should be delayed until some as yet unidentified and unscheduled comprehensive and strategic planning process has been undertaken that would allow the costs and benefits of alternative growth options to be assessed and discussed with the wider community.¹¹
- 33 At the PC73 hearing, this in turn led **Ms White** to consider that in her view PC73 would effectively pre-determine that higher density residential development to the west of the current township is appropriate in the absence of it being considered against other growth options such as to the east or south.¹²
- 34 While Commissioner Caldwell did accept that plan changes were an entirely appropriate way of addressing growth, and a method that is expressly anticipated by the NPS-UD,¹³ he agreed with the Council's position:¹⁴

"In relation to this particular plan change, I am of the view that the growth to the west of Dunns Crossing Road would be better addressed on a more strategic basis. That could potentially occur through submissions on the PDP where there is likely to be a greater ability to consider alternatives. As noted, in my view, the conclusions of a number of the Applicant's witnesses seem to place considerable weight on what was almost seen as the

¹⁰ At [272].

¹¹ At [248]

¹² At [248].

¹³ At [509].

¹⁴ At [490].

inevitability of development to the west. In circumstances where I am addressing this particular plan change, I am unable to make that determination on the evidence before me."

[emphasis added]

- 35 With the benefit of hindsight, we did not present enough evidence to be able to satisfy the Commissioner that growth to the west was, and still is, the only inevitable direction for growth in Rolleston. We did not present the map in *Figure 1* above which clearly demonstrates this to be the case given other existing constraints and in light of the upcoming NPS-HPL.
- 36 It is submitted that with no other options for growth in Rolleston, these Plan Changes do not predetermine its direction – as there is no other direction it could go. It is inevitable that sooner rather than later, the land to the west of Dunns Crossing Road will be residentially developed to meet the demands for housing in Rolleston.
- 37 Further, while in **Mr Nicholson's** (and **Mr Langman's**) ideal world a strategic planning document following lengthy consultation with strategic partners would best inform growth in Rolleston (such as an updated 'Our Space' or Structure Plan), it is too late. Those processes can take many years and are not imminent.
- 38 There are other processes already underway. Evidence has just been lodged on rezonings for the proposed District Plan and the only Rolleston residential plan changes being taken forward in that process are PC71, PC78, PC76, PC75, PC73, PC81, and PC82. The boat has sailed for other land to be added through rezoning requests and evidence has already been lodged by applicants and hearings are scheduled for January.
- 39 In addition, timing on the release of those rezoning decisions is being driven by the timeframes under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the statutory requirement to release decisions by August 2023.
- 40 The proposed plan rezonings and the medium density rules will all be decided within the next 12 months and there is no planned strategic planning process on the horizon. It would not be 'responsive' of the Council to wait for the Greater Christchurch Partnership spatial planning process/consultation, a review of the CRPS, and a subsequent review of the District Plan (which in our view would take at least 5 years to occur), as suggested by **Mr Langman**, to allow any further greenfield development in Selwyn.

Procedural timing

41 Also relevant to the issue of urban form is the timing and weight of that can be given to other concurrent plan changes processes.

42 **Ms White** in her Officer's Report for these Plan Changes considers:¹⁵

"In my view, both plan changes, when considered on their own merits, should be declined because they would have poor levels of connectivity with Rolleston and would not contribute to a compact urban form. [...]"

While I note Mr Nicholson's comments that the Sites would have better connectivity if land between the Sites, along with PC70, were rezoned, this is not in front of the Commissioner in terms of this hearing."

43 We do not agree. Firstly, the evidence before the Commissioner today is that PC81 and PC82 can stand on their own merits regardless of whether PC70 or PC73 eventuate.

44 Nevertheless, you cannot consider the Plan Changes in isolation from the urban context in which they are proposed. Even Council agrees that rezoning of PC70 is inevitable and given the hurdles now removed by the Applicant's purchase of the PC81 and PC82 land, resolution of the PC73 appeal is highly likely by agreement or Court decision.

45 Development of the land comprising PC70 and PC73 is inevitable at some point in time and the intentions of the proponents (one being the Applicant here) for those plan changes should be given considerable weight. It is artificial to look at each plan change in isolation to what is going on around them. If that were the case, very few greenfield plan changes would be seen to have good urban outcomes.

46 Further, as covered in the evidence of **Ms Lauenstein**, development does not uniformly grow out from a centre and often occurs in 'chunks'. That does necessarily result in a bad urban outcome given it will only be temporary as other development progresses in the vicinity.

THE REVERSE SENSITIVITY (ODOUR) ISSUE

47 The other issue that contributed to the decline of PC73 related to potential reverse sensitivity effects on the PWTP and more particularly on the PRRP.

¹⁵ Officer's Report at [228]-[229].

48 Ultimately on this issue, the Commissioner for PC73 found:

*"In my view, the potential, albeit of low probability, of reverse sensitivity effects in relation to the PRRP and the PWTP should be given some weight in the overall consideration of the appropriateness of the rezoning sought."*¹⁶

*"I remain concerned around the potential for reverse sensitivity effects. I acknowledge that on the expert evidence, reverse sensitivity effects are of low probability but, given the absolutely critical nature of the PWTP and the PRRP to the future growth and development of Rolleston, and indeed the wider Selwyn District, a degree of caution is appropriate."*¹⁷

Pines Waste Water Treatment Plan (PWTP)

49 This matter was discussed at length at the PC73 hearing where the Applicant expressly proffered rules to address this issue that would preclude development within 1,500m of the PWTP:

49.1 unless a no-complaints covenant is registered on the title in favour of the Council, in respect of the PWTP and PRRP; and

49.2 prior to the sooner of:

(a) Council obtaining the relevant approvals for upgrade of the PWTP; or

(b) 31 December 2025.

50 We understand the concern this rule was drafted to address was the possibility that future residents of the plan change areas might oppose the planned expansion of the PWTP and in turn compromise its ability to provide for Rolleston's growing wastewater capacity needs.

51 This same rule is being proffered for PC82 and the Applicant has accepted the Council's recommendation that that dated be extended to 31 December 2026.

52 **Mr Bender** at PC73 was comfortable that there were sufficient separation distances between the PWWTP odour generating activities and both the Holmes Block (800m) and Skellerup Block (1,700m).¹⁸

53 We understand from **Mr Bender's** odour assessment included in the Officer's Report that he considers PC82 to be sufficiently separated

¹⁶ Recommendation of Commissioner Caldwell on PC73 dated 1 March 2022 at 230.

¹⁷ At [285].

¹⁸ At [215].

from the PWTP. **Mr Van Kekem** considers the setback distances are well beyond what is required to manage the reverse sensitivity effects from the PWTP.

- 54 We accept **Mr England's** concerns regarding the fact that these rules might still result in potential complaints after approvals are obtained. But this is the case for all activities with perceived effects and is not something that any developer can guarantee will be avoided altogether. Further, complaints in and of themselves (of which many may be unfounded) do not amount to reverse sensitivity effects or constraints on infrastructure. We submit that based on the expert odour evidence, the potential reverse sensitivity effects on the PWTP as a result of PC82 are appropriately managed.

Pines Resource Recover Park (PRRP)

- 55 The issue of reverse sensitivity effects on the PRRP was of particular concern to Council staff at PC73 and the other main reason on which the Commissioner declined that plan change (with relevance to Holmes Block).
- 56 The Applicant is candid that it did not fully appreciate prior to the PC73 hearing that the reverse sensitivity issue would be as important as the Commissioner considered it was.
- 57 Having appreciated that now, the evidence and information the Commissioner has to determine the issue in the context of PC81 and PC82 is much more detailed and comprehensive than it was at PC73. The Commissioner should determine the issue on the evidence presented in this hearing and not be influenced by the findings in another case on different evidence from different witnesses.
- 58 Council recently re-consented its air discharge consent for the PRRP to allow for up to 53,000 tonnes to be composted every year at the site.¹⁹ For that consent process, **Mr Iseli** was Selwyn District Council's odour expert, and **Mr Van Kekem** was engaged by Environment Canterbury to peer review the Council's odour assessment. Details of their involvement in that process are outlined in their evidence.
- 59 Notably, the application by Selwyn District Council for its own PRRP was processed non-notified on the basis that the effects of the discharge would be less than minor. The Living 3 Zone underlying the PC73 sites would have allowed a dwelling as close as 500 m to the PRRP and this is the basis on which the adverse effects were assessed.

¹⁹ CRC211594.

- 60 **Mr Iseli** was not involved in PC73 and **Mr Bender** for Council at PC73 considered that the proposed separation distance of 600m from the active composting areas of the PRRP would likely be sufficient for avoiding adverse effects of odour from normal and compliant operations at the PRRP. He had concerns, however, related to the possible 'abnormal' emissions or 'upset' conditions that could arise from the PRRP.²⁰ And his concerns are repeated in his evidence for PC82.
- 61 At the PC73 hearing **Mr Bender** had no definitive view on what the setback from the PRRP to manage upset conditions should actually be and considered a compromise (and from our reading not based on any relevant evidence) between two recommended setback distances, noting that a 1,000m setback would be "more agreeable" than the Applicant's proposed 600m setback.²¹ **Mr Boyd** also expressed his view that a minimum 1,000m setback from the compost maturation area would be appropriate,²² although it is not clear on what that conclusion is based and he has no odour expertise.
- 62 The Commissioner concluded that:²³
- "I accept that the 600m setback is likely to be sufficient for avoiding adverse effects of odour from the future residents of the Holmes Block from the normal operations of the PRRP. I remain concerned that there is potential for odour and consequential reverse sensitivity effects from the open air composting operations as a result of abnormal emissions and the projected increased volumes of organic and green waste and increased proportion of kerbside organics. Upset conditions can occur even at well-run composting operations. In my view, that risk is relevant to the overall appropriateness."*
- 63 Again with the benefit of hindsight we obviously did not explain properly to the Commissioner that the assessments were all done taking into account the projected increases of volumes of organic and green waste and increased population for kerbside organics. That the odour assessments have been done at the full capacity of 53,000 tonnes for the PRRP as a practical limit does not appear to be in dispute.
- 64 Again, in hindsight, we could have done a better job at explaining to the Commissioner the likelihood of upset conditions arising from PRRP, being entirely dependent on a number of equally unlikely

²⁰ Recommendation of Commissioner Caldwell on PC73 dated 1 March 2022 at [163].

²¹ At [157].

²² At [162].

²³ At [210].

factors occurring all at the same time. The evidence of **Mr Van Kekem** now covers this in significant detail.

- 65 It is also important to understand that for the PRRP to operate in a way which would cause odour beyond the 600m, it would need to be operating in breach of its consent. That is what 'upset conditions' are. This is not a scenario that the law, and decision makers are legally allowed to protect.
- 66 Reverse sensitivity is the vulnerability of a lawfully established land use to complaints from a newly established, more sensitive, land use. However, a land use that is operating in breach of its conditions, cannot genuinely claim to be suffering from reverse sensitivity effects.
- 67 We note that the Council's consent for the PRRP includes a condition that provides:²⁴

"The discharge shall not cause odour or particulate matter (including airborne pathogens) which is offensive or objectionable beyond the boundary of the property on which the consent is exercised."

- 68 As such, these euphemistically described 'upset conditions' **Mr Boyd** is concerned about are discharge events where the odour is offensive or objectionable beyond the PRRP boundary, in breach of consent. The argument of reverse sensitivity effects occurring in such conditions as raised by **Mr Boyd** are therefore not legally valid and it would be entirely appropriate to expect the consent holder to remedy the situation (for example through proper implementation of their consent, or if required improvements and upgrades to composting methods). The law relating to reverse sensitivity is not there to protect a consent holder from the effects of its own inability to comply with its conditions of consent.
- 69 Notwithstanding this, the evidence before the Commissioner in this hearing clearly demonstrates that a 600 metre setback from the PRRP is more than adequate for avoiding reverse sensitivity effects on the PRRP even with the very low likelihood of upset conditions.

HOW DO THE ISSUES OF URBAN FORM AND REVERSE SENSITIVITY AFFECT EACH OTHER?

- 70 One of the issues that the Commissioner for PC73 grappled with, was how, if he were to determine a different setback than the 600m proposed was appropriate, this might impact on the issue of urban

²⁴ CRC211594, condition 15.

form and the ODPs for the sites. Left with that lacuna in the evidence the Commissioner said:²⁵

"Any increase in separation distances would need to be carefully considered in terms of the overall proposal and the impact it would have on development opportunities, urban design issues and similar. In my view, reverse sensitivity effects cannot be addressed, in an integrated way, simply by the inclusion of an extended setback on the ODP for the Holmes Block."

71 For this hearing we have addressed in the urban form evidence how a 600m or 1,000m setback would have differing outcomes for urban form.

72 **Ms Lauenstein's** evidence clearly sets out that technical matters such as the location of an odour setback (but also procedural planning matters related to temporary concerns around connectivity and timing/staging of development) are all matters that can be resolved independently of, and would not materially affect the urban form and inherent urban qualities of the Plan Changes whether the setback is 600m or 1,000m.

73 Therefore, whatever setback the Commissioner decides is appropriate for these Plan Changes, there will be an acceptable urban form solution available.

RESPONSIVE PLANNING UNDER THE NATIONAL POLICY STATEMENT FOR URBAN DEVELOPMENT 2020

74 The submissions of both Christchurch City Council (CCC) and ECan oppose the Plan Changes on the basis that they are inconsistent with the Canterbury Regional Policy Statement (CRPS) and would not give effect to the NPS-UD. This same argument has already been advanced by these parties at PC66, PC67, PC69 and PC73.

75 We note that ECan have come back from their assertions at the PC73 hearing that Map A of the CRPS provides a hard boundary for development which provides an impenetrable barrier to the responsive planning provisions in the NPS-UD. They now appear to accept that if a plan change met the outcomes in Policy 8 of the NPS-UD it would be capable of grant (despite the Map A and the associated avoid policy in the CRPS).

76 **Mr Langman's** evidence states that the Applicant is pursuing these Plan Changes on the basis that the NPS-UD overrides the CRPS. This is not the case. We agree with **Mr Langman** that the two documents are capable of being read together, however, not in the

²⁵ Recommendation of Commissioner Caldwell on PC73 dated 1 March 2022 at [471].

way **Mr Langman** considers they should be. We attach at **Appendix 1** our legal submissions given at previous hearings on this topic.

- 77 CCC and ECan go on, however, to analyse whether the Plan Changes would meet the two tests of the responsive planning framework. We do the same below.

Does the responsive planning framework (Policy 8) NPS-UD apply to these Plan Changes?

- 78 Policy 8 of the NPS-UD reads:

Policy 8: *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.*

- 79 It allows decision makers to enable development that might otherwise not be anticipated, or be out of sequence (as is the case with these Plan Changes) provided the plan change meets two criteria:

79.1 It would add significantly to development capacity; and

79.2 It contributes to well-functioning urban environments.

- 80 CCC and ECan in their submissions consider that neither of the limbs is met for either of the Plan Changes. We consider each of these issues below.

Would the Plan Changes add significantly to development capacity?

- 81 The simple answer is yes. Significance in terms of capacity is not just a matter of how many residential lots will be provided by a particular plan change, although this factor is highly relevant.

- 82 There are a range of factors (absent of any criteria as yet by ECan under clause 3.8(3) NPS-UD) that have been identified as relevant to 'significance' in MfE guidelines, including:²⁶

82.1 Significance of scale and location;

²⁶ <https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-responsive-planning-policies.pdf>

- 82.2 The extent to which the development provides for identified demand;
 - 82.3 Timing of development; and
 - 82.4 Viable options for the funding and financing of required infrastructure.
- 83 Nevertheless, in this case the numbers alone do demonstrate that the Plan Changes would add significantly to development capacity in the context of the housing stock in Rolleston with:
- 83.1 PC81 proposing around 350 lots being around 4.5% of the current housing stock; and
 - 83.2 PC82 proposing around 1,320 lots being around 10% of the current housing stock.
- 84 PC73 also proposes to provide around 2,100 lots and a positive decision on PC81 and PC82 is likely to be influential on the resolution of the PC73 appeal.
- 85 CCC and ECan cite the most recent 2021 Greater Christchurch Housing Capacity Assessment plus the fact that a number of private plan changes in the District having been approved as another reason the Plan Changes do not meet the threshold of adding significant development capacity.
- 86 This is a relevant consideration as Policy 2 of the NPS-UD requires Selwyn District Council to *"at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term."* [emphasis added]
- 87 'Sufficient development capacity' is defined in the NPS-UD as needing to be:²⁷
- 87.1 Plan enabled;²⁸ and

²⁷ Clause 3.2(2) NPS-UD.

²⁸ Further defined in clause 3.4(1) NPS-UD as:

- (a) in relation to the short term, it is on land that is zoned for housing or for business use (as applicable) in an operative district plan
- (b) in relation to the medium term, either paragraph (a) applies, or it is on land that is zoned for housing or for business use (as applicable) in a proposed district plan
- (c) in relation to the long term, either paragraph (b) applies, or 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.

- 87.2 Infrastructure ready;²⁹ and
- 87.3 Feasible and reasonably expected to be realised; and
- 87.4 Meet the expected demand plus the appropriate competitiveness margin.
- 88 We understand CCC and ECan to be saying that the planning documents already provide for (at least) sufficient capacity and therefore no more capacity is required. Whether sufficient capacity is currently provided or not is a relevant factor in decision making under Policy 8, but it does not in and of itself automatically result in further proposed developments not being capable of adding significant development capacity.
- 89 In any case, the evidence of **Mr Colegrave** and **Mr Akehurst** explain in detail why reliance cannot be placed on these capacity assessments and why it is also important to look at what is occurring on the ground to determine what is feasible and reasonably expected to be realised. They also note a lot of the land included in the assessments is not in fact 'plan enabled' as defined in the NPS-UD, including for example the inclusion of FUDAs in the medium term capacity assessments (when FUDAs do not qualify as being 'plan-enabled' for either the short or medium term).³⁰
- 90 The economic evidence:
- 90.1 quite clearly demonstrates that while such assessments can be useful, it is difficult to get them accurate and caution must be applied when placing weight on these alone; and
- 90.2 concludes that it is likely these capacity assessments are overstating capacity in the District, and perhaps significantly so.
- 91 This same evidence was provided to Commissioner Caldwell for PC73 who concluded:
- "What appears to me to be readily apparent is that despite the application of the higher growth scenario in the SCGM, the number of new dwellings has significantly exceeded SDC's predictions. It appears that the model may have been under-estimating demand. This raises a risk of SDC not meeting Policy 2."*³¹

²⁹ Further defined in clause 3.4(3) NPS-UD.

³⁰ Evidence of **Mr Colegrave** at [36].

³¹ Recommendation of Commissioner Caldwell on PC73 dated 1 March 2022 at [373].

*"Overall, I find that in recent times, and notwithstanding the best efforts of SDC, there appears to be insufficient development capacity in Rolleston, together with clear evidence of significant demand."*³²

- 92 With respect to recent plan changes being approved having added significantly already to development capacity in Rolleston:
- 92.1 Many of the recently approved Rolleston plan changes are within the FUDAs and have therefore already been counted (albeit incorrectly for the medium-term) as part of the capacity assessments (and do not in and of themselves therefore increase the capacity numbers dubiously predicted in the model).
- 92.2 Many of the other plan changes are located in other parts of Selwyn (such as Lincoln, Prebbleton, West Melton). While relevant when considering capacity for the District, that is not to say that Rolleston has enough capacity or will stop growing – and the only place it could logically grow is westwards.
- 93 Further, Policy 2 requires 'at least' sufficient development capacity to be provided at all times. The fact that these plan changes might actually assist Selwyn in meeting its sufficient capacity requirement, does not then mean that development capacity beyond this should be precluded.³³
- 94 As evidenced by **Mr Sellars** and **Mr Jones** it is important that land be rezoned regularly to ensure there is enough supply. In fact, an oversupply of capacity is preferred to encourage competition and to let the market determine whether and when land is developed based on demand in order to avoid the same inflation of house prices we experienced last year which is only just now stabilising.
- 95 It is obvious that both of these Plan Changes would add significantly to development capacity. We note Ms White has reached the same conclusion in her Officer's Report.³⁴

Would the Plan Changes contribute to well-functioning urban environments?

- 96 CCC do not consider the Plan Changes would meet this test as they are outside the projected infrastructure boundary and would require the extension of infrastructure outside an area otherwise not planned for (i.e. an area outside Map A of the CRPS).

³² At [375].

³³ As noted in the Officer's Report at [184].

³⁴ Officer's Report at [179].

- 97 With respect, that is the entire purpose of Policy 8 – to enable a pathway for plan changes that meet particular criteria even where they are not anticipated by any planning documents, or are out of sequence. Policy 8 and the responsive planning framework of the NPS-UD would be rendered ineffective if that argument was accepted. It would result in all unanticipated plan changes not meeting the 'well-functioning urban environment' test despite Policy 8 clearly contemplating applying to unanticipated plan changes.
- 98 The CCC also cite the NPS-HPL as being a reason why development might not be appropriate on the PPC81 and PC82 land (and therefore why it would not contribute to a well-functioning urban environment). Yet as set out in the evidence of **Mr Mthamo**, the Plan Change sites contain no soils that would be considered highly productive or versatile under the proposed NPS-HPL. In fact, as discussed above, growth onto these sites is the only possible direction for growth in Rolleston that would not involve development onto versatile soils. If this reasoning has any force, it supports the argument that the only direction for Rolleston growth is the west.
- 99 Both CCC and ECan do not consider the Plan Changes are supported by infrastructure or are well connected along transport corridors.
- 100 Very rarely will a greenfield development have at day one all of the required infrastructure and transport connections that will be needed for a fully implemented development. That is because until that greenfield development is sure to be realised, there is no point in providing these services to that land. The evidence demonstrates that the Plan Changes sites can be serviced appropriately, and will have good connections with the rest of Rolleston, which will inevitably improve over time through the urbanisation of that part of Rolleston (including for the other proposed developments along Dunns Crossing Road). **Ms White** notes that Our Space seeks to direct additional capacity to Rolleston in order to support public transport enhancement opportunities.³⁵
- 101 Based on the evidence, the Plan Changes would contribute to well-functioning urban environments as defined by Policy 1 of the NPS-UD.
- Is a plan change to the CRPS required?***
- 102 CCC (but not ECan) assert in their submission that the proposed Plan Changes if accepted would fail to give effect to the CRPS and therefore a change should be sought to the RPS (i.e. to Map A) either in advance or at the same time of these Plan Changes.
- 103 To assert that unanticipated plan changes should be accompanied by a change to the CRPS would result in an anomaly or absurdity

³⁵ Officer's Report at [172].

and could not have been the intention of the NPS-UD. We note that a private developer has no ability to request a change to the CRPS. Under the RMA, the ability to amend an RPS is limited to a Minister of the Crown or a territorial authority.³⁶

- 104 The evidence of **Mr Langman** covers this issue, yet we note that despite CCC's assertion in this respect, it did not appeal or join the appeal for PC69, despite no accompanying change to the CRPS for that plan change.

CONCLUSION

- 105 The Plan Change applications, 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 adequately by the proposed rules package and amended ODP.

- 106 Further, on the issues which are not agreed with Council officers, we suggest it would be helpful if the Commissioner would consider asking for expert caucusing of the following witnesses:

106.1 **Mr Nicholson, Mr Compton-Moen, and Ms Lauenstein** on the issue of urban form; and

106.2 **Mr Bender, Mr Van Kekem, and Mr Iseli** on the issue of odour and reverse sensitivity effects on the PWTP and the PRRP.

- 107 We are also conscious that while it is the Applicant's case that each of the Plan Changes stand alone on their own merits, independent of whether the PC73 appeal is ultimately resolved and granted, that the Commissioner might be of the mind that grant is only capable should PC73 also proceed.

- 108 This introduces unfortunate circularity as the reasons the Commissioner gave for declining PC73 are now resolved by the Applicant purchasing the PC81 and PC82 land and accelerating these hearings. However, if that were to be a conundrum faced by the Commissioner for this hearing that the fate of the PC73 appeal is unknown, the solution might be to issue an interim decision contingent on Council's approval of PC73, PC81 and PC82 as a package.

Witnesses to appear

- 109 The Applicant calls the following witnesses in support of the Plan Change applications:

³⁶ Resource Management Act 1991, Schedule 1, Part 2, Clause 21.

- 109.1 **Mr Carter** on behalf of the Applicant;
- 109.2 **Mr Sellars** on real estate;
- 109.3 **Mr Jones** on real estate;
- 109.4 **Mr Colegrave** on economics;
- 109.5 **Mr Akehurst** on economics;
- 109.6 **Mr Blackmore** on traffic modelling;
- 109.7 **Mr Fuller** on traffic;
- 109.8 **Mr Taylor** on ecology;
- 109.9 **Mr Van Kekem** on odour;
- 109.10 **Mr Iseli** on odour;
- 109.11 **Mr Compton-Moen** on urban form and landscape;
- 109.12 **Ms Lauenstein** on urban form;
- 109.13 **Mr Farrelly** on greenhouse gas emissions;
- 109.14 **Mr McLeod** on infrastructure and servicing;
- 109.15 **Mr Mthamo** on water supply and versatile soils; and
- 109.16 **Mr Phillips** on planning.

Dated: 7 September 2022



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

APPENDIX 1

- 1 One of the key issues for the Commissioner to decide in the PC73 hearing was whether the plan change can be approved, despite the objective in the CRPS which directs that urban development falling outside of the greenfield priority areas is to be 'avoided' (Objective 6.2.1.3).
- 2 We provide a brief summary timeline of the relevant planning instruments at the end of this appendix for reference.
- 3 The question that is to be asked is how the RPS is to be interpreted in light of the NPS-UD? This is especially so because the RPS contains an "avoid" policy with respect to development outside Map A, yet the later in time, and higher order, NPS-UD contains Objective 6 and Policy 8 which requires a responsive planning approach to out-of-sequence and unanticipated development.
- 4 To answer this question it is helpful at the outset to first cover some basic principles of statutory interpretation especially relating to the hierarchy of planning documents, and the effect of later in time legislation on existing legislation.

Principles of statutory interpretation

- 5 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase.³⁷
- 6 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):³⁸
 - 6.1 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;
 - 6.2 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;
 - 6.3 the interpretation should not prevent the plan from achieving its purpose; and

³⁷ The most fundamental principle of statutory interpretation is contained in section 5(1) of the Interpretation Act 1999: "The meaning of an enactment must be ascertained from its text and in light of its purpose".

³⁸ *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].

- 6.4 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.
- 7 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 (such as is the case here) other principles of statutory interpretation must be considered to help shed light on how a planning document should properly be interpreted. We touch on some of those relevant concepts now.
- 8 It is widely accepted that the RMA provides for a three tiered management system – national, regional and district. This establishes a ‘hierarchy’ of planning documents:³⁹
- 8.1 First, there are documents which are the responsibility of central government. These include National Policy Statements. Policy statements of whatever type state objectives and policies, which must be “given effect to” in lower order planning documents.
- 8.2 Second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans.
- 8.3 Third, there are documents which are the responsibility of territorial authorities, specifically district plans.
- 9 Therefore, subordinate planning documents, such as a regional policy statement, must give effect to National Policy Statements. This is expressly provided in section 62(3) of the RMA. The Supreme Court has held that the “give effect to” requirement is a strong directive⁴⁰ and that the notion that decision makers are entitled to decline to implement aspects of a National Policy Statement if they consider that appropriate does not fit readily into the hierarchical scheme of the RMA.⁴¹ The requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.⁴²
- 10 Where there is an apparent inconsistency between two documents, particularly where one is a higher order document, the Courts will

³⁹ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [10]-[11].

⁴⁰ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [80].

⁴¹ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [90].

⁴² *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [91].

first seek to reconcile this inconsistency and allow the two provisions to stand together.⁴³

- 11 Where two provisions are totally inconsistent (such that they cannot be reconciled in a way that they can be read together), then it is appropriate to look to the doctrine of implied repeal. The doctrine of implied repeal provides that a provision that is later in time, impliedly repeals the earlier provision. It is a doctrine of last resort and should only be applied where all attempts at reconciliation fail.⁴⁴

The potential inconsistency in the RPS and the NPS-UD

- 12 The potential inconsistency is between Objective 6.2.1.3 of the RPS and Objective 6 and Policy 8 (and relevant clauses) of the NPS-UD.

- 13 Objective 6.2.1.3 of the RPS provides:

Recover, rebuilding and development are enabled in Greater Christchurch through a land use and infrastructure framework that: [...]

3. *avoids urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS;*

- 14 It has been decided by case law in relation to some RMA planning documents, that the ordinary meaning of the word 'avoid' means "not allow" or "prevent the occurrence of".⁴⁵ Therefore read literally, the objective provides that decision makers must not allow urban development outside of existing urban areas or the greenfield priority areas identified in Map A.

- 15 However adopting this interpretation of the RPS would not reconcile the RPS with Policy 8 of the NPS-UD and would lead to the type of problems identified by the Court in *Powell*. Namely, the interpretation would be contrary to the very purpose of Policy 8, would prevent the NPS-UD from achieving its purpose and would interpret the word "avoid" in a vacuum and outside the context of reading the RPS and the NPS-UD together.

- 16 Policy 8 provides that:

Policy 8: *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to*

⁴³ *R v Taylor* [2009] 1 NZLR 654.

⁴⁴ *Taylor v Attorney-General* [2014] NZHC 2225; *Kutner v Phillips* [1891] 2 QB 267 (QB).

⁴⁵ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [93].

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.*

- 17 A rigid interpretation of the word “avoid” in the RPS inherently prevents local authorities from being responsive in the way required by the NPS-UD, as it prevents them from even considering the merits of a plan change that might otherwise add significantly to development capacity and contribute to well-functioning urban environments (the criteria for Policy 8 NPS-UD) where these fall outside of greenfield priority areas.
- 18 The requirement of the NPS-UD, that local authorities be responsive to development capacity meeting certain criteria even if it is unanticipated or out-of-sequence is clearly intended to target exactly this type of objective in the RPS and to say that the “avoid” policy in the RPS prevents all developments that fall outside Map A would to act in a manner contrary to the specific direction in Policy 8.
- 19 This is further affirmed by the Ministry for the Environment’s guide on understanding and implementing the responsive planning policies (the *MfE Guide*) which states that:

“Objective 6(c) recognises local authorities cannot predict the location or timing of all possible opportunities for urban development. It therefore directs local authorities to be responsive to significant development opportunities when they are proposed. [...]”

Expected outcomes

The responsive planning policy in the NPS-UD limits a local authority’s ability to refuse certain private plan-change requests without considering evidence. This is because Policy 8 requires local authorities to make responsive decisions where these affect urban environments. Implementing this policy is expected to result in more plan-change proposals being progressed where they meet the specified criteria (see section on criteria below). This will likely lead to proposals being brought forward for development in greenfield (land previously undeveloped) and brownfield (existing urban land) locations, which council planning documents have not identified as growth areas. [...]”

Local authorities may choose to identify in RMA plans and future development strategies where they intend:

- *development to occur*
- *urban services and infrastructure to be provided.*

The identified areas must give effect to the responsive planning policies in the NPS-UD and therefore should not represent an immovable line. Council policies, including those in regional policy statements relating to out-of-sequence development, will need to be reviewed and, in some cases, amended to reflect the responsive planning policies of the NPS-UD. [emphasis added]

Reconciling the inconsistency

- 20 It will be necessary, as a matter of interpretation, to attempt to try and reconcile the inconsistency between the two documents. If that is not possible the NPS-UD as the later in time document, and the higher order document, will have impliedly repealed (or amended) the meaning of "avoid" in the RPS.
- 21 Implied repeal of the objective in the RPS should be a last resort, and we submit there is therefore a way the two documents can be reconciled and read together as the Courts expect those interpreting legislation to do.
- 22 In this context, we consider it highly relevant that:
- 22.1 The NPS-UD provides a clear national level direction to enable development capacity and is therefore a higher order document than the RPS in terms of the resource management hierarchy; and
- 22.2 The NPS-UD is the most recent in time planning document. While PC1 to the RPS did in part give effect to the NPS-UD this was not in relation to Policy 8 where it was noted more work would be required to give full effect to the responsive planning framework established by the NPS-UD (as discussed earlier).
- 23 In light of this, it is appropriate to 'read down' or 'soften' the interpretation of 'avoid' in the RPS to give effect to the NPS-UD (at least until such time as the RPS gives full effect to the NPS-UD, which we consider would require an amendment to this objective in the RPS). This would be 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.

- 24 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...*”
- 25 Further, the NPS-UD requires local authorities to give effect to it “*as soon as practicable*”.⁴⁶ This interpretation of the RPS in light of the NPS-UD requires the Selwyn District Council to give effect to Objective 6 and Policy 8 even though the RPS does not yet. This is appropriate given the likelihood that an amendment to the RPS is unlikely to occur for some time now.
- 26 Finally, we note that clause 3.8(3) of the NPS-UD requires that regional councils are to include criteria in their RPSs for determining what plan changes will be treated, for the purpose of implementing Policy 8, as “adding significantly to development capacity”. This criteria has not yet been added to the RPS and we would expect this to also be covered in ECan’s intended review of the RPS which may not be until 2024.
- 27 Nevertheless the criteria is not required for local authorities to give effect to Policy 8 in the interim (i.e. in the absence of such criteria) and until such criteria is provided, it is appropriate for a decision maker to consider whether a particular plan change would add significantly to development capacity on a case by case basis. This will necessarily involve hearing evidence on that topic from applicants and individual submitters.
- 28 It cannot have been the intention of the NPS-UD which requires Councils to give effect to its provisions “as soon as practicable” to wait until an RPS develops criteria in some years’ time. That interpretation would be an absurdity and contrary to the plain meaning of the words. Given the amount of time it took ECan to amend their RPS to be consistent with the NPS-UDC (i.e. after the NPS-UD had been implemented), this is too long for the District Council to wait in order to fulfil its obligations under the NPS-UD to act as soon as practicable particularly in the case of a Council who is in the process of reviewing its District Plan and who is facing rezoning requests from submitters.
- 29 Selwyn District Council would not be giving effect to the NPS-UD ‘as soon as practicable’ if it was to wait for ECan to develop this criteria and in the meantime to refuse to consider requests for rezoning which on the basis of evidence produced adds significantly to development capacity.
- 30 We provided the following legal submissions in response to the CCC and ECan view of this issue:

⁴⁶ NPS-UD, clause 4.1(1).

30.1 While we accept that the CRPS as amended by PC1 does to some extent give effect to the NPS-UD. But this is at most 'partial effect':

- (a) The scope of PC1 was restricted to only include additional land identified in the Our Space 2018-2048 process, initiated under the previous National Policy Statement on Urban Development Capacity 2016 (*NPS-UDC*).
- (b) Given the NPS-UDC required local authorities only to determine the 'sufficient development capacity' required in the short, medium, and long term, the CRPS (as amended by PC1) could only ever identify the minimum amount of development capacity that is required to be enabled by the NPS-UD. Noting that the NPS-UD now requires 'at least' sufficient development capacity to be provided for.
- (c) The Report prepared by ECan itself to the Minister on PC1 expressly recognise that:⁴⁷
 - (i) the purpose of PC1 is not to identify any additional areas appropriate for future rezoning;
 - (ii) the purpose of PC1 is to give effect to Policy 2 and clause 3.7 of the NPS-UD and that therefore this would give effect to the NPS-UD "in part";
 - (iii) PC1 does not purport to give full effect to the NPS-UD given the scope of PC1 under the streamlined planning process;
 - (iv) further changes to the CRPS would be required in order to fully give effect to the NPS-UD (including the introduction of the criteria required under clause 3.8 NPS-UD);
 - (v) further work to the CRPS is currently being undertaken and in the meantime, any plan change requests will need to be considered in light of the NPS-UD.

30.2 Our legal interpretation does not rely on Policy 8 of the NPS-UD having any particular elevated significance over the other objectives and policies in the NPS-UD. All other objectives and policies in the NPS-UD will be relevant in the context of

⁴⁷ Report to the Minister for the Environment on Proposed Change 1 to Chapter 6 of the CRPC, March 2021.

whether a particular plan change achieves the purpose of the NPS-UD and to which it would be appropriate to apply the responsive planning framework to. For example, we consider it unlikely, if not impossible, that there would ever be a situation where a plan change meets the tests in Policy 8, but is contrary or inconsistent with Objective 6. We consider PC73 is also consistent with Objective 6.

- 30.3 We reject the notion that a 'hard line' approach to urban growth may be warranted under the NPS-UD. This is particularly so when the MfE Fact Sheet on responsive planning expressly states that "*a hard rural urban boundary without the ability to consider change or movement of that boundary would not meet the requirements of the responsive planning policy.*"
- 30.4 As such, there is an inconsistency or a tension between the CRPS and the NPS-UD which must be resolved in order to meet the requirement to give effect to both of these documents in section 75(3) of the RMA. Our interpretation above, sets out the most appropriate way to reconcile this inconsistency in the way intended by the NPS-UD, being the document that came later in time.
- 30.5 Nowhere in the NPS-UD does it require that responsive planning be undertaken "in a manner that complements existing strategic planning". And it is not clear how or why CCC and ECan would read this requirement into the NPS, when the NPS-UD is clearly trying to do the opposite.
- 30.6 To assert that plan changes falling outside of the PIB should be accompanied by a change to the CRPS is absurd and could not have been the intention of the NPS-UD. We note that a private developer has no ability to request a change to the CRPS. Under the RMA, the ability to amend an RPS is limited to a Minister of the Crown or a territorial authority.⁴⁸ This interpretation therefore does not provide an accessible method or solution for reconciling the CRPS with the need to be responsive those plan changes anticipated under Policy 8. Further, the NPS-UD itself requires regional councils to amend their regional policy statements to give effects to the NPS-UD.
- 30.7 CCC and ECan appear to completely ignore the fact that the NPS-UD is a later in time, higher order document.
- 31 We understand CCC and ECan are also concerned about precedent and cumulative effects of our interpretation of these planning documents. We do not really see this as an issue as ultimately, any

⁴⁸ Clause 21, Schedule 1, Part 2 Resource Management Act 1991.

decision under the responsive planning framework in the NPS-UD must meet the tests in the NPS-UD. Not every ad hoc application outside of the PIB is guaranteed to be granted under Policy 8. All applications will still be subject to a high level of scrutiny on a case by case basis and dependent on evidence as to:

31.1 Whether it adds significantly to development capacity;

31.2 Contributes to a well-functioning environment; and

31.3 Is otherwise consistent with the rest of the NPS-UD and other planning documents (i.e. as these might be amended by the NPS-UD).

32 It is therefore entirely appropriate to consider this proposal under the responsive planning framework in the NPS-UD.

The urban environment to be considered

33 **Mr Langman**, in his evidence, considers that development capacity must be assessed with relation to Greater Christchurch as the 'urban environment'.

34 We do not agree with **Mr Langman** that the significance of a development should be considered as against the Greater Christchurch urban environment only.

35 An urban environment is defined so broadly in the NPS-UD that it can encompass a number of varying and overlapping urban environments. For example, in this context, we consider the urban environments of Rolleston, Selwyn, and Greater Christchurch to be of most relevance.

TIMELINE OF THE RELEVANT PLANNING INSTRUMENTS

Document	Time of implementation	Comments
Land Use Recovery Plan (<i>LURP</i>) ⁴⁹	Took effect in December 2013 .	A regional planning document prepared under Canterbury Earthquake Recovery Act 2011. It puts land use policies and rules in place to assist the rebuilding and recovery of communities (including housing and

⁴⁹ <https://dpmc.govt.nz/our-programmes/greater-christchurch-recovery-and-regeneration/recovery-and-regeneration-plans/land-use-recovery-plan>

Document	Time of implementation	Comments
		<p>businesses) disrupted by the Canterbury Earthquakes.</p> <p>Of most relevance, however, it amended the RPS to include Chapter 6 (Recovery and rebuilding of Greater Christchurch) and identified 'greenfield priority areas'.</p> <p>The LURP introduced the first iteration of what we know as 'Map A' into the RPS.</p>
National Policy Statement on Urban Development Capacity (NPS-UDC) ⁵⁰	Took effect in December 2016.	<p>The purpose of the NPS-UDC was to ensure that councils enabled development capacity for housing and businesses (through their land-use planning infrastructure) so that urban areas could grow and change in response to the needs of their communities.</p> <p>The emphasis of the NPS-UDC was to direct councils to "provide sufficient development capacity and enable development to meet demand in the short, medium, and long term."⁵¹</p>
Our Space 2018-2048: Greater Christchurch Settlement Pattern Update (Our Space) ⁵²	Final report endorsed by the Greater Christchurch Partnership in June 2019.	<p>This document was expressly prepared to give effect to the NPS-UDC in Greater Christchurch and in particular the provision of "sufficient development capacity". Our Space identified that housing development capacity in Selwyn and Waimakariri is potentially not sufficient to meet demand over the medium and long term (10 to 30 years).</p> <p>It was intended that this document then form the basis of changes to Regional and District Planning documents to give effect to the NPS-UDC in a planned and collaborative way across Greater Christchurch.</p>

⁵⁰

https://environment.govt.nz/assets/Publications/Files/National_Policy_Statement_on_Urban_Development_Capacity_2016-final.pdf

⁵¹

Refer for example OA2, PA1, PC1, PC3, PC4 of the NPS-UDC.

⁵²

<https://greaterchristchurch.org.nz/assets/Documents/greaterchristchurch/Our-Space-final/Our-Space-2018-2048-WEB.pdf>

Document	Time of implementation	Comments
		<p>Our Space proposed that Map A of the RPS be amended to include 'Future Development Areas' which would give effect to the NPS-UDC.</p> <p>We note that the Our Space Map A contains a note at the bottom which provides: "<i>While it is intended Our Space provides some direction to inform future RMA processes, [this map] is indicative only.</i>"</p>
National Policy Statement on Urban Development (NPS-UD) ⁵³	Took effect in August 2020.	<p>This national policy statement replaced the previous NPS-UDC.</p> <p>Of particular relevance is the following change in the direction to councils to "<i>at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.</i>"⁵⁴</p> <p>It also introduced a range of policies and objectives not even contemplated in the NPS-UDC. Of particular note is Objective 6 and Policy 8 (which we consider in more detail below).</p>
Plan Change 1 to Chapter 6 of the RPS (PC1) ⁵⁵	PC1 made operative July 2021.	<p>PC1 was approved by the Minister for the Environment (the <i>Minister</i>) under the Streamlined Planning Process (which we explain in more detail in paragraphs 5-23 below).</p> <p>PC1 effectively amends the RPS to include in Map A the Future Development Areas identified in Our Space. Map A as contained in Our Space and PC1 are identical. It also introduced new objectives and policies around the new future development areas.</p>

⁵³ <https://environment.govt.nz/assets/Publications/Files/AA-Gazetted-NPSUD-17.07.2020-pdf.pdf>

⁵⁴ Refer Policy 2, Clause 3.2, Clause 3.3, Clause 3.11, Clause 3.13 of the NPS-UD.

⁵⁵ <https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-regional-policy-statement/change-chapter-6/>

Document	Time of implementation	Comments
		PC1 does not fully give effect to the NPS-UD as it includes only the Future Development Areas from Our Space which only gave effect to the NPS-UDC.