

SELWYN DISTRICT COUNCIL

HEARING OF PROPOSED PLAN CHANGES 81 AND 82

ROLLESTON INDUSTRIAL DEVELOPMENTS LIMITED (PC 81)

AND

BROOKSIDE ROAD RESIDENTIAL LIMITED (PC 82)

**Report and recommendations by Hearing Commissioner Paul
Thomas**

27 January 2023

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ANNEXURES

- 1. Plan Change 81: Recommendations on Submissions.**
- 2. Plan Change 82: Recommendations on Submissions.**

SUBJECT TO COUNCIL DECISION

1. INTRODUCTION

1.1 PROCEEDINGS

- 1 Pursuant to instructions from the Selwyn District (SDC) I was appointed as the sole Hearing Commissioner to hear and consider Proposed Plan Changes 81 and 82 (PC 81 and 82). As such I am required to recommend to the Council decisions on whether the proposed plan changes should be declined, approved or approved with modifications and consequent on that to recommend decisions on submissions to the Plan Changes.
- 2 The reason these two plan changes have been heard together is because the proponents now have common ownership and the land involved is in the same general location on the west side of Rolleston. There are, therefore, interrelationships between them and efficiencies in hearing submissions in a single combined hearing.
- 3 For that purpose, I conducted a hearing of the details of these Plan Changes and related submissions. Directions regarding the exchange of evidence and conduct of the hearing were issued to all parties on 14th July 2022. The hearing commenced at Te Ara Ātea on Monday 12th September 2022 and continued during Tuesday 13th September adjourning at 5.00 pm on that day.
- 4 For the record, prior to the hearing, I issued Minute 2 amending the deadline for filing submitter expert evidence because of a short delay in making the requestors evidence available.
- 5 At the hearing adjournment I indicated that I would issue a further minute addressing further information requested, a request for expert conferencing on urban design matters and any other matters to be addressed in reply. Minute 3 was issued on 20th September 2022.
- 6 The hearing, after some approved time extensions recorded in Minutes 4 and 5, resumed to address the matters set out in Minute 3 on 5th November 2022. On that day I also undertook an additional site visit to the Pines Resource Recovery Park and Pines Wastewater Treatment Plant.
- 7 A final reply was received in writing on 9th December. After reviewing that material, I formally closed the hearing on 12th December by way of Minute 6.
- 8 In preparing this report I have chosen not to specifically record all of the evidence received, nor do I record an analysis of all of the evidence. The report however does consider all the relevant evidence for each principal issue and any other areas where changes to the provisions have been proposed.

1.2 THE PROPOSED PLAN CHANGES

- 9 PC 81 essentially seeks to enable the coordinated residential development of an area of 28.4 hectares located on the northwest corner of the intersection of Dunns Crossing, Selwyn and Goulds Roads. The site is rectangular in shape, generally flat with shelter belts and pasture. There is a water race in the centre of the site which terminates in a soak pit near Selwyn Road.
- 10 The PC 82 site is larger at 109.8 hectares located on the southwest corner of the intersection of Dunns Crossing and Brookside Roads, extending west to the intersection of Edwards Road.
- 11 Both Plan Changes seek to rezone the land from Rural (Outer Plains) Zone to Living MD Zone. PC 82 also includes two areas of Business 1 zoning, one located at the intersection of Brookside Road and Dunns Crossing Road and the other more central to the development area.
- 12 The s42A report notes that the Living MD Zone is one that does not yet exist in the Operative District Plan. It has been developed by Council to give effect to the requirements of the Resource Management (Enabling Housing Supply and other Matters) Amendment Act. It is therefore an iteration of the existing Living Z zone amended to comply with the new Medium Density Residential Standards imposed by the RMA Amendment Act.
- 13 The Zone is proposed to provide for density of 400 m² lots with 3 residential units per site in accordance with the Medium Density Residential Standards.
- 14 Incorporating this zone into the Plan includes:
- a Living MD Zone Description,
 - new objective B3.4.7,
 - new policies B3.4.9A, B3.4.27A, B and C.
 - new Objective B4.1.3
 - New Policy B4.1.14
- 15 Other plan provision changes proposed are:
- Addition to Policy B4.3.77 setting out in text the important features of each Outline Development Plan (ODP).
 - The Skellerup South Outline Development Plan
 - Specific matters of discretion for subdivision in the Skellerup South Block relating to school provision, infrastructure and connectivity, boundary

treatments, and an Integrated Transport Assessment (ITA) where more than 350 residential units.

- 16 The provisions for PC 82, known as Brookside, similarly have a policy setting out the key design principles, amendment to permitted activity rule 4.9.39 to control land use within the odour constrained area identified on the ODP Plan, along with a partner non complying activity rule 4.9.58.
- 17 Also for PC 82:
- amendment to subdivision rule 12.1.3.50 requiring a consent notice on subdivision preventing dwelling occupation prior to three specified intersection or road upgrades
 - no allotments within 1500 m of the Pines Wastewater Treatment Plan buildings prior to plant expansion authorisations or a specified date.
 - Brookside matters of discretion similar to that for the Skellerup South Block with the ITA relating to 1320 residential units and management of the odour constrained area.

1.3 SUBMISSIONS

- 18 Both PC 81 and 82 were publicly notified on 6th April 2022 with submissions closing on 9th May 2022. Eight submissions were received on PC 81 and 16 on PC 82 with one late submission on each Plan Change. These were notified for further submissions on 8th June 2022. No further submissions were received.
- 19 The section 42A report was prepared by Ms Elizabeth (Liz) White, an independent planning consultant. She identified the key matters to be addressed arising from submissions and from assessing the Plan Change to include:
- (a) Traffic Effects
 - (b) Servicing
 - (c) Effects on community facilities
 - (d) Soils
 - (e) Environmental quality
 - (f) Reverse sensitivity
 - (g) The form of urban growth
 - (h) Geotechnical and ecological considerations

- (i) Other matters

2. RELEVANT STATUTORY CONSIDERATIONS AND RELATED LEGAL ISSUES

20 The relevant statutory consideration that I must consider in making my recommendations were considered in the section 42A report, the opening submission for the proponents and the submissions for Canterbury Regional Council / Christchurch City Council. In Greater Christchurch the statutory considerations have been extended by plans prepared under Canterbury Earthquake Recovery Act (CER Act), in this case principally being the Land Use Recovery Plan.

21 A summary of the matters required to be considered in *Long Bay – Okura Great Park Soc Inc v North Shore City Council* (A078/08) was updated in *Colonial Vineyard v Marlborough District Council* (NZEnvC 55) as follows:

22 **A General Requirements**

1. *A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.*
2. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.*
3. *When preparing its district plan (change) the territorial authority shall:*
 - a. *Have regard to any proposed regional policy statement;*
 - b. *Give effect to any regional policy statement.*
4. *When preparing its district plan (change) the territorial authority must also:*
 - a. *Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations, and to consistency with plans and proposed plans of adjacent territorial local authorities.*
 - b. *Take into account any relevant planning document recognised by an iwi authority, and*
 - c. *Not have regard to trade competition*
5. *A district plan (change) must state its objectives, policies and rules (if any) and may state other matters.*

B Objectives [the section 32 test for objectives].

6. *Each proposed objective in a District Plan (change) is to be evaluated by the*

extent to which it is the most appropriate way to achieve the purpose of the Act.

C Policies and methods (including rules) [the section 32 test for policies and rules]

7. *The policies are to implement the objectives, and the rules (if any) are to implement the policies.*
8. *The provisions of the proposal are to be examined, and quantified if practicable, assessing their efficiency and effectiveness, against reasonably practicable options for achieving the objective taking into account:*
 - a. *The benefits and costs of the environmental, economic, social and cultural effects anticipated from the provisions, including economic growth and employment; and*
 - b. *The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

D Rules

9. *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.*

23 Section 32AA also requires me to undertake further evaluation in the event that I recommend changes to the content of the Plan Changes.

24 Mr Rogers for the Council helpfully provided a background memorandum on the Private plan change process leading up to this hearing. In this regard it is important that I check that the process has met the requirements of the Act so there is no legal doubt about my jurisdiction to make a recommendation.

25 The memorandum focusses on Clause 26 of the First Schedule. Mr Rogers confirmed that Clause 26 is procedural and does not include a merits assessment of a plan change. Clause 26 essentially requires that having accepted a plan change as a private plan change under Clause 25, the local authority is then required to prepare the plan change in consultation with the person who made the request and notify the plan change within 4 months of deciding to accept the request. At para 19 Mr Rogers states:

26 19 “Preparing the change for notification in consultation with the proponent who made the request for the change includes Council ensuring what is contained within the change and how the change impacts on the operative plan is accurate and suitable.

20 *Clause 26 by providing a 4 month timeframe acknowledges the consultation and the task can take some time because ensuring the plan change provisions fit with the operative plan change provisions (sic) can be time consuming.*

21 *Indeed, the plan change may have impact on many provisions spread through a range of chapters or sections of an operative plan. Council knows its operative plan and is responsible to (sic) administer it. So to have Council 'prepare the change' as explained above makes sense. As well Council has the role to ensure taking into account the plan change that the operative plan remains consistent."*¹

- 27 In answering the question did Council undertake a Clause 26 step? Mr Rogers at paras 33/34 relies on the requests for further information and incorporation of the MDRS into the plan change request. However, this occurred prior to the Clause 25 consideration of the requests. This, therefore, relates to Clauses 23 and 24 which gives the local authority power to require further information and to modify the request in response to that information with the agreement of the requestor.
- 28 While these are two separate procedural steps, it is arguable that the purposes overlap and that, in addition to determining a recommendation under Clause 25, this can reasonably extend to ensuring a plan change request is in a suitable form to proceed to notification depending on the Clause 25 decision.
- 29 Both Mr Rogers and Ms Appleyard consider that this is what occurred in this case and they both agree that the requirements of the Act have in this case been met. This was addressed in Ms Appleyard's closing Legal Submissions dated 5th December where she states at para 7.3 that *"prior to notification the Council engaged and consulted with the Applicant to ensure it had the appropriate information required for notification of the Plan Changes"*.
- 30 I am satisfied that, in this case, the Council did turn its mind to fitting the plan change into the Operative Plan even if this was at the pre Clause 25 stage. However, that then begs the question whether it is actually lawful to notify a plan change request or should it be a proposed plan change prepared in accordance with a plan change request. Mr Rogers says at para 6 of the memorandum *"Clause 26, properly interpreted, relates to the preparation of the plan change for the purpose of notifying the plan change as distinct from preparing the plan change itself."*
- 31 The public notices for these plan changes however both refer expressly to notification of a private plan change request, as opposed to a plan change prepared following a plan change request.
- 32 This was discussed further with Mr Rogers when he appeared on 5th December and he confirmed that he was satisfied that the process adopted was in accordance with

¹ Para 19 Memorandum of Mr Rogers Adderley Head 17 August 2022.

the First Schedule requirements. Ms Appleyard agrees with that position.

33 While I have some concerns about the language used in the public notification, I am conscious that the process adopted for the recent plethora of private plan changes considered by the Council has been consistent with the approach in this case and has not previously been challenged. Mr Rogers noted that there is little in the way of case law that assists. This is surprising given these provisions have been in place for over 30 years. This hearing also comes at a time when the Natural and Built Environments Bill has just been released for public submissions and is expected to put in place a wholly different set of Plan making procedures.

34 Given this context, I accept the submissions of Mr Rogers and Ms Appleyard that the procedure adopted by the Council does not prevent me from making recommendation on the plan change requests.

3. THE HEARING

35 I do not intend to summarise all the evidence presented to the hearing in this recommendation report. Instead, I will analyse the evidence presented under each of the Principal Issues. The section below does, however, record the witnesses who appeared at the hearing. Expert evidence which had been made available to all parties in accordance with the hearing directions was taken as read. Witnesses presented a summary of the evidence and supplementary material at the hearing. In accordance with Minute 1 the Plan Change proponents being the Rolleston Industrial Developments Ltd and Brookside Road Residential Ltd appeared first, followed by submitters, and then the Council s42A report witnesses.

36 The full order of appearance was as follows:

For the proponent:

- Opening legal submissions from Ms Jo Appleyard
- Company evidence of Mr Tim Carter
- Evidence of Mr Gary Sellars on valuation.
- Evidence of Mr Chris Jones on the real estate market.
- Evidence of Mr Fraser Colegrave on economics
- Evidence of Mr Greg Akehurst on economics.
- Evidence of Mr Chris Blackmore on traffic modelling.
- Evidence of Mr Nick Fuller on transport.
- Evidence of Mr Mark Taylor on ecology.
- Evidence of Mr Donovan van Kekem on odour.

- Evidence of Mr John Iseli on odour
- Evidence of Mr David Compton Moen on urban design and landscape
- Evidence of Ms Nicole Lauenstein on Urban Design.
- Evidence of Mr Paul Farrelly on greenhouse gas emissions
- Evidence of Mr Tim McLeod on Infrastructure
- Evidence of Mr Victor Mthamo on water supply and versatile soils
- Evidence of Mr Jeremy Phillips on Planning.

37 Submitters Malcolm and Jan Douglas

38 For Canterbury Regional Council and Christchurch City Council.

- Legal submissions from Mr Mike Wakefield by Zoom
- Evidence of Mr Marcus Langman by Zoom.

39 For Selwyn District Council

- Evidence of Mr Matt Collins on traffic.
- Evidence of Mr Andrew Curtis on odour.
- Evidence of Mr Andrew Boyd on the Pines Resource Recovery Park.
- Evidence of Mr Hugh Nicholson on urban design
- Evidence of Mr Murray England on infrastructure.
- Evidence of Ms Liz White on Planning.

40 When the hearing reconvened on 5th December there were further appearances from a number of experts. In addition, Mr Ben Baird from Selwyn District Council appeared as did Councils legal adviser Mr Paul Rogers.

4. THE PLANNING CONTEXT

41 The planning context of this proposed plan change is somewhat complex and consequently I will outline some parts of the jigsaw in this section before addressing in more detail the issues that arise in the principal issues sections below.

42 Firstly, it is important to stress that this is a proposed change to the Operative Selwyn District Plan. This is being pursued at the same time that the review of the District Plan is progressing, in the form of the Proposed District Plan, through its

process of hearing submissions to the Proposed District Plan. The Proposed District Plan will replace the current Operative Plan at the conclusion of that process. If these Plan Changes are approved, they will, therefore, have a short lifespan unless carried through into the Proposed District Plan.

- 43 The sites are not proposed in the Proposed District Plan to be zoned residential. The proponents are, therefore, in parallel with this process, pursuing submissions to the same effect through the Proposed District Plan process. The hearings on the Proposed District Plan are now well advanced. However, there is now also need to hold hearings into submissions on Variation 1 to the Proposed District Plan before issuing decisions. The hearing of submissions seeking a change of zoning including the land areas associated with PC 81 and 82 is scheduled to be held in the week of 30th January 2023.
- 44 Those decisions will be made by the District Plan Review Hearing Panel quite independently from this hearing process. It is intended that all decisions on submissions are notified at the same time including Variation 1 which has a statutory deadline in August 2023.
- 45 There are currently a number of other private plan changes being pursued through similar processes at this time. The Resource Management Act (Enabling Housing Supply and Other Matters) Amendment Act (RMA-EHS) requires that those Plan Changes that had been publicly notified before the commencement date of the RMA-EHS be amended to incorporate the MDRS and notified at the same time as the IPI. Hence Variation 1 includes amended versions of PC 71, PC 75, PC 76, PC78 at Rolleston, PC 68 and PC 72 at Prebbleton and PC 69 at Lincoln.
- 46 Plan Changes 75, 76 and 78 are all approved plan changes that are now operative in the operative District Plan. Plan Change 71 was approved by Council but is subject to appeal, and Plan Change 73 was declined by Council and is subject to appeal by the proponent.
- 47 The Skellerup North Block part of Plan Change 73 is, as will be detailed later in this report, important to both Plan Change 81 and Plan Change 82 as it is located directly between these two areas and adjoins both. I was told that there had been Court directed mediation on the appeal but at the point of closing the hearing there was no resolution to the appeal.
- 48 As stated above, decisions on the Proposed District Plan including Variation 1 are expected to be notified in mid 2023. District Plans are required to be reviewed on a ten yearly basis, although in practice this is rarely achieved. In terms of the National Policy Statement on Urban Development this lines up with requirements to provide for short and medium term development capacity. Short term is defined as within

the next three years. In this context the life of the existing operative plan is at a minimum 6 months and at maximum 12 – 18 months.

- 49 The Regional Planning Context is also important. Mr Langman's evidence details the history of this context. The Canterbury Regional Policy Statement (CRPS) includes a Chapter on Recovery and Rebuilding of Greater Christchurch which was included in the CRPS through the Land Use Recovery Plan (LURP). Unlike most Regional Policy Statements, this included policies to give effect to a particular urban form identifying the location and extent of growth areas to support recovery. The growth areas are called Greenfield Priority Areas for Residential and Business. This drew on the previous Urban Development Strategy (UDS) prepared as far back as 2007. The growth areas are shown on Map A of the CRPS. Alongside this, is a policy framework that seeks to avoid urban development outside of the identified locations on Map A.
- 50 These growth areas are all now largely developed. Following the release of the National Policy Statement on Urban Development Capacity a review of the land use framework for Greater Christchurch was undertaken and a report published in July 2019 called *"Our Space 2018-2048 Greater Christchurch Settlement Pattern Update"*.
- 51 This recommended that additional greenfield growth land, called Future Development Areas (FDAs), be released in Rolleston, Rangiora and Kaiapoi to meet medium term needs. This then led to Change 1 to the CRPS which incorporated the necessary changes including identifying the FDAs on Map A. This plan change to the CRPS was processed through the Streamlined Planning Process and approved by the Minister for the Environment. Two FDAs were identified at Rolleston and Plan Changes or other consent mechanisms have been advanced for both of these areas.
- 52 During this period the National Policy Statement on Urban Development Capacity was replaced with the National Policy Statement on Urban Development 2020 (NPS UD). The provisions of the NPS UD are highly relevant to this matter and will be discussed in detail later. However, at this point it is important to reference Policy 8 which requires *"local authority decisions to be responsive to plan changes that would add significantly to development capacity and contribute to well functioning urban environment, even if the development capacity is:*
- (a) *Unanticipated by RMA planning documents; or*
 - (b) *Out of sequence with planned land release. "*²
- 53 It is, at least in part, the existence of this policy that has triggered the multiple private plan changes in Selwyn District as it is seen as providing a pathway for

² Policy 8 NPS UD 2020

proposals beyond that identified on the CRPS Map A. This pathway exists specifically for plan changes, arguably to a greater degree than through the process of the District Plan Review. However, in discussion at the hearing Ms Appleyard stated clearly that she did not consider that the CRPS was a bar to zoning additional land through the Proposed District Plan and the principal reasons why this matter was being pursued through a change to the Operative District Plan was one of “urgency” in terms of need for additional development capacity in Rolleston.

- 54 For completeness the other recent context change in terms of development capacity is the RMA-EHS referred to in para 44 above. This directs changes to District Plans of Tier 1 authorities including Selwyn to enable medium density residential development in existing residential zones. As stated above, this is being implemented through Variation 1 to the Proposed District Plan and those provisions have been mirrored in changes to the Operative District Plan specifically for Plan Changes 81 and 82. This has implications for housing supply which is considered later in this report.
- 55 In relation to the Proposed District Plan and Variation 1, Ms Appleyard, in her closing legal submissions, stated *“We emphasise that while those other processes are relevant to the wider context of these Plan Changes, they do not in any way impede the Commissioners’ ability to decide whether these Plan Changes should be approved on their merits.”*³ I accept that is correct, but this must also sit alongside the limited remaining life of the current Operative District Plan.

5 THE SCOPE OF THE PRINCIPAL ISSUES

- 56 There are a range of Principal Issues extending from site specific development planning matters, reverse sensitivity and the content of the Outline Development Plans, through to the more strategic planning issues at a regional level. I have determined that, in this case, an appropriate approach for addressing the principal issues is to start with the demand and development capacity justification before addressing the development constraints, reverse sensitivity and urban design issues. I will then consider the wider Regional and National higher order documents before focussing on the section 32 evaluation requirements.

6. HOUSING CAPACITY AND DEMAND

- 57 Expert evidence on housing capacity and demand was given by Mr Sellers, Mr Jones and Mr Colegrave. Mr Sellars evidence is that the property market in Greater Christchurch has experienced a significant increase in demand between 2020 and 2022. However, the recent increases in interest rates have resulted in market

³ Para 18 Closing Legal Submissions on behalf of the Applicants.

correction and a drop in market confidence. An average of 485 sales per annum for the period 2014 to 2018 then increased to 1191 sales in 2020. Residential section sale price has similarly reflected demand resulting in 100%-145% growth in 2020-2021.

- 58 In his assessment up until early 2022 the supply of vacant residential land had failed to keep pace with the level of demand with limited choice and uncompetitive market practices by vendors. However more recently conditions have changed which Mr Sellars described as *“marketability poor for all but titles lots.”*⁴ However, he considers this to be a temporary hiatus unless there is increased supply.
- 59 Mr Sellars analysis found a total of 9,279 titled lots in Rolleston. In terms of market supply, he provided an analysis which showed 695 developed vacant sections, 348 sections under development. He also identified 6,415 additional lots yet to be developed and associated with the recent private plan changes. This figure includes PC 73 which has been appealed and the current plan changes PC 81 and 82, clearly not yet approved. Finally, he found an additional potential supply of 2520 associated with yet to be zoned Future Urban Development land and zoned land in piecemeal ownership.
- 60 Mr Jones provided a real estate perspective of the recent market. He described demand in 2021 as the highest he has seen in his 21 years in real estate. His opinion is that the recent settling of the market in 2022 was a result of both *“a shift in the market”*⁵, and also the availability of residential land which has recently been provided by re zonings in Selwyn. He does not see any risks of oversupply and sees these plans changes as an opportunity to get ahead of the market.
- 61 Mr Colegrave’s evidence brings this together with estimates of future demand and provides an economic assessment of the plan changes. He reminds us that Selwyn is second only to Queenstown in its population growth rate, with 30 June 2021 population estimates being above the Statistics New Zealand high population projection.
- 62 As would be expected, this is reflected in the new dwelling consents which reached record highs in mid 2021 and this was maintained into 2022. In his opinion this represents enduring demand for living in Selwyn despite the recent downturn.
- 63 His evidence then considers the latest Housing and Business Development Capacity Assessment (HBA) for Greater Christchurch being 30 July 2021. This estimates demand in the whole of Selwyn to be 2,714 for the short term next 3 years and 8,451

⁴ Para 11 Statement of Evidence of Gary Sellars.

⁵ Para 10 Statement of Evidence of Chris Jones

for the medium term being Years 3 to 10. This equates to 905 per year for the first three years increasing to 1,220 per year for the medium term.

- 64 The HBA finds, as a result, that with the capacity provided by the Future Development Area (FDAs) there is a surplus supply of 1,864 in the first three years and 3,667 – 4,961 in the medium term. Mr Colegrave questioned the plan enabled status of the FDAs and also considers that the demand levels are “*very conservative*”⁶. He also challenges the yield assumptions and low profit margins.
- 65 His estimates of demand amount to 3,886 in the short term and 11,819 in the medium term showing a shortfall of 850 and 6,769 respectively.
- 66 Mr Colegrave then provided an economic assessment which shows material economic benefit from the boost in market supply, land market competition, support for local retail and service provision and one-off economic stimulus with only minor costs associated with foregone rural production.
- 67 Mr Akehurst also provided evidence on modelling matters and was previously responsible for the development of the Selwyn Capacity for Growth Model (SCGM). He comments on recent work by Mr Ben Baird that was not presented to me to consider. However, interestingly Mr Baird and Mr Akehurst agree that the key driver for recent growth is internal migration, with 70% of that coming from Christchurch City. So, unless this is generated by new household formation, this internal migration has been releasing additional housing availability within Christchurch City.
- 68 Mr Akehurst’s evidence then traverses seven aspects of the model that, in his opinion, leads to overstating of capacity. This evidence was not available to the Council experts ahead of producing their section 42A evidence. Ms White does address capacity at paragraphs 181-184 of her evidence, but this does not get into any modelling detail, it simply notes that Council has not identified that the rezoning of this land is required to meet the minimum requirements of the NPS UD nor is it considered necessary in more localised assessment of growth capacity.
- 69 At the adjournment of the hearing on Tuesday 13th September I indicated that it was important for me to have a clearer picture of capacity actively being enabled in Rolleston and that is a matter of some complexity. Therefore, in Minute 3, I specifically requested that the Proponent and Selwyn District Council jointly prepare an agreed schedule and associated mapping of the recorded dwelling yield at all development locations in Rolleston broken down into stated categories.
- 70 This piece of work was able to achieve agreement between the corresponding experts in terms of the final total however there are differences within the

⁶ Para 37 Statement of Evidence of Fraser Colegrave

categories arising from methodology differences. The categories were redefined to avoid double counting and are:

- Consented ODP Areas – 13 ODP areas plus Lowes Road
- Unconsented ODP Areas – 10 ODP areas plus Lowes Road.
- Outside ODP Areas
- Consented through other pathways – two HASHA consented and 2 COVID Fast Track Consents
- Operative Plan Changes – Plan Changes 75, 76 and 78.
- Approved Plan Changes – Plan Change 71 at appeal from third party.
- Variation 1 – 6 sites
- Urban Growth Overlay – balance of land in PDP Overlay

71 This totalled 6,629 by the Council and 6,554 by Mr Sellars with the difference being considered immaterial.

72 The parties were also asked to consider intensification potential through the Medium Density Residential Standards by identifying sites over 2000m². This identified 223 by Mr Sellars and 272 by the Council. It is agreed that many of these are not capable of further subdivision nor is there necessarily motivation to pursue intensification.

73 It was also noted that there are three areas at Rolleston that are sought to be rezoned for urban development by way of submission on Variation 1. This includes the area to the south of PC 73 and PC 81, which is also the subject of a submission to the Proposed District Plan.

74 The mapping information provided shows the location of each of the areas assessed for capacity. This confirms that all these areas are within the Rolleston Structure Plan area and collectively take up all the remaining unconstrained development land within the Structure Plan area. This area is also the same as the Projected Infrastructure Boundary which appears in the Regional Policy Statement.

75 I understand that each area assessed is in a different stage of implementation ranging from completed subdivision through to the Urban Growth Overlay which is yet to be confirmed through PDP hearings and will then require a private plan change before development can proceed. Having stated this, I did ask Mr Sellars whether any of the assessed capacity had any form of infrastructure constraint

affecting the timing or rate of development. He confirmed that none existed for these development areas.

- 76 Mr Sellars evidence in chief at para 17 states that there are 9,279 titled lots in Rolleston. A growth capacity of 6,554 – 6,629 represents a growth of Rolleston of 71%. At Mr Colegrave's estimate of demand including a buffer, this is sufficient for the short term of 3 years and more than half of the medium term period of 3 – 10 years. The assessment for the Council was undertaken by Mr Ben Baird. He did not provide any supplementary evidence but was available for questions. I asked him about his assessment of future demand and he gave me the clear impression that there was a lack of information on the drivers for the unprecedented recent very high growth rate and this leads to considerable uncertainty over future demand levels. The Council is considering commissioning surveys of recent arrivals to better understand this. The recent reduction in house prices, increases in construction cost and rising interest rates are also important factors when looking forward.
- 77 Given the above, I am satisfied that by means of various processes there is likely to be a strong short term and first half of the medium term supply of residential land in Rolleston being the next 6 – 7 years. Beyond that is less certain, but it is not the responsibility of the Operative District Plan, which is unlikely to have a legal function beyond the next 12-18 months, to enable capacity to meet demand beyond 7 years into the future.

7. INFRASTRUCTURE

- 78 There are two principal issues to consider that relate to infrastructure. They are transport infrastructure and water supply infrastructure. This was an area of considerable agreement between the experts for the proponent and the Council, being Mr Fuller and Mr Collins. Expert evidence was also tabled by Olivia Whyte for Waka Kotahi NZ Transport Agency.
- 79 A number of the upgrades are required for development of both PC 82 and PC 81. The consequence of this is that the proposed Outline Development Plans for each Plan Change have been amended to cover the issues of concern.
- 80 Both ODPs include a table setting out the nature of the upgrade required, the timing in relation to development and the anticipated funding mechanism. In both cases at the top of the list is the upgrade of the State Highway 1/ Dunns Crossing Road/ Walkers Road intersection. Ms Whyte confirmed that this is part of the New Zealand Upgrade Programme Canterbury Package which includes a number of improvements through Rolleston. These are shown on Figure 4 of Mr Fullers evidence. She also confirmed that funding has been allocated to the intersection and while the design has not been finalised it is likely to involve a roundabout. Her evidence, confirmed

by email during the hearing, was that the works will commence in 2024 and the intersection completed in 2026. There was some discussion between the parties on the construction timing with the outcome being that the agreed relationship with timing of development in both Plan Change locations is that the intersection works shall be commenced prior to any construction activities commencing in the Plan Change areas.

81 Most of the other upgrades are required to be completed prior to issue of a section 224 certificate and where not provided as part of the project they will need to be separately advanced by way of a Development Agreement to meet the requirements of the ODP.

82 For PC 81 (Skellerup South) the required upgrades are

- Dunns Crossing Road/ Burnham School Road Traffic Signals – Development Agreement
- Realignment of Goulds Road to intersect with Dunns Crossing Road approximately 150 m north west of Selwyn Road. Selwyn Road/Goulds Road/Dunns Crossing Road to become a roundabout – Development Agreement
- Road frontage upgrades as shown on the ODP - Developer
- Dunns Crossing Road / Lowes Road Roundabout - Developer or Development Agreement

83 For PC 82 (Brookside) the required upgrades are

- Dunns Crossing Road/ Burnham School Road Traffic Signals – Development Agreement
- Realignment of Brookside Road at Dunns Crossing Road and gateway threshold on Brookside Road – Developer
- Realignment of Goulds Road to intersect with Dunns Crossing Road approximately 150 m north west of Selwyn Road. Selwyn Road/Goulds Road/Dunns Crossing Road to become a roundabout – Development Agreement
- Dunns Crossing Road Frontage and Edwards Road frontage as shown on ODP – Developer
- Dunns Crossing Road / Lowes Road Roundabout - Developer or Development Agreement
- Edwards Road upgrade between Brookside Road and Selwyn Road with gateway threshold on Edwards Road – Developer
- Edwards Road / Ellesmere Junction Road intersection upgrade – Developer

- 84 While some of the wording of the tables could be improved, I am generally satisfied that the proposed framework will ensure that these upgrades are in place when required and collectively will involve a considerable programme of works. In this regard, I note that the upgrades were also proposed to be included as a performance standard on subdivision. However, the planning experts finally came to the position that this requirement should remain in the ODP and not in the performance standard to avoid duplication. The exception appears to be commencement of the upgrade of the SH1/ Dunns Crossing Road / Walkers Road intersection which is retained as a standard for both Plan Change areas. I understand that this approach is consistent with the final form of PC 69 and I agree it is appropriate. The existing rules require adherence to the ODP and there is clearly the ability to set resource consent conditions to give effect to these requirements.
- 85 The ODPs also include a dwelling yield threshold for further assessment of traffic effects through an Integrated Transport Assessment. For PC 81 this is set at 350 households and for PC 82, 1,320 households. I consider this a prudent measure which has been agreed by the proponent and Council and ensures that, at that point, traffic arrangements can be reviewed and implemented either through further consent conditions, Development Agreements or Council funding.
- 86 These works can largely be designed and constructed in parallel with the design consenting and construction of the first stages of each Plan Change area. However, this will create some infrastructure lag in terms of timing of delivery to market. While the proponent has not set out a planned timetable for staging and delivery of each area, the evidence presented all talks in terms of meeting medium term demand. This is, therefore, in the 3 to 10 year bracket and sits well beyond the reasonably expected life of the Operative District Plan.
- 87 In terms of three waters the principal issue relates to water supply. Mr Murray England provided evidence for the Council on these aspects. His evidence is that Council has a programme in place for additional groundwater bores which are consented and will provide capacity for growth. However, to date planning has been based on servicing the area within the Rolleston Structure Plan development area. Additional consented water supply capacity with associated UV treatment will be required for the Plan Change areas.
- 88 Mr Mthamo, for the proponent, proposed that some of the existing Council capacity be made available to these areas and that additional bores overtime replace that capacity as required. While Mr Mthamo did not see the need for additional rules relating to this, the final versions of the provisions include a performance standard for both areas requiring an available potable water supply at the time of subdivision.

This is also referred to in the ODPs which also include reference to a requirement to transfer existing irrigation water take and use consents to the Council.

- 89 I am satisfied that this is not a significant constraint to development of either area and that appropriate provisions are in place to ensure water supply is available for development. However, it will be a factor in the timing of development.

8. THE ODOUR ENVIRONMENT AND REVERSE SENSITIVITY

- 90 The issues associated with odour and reverse sensitivity occupied a considerable part of the hearing and were a material consideration in the recommendation to decline PC 73 by Commissioner Caldwell in March 2022.
- 91 The issues are confined to Plan Change 82 which has the Pines Wastewater Treatment Plant (PWTP) and Pines Resource Recovery Park (PRRP) located to the north west. The issues relate to the risk of odour effects on the future residential environment that PC 82 will enable and the risk of reverse sensitivity effects on the operation of those facilities.
- 92 The expert evidence in this area was for the proponent by Mr van Kekem and peer review by Mr Iseli. Mr Bender provided an assessment for the Council for the s42A report. However, Mr Bender was not available for the hearing and was replaced by Mr Curtis, who peer reviewed the s42A report both being from Pattle Dellamore Partners Ltd. In relation to the PRRP, Mr Boyd, the Solid Waste Manager and Mr England, the Asset Manager Water Services, for SDC also gave evidence.
- 93 First, I should record that one other existing odour source, being the Tegal Poultry Sheds on Dunns Crossing Road, is located within the PC 82 area and will be decommissioned prior to development. I agree that this can be considered as a positive odour effect in terms of risk of odour effects to existing residential land on the eastern side of Dunns Crossing Road.
- 94 Mr England's evidence outlined the Council's plans for the PWTP. The plant currently services a catchment population of 42,000 – 45,000, but is designed to be progressively upgraded to accommodate 60,000 person equivalents. In addition, work is underway to further expand the treatment capacity in the longer term to 120,000. The plant currently services a number of other centres in Selwyn including Lincoln, Prebbleton, West Melton and Springston. Recently Darfield, Kirwee and NZDF Burnham have connected and in 2024 Leeston, Southbridge and Doyleston will connect. The plant itself occupies a relatively small area but a large area surrounding the plant is used for disposal of treated wastewater through centre pivot irrigation. This currently involves some 238 ha which is planned to increase to 302 ha. The

plant is currently a fully aerobic system, however, the future expansion may involve primary treatment and anaerobic digestion.

- 95 In terms of separation distance, the closest part of PC 82 area is 1000m from the PWTP and 500 m from the application of biosolids and treated wastewater to land. All the odour experts agree that this is sufficient separation distance for the odour generating activities from a well-designed and well run WWTP.
- 96 However, Mr England remains concerned about “unforeseen events” that might create odour events such as plant failure and extreme climatic conditions. I consider that plant management should consider all possible scenarios and plan appropriately reducing the odour effect to the rarest of events. Having said that, I am conscious that Christchurch City experienced, in November 2021, a major fire at the Bromley Wastewater Treatment Plant which caused enduring odour effects on nearby communities.
- 97 Reverse sensitivity is a separate but related consequence of any odour effects on new residential activities. The meaning of reverse sensitivity was addressed in the proponents opening and closing submissions. In the opening submissions direct reference is made to the PC 73 decision and the weight given to reverse sensitivity risk. The same rules are proposed to address this in PC 82 as were proposed in PC 73. That is a performance standard that no residential allotments may be created within 1500 m of the PWTP buildings as depicted by the line on the ODP prior to the certification by the Council’s Asset Manager that the resource management approvals to enable the PWTP to provide treatment capacity for 120,000 person equivalents have been obtained, or 31 December 2026, whichever is the sooner, unless a no complaints covenant is registered against the title in relation to the PWTP and PRRP.
- 98 Clearly, a permanent no complaints covenant on a title is a longer term and more enduring mechanism compared with the alternative maximum 3 year restriction on development. However, unless carried forward into the Proposed District Plan by way of successful submission the effectiveness of these mechanisms is in doubt. The proposal for a no complaints covenant is, in my assessment, something of a double-edged sword. In one respect, it gives the operators of the PWTP the confidence that “unforeseen events” cannot lead to complaint; on the other hand, the fact that it is considered necessary, does question the overall suitability of this part of the PC 82 area for urban development.
- 99 I agree with the proponent’s legal position that a no complaints covenant does not excuse the operator from compliance with the resource consent conditions for discharge to air.

- 100 The discussion above overlaps materially with the other potential odour source which the subject of considerable evidence and that is the Pines Resource Recovery Park (PRRP). This is also an expanding facility that provides for receipt of recycling materials including green waste. It also receives domestic refuse which is then compacted into containers and transported by truck to the Kate Valley Landfill.
- 101 Other waste streams such as hazardous waste and food waste are also received. The green waste is processed through a large shredder and is then mixed with food waste on a concrete pad. The compost material is then located into windrows about 2m high and 20 m long located to the southern or rear part of the site. Each windrow is turned approximately every 3 - 7 days with the more mature compost located to the east.
- 102 Mr Boyd's evidence was that this facility was strategically located alongside the PWTP because future growth of the township is planned to the south and not the west. The only potential odour generating activity is the composting windrows when they are most active. Being an open-air composting methodology, it is generally considered by all experts to have a higher risk of odour plumes compared with closed in facilities. The key circumstances when what are termed 'upset conditions' may occur is in very wet weather combined with poor windrow drainage. Under these conditions the lower part of a windrow can become anaerobic and cause odour. This can be remedied by turning the windrows which will emit odour. However, Mr Boyd's evidence is that consent conditions limiting the turning of windrows in certain wind conditions limits turning time to 51% of the time between 7 am and 4 pm.
- 103 Mr Boyd told the hearing that the Council expansion of the centre called the "Reconnect Project" will include provision of a reuse shop, salvage yard, micro enterprise/maker space units, education centre, garden hub, multipurpose waste hub, landscape supplies yard and high temperature pyrolysis plant for processing waste materials into oil and gas for reuse.
- 104 The site operates under a designation and discharge to air consent which provides for an increase in organic material to be composted to 53,000 tonnes per year. This is limited to green waste, commercial food waste and kerbside organics. The consent term extends to December 2044. Mr van Kekem's evidence tells us that the maximum quantity was based on assessment of the maximum production that could be practically achieved on the defined site.
- 105 Council plans to trial caddies for individual households to divert organic material from the general waste. This will increase the food content in the compost which Mr Boyd considers increases the potential for odour.

- 106 Ms Appleyard's opening submissions note that Condition 15 of the current consent is the, somewhat standard, condition that the discharge shall not cause odour or particulate matter which is offensive or objectionable beyond the boundary of the property on which the consent is exercised.
- 107 Given this, the principal issue is what should be the appropriate setback of the proposed residential zone to ensure that there are not adverse odour effects for those living near by and also that any effects do not result in reverse sensitivity political pressure on the composting operation.
- 108 Clearly, the composting operation has a legal responsibility to manage its activities in compliance with its consent conditions. The MFE best practice tests for offensive and objectionable odour apply the FIDOL methodology being frequency, intensity, duration, offensiveness character and location. The FIDOL threshold is different for a rural environment to a residential environment. However, in neither case, does it mean no odour at all is permitted.
- 109 The principal issue is that, given some odour is permitted, the increase in residential population within the vicinity will likely increase the number of people who may consider that levels of odour that comply with the consent conditions are still an unacceptable adverse effect and pursue complaints on that basis. There is also a proportional increase in the small minority who may be motivated to pursue a vexatious form of complaint, even if there is no evidence of odour effects.
- 110 Mr van Kekem provided the principal evidence for the applicant on odour. His site specific assessment is that a separation distance from the composting activities of 600 m is appropriate. Given this, he considers that the key matter to be considered is if odour is observable beyond 600 m, would it be considered as offensive in this more sensitive residential zoning. There is general agreement amongst all the expert witnesses that under normal operating conditions offensive or objectionable odour will not occur beyond 600 m. However, should that occur, it would be a clear breach of the consent conditions. The setback determination is, therefore, more about odours that do not reach the offensive or objectionable level but are still observable. In this regard, Mr van Kekem notes that on his site visit he was not able to observe odour more than 50 m downwind of the active composting operations.
- 111 A setback of 600 m from the active composting area has very little impact on the PC 82 area as the closest point is 585m from the active compost area.
- 112 The differences of opinion in the evidence largely focus on the risk associated with complying low level composting odours and the risk of "upset conditions" of offensive odour in the PC 82 area. Mr van Kekem considers that "upset conditions" requires a windrow to turn anaerobic and then be turned with the wind blowing

towards PC 82. He considers this to be “*very low to non existent*”⁷ and, therefore, will not result in any consequential reverse sensitivity effects. He also considers that the low risk feedstock consented and the avoidance of the need for leachate collection and treatment further reduce the risk.

- 113 Mr van Kekem also undertook a Community Odour Survey in which he interviewed nine residents of seven nearby dwellings which produced a mix of responses. Only two did not smell any odours but only one considered the odour offensive. A review of comparable composting operations also found that odour “*is generally contained within 400 m of the source*”⁸. Mr van Kekem and other experts also undertook an Odour Scout Survey between 22nd and 25th August 2022. It was accepted that this was a limited dataset but showed a maximum odour plume of 350 m downwind and a width of not more than 150 m wide.
- 114 Mr Iseli reviewed Mr van Kekem’s work and agrees with his conclusions that adverse odour effects are unlikely to occur beyond 600 m from the active windrows and that “upset conditions” are not likely to occur given the Odour Discharge Management Plan (ODMP) in place and the conditions of consent.
- 115 Mr Curtis’s evidence for the Council adopted the s42A report by Mr Bender that he peer reviewed. He notes that the proposed 600 m separation distance is significantly less than is recommended by a number of international authorities for a composting facility of the size and type at the PRRP. In his opinion the 600 m setback is “*insufficient to avoid the potential for reverse sensitivity effects on the PRRP.*”⁹ Also that any setback should be determined from the composting area as a whole including the compost maturation and processing area.
- 116 The essence of Mr Curtis’s opinion is that, despite compliance with the offensive and objectionable condition at the boundary, occasional low intensity odours will occur and, in his terms, “*will not be tolerated*” by the residential communities affected. He recommends that a setback of 1,000 m is applied. I understand these odours are called “chronic” effects.
- 117 Mr van Kekem responded to this issue in his Supplementary evidence. He does not consider there will be chronic effects in PC 82 and that observable odour will “*occur infrequently and for short durations*”¹⁰.
- 118 An important factor looking forward on this issue is the 5 fold growth in compost processing that the site can accommodate. I am not aware that the discharge to air

⁷ Para 187 Statement of Evidence of Donovan Van Kekem

⁸ Para 139 Statement of Evidence of Donovan Van Kekem

⁹ Para 5.4 Statement of Evidence of Andrew Curtis

¹⁰ Para 32 Supplementary Statement of Evidence of Donovan Van Kekem

consent specifically allocates space to active composting and maturation areas. It is, therefore, quite conceivable that the use of the area between active composting and maturation will change over time compared with the current operation. For that reason, it is important that any setback assumes a worst case scenario in terms of active composting and should, therefore, be from the nearest point of the specified composting area. This was further addressed in the supplementary evidence of Mr van Kekem and drew a distinction between the maturation area and the property boundary being a difference of 10 – 30 m and currently planted in pine shelterbelt. I reiterate my comment above that in my assessment unless active composting is not authorised in the maturation area then the setback boundary should be taken from the nearest point of the maturation areas.

- 119 The future growth is also important to the risk associated with low intensity odours and possible “upset conditions”. Mr van Kekem does not consider that the increase in throughput will change the potential for odour because the intensity of odour from the activity will not change. Mr Curtis, in contrast, considers the increased throughput is likely to increase the duration and frequency of the low level odours.
- 120 Mr Curtis also notes that, as the percentage of food waste in the compost increases, the frequency of turning will also increase and consequently the need to turn in westerly conditions increases. These are detailed operational management matters that are the subject of the ODMP and associated monitoring and reporting. The ODMP will be adjusted over time to manage the risk of upset conditions but, assuming that a condition of offensive and objectionable limits continue to apply, I agree with Mr Curtis that there will likely be an increased level of low intensity odours that a proportion of residents may find unacceptable.
- 121 The other societal trend that Mr Curtis points to, looking forward, is communities becoming less tolerant to changes in the amenity of the local area over time.
- 122 It is proposed that the no complaints covenant proposed for within 1500 m of the PWTP also apply to the PRRP. My discussion on this earlier is equally relevant to the PRRP. This is a further area where there is a difference between Mr van Kekem and Mr Curtis. In short, I consider that such tools can be applied to new development where there are no other options for growth that meets the requirements of a well-functioning urban environment. I use this term in a slight wider sense than that defined in the NPS UD in the sense that a well-functioning urban environment is arguably not being achieved if tools such as no complaints covenants are necessary to be applied.
- 123 The evidence also discusses alternative composting technologies which could reduce odour risk such as forced aeration. Similarly, given the very large area of land owned

by the Council and used for land based disposal of treated wastewater, there are options to relocate the active composting part of the process to a location where odour risks and consequences will be mitigated.

- 124 Ultimately these are matters for the long-term strategic planning of the area that go beyond the timeframe of the Operative District Plan. Furthermore, given that context and the realistic timeframe associated with development of PC 82 it is appropriate that the Operative District Plan take a conservative approach to uncertainty and risk and allow the Proposed District Plan process to look more widely as the growth options on the west side of Rolleston and the odour risks in that context.
- 125 Consequently, I find that from an odour effects perspective in this process the wider 1,000m setback should be adopted if PC 82 is to be applied to the Operative District Plan.
- 126 In reaching this finding I am also mindful of the existing Operative District Plan policy referred to in Mr Phillips' Supplementary Evidence referenced B3.4.39 which is *"avoid rezoning land for new residential development adjoining or near to existing activities which are likely to be incompatible with residential activities, unless any potential 'reverse sensitivity' effects will be avoided, remedied or mitigated."*
- 127 This infers a precautionary approach to reverse sensitivity risks which I have taken account of in this finding.

9. URBAN FORM AND URBAN DESIGN

- 128 PC 81 and PC82 both sit outside of the Rolleston Structure Plan area. As previously stated, the PC 73 Skellerup Block connects PC 81 and 82, while the PC 73 Holmes Block is located to the north adjacent to State Highway 1. All these areas sit outside the Structure Plan Area and, as advised by Ms Appleyard, all are subject to submissions to the Proposed District Plan seeking to enable their development. In addition, Hill Street Ltd is a submitter in support and filed legal submissions. Their interest is in land adjoining and south of PC 73 and west of PC 81 which is also the subject of a submission to the PDP.
- 129 The upcoming Proposed District Plan hearings therefore have the opportunity to consider the strategic merits of medium to long term growth on the west side of Rolleston in a way that is not open to me. I do have the opportunity to consider both PC 81 and 82 together as this is a combined hearing. However, PC 73 was declined and is subject to appeal. While there has been mediation at the close of this hearing there was no resolution of the appeal. I must, therefore, regard the PC

73 Skellerup Block as it is currently zoned in the Operative District Plan being Living 3.

130 Mr Compton-Moen gave evidence on the growth of Rolleston since 2012 when it had a population of 9,555 to the 2017 Census total of 17,500. Initially triggered by demand after the Canterbury earthquakes as discussed in Section 6 residential growth has continued to grow at an increasing rate until early 2022.

131 Mr Compton-Moen correctly points to existing growth restrictions associated with the Christchurch Airport noise contours in the east and the Gammack Estate to the south. These are constraints in the short to medium term but less certain in the longer term. As assessed by Mr Sellars and the Council, land within the Structure Plan area that was intended to provide for growth to the 2041-2075 period is now actively being developed. He considers that urban development *"should and will inevitably grow to the west, south west and south east of Rolleston"* and in this context he argues that PC 81 and 82 are natural in sequence extensions of the urban area.

132 The Outline Development Plans for each area show:

- the indicative road network with connections to Dunns Crossing Road and links to adjacent areas,
- reserve locations,
- business zones for neighbourhood centres,
- boundary treatment,
- intersection upgrades,
- road frontage upgrade and
- pedestrian crossings.

133 This includes connections to the Living 3 zone between the two areas and in the event that PC 73 is approved. This is based around a primary north south road running through PC 82. In addition, east west connections align with the east west road proposed on the eastern side of Dunns Crossing Road, and open green spaces are planned for a 500 m walkable catchment.

134 Mr Compton-Moen says the ODP structures are consistent with densities of 12 households per hectare and greater, recognising that the Medium Density Residential Standards do form part of the Plan Changes. Where the ODP has a rural edge lower density has been considered but not incorporated into the ODP. In my

assessment, this illustrates the shortcoming of the piecemeal nature of Private Plan Change requests as opposed to the development of an ODP for a wider strategic growth area.

- 135 Urban development will clearly change the landscape character of the locality but there are no natural landscape features of note.
- 136 Urban design evidence for the proponent was also provided by Ms Lauenstein. She notes that small adjustments have been made to the ODPs in response to submissions and the Council evidence. These, in her assessment, improve the distribution of commercial centres and greenspaces with minor adjustments to the road layout.
- 137 Ms Lauenstein expresses the opinion that advising on urban design requires *“strategic oversight”*¹¹ and *“should be seen as part of a cohesive, connected and compact strategy for urban growth west of Dunns Road Crossing”*. Therein lies one of the key issues in that I am legally constrained to the current status of the adjacent land in this wider location. Ms Lauenstein states in her evidence that *“without a doubt, the approval of PC81, PC82, PC73 (and ideally the residential rezoning of the rural L2 pocket) represents the best urban outcome for the West of Dunns Crossing Road.”*¹²
- 138 I agree that a strategic approach to any future urban development of this location is important to achieving the best outcomes, and that should include the Hill Street Ltd land to the south. However, that is not legally possible though this Recommendation Report. It is, however, possible through the hearing process on the Proposed District Plan if it is pursued through a thorough strategic assessment of growth options west, south west and south east of Rolleston and under what circumstances constraints to other locations might be eased.
- 139 In this regard, it is important at this point to recognise that the National Policy Statement on Highly Productive Land came into legal effect in September 2022. It requires careful strategic assessment of options if urban growth of Class 1, 2 or 3 land is being considered. In this case PC 81 and 82 are not located on Class 1, 2 or 3 soils but this is a constraint on potential growth options to the east and south.
- 140 Mr Nicholson provided urban design evidence for the Council. His opinion is that PC 81 and 82 do not provide strategic or comprehensive responses to urban growth in Rolleston. Mr Nicholson does not support the proponent’s experts position that growth to the west is inevitable. He considers that there are options for urban growth that include intensification and growth to the south and southeast and that a

¹¹ Para 20 Statement of Evidence of Nicole Lauenstein

¹² Para 20 Statement of Evidence of Nicole Lauenstein

more comprehensive and strategic approach would allow growth options to be assessed. This position is also supported by Ms White.

- 141 The issue here is that a piece meal, first come first served, approach is largely inherent in the nature of Private Plan Change requests unless they fit within an established broader strategic framework, or indeed seek to set that framework. Neither are the case for PC 81 and 82.
- 142 It is this piecemeal nature that is Mr Nicholson's fundamental concern. In essence it is his opinion that both PC 81 and PC 82 are poorly connected with Rolleston and do not provide compact urban form in that they are "urban peninsulas" surrounded by rural or rural lifestyle land. To a large degree, he agrees with Ms Lauenstein that there is better urban form and connectivity if PC 73 had been approved. However, PC 73 is subject to a quite separate process.
- 143 Mr Nicholson also notes that there remains some doubt over the detailed planning of the land on the eastern side of Dunns Crossing Road from the PC 81 site, known as PC 70. The status of this land is detailed in the evidence of Mr Phillips and I understand has now been referred to an expert panel to consider. Also, on the basis of Mr Phillips evidence, I understand this will include a commercial centre which will have good accessibility to PC 81 and PC 82.
- 144 Mr Nicholson recommended some changes to road structure and pedestrian cycling facilities which have been addressed by Ms Lauenstein. He also supports a precautionary approach to the odour setback issue from an urban design perspective.
- 145 With this issue in mind, I requested in Minute No 3 that there be expert conferencing on the ODP changes that would be recommended in the event of adoption of a 1,000m set back from the boundary of the PRRP.
- 146 A Joint Witness Statement and Supplementary evidence from Mr Compton-Moen was presented to the reconvened hearing on 5th December. The revised ODP identified the area of PC 82 within the 1,000m set back which is calculated to be 34 hectares. The ODP repositions the main north south and east west road so that they skirt the edge of the setback with two indicative future access points into that area.
- 147 The JWS states that the experts agree that the revised ODP is an acceptable and functional alternative to the original ODP. Mr Nicholson maintains his position on the need for PC 73 to be approved to achieve an acceptable outcome. Ms Lauenstein and Mr Compton-Moen agree that the revised ODP would function better if PC 73 was approved but believe it would still function with the existing Living 3 zone.

- 148 The other key issue arising from the possible set back is whether the existing Rural Zoning should be retained for that area, or a residential zoning with rules preventing the erection of dwellings.
- 149 Both the urban design and odour experts agree that if there is to be a setback the land uses should be limited to those that avoid attracting people for extended periods of time and avoid attracting significant numbers of people. Mr Curtis supported forestry, low intensity recreation such as bike tracks, dog park, golf course and horse riding, and rural land uses. He did not support the area being used for cemetery which was suggested in the Urban Design JWS.
- 150 I note that these uses do not include sports fields which can potentially involve large number of people and in answer to a question Mr Nicholson said he would not recommend the area to the Council for this use. On the face of it the size of the area at 34 hectares looks appropriate for a golf course, but I note that while this activity does not involve large numbers it does involve considerable lengths of time.
- 151 The JWS also records that both Ms Lauenstein and Mr Compton-Moen supported residential zoning of the buffer as they considered that it would likely allow public access, provide for better standards of roading and associated infrastructure, and avoid leaving a pocket of rural land with potential for reverse sensitivity effects.
- 152 This was also addressed in the supplementary evidence of Mr Compton-Moen where he also considered that future proofing the area for residential development would be appropriate in the event that, in the future, the PRRP was to be relocated or adopt improved composting methods. What Mr Compton-Moen is implying is something of a deferred residential zoning in the hope that in the future the setback will not be required.
- 153 This may be the case but in the context of the Operative District Plan, which has a very limited remaining legal life, it is not a matter that I should give particular weight to.
- 154 In relation to reverse sensitivity from rural activities, further evidence was presented by Mr Mthamo as a Memorandum attachment to the Supplementary evidence of Mr Phillips. He records that the 34.1 hectare area is all LUC Class 4 with consequent low productivity potential. He questions whether irrigation of the land would be justified despite, I understand from other witnesses, that there are valid water take consents in place.
- 155 Mr Mthamo considers that the block of land is not cohesive and stands alone and there is no opportunity to amalgamate with other land. However, the area has rural land on the other side of both Brookside Road and Edwards Road and farming land

on two sides of a rural road is not an uncommon practice. He also has concerns about reverse sensitivity from rural activities involving noise, spray drift, and odour, and that a buffer would be necessary. This appears wholly inconsistent with his position on the most likely farming of this land with more intense activities not being viable. Further, as Ms White pointed out, the internal boundary has road proposed along nearly all of the interface which is usual practice for a rural urban edge.

- 156 Mr Mthamo recommends that the land is zoned urban or open space / recreation. This is to enable activities that are in his assessment more compatible with the residential zoning and enable activities such as parks, reserve, sports facilities, golf course, water supply bores and bike racetrack. However, there is no wider assessed need for these activities and indeed the odour evidence is that sports facilities would be inappropriate.
- 157 Mr Nicholson and Ms White consider that decision on the zoning of the setback area should reflect the anticipated land uses and that, given residential activities would not be enabled, a residential zoning is not appropriate, and that a rural zoning would facilitate most of the appropriate land uses.
- 158 Mr Phillips in his supplementary evidence notes that in his opinion a rural zoning would preclude the potential for the area to be used for any of the suggested suitable non rural activities. This is because the definition of urban activities in the Canterbury Regional Policy Statement includes sports fields and recreation activities that service the urban population but require a rural location. However, sports fields are not considered appropriate in the setback area and lower density recreational activities are in my assessment more compatible with a rural zoning.
- 159 Mr Phillips and Ms White undertook conferencing to examine what the plan provisions implications are if I was to recommend that the buffer area be zoned Living MD. They agreed that this would require:
- the identification on the ODP of this area as Odour Constrained Area (OCA). This is a term already used in the Operative Plan.
 - Amendment to the ODP narrative identifying what activities are anticipated or not anticipated in the OCA.
 - An additional rule identifying low intensity recreational activities as permitted activities within the OCA.
 - Inclusion of a definition of low intensity recreation activities and rural activities

- 160 The JWS helpfully includes tracked changes to the provisions to give effect to the above changes.
- 161 Mr Phillips also addresses this aspect of PC 82 in terms of s32AA considerations. He considers that the residential zoning provides a greater range of benefits in terms of flexibility and opportunity compared with a rural zone which he considers to be less enabling and responsive.
- 162 However, the aim of the setback is not to be enabling and flexible. It is to ensure there is a plan framework that avoids the establishment of activities that are likely to be affected by low intensity odour emissions as the scale of composting operations grows over time. The Plan framework that this matter is dealing with is the Operative District Plan. The Hearings Panel for the Proposed District Plan will have the opportunity to consider whether the different framework of the PDP requires a different approach given the longer term horizon of that Plan. The Operative Plan has a much shorter horizon and, given the agreed supply of residential land over the short and medium term, the Operative Plan does not require urgent action to increase immediate supply.
- 163 I explore the section 32 evaluation requirements in more detail in a later section. However, an important element of section 32 is assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. The different opinions from the odour experts on the effect of low level chronic odour from the composting plant as it grows remains in my assessment an uncertainty that supports not acting to change plan provisions in this set back area. I also fundamentally agree with Mr Nicholson and Ms White that rural activities are the most appropriate activities in this buffer and that to apply anything other than a Rural zone would be misleading users of the Plan. I remain unconvinced of the urban design benefits of a Residential Zoning with an Odour Constrained Area. Further, the existing Rural (Outer Plains) zoning which involves a subdivision minimum lot size of 20 hectares does not enable rural subdivision within the 31 hectare setback area.
- 164 I should note also that I asked witnesses about the potential for a low density Living 3 zone for the setback area that limited new dwellings to the outer perimeter. This was not generally seen as a preferred alternative. I agree with Mr Compton-Moen that it is conceivable that at some point in the future the composting operation will be relocated or significantly upgraded. In the event that occurs, a change to whatever Plan is in effect can be pursued to provide for residential development of the buffer area. That is not a matter that sits within the legal life of the Operative Plan.

- 165 Consequently, if I was to recommend that PC 82 be approved it would be with the 1,000m odour setback, amended ODP as agreed by the urban design experts, and with the existing Rural (Outer Plains) zoning retained for that land.

10. OTHER MATTERS

- 166 A range of other issues were raised in submissions ranging from strategic growth concerns through to impact on outlooks of individual properties. Malcolm and Jan Douglas who live on Edwards Road spoke to their submission which covered concerns regarding road network improvements, pressure on water supply, pressure on community facilities, road dust, and conflict with the PWTP. A number of these matters have already been addressed but others will be picked up in this section.
- 167 In terms of community facilities, three submitters in total raised concerns about pressure on schools including the Ministry of Education. This resulted in some engagement by the proponent with the Ministry and a consequent proposed amendment to the provisions to insert an additional assessment matter into both Plan Changes as well as reference to the provision of new education facilities if required in the text of each ODP. A letter from Sarah Hodgson of the Ministry was received and confirms that it is satisfied if those changes are adopted.
- 168 Mr Phillips evidence also pointed to the range of business zones and neighbourhood centres, including nearby within PC 70 and within the two Plan Change areas.
- 169 A number of submission points relate to environmental quality. This includes visual amenity, construction effects, noise and light pollution, property values and crime.
- 170 Ms White in her s42A planning evidence notes that the required incorporation of the MDRS is a factor in potential future character and density. I agree with Ms White that urban growth onto rural land will inevitably change the experience of that area for some people. As Mr Nicholson states these matters need to be balanced against the effects of increased housing supply and choice. However, these submission points do also relate to the bigger picture issue of trade off to achieve development in the right part of Rolleston at the right time. I have previously concluded that these Plan Change areas provide medium term supply at best given the infrastructure requirements and nature of the development process. Hence it is legitimate for submitters to be asking the question is this the right process and the right Plan to be making this strategic growth decision.
- 171 A noise related issue is raised in the submission from the New Zealand Defence Force which is concerned about noise related reverse sensitivity effects on the operation of Burnham Military Camp and particularly the Aylesbury Range and training areas. A letter detailing these concerns was submitted from Rebecca Davies.

This seeks that no complaints covenants in relation to NZDF noise be applied to dwellings in PC 82. The Aylesbury Range is nearly 4 kilometres from the nearest part of PC 82. While no expert noise evidence was presented, Ms White considers that this area is sufficiently distant from PC 82 and separated by a State Highway and Railway such that reverse sensitivity effects are unlikely to arise. I do not consider this matter to weigh materially on my recommendation. However, it does add further weight to the importance of comprehensive strategic assessment of growth options at Rolleston given the NZDF Camp is regionally significant infrastructure.

- 172 Mr Phillips notes that environmental quality matters have arisen in other recent plan changes seeking greenfield residential zoning, and he points to the NPS UD Policy 6 that acknowledges that planned urban built form may involve significant changes including changes to amenity values.
- 173 Ms White also addresses submissions referring to the loss of high quality soils and potential contamination of the soils. Mr Mthamo gave evidence on soils and has confirmed that there are no versatile soils in the plan change areas. Ms White considers that further investigation of contamination in both areas from “Persistent Bulk Use and Storage” is likely to be required. However, I agree with Ms White that this is not a fatal flaw for the Plan Changes.
- 174 The Plan Change requests also includes a Geotechnical Assessment and peer review of that Assessment. This has concluded that for the PC 81 area there is minimal liquefaction hazard and the site is equivalent to TC 1. Similarly, assessment of the PC 82 land does not raise any issues. There were no submissions relating to geotechnical matters.
- 175 Finally, the PC 81 and PC 82 requests include an ecological assessment. For PC 81 it considers the water race, soak hole and two ponds on the site. Ms White reports that this assessment was reviewed by Dr Greg Burrell of Instream Consulting. He considers that further assessment of the status of the two pond areas is warranted and that the ODP text should be amended to require this. Mr Phillips has amended the ODP in line with this recommendation.
- 176 He made similar comments in relation to the water race in the PC 82 area which has some potential to be naturalised and integrated into the residential development. This ODP has similarly been updated in line with this.

11. STATUTORY ASSESSMENT

- 177 I set out the relevant statutory consideration in Section 2. I have also referred at various points above to the function of the Operative District Plan in relation to this recommendation. I received extensive evidence on the statutory analysis and

related legal issues. In particular, I draw below on the legal submissions of the proponent and Canterbury Regional Council / Christchurch City Council (CRC/CCC), and the planning evidence of Mr Phillips, Ms White and Mr Langman.

11.1 THE FUNCTIONS OF TERRITORIAL AUTHORITIES

- 178 The first requirement of a district plan change is that it should be designed to accord with, and assist, the territorial authority to carry out its functions so as to achieve the purpose of the Act. Ms White in her planning s42A evidence draws attention to the first two limbs of s31. The first is that the Plan achieve integrated management of the effects of use, development or protection of land and associated natural and physical resources of the district.
- 179 The Act does not tell us what level of integrated management is to be achieved. This is a relative matter and should have regard to the circumstances. In this context we have four different areas of land that are the subject of private plan changes to the Operative District Plan. I consider that the ODPs for PC 81 and 82 have had particular regard to integration with the land between, with clearly a better level of integration if PC 73 is approved compared to the current Living 3 zone.
- 180 I also consider that the revisions for the exclusion of the buffer area are appropriate.
- 181 Ms White also draws attention to Councils functions under s31(1)(aa) which is to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the District. This clearly overlaps with the NPS UD responsibilities. Ms White's evidence is that the plan changes are not necessary to provide sufficient development capacity which is contrary to the evidence of the proponent's experts. However, this position was reinforced when response to Minute 3 was compiled showing a short to medium term supply of 6,500 dwellings. This is then further reinforced when the legal life of the Operative District Plan is considered. Given the supply of housing there is clearly an opportunity through the Proposed District Plan to consider a more integrated and staged form of development.
- 182 I recall early in the hearing asking Ms Appleyard why the proponent was pursuing this matter through the Operative Plan and not just the Proposed District Plan. The response was *"this is a developer in a hurry"*. I appreciate that the proponent might feel that a change to the Operative Plan might provide some certainty for investment going forward. However, not only are there infrastructure requirements to be met for these Plan Change areas but I also agree with Mr England that development within the Structure Plan area should be largely completed before additional development is authorised in terms of new strategic greenfield growth.

183 This is also largely the position taken by Mr Wakefield and Mr Langman for CRC/CCC.

184 I, therefore, find that approval of the Plan Changes to the Operative District Plan will not assist the Council in achieving integrated management of the effects of use, development or protection of land and associated natural and physical resources of the district. A process enabling a more comprehensive assessment of the wider block against other options through the Proposed District Plan hearings and emerging Spatial Plan will be capable of addressing these shortcomings.

11.2 THE NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020

185 There are a number of aspects of the NPS UD to consider. In terms of Policy 1 Ms White's evidence considers that the Plan Change residential development will not achieve a well functioning urban environment because of a shortage of local employment opportunities with consequent commuting distances meaning that active transport opportunities are not practical. Mr Nicholson also has concerns about accessibility and public transport.

186 Ms White considers that, as a consequence, the Plan Changes may not support reductions in greenhouse emissions. Mr Paul Farrelly gave evidence for the proponent on greenhouse gas emissions and considers that the working from home trend will continue to reduce travel commuting frequency to Christchurch as will the take up of EVs. He concludes that the Plan Changes support a reduction in GHG emissions relative to other greenfield development opportunities. However, his evidence does not evaluate any other development options against PC 81 and 82. Notwithstanding this, I do accept that Rolleston is rapidly reaching a stage where all supermarket and most retail needs will be able to be met locally. There is also additional zoning of industrial land being pursued. I, therefore, do not consider that the Plan Changes should be rejected on grounds of Policy 1(e) relating to GHG emissions.

187 Objective 6 requires that local authority decisions relating to urban development that affect urban environments are:

- (a) Integrated with infrastructure planning and funding decisions
- (b) Strategic over the medium term and long term.
- (c) Responsive, particularly in relation to proposals that would supply significant development capacity.¹³

188 I am satisfied that the infrastructure planning and funding for transport related matters have been addressed. However, this is largely by way of Development

¹³ Objective 6; NPS UD 2020

Agreements that will bring forward funding that would otherwise have been through the Long Term Plan. In addition, further funding of water supply capacity will also be required. As indicated earlier, I do not consider that PC 81 and 82 are strategic because they don't fit within an established or proposed overall strategy for medium and long term housing capacity.

- 189 It is also of note that the requirement to be responsive applies to all decisions on urban environments and not just in relation to plan changes referred to in Policy 8. Responsiveness in this sense does not, in my assessment, imply any presumption in favour of supply of development capacity but does mean that proposals should be seriously considered and that integration with infrastructure and medium to long term strategy are part of that responsiveness consideration.
- 190 In terms of existing strategy, the currently leading document is "Our Space". This supports growth at Rolleston, Rangiora and Kaiapoi. This includes two Future Development Areas at Rolleston that are within the Structure Plan area. The recent rate of growth at Rolleston means these are being advanced and now form part of the short and medium capacity supply.
- 191 The NPS UD specifically requires all Tier 1 and 2 local authorities to prepare a Future Development Strategy every 6 years timed to inform the next Long Term Plan. Ms White's evidence advises that this will be in the form of a Greater Christchurch Spatial Plan (GCSP) which will then inform a review of the Regional Policy Statement. Both Ms Appleyard and Mr Phillips have presented that as some future process with great uncertainty over timing and consequent delay. However, Mr Langman reported that a draft GCSP was expected to be released for public consultation in February 2023 with a final document by mid 2023. I regard that as reasonably imminent.
- 192 I also note that while CRC has a role in this Spatial Plan it is being developed by the Greater Christchurch Partnership which includes Selwyn District Council. The Council will, therefore, be able to inform the Proposed District Plan Hearings Panel of detailed progress as part of their upcoming zone change hearings.
- 193 Objective 6 of the NPS UD links, in part, to Policy 8 which requires local authority decisions affecting urban environments to be responsive to plan changes that would add significantly to development capacity and contribute to well functioning urban environments, even if the capacity is:
- (a) Unanticipated by RMA planning documents; or

(b) Out of sequence with planned land release¹⁴

- 194 The nature of Plan Change Requests are that they are generally unanticipated and at least out of sequence otherwise they likely would not be necessary. What this signals is that Plan Change request that meet the other criteria should not be declined on that basis.
- 195 Clause 3.8(3) requires the regional council to include criteria in its Regional Policy Statement for determining what plan changes will be treated as adding significantly to development capacity. This has yet to occur.
- 196 Ms White's s42A report at para 178 records that PC 81 is expected to enable 350 additional dwellings representing 4.5% of the existing Rolleston housing stock and PC 82 as sought would enable 1320 dwellings being 24% of the Rolleston housing stock.
- 197 With reference to the economic assessments, Ms White considers both plan changes to provide significant development capacity albeit that PC 82 is more significant. Ms Appleyard, in the opening legal submissions, agrees with this in terms of scale but notes the MFE guidelines refer to additional criteria being the significance of scale and location, the extent to which development provides for identified demand, timing of development, and viable options for the funding and financing of required infrastructure.
- 198 I agree with Ms Appleyard that this specific matter relates to significant development capacity and not sufficient development capacity. Mr Langman at para 83 of his evidence agrees that in terms of quantum PC 82 will deliver yield that could be considered significant but does not consider the same can be said for PC 81.
- 199 Mr Langman considers that the context of the large number of private plan changes before Selwyn District Council is important to this assessment. He totals this at 11,561 residential lots if all are approved. However, different plan change requests are in different positions in terms of both the Operative Plan and the Proposed Plan either by way of submission or inclusion in Variation 1. I consider that the analysis provided in Response to Minute 3 provides a more helpful numerical context of a Rolleston dwelling supply of 6,500 lots. PC 81 represents an increase of 5.3% of this supply and PC 82 represents an increase of 20%.
- 200 In terms of part I, I am satisfied that the scale of PC 82 in the context of planning for Rolleston would supply significant development capacity. The scale of PC 81 is considerably more marginal. However, in both cases, the development capacity will not be available in the short or early medium term.

¹⁴ Policy 8: NPS UD 2020

- 201 In regard to the MFE guidelines referred to above, I am cautious about relying on guidance of this nature. For example, the location is significant in that it seeks to authorise a new strategic direction for greenfield urban growth at Rolleston, the timing of development is assessed to medium to long term, and there is infrastructure required which is largely addressed in the ODP. Perhaps in terms of significance the more important criteria is 'can this capacity be delivered in the time frame of the remaining life of the Operative District Plan?', the answer to that in my assessment is clearly No.
- 202 Even if this aspect is disregarded, Policy 8 requires this recommendation to be responsive. I agree with Mr Langman that this requires careful consideration of the proposal, but I do not consider this extends to SDC seeking a change to the Regional Policy Statement. Being responsive means not being unduly dismissive, including dismissing the proposals solely on the grounds that they do not give effect to the Regional Policy Statement. All the statutory requirements need to be given careful consideration. To that extent I agree with Mr Wakefield that it should not be interpreted as providing *"innate flexibility for urban development"*.
- 203 In giving that due careful consideration Clause 3.8 of the NPS UD then requires that consideration to give "particular regard to the development capacity" if that capacity:
- (a) Would contribute to a well functioning urban environment; and
 - (b) Is well connected along transport corridors; and
 - (c) Meets the criteria set under sub clause(3)¹⁵
- 204 "Particular regard" in this context generally means giving more weight to the benefits of that development capacity if it meets all the stated criteria. The earlier finding of this report is that without full integration with residential zoning of the PC 73 land there is a risk of not achieving a well functioning urban environment and that modification to achieve a conservative set back from the Pines Resource Recovery Park is justified.
- 205 In terms of being well connected along transport corridors I am satisfied that the ODP and associated requirements for transport improvements including connection to State Highway mean that this element is achieved.
- 206 Part (c) cannot be applied.
- 207 The failure of part (a) is sufficient grounds not to give particular regard to this development capacity. However, irrespective of this, it is very difficult to give

¹⁵ Clause 3.8 NPS UD 2020

weight to the development capacity provided by the plan changes, when that development capacity cannot practicably be realised in the remaining limited life of the Operative Plan.

11.3 THE CANTERBURY REGIONAL POLICY STATEMENT

- 208 The relevant provisions of the Canterbury Regional Policy Statement (CRPS) are well traversed in the evidence of Mr Langman and relate largely to Chapters 5 and 6. Chapter 6 is titled Recovery and Rebuilding of Christchurch. This was added to the CRPS through the Minister of Earthquake Recovery's powers under the Land Use Recovery Plan. It had the Greater Christchurch Urban Development Strategy informing it and put in place a regional partnership approach to a directive recovery strategy in relation to greenfield residential and business land.
- 209 In that it specified certain land areas rather than broad locations for growth, it very much determined what needed to then be put into effect through District Plan provisions. The circumstances of earthquake recovery were of course highly unusual but, as stated earlier in the report, it clearly adopted a more directive and site specific approach than has been seen in other Regional Policy Statements.
- 210 Rebuilding and development of the greenfield areas proceeded at pace and Change 1 was then necessary to allocate additional greenfield land. This did not include a review of the policy regime but did allocate two new Future Development Areas to Rolleston. These are included in the development capacity assessed in response to Minute 3.
- 211 The directive approach is put in place through the following objectives and policies:
- Objective 6.2.1(3) which seeks to avoid urban development outside of existing urban areas or greenfield priority areas for development unless expressly provided for in the CRPS.
 - Objective 6.2.2 which seeks an urban form that achieves consolidation and intensification of urban areas, and avoids unplanned expansion of urban areas.
 - Policy 6.3.1(4) which is to ensure new urban activities only occur within existing expressly urban areas or identified greenfield priority areas shown on Map A, unless they are otherwise expressly provided for.
- 212 Mr Langman explains that these policies are deliberately strict to provide certainty and targeting of investment into identified areas and to achieve a balance with intensification.

- 213 In addition, Objective 6.2.2 sets targets for intensification as a proportion of overall growth being 45% between 2016 and 2021 and 55% between 2022 and 2028.
- 214 Mr Langman considers that any unplanned increase in greenfield land will make these targets for intensification harder to achieve. Countering that of course are the compulsory Medium Density Residential Standards which have been put in place in Selwyn but are being resisted in Christchurch.
- 215 The expert evidence in this regard is that there is no direct substitution between the largely single dwelling family home market that dominates Rolleston with the medium density / apartment inner city market.
- 216 Change 1 to the RPS has been previously referred to. This implements the actions from Our Space which includes adding to Map A Future Development Areas in Rolleston, Rangiora and Kaiapoi. Change 1 was made operative in July 2021. Mr Langman considers that Change 1 ensures that there is provision for the development of land within existing urban areas, greenfield priority areas and FDAs at a rate and in locations that meet anticipated demand and enables the efficient provisions and use of network infrastructure.
- 217 Mr Langman's position is that the additional supply associated with PC 81 and 82 is not in accordance with current strategic planning and is not required in the short or medium term. Further, the current work on the Greater Christchurch Spatial Plan will enable new growth options such as west of Dunns Crossing Road to be tested in a strategic sense against other options and strategies as part of that process. As stated above a draft of the Spatial Plan is imminent.
- 218 In terms of the key issue of reconciling the NPS UD responsive framework with the directive approach of the CRPS, Mr Langman considers that the key matter is that Policy 8 provides a pathway for responsive decision making but does not direct any substantive outcome. However, the nature of the CRPS policies and the case law on the term "avoid" effectively leaves no discretion and therefore is a form of roadblock on the Policy 8 pathway.
- 219 Appendix 1 to the opening legal submissions addresses this matter in some depth. These submissions argue that the responsive framework was intended to target and counter the "avoid" policy in the CRPS. The submissions argue that, because of this, it is necessary to soften the interpretation of 'avoid' in the CRPS by adding the necessary qualification of the higher order document of *"except if otherwise provided for in the NPS-UD, avoid...."*.¹⁶

¹⁶ Para 24 Appendix 1 to the Opening Legal Submissions on behalf of the Applicant.

- 220 The responsive framework of the NPS UD is an important component of that higher order document and I agree that the CRPS must be interpreted in a way that leaves that pathway to be tested in accordance with the requirements of the NPS UD. This would, in effect, be until such time as the CRPS is amended to bring the policies in line with the NPS UD.
- 221 However, in this case I have found that for various reasons PC 81 and PC 82 do not meet the requirements of the responsive framework. Hence the required qualification of being provided for in the NPS UD is not triggered and consequently I find that the Plan Changes do not justify the overriding of the existing policy framework of the CRPS.
- 222 Finally, on this aspect I note at para 30.5 of Appendix 1 to the opening legal submissions it is submitted that *“nowhere in the NPS UD does it require that responsive planning be undertaken “in a manner that complements existing strategic planning”.*¹⁷ Indeed, the submission is that the NPS UD is trying to do the opposite. In considering this point I have looked again at Objective 6 of the NPS UD which requires that urban development decisions are responsive but also that they are strategic over the medium and long term. This is important because PC 81 and 82 would, if approved, effectively determine the next strategic move in terms of greenfield growth but without offering up a full strategic evaluation of options, and indeed, something of a partial approach to the planning framework for a new growth area west of Dunns Crossing Road.
- 223 As previously noted, these matters will be able to be more comprehensively evaluated through the upcoming Proposed District Plan hearings.
- 224 Ms White in the s42A planning evidence also considers that Objectives 5.2.1 and 6.2.1 are particularly relevant. They require the integration of strategic infrastructure and services with land use development and development that does not affect existing and future planned strategic infrastructure. As Ms White notes this is relevant to the future expansion of the PWTP and PRRP. This supports a cautious approach to the odour set back and activities within the odour setback which I found to be appropriate earlier in this report.
- 225 Ms White also notes that to meet the policy requirements it is important to be satisfied that the provisions of water infrastructure to the Plan Change areas will not undermine the coordination and integration of infrastructure for other planned development. Mr England has confirmed that additional groundwater resource will

¹⁷ Para 30.5 Appendix 1 to the Opening Legal Submissions on behalf of the Applicant.

be required to avoid affecting other planned developments. Again, this is a matter of timing that goes well beyond the life of the Operative Plan.

- 226 In terms of other relevant Plans, Ms White considers that neither the Canterbury Land and Water Plan (LWRP) and Canterbury Air Regional Plan (CARP) raise any material issues at this stage of the process. Similarly, she has reviewed the PC 81 assessment of the Mahaanui Iwi Management Plan and agrees with that assessment and its application also to PC 82. I did not receive any evidence or submissions challenging these aspects.
- 227 The Rolleston Structure Plan is also a strategy of relevance. Ms White considers that the Plan Change sites, being outside the Structure Plan area, simply reflects the alignment of growth and the Structure Plan to date. She considers that Policy 8 ensures this is not a bar to approval of the plan changes on their merits. I accept this, but also note that, given all the unconstrained land in the Structure Plan area is developed or actively at some stage of development, PC 81 and 82 and for that matter PC 73 raise the clear question ‘where to next?’. The proponent’s experts say it is really the only option and is inevitable, the Council experts say there are options and they haven’t been tested. The issue is whether private plan changes to the Operative Plan are the appropriate means of addressing this strategic decision or, given the existing development capacity, whether it is better addressed through the submissions to the Proposed District Plan in conjunction with the emerging Greater Christchurch Spatial Plan. I consider this further below in the context of Section 32.

11.4 SECTION 32: ALTERNATIVES, BENEFITS AND COSTS

- 228 Section 32(1)(a) requires an evaluation report to examine the extent to the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.
- 229 The s32 evaluation for PC 81 as reported at Para 210 of Ms White’s evidence states that the objective of the proposal is to *“provide for an extension of the adjoining existing urban residential area of Rolleston in a manner that adds significantly to development capacity and provides for increased competition and choice in residential land markets”*.¹⁸
- 230 To address whether this is the most appropriate way to achieve the purpose of the Act the alternatives need to be evaluated as well as whether the components of the objective of the proposal as set out above are the most appropriate way to achieve the purpose of the Act.

¹⁸ Para 210 Section 42A Report by Liz White.

231 This includes:

- (a) Is the additional residential area needed to achieve the purpose of the Act at this time?
- (b) Is it the best location for expansion?
- (c) What are the other options?
- (d) What are the infrastructure and other implications of the other options?
- (e) Will the proposal actually add significantly to development capacity?
- (f) Will it provide for competition and choice?

232 The objective of the Plan Change 82 proposal is stated to be “*to change the zoning of the application site in the Operative District Plan from Rural Outer Plains Zone to Living MD and Business 1 Zones in a controlled and managed way through an Outline Development Plan and by adopting as far as possible planning zones and subdivision, activity and development standards of the operative plan.*”¹⁹

233 This objective refers more to the method of change rather than the outcome. But irrespective of this similar questions of testing the appropriateness of the proposal in the context of Part II of the Act are relevant.

234 The Minute 3 response has greatly assisted with a clearer understanding of the development capacity at Rolleston which at 6,600 is very significant. I have earlier found that, in scale terms, PC 81 does not add significantly to development capacity but PC 82 does. Although this is reduced if the odour set back is 1,000m.

235 Given the extent of agreed housing supply over the short and medium term and the fact that both PC 81 and PC 82 have infrastructure and process time lags, I do not expect either of them to make a material impact on competition and choice.

236 Mr Phillips in his supplementary evidence reminded me that the plan change requests assessed four options being:

- Do nothing,
- rezone as proposed,
- apply for resource consents for development under the current zoning,
- apply for multiple plan changes in other locations around Rolleston to achieve equivalent development.

¹⁹ Para 211 Section 42A Report by Liz White.

- 237 Only the last of those options considers the merits of the Plan Change locations with other locations and might inform the evaluation of whether the development of the PC 81 and 82 areas are the most appropriate way to achieve the purpose of the Act. However, looking back at the original s32 evaluation Table 6, which considers Option 4, it is superficial and not helpful to this matter.
- 238 In response to some of my questioning, Mr Phillips in his Supplementary Evidence sought to provide evaluation of a further option being to *“await the spatial planning process and comprehensive rezoning”*. I consider this further below, but note this focusses more on process than outcome, and still fails to satisfy the question of whether the objectives of the two proposals are the most appropriate way to achieve the purpose of the Act.
- 239 Ms White seeks to assist by turning her mind to this in terms of the two Plan Change areas but not alternative locations. She does not consider there are any matters of national importance that are relevant. However, she considers that there are section 7 matters that relate to the risk of reverse sensitivity and need for additional water supplies. She also considers that the NPS UD and CRPS are relevant to this assessment which have been considered in detail above.
- 240 Ms White also has concerns about fit with existing District Plan objectives and policies largely around connectivity, integration and reverse sensitivity.
- 241 The second part of Section 32(1) refers expressly to the provisions in the proposal. It is this evaluation that is required to consider other practicable options for achieving the objectives and assessing the efficiency and effectiveness of the provisions in achieving the objectives. The provisions of course include the change of zoning, the ODP and changes/additions to rules and performance standards.
- 242 I am generally satisfied that the provisions have been worked through and refinements made such that if a proper evaluation of provisions was undertaken the costs and benefits and efficiency and effectiveness of the provisions as finally proposed at the end of the hearing with the removal of the buffer area from the plan change would stand scrutiny.
- 243 As stated above, Mr Phillips has sought to address my concerns about the important strategic decision built into PC 81 and 82 by evaluating an alternative process as sought by Mr Langman i.e. awaiting spatial planning process and comprehensive rezoning.
- 244 Most of his identified disadvantages relate to the cost of the process and the delay compared to this private plan change process. However, we have established early on that PC 81 and 82 can at best deliver medium term supply, and the assessed

supply in Rolleston means the additional supply is not likely to be required until the latter part of the medium term. A change to the Operative District Plan, on its own, is clearly not sufficient to achieve the objectives of the Plan Changes. Decisions on submissions in favour of changing the zoning are also required in the Proposed District Plan Hearings. This recommendation report does not in any way bind the findings of the Proposed District Plan Hearings.

- 245 Mr Phillips accepts that a PDP / Spatial Planning process will enable community participation and comprehensive planning *“where there is no preferable alternative, or urgency to act.”* The evidence from Minute 3 is that the urgency to act is not as urgent as the witnesses first have suggested. Further I consider that a piecemeal approach to planning the most significant new growth area for Rolleston since the 1990s is neither efficient nor effective. Particularly, when the Operative District Plan has such a limited remaining legal life.
- 246 Section 32(2)(c) requires consideration of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. I have previously raised this in relation to the odour setback issue. The wider issue is that, while this location is on the evidence a good candidate for long term greenfield growth if pursued in a comprehensive and integrated way, there are other potential locations which have not been tested. The relative merits of those areas have only been given scant comment and the risk of acting is, therefore, clearly that this infers at least a commitment to a strategic area of growth which may not be the best strategic option. Conversely, I do not consider there are material risks of not acting given this matter will come before the Proposed District Plan Hearings in the near future.

12. OVERALL CONCLUSION

- 247 In section 2 of this report I identified the statutory considerations that I need to consider. The hearing process and associated conferencing has assisted in the evaluation of the two Plan Change proposals. In particular, it has assisted with achieving some clarity on the Rolleston short and medium term new dwelling lot supply and has addressed the consequences of imposing a larger 1,000m dwelling setback from the active composting area. The plan provisions have also evolved through the work of the planners to address the issues that have arisen.
- 248 In terms of effects on the environment and risk of reverse sensitivity on significant infrastructure I have found that, were PC 82 to be approved, it should be modified to provide a 1,000 m building set back from the composting area of the PRRP. I am satisfied that this would not prevent an appropriate form of design and I am satisfied

with the amended ODP that accommodates this setback. I have also found that the setback area should be zoned Rural (Outer Plains) and not Living MD.

- 249 In terms of infrastructure, I am satisfied that the required transport infrastructure is capable of being delivered by various means and these requirements have been incorporated into the ODP text. Additional groundwater supply and treatment is also required and not currently planned by the Council which would likely affect the timing of subdivision and development of both Plan Change areas.
- 250 The ODPs provide a generally appropriate development structure with neighbourhood centres, reserves and connectivity to adjoining potential development areas. However, a better functioning urban environment would be created through integration of the PC 73 area being zoned Living MD. Further improvements would likely be achieved if the whole of the block to Edwards Road was planned comprehensively, and specific staging put in place.
- 251 In terms of the statutory assessment of the Plan Changes, I find that approval of the Plan Changes would not assist the Council in achieving integrated management of the effects of use, development or protection of land and associated natural and physical resources of the district. A process enabling a more comprehensive assessment of the wider location against other options through the Proposed District Plan hearings and emerging Spatial Plan may reach a different conclusion.
- 252 I find that the Plan Changes do not meet the requirements of Objective 6 of the NPS UD as they do not form part of a wider growth and development capacity strategy. In terms of Policy 8, I find that PC 82 would achieve significant development capacity in terms of scale, however this is not expected to be achieved in the life of the Operative District Plan. The best that might be expected is the consenting of a first stage of development. However, it is the implementation of the consent that creates the capacity. I also find that the Plan Changes do not meet all the requirements of Clause 3.8.
- 253 I find that the Plan Changes do not give effect to the Canterbury Regional Policy Statement in its current form. The CRPS however is not a complete block to a positive recommendation and must be interpreted, in the interim, in a way that leaves the Policy 8 pathway to be tested. Having undertaken this assessment I find that the Plan Changes do not justify the overriding of the existing policy framework of the CRPS.
- 254 In terms of s32, I have found that the assessments do not satisfy me that the objectives of either proposal are the most appropriate way to achieve the purpose of the Act.

- 255 However, I am generally satisfied that the proposed plan provisions have been worked through and refinements made such that if an evaluation of provisions was undertaken the costs and benefits and efficiency and effectiveness of the provisions as finally proposed at the end of the hearing with the removal of the buffer area from the plan change would stand scrutiny against other provisions options.
- 256 I consider that PDP / Spatial Planning process is capable of providing a process whereby these shortcomings can be addressed. The proponent's view on the urgency to act now is not born out in the evidence and does not justify a deficient process through the Operative District Plan. A piecemeal approach to planning the most significant new growth area for Rolleston since the 1990s is neither efficient not effective, despite the evidence showing that this location is a strong candidate.

13. RECOMMENDATIONS

257 For the reasons above I recommend to the Selwyn District Council that:

1. **Pursuant to Clause 10 of Schedule 1 of the Resource Management Act 1991 the Council declines Plan Change 81 to the Selwyn District Plan.**
2. **Pursuant to Clause 10 of Schedule 1 of the Resource Management Act 1991 the Council declines Plan Change 82 to the Selwyn District Plan.**
3. **That for the reasons set out in the body of my Recommendation Report, and summarised in Annexures 1 and 2, the Council either accept, accept in part or reject the submissions identified in Annexures 1 and 2.**



Paul Thomas

Hearing Commissioner

27 January 2023

ANNEXURES

- 1. Plan Change 81: Recommendations on Submissions.**
- 2. Plan Change 82: Recommendations on Submissions.**

SUBJECT TO COUNCIL DECISION

ANNEXURE 1

Plan Change 81: Recommendations on Submissions.

SUBJECT TO COUNCIL DECISION

ANNEXURE 2

Plan Change 82: Recommendations on Submissions.

SUBJECT TO COUNCIL DECISION