

## SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF MIKE GREER HOMES NZ LIMITED

### Introduction

1. In its submission on the Proposed Plan and Variation 1, the Submitter sought Medium Density Residential Zoning (**MRZ**), which would enable a yield in the order of approximately 190 dwellings, with subdivision and development guided by an ODP (**Proposal** or **proposed rezoning**). The s42A Officer Report did not support the Proposal due to lack of evidence regarding downstream flood hazard effects. That matter has been addressed by supplementary evidence and it's understood that the Reporting Officer now supports the Proposal.
2. The factual and planning context regarding this Proposal are similar to those in respect of the Momentum Land Limited Proposal.<sup>1</sup> In the circumstances, Mike Greer Homes adopts the summary of legal submissions filed by Momentum Land Limited on Stream 12E (attached at **Appendix A**) subject to all necessary alterations to account for differences between the two Sites.

### Opposition from CIAL and RIDL

3. Christchurch International Airport Limited (**CIAL**) and Carter Group Limited and Rolleston Industrial Developments Limited (collectively **RIDL**) have filed legal submissions and evidence opposing the Proposal. They argue that the Proposal does not give effect to the CRPS because it would allow development contrary to Policy 11.3.1 (development in high hazard areas) and Policy 6.3.5(4) (noise sensitive activities within the 50 dBA Ldn airport noise contour).

### Reply to CIAL case presentation

4. In its case presentation, CIAL referred to (among other matters) Plan Change 71 to the Operative Selwyn District Plan (**PC71**). CIAL argued that PC71 was highly relevant because it was factually similar to the Momentum Land Limited (**Momentum**) Proposal and Mike Greer Homes NZ Limited (**Mike Greer Homes**) Proposal seeking to rezone land at Kaiapoi.

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<sup>1</sup> 1. For example, both Sites are located adjacent to the existing urban zone at Kaiapoi, both Submitters seek MDZ under the WPDP and Variation 1, both Sites are located (at least in part) beneath the 50 dBA Ldn airport noise contour, both Sites are potentially affected by high flood hazard.

5. I disagree with that view the following reasons:
- (a) The factual context is different because virtually all of Kaiapoi is already underneath the 50 dBA Ldn airport noise contour whereas none of Rolleston is underneath the 50 dBA Ldn contour. Further, Rolleston has plenty of room to expand without needing to locate urban growth under the contour whereas Kaiapoi is much more constrained because greenfield land that is suitable for urban growth lies beneath the contour. This point is illustrated by Figure 5 and Figure 6 of Appendix A to the Stream 1 Legal Submissions filed for Momentum dated 8 May 2023 (attached as **Appendix B**); and
  - (b) The case for the applicant in support of PC71 was quite different to the case for Momentum and Mike Greer Homes in support of the PWPD and Variation 1 rezoning proposals at Kaiapoi. In the present case, the argument for Momentum and Mike Greer Homes is that the level of aircraft noise on residential development beneath the 50 dBA Ldn contour is acceptable because such noise will not be highly annoying such as to generate complaints that would affect the efficient operation of the airport. Evidence in support of this case was presented by an independent, objective and well qualified aeronautical acoustic expert, Professor John-Paul Clarke. Expert acoustic evidence was also presented by William Reeves regarding complaints from residents at Kaiapoi regarding aircraft noise. The case for the applicant in PC71 was presented on a different footing; the issue of whether residential development beneath the 50 dBA Ldn contour is acceptable was not contested through evidence from acoustic experts. This point is illustrated by the list of appearances at the PC71 hearing at page 2 of the Interim Recommendation by Commissioner David Caldwell dated 7 June 2022 (attached at **Appendix C**) which shows no evidence was presented by acoustic experts for the applicant or CIAL. The only acoustic evidence presented was from Foodstuffs on an unrelated issue.
6. For completeness, a full copy of the Interim Recommendation by Commissioner David Caldwell dated 7 June 2022 is filed together with this Summary of Legal Submissions.

20 August 2024

## SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF MOMENTUM LAND LIMITED

### Introduction

7. In its submission on the Proposed Plan and Variation 1, the Submitter sought Medium Density Residential Zoning (**MRZ**), which would enable a yield in the order of approximately 1,000 dwellings, with subdivision and development guided by an ODP (**Proposal** or **proposed rezoning**). The s42A Officer Report supports the Proposal.
8. Christchurch International Airport Limited (**CIAL**) and Carter Group Limited and Rolleston Industrial Developments Limited (collectively **RIDL**) have filed legal submissions and evidence opposing the Proposal. They argue that the Proposal does not give effect to the CRPS because it would allow development contrary to Policy 11.3.1 (development in high hazard areas) and Policy 6.3.5(4) (noise sensitive activities within the 50 dBA Ldn airport noise contour).

### How should the CRPS be interpreted and applied

9. The NPS-UD directs a “radical change” to the way in which local authorities must approach the issue of development capacity – the spirit and intent of substantive objectives is to open development doors rather than to close them.<sup>2</sup>
10. The hierarchy of planning documents established by the RMA means that subordinate planning documents must give effect to National Policy Statements.<sup>3</sup> In this case the NPS-UD demands greater weight than the CRPS because it is the later document, is higher in the statutory hierarchy, and has better regard to section 7(b) RMA.
11. There is considerable case law regarding the interpretation of resource management provisions.<sup>4</sup> There is a strong argument to support a “purposive” approach to interpretation of CRPS policies that are inconsistent with, or do not give effect to, the NPS-UD.

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<sup>2</sup> *Bunnings Ltd v Queenstown Lakes District Council* [2022] NZEnvC 162 at [148] – [155]

<sup>3</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [10] and [80]

<sup>4</sup> The recent decision of *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128 provides a useful summary of the main principles which apply when determining the meaning of planning provisions created in the RMA context

12. Conflicts between policies are likely to be rare if those policies are properly construed, even where they seem to be pulling in different directions<sup>5</sup> and further that concepts of mitigation and remedy may serve to meet the “avoid” standard by bringing the level of harm down so that material harm is avoided.<sup>6</sup>

**Noise sensitive activities beneath the 50 dBA Ldn airport noise contour**

13. Part of the North Block and all of the South Block is identified as Future Development Area (**FDA**) on Map A of the CRPS. However FDA are not expressly mentioned within the exemption provided by Policy 6.3.5(4) which otherwise seeks to avoid noise sensitive activities beneath the 50 dBA airport noise contour due to potential adverse effects on the efficient operation of the Christchurch International Airport
14. Ambiguity about application of Policy 6.3.5(4) to the Proposal does not preclude rezoning of the Site to MRZ because:
- (a) the Proposal complies with Policy 6.3.5(4) as it falls within the “residential greenfield area” exemption provided by Policy 6.3.5(4);
  - (b) the Proposal complies with Policy 6.3.5(4) as the mischief that this policy seeks to avoid will not occur because the effects of the Proposal on the efficient operation of Christchurch Airport will be minimal; and
  - (c) the expert evidence filed by the Submitter demonstrates that the Proposal satisfies the responsive planning decisions requirements at Policy 8 and Clause 3.8 of the NPS-UD and therefore should be approved even if the Panel determines that urban development is not anticipated by the CRPS in this location.
15. It is unfortunate that the CRPS has not been reviewed to give effect to the NPS-UD.<sup>7</sup> It is noteworthy that the much more recent Greater Christchurch Spatial Plan and Plan Change 14 to the Christchurch District Plan adopt a markedly different and more enabling approach to management of residential growth beneath the 50 dBA airport noise contour to that provided by the outdated CRPS.

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<sup>5</sup> Supra at [63]

<sup>6</sup> Supra at [65]

<sup>7</sup> As anticipated by Policy 6.3.11

### **Response to evidence and submissions for CIAL**

16. Planning evidence of Mr Kyle and legal submissions on behalf of CIAL discuss land use planning within an airport's aircraft noise boundaries and the role of acoustic insulation in managing noise effects within the 50 dBA Noise Contour.
17. The key point when considering aircraft noise and land use planning is the level of aircraft noise that is projected to occur as this critically informs the nature and suitability of land use controls within the affected area.
18. In this case the relevant projected level of aircraft noise is 50 dBA Ldn. The New Zealand Standard for Airport Noise Management and Land Use Planning (NZS6805:1992) (**Standard**) referred to by Mr Kyle recommends local authorities to incorporate into the district plan maps the sound exposure contours of the 65 dBA Ldn and the 55 dBA Ldn. The Standard does not recommend mapping a sound exposure contour for the 50 dBA Ldn.
19. Further, the 50 dBA contour is markedly less noisy than the 60-65 dBA noise contours at issue in the *Auckland International Airport Ltd decision*<sup>8</sup> referred to in Mr Kyle's evidence and the legal submissions for CIAL.
20. Put simply, avoiding residential growth beneath the 50 dBA contour at Kaiapoi cannot be justified in light of the expert evidence present for the Submitter at the Stream 10A hearing and the new requirements on local authorities to provide at least sufficient development capacity under the NPS-UD.

### **Response to evidence and legal submissions for Carter Group Limited and RIDL**

21. Planning evidence of Mr Phillips and legal submissions on behalf of RIDL discuss flooding and the Kaiapoi Development Area.
22. RIDL has not filed a further submission in opposition to the Submitter's rezoning proposal. Instead Mr Phillips refers to his evidence filed for Hearing Stream 10A as the basis for RIDL's involvement in the present hearing. In that evidence Mr Phillips states that relates to *"the submitters' further submission number 82 supported the Canterbury Regional Council's submission (submission number 316.190) to use a regular plan change process (for the rezoning of the Kaiapoi Development Area), rather than enable development through certification."*<sup>9</sup>

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<sup>8</sup> *Auckland International Airport Ltd decision* [2024] NZHC 2058

<sup>9</sup> Planning evidence of Mr Phillips on Hearing Stream 10A at [7]

23. This hearing is not about the question of certification but rather relates to large scale rezone proposals. The Submitter's Proposal is akin to using a regular plan change process as requested by ECan and supported by RIDL. In my view RIDL's evidence and legal submissions on Stream 12E should be disregarded by the Panel as they are outside scope of matters raised in submissions by RIDL on the WPDP and Variation 1.
24. In any event, Policy 11.3.1 CRPS provides four separate exemptions to the requirement to "avoid" development within high hazard.<sup>10</sup> Sub-policy 11.3.1(6) regarding urban growth within Greater Christchurch is most relevant and states (emphasis added):
- Within greater Christchurch, is proposed to be located in an area zoned in a district plan for urban residential, industrial or commercial use, or identified as a "Greenfield Priority Area" on Map A of Chapter 6, both at the date the Land Use Recovery Plan was notified in the Gazette, in which the effect of the natural hazard must be avoided or appropriately mitigated*
25. Policy 11.3.1(6) suffers from the same problem as identified above with respect to Policy 6.3.4(5) in that it has not been updated to give effect to the more recent NPS-UD. Accordingly, similar considerations discussed above regarding CRPS Policy 6.3.5(4) apply with respect to Policy 11.3.1 CRPS regarding new development in high flood hazard areas.<sup>11</sup>
26. Precluding the Proposal due to inconsistency with high hazard area Policy 11.3.1 cannot justified in light of the expert evidence presented for the Submitter which demonstrates that flood hazard can be appropriately mitigated and the new requirements on local authorities to provide at least sufficient development capacity under the NPS-UD.

Chris Fowler  
19 August 2024

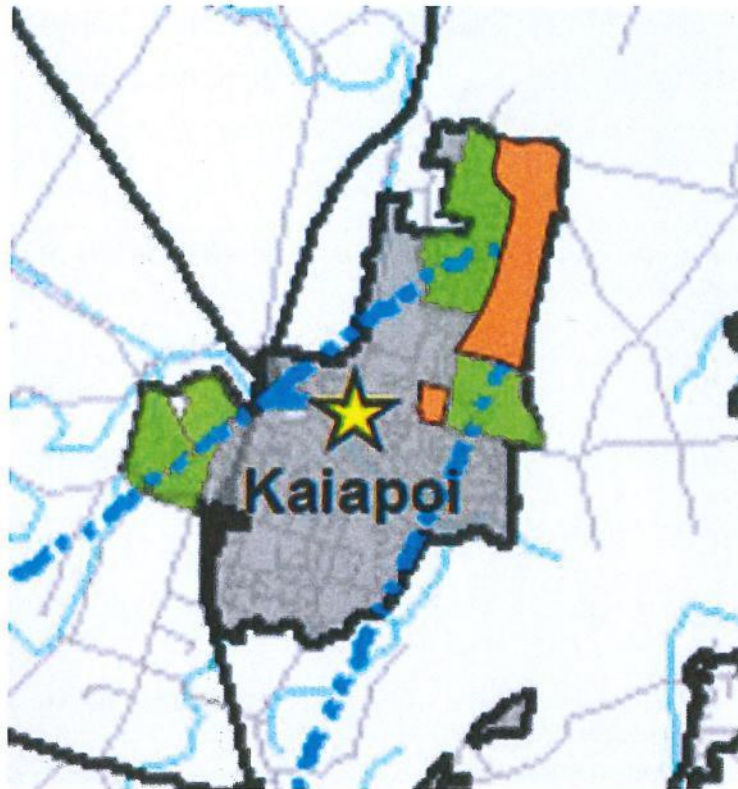
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<sup>10</sup> Namely exemptions at sub-policies (1)-(4) generally for low-intensity uses, sub-policy (5) outside Greater Christchurch, sub-policy (6) within Greater Christchurch regarding urban growth, and sub-policy (7) within Greater Christchurch regarding existing infrastructure

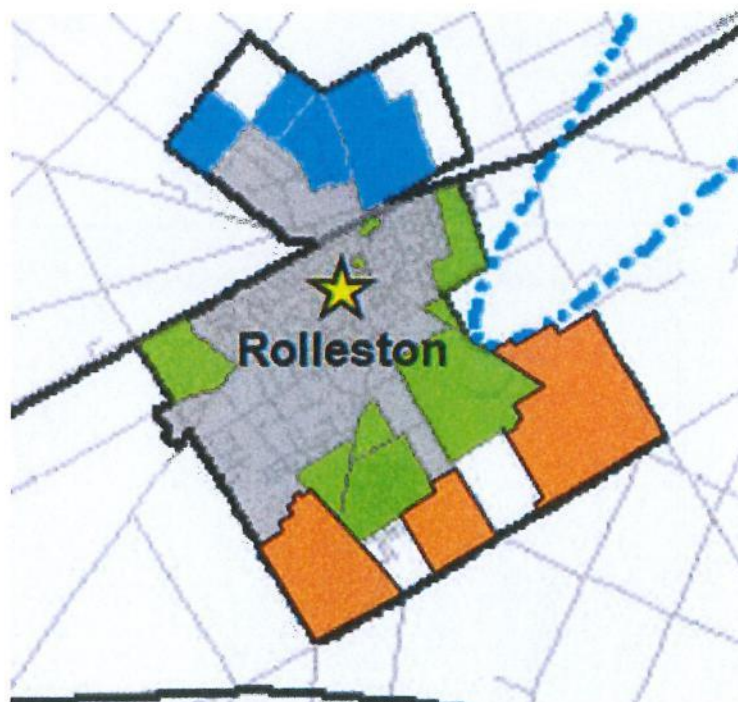
<sup>11</sup> Refer discussion about interpretation of the CRPS at [3]-[6] above and commentary regarding Policy 6.3.5(4) at [8](b)-(c) and [9] above

**50 dBA noise contours – Kaiapoi and Rolleston**

Extracts from Map A, Chapter 6, CRPS



**Figure 5:** Snip showing 50 dBA noise contour and FDA at Kaiapoi



**Figure 6:** Snip showing 50 dBA noise contour and FDA at Rolleston



**BEFORE THE SELWYN DISTRICT COUNCIL**

**IN THE MATTER OF** Clause 21 of the First Schedule of the  
Resource Management Act 1991

**AND**

**IN THE MATTER OF** Four Stars Development Limited and  
Gould Developments Limited, Private  
Plan Change 71

**Applicant**

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**INTERIM RECOMMENDATION BY COMMISSIONER DAVID CALDWELL**

**Dated 7 June 2022**

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**Hearing Held: 9 and 10 February 2022****Appearances:**Council:

Ms Liz White – Consultant Planner for Selwyn District Council

Mr Mat Collins – Associate in Transportation Planning at Flow Transportation Specialists

Mr Hugh Nicholson – Consultant Urban Design and Landscape

Mr Murray England – Asset Manager – Water Services with Selwyn District Council

Applicant:

Mr Gerard Cleary, Anthony Harper – Legal Counsel

Mr Philip Kennard (Company Representative)

Mr John Ballingall, Partner at Sense Partners – Economics

Ms Lisa Williams, Transport Engineer and Planner at Novo Group Limited – Transportation

Mr William Salmond, Licensed Cadastral Surveyor and Principal of Christchurch Branch Paterson Pitts Group – Servicing/Infrastructure excluding Water Supply

Mr Victor Mthamo, Principal Consultant at Reeftide Environmental and Projects Limited – Versatile Soils/Water Supply

Ms Nicole Lauenstein, Urban Designer and Architect, Director a + urban – Urban Design

Ms Fiona Aston, Principal of Aston Consultants – Planning

Submitters

Foodstuffs (South Island) Properties Limited (PC71-0009):

- Ms Alex Booker, Anderson Lloyd – Legal Counsel
- Ms Rebecca Parish – Development Manager for Foodstuffs (South Island) Limited
- Mr Robert Hay – Associate and Director of Marshall Day Acoustics – Reverse Sensitivity Effects/Noise Mitigation
- Mr Mark Allan – Director with Aurecon New Zealand Limited – Planning

Christchurch City Council (PC71-0007) / Canterbury Regional Council (PC71-0008):

- Mr Michael Wakefield, Simpson Grierson – Legal Counsel
- Mr Marcus Langman – Independent Planning Consultant – Planning

Christchurch International Airport Limited (PC71-0004):

- Ms Joanne Appleyard and Ms Amy Hill, Chapman Tripp – Legal Counsel
- Ms Felicity Blackmore, Environment and Planning Manager at CIAL – Aircraft Noise and Contour Modelling
- Mr Matthew Bonis – Associate at Planz Consultants – Planning

Mr Ivan Court (PC71-0005)



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**ABBREVIATIONS TABLE**

<b>CARP</b>	Canterbury Air Regional Plan
<b>CCC</b>	Christchurch City Council
<b>CIAL</b>	Christchurch International Airport Limited
<b>CLWRP</b>	Canterbury Land and Water Regional Plan
<b>CRC</b>	Canterbury Regional Council / Environment Canterbury
<b>CRPS</b>	Canterbury Regional Policy Statement
<b>FDA</b>	Future Development Area
<b>GCP</b>	Greater Christchurch Partnership
<b>HCA</b>	Housing Capacity Assessment
<b>hh/ha</b>	Households per hectare
<b>LTP</b>	Long Term Plan
<b>MIMP</b>	Mahaanui Iwi Management Plan
<b>NPS-UD</b>	National Policy Statement – Urban Development
<b>ODP</b>	Outline Development Plan
<b>Our Space</b>	Our Space 2018-2048: Greater Christchurch Settlement Pattern Update Whakahāngai O Te Hōrapa Nohoanga
<b>PC71</b>	Private Plan Change 71
<b>PDP</b>	Proposed Selwyn District Plan
<b>PIB</b>	Projected Infrastructure Boundary
<b>pNPS-HPL</b>	Proposed National Policy Statement for Highly Productive Land
<b>RMA</b>	Resource Management Act 1991
<b>RSP</b>	Rolleston Structure Plan 2009
<b>SDC</b>	Selwyn District Council
<b>SDP</b>	Operative Selwyn District Plan
<b>UDS</b>	Urban Development Strategy
<b>WWTP</b>	Wastewater Treatment Plant

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## Introduction

1. I have been appointed to hear submissions and make a Recommendation on Private Plan Change 71 to the Operative SDP.
2. I attended and conducted the hearing at the Selwyn Health Hub, Norman Kirk Drive, Rolleston on 9 and 10 February 2022. The Applicant's reply submissions and evidence were received on 4 March 2022. The hearing was formally closed on 28 March 2022.
3. I have not included a specific summary of all of the documents considered, evidence provided and submissions made. All of that information is publicly available and has been uploaded to SDC's plan change site at [www.selwyn.govt.nz/pc71](http://www.selwyn.govt.nz/pc71). I refer to the relevant evidence, submissions and other documents, when addressing the particular issues and statutory provisions. I have carefully considered all of the relevant documents, evidence and submissions.

## PC71

4. PC71 is a private plan change initiated by Four Stars Development Limited and Gould Developments Limited (**the Applicant**) to rezone, as notified, approximately 53 hectares of land at Rolleston bounded by Levi and Lincoln Rolleston Roads and Nobeline Drive. Under PC71 as notified, it was proposed that the area of land within the noise contour would be deferred zoning reflecting the anticipated shift of contour off the site. In summary, the changes sought were:
  - Amend the SDP maps to rezone and identify the 53 hectare site Living Z and Living Z Deferred;
  - Add Rolleston ODP Area 5 and supporting narrative;
  - Add an additional rule in relation to Deferred LZ status of the land currently under the Christchurch International Airport 50 dBA Ldn noise contour;
  - Amend ODP Rolleston Area 4 by showing a link through the ODP for Area 4, removing a Large Lot notation on the boundary, amending the supporting narrative and removing medium density area on ODP Area 4's eastern boundary.
5. The yield assessment was estimated to be a potential yield of 688 lots across three blocks. A number of changes were proposed in evidence. These will be addressed in my Recommendation.
6. PC71 was formally received by SDC on 12 November 2020. A Request for Further Information was issued on 2 February 2021 with the Applicant's responses received on 16 March 2021 and 12 May 2021. SDC accepted PC71 for notification pursuant to Clause 25(2)(b) of Schedule 1 to the RMA at its meeting on 26 May 2021.



7. PC71 was publicly notified on 30 June 2021 with the submission period closing on 29 July 2021. A Summary of Submissions was publicly notified on 18 August 2021 with the further submission period closing on 1 September 2021.
8. 10 primary submissions were received, together with 3 further submissions.
9. A late submission was received from S M and B A Roche on 17 March 2022. I declined to accept the submission, accepting the recommendation provided by Ms Rachael Carruthers, Strategy and Policy Planner with SDC. The reasons for that were recorded in my decision of 21 March 2022.

### **Site Visit**

10. I undertook a site visit on 28 February 2022. I had intended to undertake that site visit earlier but due to various commitments the Applicant had, I was unable to do so before that date. I was advised that the only person able to accompany me onto the site was Mr Philip Kennard who of course gave evidence on behalf of the Applicant. I issued a Minute on 22 February 2022 recording that and reiterating my previous advice that the site visit is not an opportunity for any party to provide further evidence and recording that Mr Cleary had confirmed he had made Mr Kennard aware that under no circumstances was he to discuss the plan change with me.
11. I met Mr Kennard at the All Stars Racing Stable. I followed him into the property. Mr Kennard pointed out some of the boundaries and locations from within the site. We then went, in separate vehicles, to other properties on Lincoln Rolleston Road and Nobeline Drive. I was able to view the surrounding environment and properties incorporated into the plan change. The site visit assisted in my understanding of the site and how it fits into the surrounding environment.

### **The Site and Surrounding Environment**

12. The site and its surrounds was described in in the application/request.<sup>1</sup>
13. Ms White described the site in her s42A Report.<sup>2</sup> Ms White noted that Part A, being 53.89 ha, comprised in 8 land parcels, was the site over which the change in zoning was sought. She noted the second site to which the Request applied (Part B) was a 7.1831 ha site which is currently zoned Living Z. She noted no change was sought to that zoning but amendments to the ODP currently applying were sought. Ms White noted Part B of the site, while zoned for residential development, was subject to a resource consent application (216016) to establish a Pak n Save supermarket which had been accepted by SDC for processing on 11 January 2022. Ms White also noted that part of the site is affected by the Christchurch International Airport 50 dBA Ldn noise contour.

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<sup>1</sup> Application for Private Plan Change June 2021. Note the plan change application was amended to incorporate the further information requested. The amended application superseded the original application documents received.

<sup>2</sup> s42A Report 17 January 2022 at paras [9] – [15]

### *Surrounding Environment*

14. Again the surrounding environment was described in the application, particularly in paragraphs [4], [5] and [10] – [13], and by Ms White in paragraphs [16] and [17] of her s42A Report. I consider those descriptions are accurate and I adopt them for the purpose of this Recommendation. It directly adjoins the Living Z zones to the north and west. The areas to the east and south of the site are zoned Rural Inner Plains. Directly on the eastern boundary, SDC owns 99 ha which were purchased for the purpose of developing a district-scale park. This was described by Mr Rykers as effectively being a land-banking opportunity to ensure sufficient space was available for those purposes to meet the district growth requirements. He noted that the needs assessment and planning work for the development of the park had not yet formally commenced and therefore the actual activities to be accommodated on the park are yet to be defined.

### **Statutory Framework**

15. The Environment Court has provided a comprehensive summary of the mandatory requirements in its decision in *Long Bay*.<sup>3</sup> This was updated to reflect changes to the RMA in 2009 in the Environment Court's decision in *Colonial Vineyards*.<sup>4</sup>
16. The general requirements are:
- (a) The district plan (change) should accord with and assist the local authority to carry out its functions under s31 and to achieve the purpose of the RMA;<sup>5</sup>
  - (b) When preparing the district plan (change) the territorial authority must give effect to any National Policy Statement, a National Planning Standard, the New Zealand Coastal Policy Statement and the operative Regional Policy Statement;<sup>6</sup>
  - (c) When preparing its district plan (change) the territorial authority shall:
    - (i) Have regard to any proposed Regional Policy Statement;<sup>7</sup>
    - (ii) Give effect to any operative Regional Policy Statement;<sup>8</sup>
  - (d) The district plan (change) must not be inconsistent with an operative Regional Plan for any matter specified in s30(1) or a Water Conservation Order,<sup>9</sup> and must have regard to any proposed Regional Plan on any matter of regional significance;<sup>10</sup>

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<sup>3</sup> *Long Bay – Okura Great Park Society Inc v North Shore City Council* A078/08

<sup>4</sup> *Colonial Vineyards Limited v Marlborough District Council* [2014] NZEnvC 55

<sup>5</sup> s74(1)(a) and (b) of the RMA

<sup>6</sup> s75(3)(a), (ba) and (c) of the RMA

<sup>7</sup> s74(2)(a)(i) of the RMA

<sup>8</sup> s75(3)(c) of the RMA

<sup>9</sup> s75(4) of the RMA

<sup>10</sup> s74(2)(a)(ii) of the RMA

- (e) The territorial authority must also have regard to any relevant management plans and strategies under other Acts, and must take into account any relevant planning document recognised by an iwi authority and lodged with a territorial authority, to the extent that its contents has a bearing on the resource management issues of the district;<sup>11</sup>
- (f) The policies are to implement the objectives, and the rules are to implement the policies;<sup>12</sup>
- (g) The plan change shall have regard to the actual or potential effects on the environment of activities including, in particular, any adverse effects.<sup>13</sup>

17. Section 32 requires that:

- (a) Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account the benefits and costs of the proposed policies and methods, and the risk of acting or not acting if there is uncertain or insufficient information;
- (b) If a National Environmental Standard applies, and the proposed rule imposes a greater prohibition or restriction than that, then an assessment is required as to whether the greater prohibition or restriction is justified in the circumstances;
- (c) The objectives of the proposal (here the stated purpose of the proposal) are to be the most appropriate way to achieve the purpose of the RMA;<sup>14</sup>
- (d) An assessment of whether the provisions of PC71 are the most appropriate way to achieve the objectives of the SDP and the purpose of the proposal.<sup>15</sup>

### **Assessment of Actual or Potential Effects on the Environment/Matters Raised in Submissions**

18. Ms White identified the key matters that had either been raised by submitters or are necessary to be considered in ensuring SDC's statutory functions and responsibilities are fulfilled. These were:

- (a) Traffic effects;
- (b) Servicing;
- (c) Effects on community facilities;
- (d) Density;

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<sup>11</sup> s74(2)(b)(i) and s74(2A) of the RMA

<sup>12</sup> s75(1)(b) and (c) of the RMA

<sup>13</sup> s76(3) of the RMA

<sup>14</sup> s32(1)(a)

<sup>15</sup> s32(1)(b)

- (e) Versatile soils;
- (f) Landscape and visual impacts;
- (g) Reverse sensitivity;
- (h) The form of urban growth;
- (i) Geotechnical and contaminated land considerations;
- (j) Other matters.

19. I largely adopt those headings in this Recommendation.

### Traffic Effects

#### *Submissions*

20. A number of the submitters raised concerns in relation to traffic effects. The relevant submitters, and their concerns, were summarised by Ms White in her paragraphs [33] through to and including [41]. I accept and adopt Ms White's summary of the concerns raised in those submissions. The submissions ranged from concerns expressed by residents relating to what could be described as the more direct impacts in terms of congestion, the state of the roading network, and safety concerns.<sup>16</sup>
21. Other submitters raised wider concerns in relation to what might be described as the more strategic issues. These related to matters such as the Greater Christchurch approach including the UDS, Our Space and similar. The importance of providing for multi-modal transport was also identified by those submitters, and associated concerns in relation to emissions.<sup>17</sup>

#### *Evidence*

22. The application included an Integrated Transport Assessment (**ITA**) prepared by Ms Williams which included an assessment of effects based on the total 660 lots anticipated. That was peer reviewed by Mr Collins in his Transportation Hearing Report which included recommendations and an assessment of the matters raised in submissions.
23. Ms Williams identified and addressed the matters raised in submissions including that raised by Foodstuffs (PC71-0009) in relation to the impact that an extension of Broadlands Drive would have on its landholdings at 157 Levi Road and that there was only one road connection to Levi Road. In her Summary of Evidence presented at the hearing, she confirmed that she considered the amended ODP, including changes adopted in response to the Officers' Report, provided good access to the site for pedestrians, cyclists and vehicles. She considered the site to be well located in terms of pedestrian and cycle access to public transport stops, schools

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<sup>16</sup> Paula (PC71-0001); A Grant (PC71-0002); B Morch (PC71-0011)

<sup>17</sup> Waka Kotahi (PC71-0006); CCC (PC71-0007); CRC (PC71-0008)

and the town centre, and that the proposal was generally consistent with the transport related objectives and policies in the SDP and would achieve an extension of a primary road through the site to the future district park. She noted that there was general agreement between her and Mr Collins and focused her evidence and summary on the points of difference which she understood to be left in relation to the issues identified in Mr Collins' report.

24. There was a high level of agreement between the traffic experts. Mr Collins, in his Summary, addressed Mr Nicholson's recommendation that a second road connection to Levi Road be shown on the ODP. He agreed with Ms Williams that if it were to be included, it be located to the east of Goldrush Road and that it be designed to discourage through traffic. Both Ms Williams and Mr Collins identified that Levi Road is a critical through movement corridor between Rolleston and Christchurch. He considered that the proposed ODP narrative appropriately identified the through movement function of that road and was of the view that a second connection could be provided without compromising its primary function.
25. One of the issues where there was disagreement related to the timing of the connection of the Broadlands Drive extension with Lincoln Rolleston Road. Mr Collins was of the view that a planning mechanism needed to be included to require the formation of a roundabout at the intersection of Lincoln Rolleston Road and Broadlands Drive and an extension of Broadlands Drive over ODP Area 4. Ms Williams supported that recommendation but proposed a threshold of 491 dwellings at which point the roundabout and connection would be required. Mr Collins agreed with that from a traffic efficiency perspective but did not consider it adequately addressed the potential effects on the effectiveness of the transport network. He noted that if the northern and southern portions of PC71 were separated by a deferred zoning, or by the retention of a Rural zoning in the area under the noise contour, the northern block could develop with only one or two road accesses, both onto Levi Road. That would limit the connectivity and resilience of the transport network within that northern block. He remained of the view that a connection from Broadlands Drive to Levi Road should be formed in conjunction with any development of the southern portion of the northern block.
26. Another area of disagreement related to the need for walking/cycling facilities being identified on the site frontage with Lincoln Rolleston Road, including safe crossing points. Ms Williams considered that the existing shared use pathway on the western side of Lincoln Rolleston Road, along with crossing points at new intersections, were sufficient as the existing shared use path allowed for two-way cycle movements. Mr Collins disagreed. He noted Lincoln Rolleston Road is an arterial road which creates a barrier to crossing movements for pedestrians and cyclists. He also considered that PC71 would generate internal cycling demand which would be suppressed if cyclists were required to cross Lincoln Rolleston Road to use the cycle facilities. He considered cycling facilities on the eastern edge of Lincoln Rolleston Road would address the "disconnected nature" of the northern and southern sections of PC71.
27. Both Ms Williams and Mr Collins addressed cumulative effects, being an issue raised by CCC in particular and Mr Langman in his evidence. This related to the cumulative effects of the

various private plan changes proposed. Ms Williams agreed with the cumulative effects assessment provided by Mr Collins in sections 3 and 4 of his report. His view was that the planning and coordination of road network improvements to accommodate the cumulative growth was a matter to be considered by SDC through the LTP and development contributions.

28. In his Summary presented at the hearing, Mr Collins expanded on this issue. He advised that he had become aware that a report prepared by Quality Transport Planning (**QTP**) had become available. This report assessed two future land use scenarios. He provided a copy of that as Appendix A to his Summary. He noted that the QTP analysis compares the two future growth scenarios, being Scenario 1 (2038), which was the growth in Selwyn based on forecasts agreed by the GCP committee for households, population and employment; and Scenario 2 (2038) being Scenario 1 plus an additional 10,000 dwellings (Selwyn District only) without any changes to employment, or changes to households in Christchurch City or Waimakariri District.
29. He advised that QTP had found that travel patterns in both scenarios would remain similar to 2021 but with an increased magnitude proportional to population increase of around 32% of peak hour trips. He noted the report concluded that there is now, and will remain, high demand between Selwyn and Christchurch, with approximately 50% of Selwyn's peak hour trips starting or finishing in Christchurch. Those trips were distributed across available corridors between the two districts. He noted the report identified that for both scenarios, limited growth is indicated on some commuter routes such as Springs Road and Shands Road, due to downstream constraints in Christchurch, which would result in other routes seeing a higher increase in traffic. These included State Highway 1/State Highway 76, Maddisons Road and Waterholes Road.
30. He considered the QTP report supported his commentary in relation to the potential effects of PC71 on the wider transport network. He summarised those as being that if PC71 affected the quantum of residential growth within Selwyn without a corresponding increase in local employment and access to services, additional impact on the Greater Christchurch transport network could be expected but the wider effect of an 'out of sequence' plan change may not be overly apparent in a macro scale regional traffic model. He noted that as vehicle movements generated by a plan change distribute, they become a smaller and smaller proportion of the total trips on the network.
31. He was therefore of the view that while PC71 will have effects on the wider transport network beyond those assessed by Ms Williams, those effects (including cumulative effects of other plan changes) were more appropriately addressed at a district and/or regional level.
32. Ms Williams and Mr Collins both addressed an issue raised in the Foodstuffs submission. Ms Williams noted the opposition by Foodstuffs to the extension of Broadlands Drive over its landholdings. Ms Williams advised that the Broadlands Drive extension was understood to represent an important connection in Rolleston and the connection across both ODP areas to the future park was consistent with the RSP. She agreed with Mr Collins in terms of the

positioning of the road connection and the rationale for it, noting that it allowed for sufficient intersection separation distance between the future Broadlands Drive intersection with Lincoln Rolleston Road and the existing Reubin Avenue/Lincoln Rolleston Road intersection.

33. Mr Collins confirmed his opinion that the extension of Broadlands Drive over ODP Area 4 was a key component of the future transport network as it would fulfil a role as a major east/west link through Rolleston. He advised that the form of the urban land use and transport network to the west of Lincoln Rolleston Road precluded any alternative east/west link. He considered Broadlands Drive to be a key link in opening access for all transport modes into PC71. He advised that he had viewed the development plans for Foodstuffs' resource consent application and considered that the proposed supermarket did not compromise the extension of Broadlands Drive. It may compromise the proposed northern local road connection but, in his view, that could be assessed and addressed through the subdivision/land use consent application process.
34. The two key areas of disagreement between Ms Williams and Mr Collins, being the appropriateness of a pedestrian/cycle path along the Lincoln Rolleston Road frontage and the issue of the timing of the connection to the Broadlands Drive extension with Lincoln Rolleston Road, were also addressed in the urban design evidence of Ms Lauenstein and Mr Nicholson.
35. In relation to the pedestrian/cycle path along the Lincoln Rolleston Road frontage, Ms Lauenstein agreed with Ms Williams' evidence that a footpath only was required on the eastern side as part of the road frontage upgrade. She considered a dedicated crossing point would need to be provided at the key intersections for the Levi Road and Broadlands Drive to provide a safe and continuous network. Mr Nicholson acknowledged the shared pedestrian/cycle path on the western side of Lincoln Rolleston Road. He was of the view that expecting pedestrians or cyclists to cross a busy arterial road in order to reach a safe facility signals that they have secondary status and does not encourage or support alternative traffic modes. He recommended that a separated shared pedestrian and cycleway be provided along the Lincoln Rolleston Road frontage as part of the ODP in order to provide high quality pedestrian and cycling opportunities for the future residents of PC71.

#### *Discussion and Assessment*

36. As is apparent from the summary of the evidence, there was little dispute between the traffic experts in relation to the fundamental transportation issues and effects.
37. In relation to the provision of a pedestrian/cycle path along the Lincoln Rolleston Road frontage, I consider that is appropriate both from a transportation perspective and in terms of urban design. I accept the evidence of Mr Collins and Mr Nicholson in that regard. While I acknowledge there is a cycleway on the opposite side of Lincoln Rolleston Road, that is a busy arterial road which does create a barrier to crossing movements to pedestrians and cyclists.
38. Even with the crossing points, in my view that barrier will remain. PC71 will generate internal cycling demand. The shared pedestrian/cycle path on the eastern frontage will address the

disconnected nature of the northern and southern sections arising from either the deferred zoning of the area underneath the contour, or that land remaining rural. In my view, from both a transportation and urban design perspective, cycling facilities on the eastern Lincoln Rolleston Road frontage is appropriate. The cycling facilities are useful in providing modal choice, connecting the various areas within the ODP, and improving accessibility to Rolleston Town Centre and other facilities.

39. In terms of the connection of Broadlands Drive, there was again agreement as to its importance but disagreement as to the timing and the mechanism to ensure that it occurred at the appropriate stage. A complicating factor with this issue is the position of Foodstuffs expressed at the hearing that it would not agree to the extension of Broadlands Drive across its land. That position remained notwithstanding Mr Collins' evidence the supermarket would not interfere with the Broadlands Drive extension.
40. Again, this issue was addressed by Ms Lauenstein and Mr Nicholson from an urban design perspective. Mr Nicholson proposed that a rule be included in relation to the northern area which would require the Broadlands Drive connection and intersection to be formed before any subdivision of the land is approved south of a "development line" he illustrated in Figure 2 of his evidence. He considered that the land to the north of the development line could be adequately connected by the two connections to Levi Road, while the land to the south of that line would require an additional connection to Broadlands Drive to provide an adequate level of connectivity for future residents.
41. Ms Lauenstein provided rebuttal evidence in response to Mr Nicholson's Summary of Evidence, and particularly in relation to the introduction of the development line and rule.
42. Ms Lauenstein advised that she had had discussions with Mr Nicholson following the hearing and that his main criteria for the exact location was to ensure a "walkable distance" is achieved from any dwelling within the northern part of the development to Levi Road. Ms Lauenstein noted that she and Mr Nicholson agree that in a standard residential development 400m – 500m (as the crow flies) was generally considered an appropriate walkable distance.
43. While Ms Lauenstein agreed with the importance Mr Nicholson places on walkability as a key part of connectivity, she considered the development line proposed could be counterproductive and create unnecessary hurdles as it did not take into account other important parameters and could result in undesirable lot geometries. She provided an analysis in terms of walkability and considered that the only remaining area of concern was the southwest corner of the site around the Broadlands Drive extension. Ms Lauenstein agreed with Mr Nicholson that in addition to access to Levi Road, a pedestrian/cycle link to Lincoln Rolleston Road should be provided for this portion to ensure appropriate walkable connectivity. It was however her view that instead of using a line limiting development, the following requirement should be incorporated:

Construction of any part of the Broadlands Drive extension on ODP 14 west of the main intersection with the main North-South road (leading to Levi Road) will



trigger the provision of a walking and cycle connection to Lincoln Rolleston Road. This link should be provided as an integral part of the Broadlands Drive extension across ODP 4.

Should the main connection west across ODP 4 to Lincoln Rolleston Road not yet be available, a temporary walking and cycle connection is to be provided to Lincoln Rolleston Road via the shortest possible alternative route.

She identified that in her Appendix A being the ODP diagram.

#### *Finding*

44. In my view this is a reasonably significant issue. Considerable emphasis has been placed on the positive aspects of the extension of Broadlands Drive. That extension is identified in the RSP as a primary road linking Lowes Road, Goulds Road, Springston Rolleston Road and Lincoln Rolleston Road and through to the proposed district park. In those circumstances, given its importance, I consider it appropriate that an additional rule is included. However I think there is merit in Mr Cleary's suggestion, which Ms White confirmed was acceptable to her, that it be a restricted discretionary activity.
45. Overall, and subject to the discussion above in relation to status, I consider that the changes recommended by Ms White in her s42A Report and in her Summary in relation to transportation aspects are appropriate. These include the amendment to recommended Rule 12.1.3.52A(b); the reference in the ODP text for a roundabout to be formed by the Applicant when Area 14 connects to the Levi/Ruby intersection; and addition of the reference to a separate shared pedestrian and cycle way and the provision of safe crossing points to include the Lincoln Rolleston Road frontage.

#### Servicing

46. Servicing was identified in two of the submissions. Paula (PC71-0001) raised an issue as to whether the additional housing facilitated would affect their water well and also raised a query in relation to the impact of the Request on the internet. CRC (PC71-0008) submitted that the application may be inconsistent with Policy 6.3.5(2) of the CRPS.
47. Mr England, Council's Asset Manager – Water Services, provided an assessment as part of the s42A Report and attended the hearing. Overall he concluded that there was capacity within the water network to service the part of the site which is within the RSP; additional water needs to be made available for that part of the site which is not within the RSP; conveyance of wastewater to the Pines WWTP is feasible and will be the subject of an engineering approval process; expansions to the Pines WWTP are planned and budgeted for which provide for growth within the District including this site; and there is a viable method to dispose of stormwater.
48. Mr Salmond prepared the Preliminary Servicing Assessment which accompanied the PC71 Request. In his evidence he addressed stormwater. He advised that he was not aware of any existing reticulated stormwater network servicing the site. He advised that stormwater would

need to be managed through the collection, conveyance and discharge to ground which would require CRC consent. He described the primary and secondary stormwater systems. The discharge of roof stormwater would be directly to ground via standard soak pits. Driveway runoff would either be intercepted at the end of the driveways and discharged to ground via soak pits, or would flow onto the streets to be conveyed to the collection and discharge systems servicing the roads. Road runoff would be discharged to ground via roadside soak pits without the need for treatment. He also addressed how the secondary flows from individual lots and roads would flow towards the main roads away from building platforms. He outlined the infiltration tests and similar which had been undertaken, noting the discharge to ground would be a discretionary activity under the CLWRP. Mr Salmond addressed construction phase stormwater which again would be to ground with resource consent for construction phase discharge to be sought from CRC.

49. In terms of wastewater generation and flow, he discussed the calculations undertaken in accordance with the methodology in Part 6 of the SDC's Code of Engineering Practice. He discussed his initial assessment of the wastewater servicing for the site and options available for reticulating the wastewater. He identified five options, noting that they were not mutually exclusive and that a combination of options was likely to be used to service the site. He identified that in some parts of the catchment there may need to be pumped water flows. He confirmed that power and telecommunications would be available.
50. Mr Mthamo addressed water supply noting that a third (17 ha) of the site was within the RSP and FDA, and the potable water requirements associated with that area was included in SDC's planning.
51. Mr Mthamo estimated the potable water requirements for the remaining two-thirds of the area. He identified a number of options which he considered to be available or highly likely to be available to meet the demand for PC71. These included the provision of a new community water take supply on the land and/or by purchasing and transferring consents from other sites.
52. He advised that new takes for community water supplies were a restricted discretionary activity pursuant to Rule 5.1.1.5 of the CLWRP. He discussed the rules enabling consents to be transferred from site to site. He noted that SDC had 7,183,440 m<sup>3</sup>/year consented and that the average annual use being 3,300,000 m<sup>3</sup>/year which provided a significant existing surplus.
53. Overall he considered that the balance of PC71 (outside of the FDA) could be provided with a potable water supply at the time of development. It was his view that there was no need for a rule to be included, as had been suggested by Ms White, restricting subdivision until the water supply is provided. It was his view that the Applicant should "just be able to" demonstrate at subdivision stage that each stage submitted for subdivision consent can be supplied.
54. Finally, Mr Mthamo addressed flooding. He identified that there were no areas of high flood hazard within the site and that the requirements relating to flood hazards in the PDP and the CRPS would be achieved.

55. Mr Langman raised concerns in relation to Policy 6.3.5(2) as raised in the CRC submission. Mr Langman also identified a concern in relation to the cumulative effects of the various plan changes on the WWTP and its capacity. He was unclear as to whether Mr England had considered those cumulative effects.

#### *Analysis and Finding*

56. I specifically discussed that issue with Mr England in terms of both the capacity and the upgrades. He confirmed that the potential cumulative effects of the various plan changes in Selwyn had been considered. He noted the upgrades to the Pines WWTP were planned and budgeted for. He confirmed that they were not yet consented. I am satisfied there are no readily identifiable risks to that consenting process. The Pines WWTP is established, SDC owns the land and holds the existing consents. The plant is designed to enable modular upgrading.
57. Overall, I am satisfied that infrastructural issues have been appropriately addressed. I agree there are potentially some uncertainties in relation to potable water supply. I note however that there does appear to be significant capacity available in the consented takes. Mr Mthamo discussed the likelihood of further potable water becoming available either through transfer or additional bores. With the inclusion of the subdivision rule proposed by Ms White, in my view infrastructural issues have been properly resolved.

#### Effects on Community Facilities

58. Several submitters raised concerns in relation to community facilities. Paula (PC71-0001) raised a concern that existing supermarkets and shops do not have sufficient carparking. A Grant (PC71-0002) raised concerns in relation to wellbeing from the increased number of residents and the lack of reasonable sized parks or greenspace in comparison to other areas. The Ministry of Education (PC71-0010) noted the increase in population in the east of Rolleston resulting in an increase in school-age children and that there had not been any consultation. In addition to the issues raised in relation to PC71 itself, the Ministry raised issues in relation to planning and precedent.
59. On the parking issue raised by Paula (PC71-0001), Mr Collins addressed that in his review. He considered parking external to the site can be managed by landowners and existing Council processes. I agree. If there are issues with additional housing impacting on parking in the Town Centre then that can be addressed through those processes. It is not an effect which relates to this particular site.
60. In terms of greenspace, Mr Rykers, the Manager of Open Space and Strategy for SDC, provided comments by way of an appendix to the s42A Report. He addressed the originally proposed ODP including the large central linear open space through the site and connecting with the district park to the east; a local neighbourhood reserve to service the southern part of development in ODP Area 5 and a local neighbourhood reserve to service the northern part of development in ODP Area 4. Mr Rykers identified a lack of an indication of size for the proposed reserves but considered that could be determined at the time of subdivision.

61. Mr Rykers' Memorandum advised that SDC standards are 1.2 ha per 1,000 head of population but noted the proposal benefited from it bordering the planned district park with easy access to that land. It was his view that it was not essential to meet the 1.2 ha per 1,000 population provision standard.
62. Mr Rykers' Memorandum also addressed additional demand for active sports and recreation space and that over the next 30 years around 50 ha of additional land would be required to meet the adopted standard of 3.0 ha per 1,000 population. He advised that modelling of the sports park demand against the additional population created through the proposed development indicated that there would be more than adequate land available. While he identified that there was some uncertainty around the land requirements for park purposes, given the growth in eastern Selwyn, it was anticipated that the full area of land would be required for the park.
63. Mr Nicholson expressed a concern in his Summary regarding the ODP indicating a park in the area under the 50 dBA noise contour together with a pocket park to service the northern half of the site with open space. It was his view that it was not appropriate for new residential areas to rely on a neighbourhood park in the land under the 50 dBA noise contour. Even if the land was zoned on a deferred basis, he considered there was no certainty that the 50 dBA noise contour would be removed. It was his opinion that two neighbourhood parks should be located close to the centres of the northern and southern residential areas to ensure adequate greenspace provision.<sup>18</sup>

#### *Finding*

64. I have considered the evidence in relation to this issue. I note that Mr Nicholson's position in his Summary was not expressly responded to in Ms Lauenstein's reply evidence, nor Mr Cleary's closing submissions.
65. I consider it is appropriate that what is presently identified as the pocket park to service the northern part of the site is replaced with a neighbourhood park. That provides some certainty in the event that the 50 dBA noise contour is not removed. In my view it is appropriate in any event. That area of the site is proposed to have a density of 15 hh/ha. That density, in my view, supports, indeed requires, a neighbourhood park. The scale of that park can of course be determined at subdivision stage.

#### Ministry of Education

66. The Ministry of Education (PC71-0010) identified that the Request would result in a considerable increase in the population in East Rolleston which would result in an increase in school-age children from the catchment of existing schools in Rolleston. It identified that there had been no consultation and they sought that it only be approved if there was consultation and sufficient provision is made to accommodate school-aged children such as a new site

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<sup>18</sup> Summary of Hearing Report of Hugh Anthony Nicholson on behalf of Selwyn District Council 10 February 2022 at para [2.3]

within the ODP. The Ministry's submission also raised the wider issue of precedent for development occurring outside existing planned areas which would make planning for school capacity networks increasingly difficult.

67. Ms White accepted that there was a need to assess the impact of the rezoning on the capacity of local schools and identify where it is appropriate to provide for additional capacity within the site.
68. She considered that the matter could be resolved through amendments to the Request. She recommended an amendment to the ODP text to include:

*The ODP does not identify a specific area for new education facilities, but some land may be required within the ODP area for such facilities. This will be determined in conjunction with the Ministry of Education.*

69. I agree that wording is appropriate.

#### Density

70. CCC (PC71-0007) sought a minimum density of 15 hh/ha. It submitted this better achieved efficiencies in coordination of land use and infrastructure, supported mixed use activities and multi-modal transport systems, and protected the productive rural land resource.
71. Mr Nicholson considered, on balance, it would be appropriate to increase the density to a minimum of 15 hh/ha in the northern portion of the site, given its proximity to the township's community and commercial facilities, with the 12 hh/ha retained in the southern part.
72. Ms Lauenstein agreed that the northern part of the site was a suitable location for a minimum of 15 hh/ha density due to its proximity to the walkable distance to the Town Centre, recreation facilities and schools and was capable of absorbing the potential effects.<sup>19</sup>
73. She considered that a 15 hh/ha minimum density does bring with it some changes to the residential character as it would likely introduce a larger amount of 2-3 storey town houses, duplex and terrace housing and possibly low-level apartment type buildings in a few selected locations. She recommended that to guide intensification on the northern part of the site to 15 hh/ha there would need to be strategic location of comprehensive medium density which should be placed adjacent to open and green space, and major movement corridors to provide easy access to open space and public transport. She noted that in addition the open space and wider road corridors provide a break in the built form and a sense of scale for the denser build environment.

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<sup>19</sup> Summary Brief of Evidence of Nicole Lauenstein 8 February 2022 at para [6.3]

### *Finding*

74. In my view, the density proposed is appropriate. I rely on and accept the evidence of Mr Nicholson and Ms Lauenstein in relation to the minimum of 15 hh/ha in the northern part of the site and 12 hh/ha in the southern part.

### Versatile Soils

75. CRC (PC71-0008) identified in its submission that the predominant LUC Class 3 classification of the site meant that the area would likely be identified as highly productive land under the pNPS-HPL. It also submitted that the Request was in conflict with Policy B1.1.8 of the SDP. The submission also identified the proposed policy UG-P9 of the PDP which seeks to recognise and provide for the finite nature of the versatile soil resource when zoning land to extend township boundaries.
76. Sam Carrick (PC71-0013) was a further submitter on the CRC submission. He sought that the CRC submission point on the importance of protecting highly versatile soils be accepted. He considered this to be an important reason for declining PC71.
77. Mr Mthamo provided comprehensive expert evidence on this issue. Overall he concluded that the site contained 51.85 ha of LUC Class 2 soils and 2.04 ha of LUC Class 3 soils. He confirmed that 17 ha of the 51.85 ha had been designated as FDA, leaving 31.85 ha of LUC Class 2 soils which he described as the total 'new area' potentially lost. He confirmed his opinion was that the use of the LUC classes in defining soil versatility is only a first step and where site-specific information is available, this is to be taken into account. He referenced the pNPS-HPL which, in his view, recognised that the use of LUC classes is only a starting point. He also identified and discussed Judge Treadwell's decision in *Canterbury Regional Council v Selwyn District Council*.<sup>20</sup> I accept that the comprehensive list of factors suggested by Judge Treadwell in determining versatility of soils is helpful.
78. I accept Mr Mthamo's evidence that the productive potential of land should not be based on the LUC classes alone and that there are other relevant factors that require consideration on a site-specific basis. The restraints identified by Mr Mthamo included soil moisture deficits given that Selwyn can have very hot and dry springs and summers and that moisture or irrigation was critical to support crop growth no matter how inherently fertile or productive the soils are.<sup>21</sup> He provided, in tabular form, information in relation to the monthly deficit moisture days, monthly mean moisture deficits and monthly maximum moisture deficits. Overall in relation to irrigation he considered the soils versatility and production potential was lower than the LUC classes suggest. He noted the lack of irrigation availability. He also identified the regional planning framework and particularly its restrictions on nitrogen application.

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<sup>20</sup> *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25, Judge Treadwell

<sup>21</sup> Statement of Evidence of Victor Mkurutsi Mthamo 24 May 2022 at para [72]

79. Other factors identified included reverse sensitivity from the surrounding subdivisions and land fragmentation both on the site itself and the land surrounding it. He noted this was well documented to be a hindrance for intensive land use productivity.
80. Ms Aston relied on Mr Mthamo's evidence. She noted that 17 ha of the 51.85 ha had been designated FDA. She acknowledged the pNPS-HPL. She considered there was not a strong policy context supporting the protection of high quality soils and described the CRPS as being virtually silent in protecting them in Greater Christchurch. This reflected, in her view, the more holistic approach to managing soil resources in the RMA.<sup>22</sup> She identified Policy B1.1.8 and relied on Mr Mthamo's evidence in relation to the factors which told against the land being used productively. She identified these as including the lack of irrigation, reverse sensitivity effects, the relatively small area of LUC soils that would be foregone to accommodate housing, and the overall loss of productivity potential being insignificant.
81. Mr Langman considered that Ms Aston downplayed the importance of the soil resource. He accepted Ms Aston's evidence that part of the area had already been identified for urban growth through a strategic planning process but he noted that did not apply to a large portion of the land in the northern part of the plan change and under the airport noise contour.<sup>23</sup> He noted that cumulative impact of loss of finite soils over time to urban development could potentially be significant, referencing the discussion document on the pNPS-HPL. Overall, he considered that discussions regarding expansion onto highly productive land should be made following a strategic review of the development options across a district and sub-regional basis. He also noted that within Rolleston there were less versatile soils available in the western end.
82. Ms White identified Policy B1.1.8. She considered the loss to be a relevant factor to be considered in the overall assessment of the plan change but that it was not, of itself, sufficient to render rezoning inappropriate.

#### *Discussion and Findings*

83. Again versatile soils are an important issue. Policy B1.1.8 appears to be reasonably directive in its approach. It directs that the rezoning of land for new residential development is avoided if the land is appropriate for other activities and there are other areas adjoining the township that are appropriate for new residential development which do not contain versatile soils.
84. The explanation to that policy notes that the RMA does not recognise adverse effects of activities on soils as having primacy over adverse effects on other parts of the environment. In my view, neither the RMA, the CRPS or the SDP place primacy on soil protection over the other natural and physical resources which allow people and their communities to provide for the needs of current and future generations. That was identified in the SDC Baseline Assessment of Versatile Soils (DW015).

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<sup>22</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [140]

<sup>23</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [145]

85. I note that Mr Mthamo carried out his assessment of the productive values of the land by, in essence, applying the list of factors that Judge Treadwell identified as being relevant in determining if land is productive.<sup>24</sup> He identified a number of factors relevant to this site which he considered would limit the productive use of the soil. The current use of a large part of the site is associated with the All Stars Racing Stable and its training track. From the evidence, it is my understanding that that activity is not dependent on the productive nature of the soils and can be relocated.
86. There are other locations around Rolleston, particularly on its western edges, which do not contain versatile soils. I note a number of sites along the western edge are subject to private plan change requests. While there is some tension with Policy B1.1.8, relying on Mr Mthamo's evidence in particular, the loss of versatile soils is not, of itself, sufficient to render rezoning inappropriate.

#### Landscape and Visual Impacts

87. While landscape and visual effects were not matters directly raised in any submission, they of course remain relevant.
88. The application was accompanied by a Landscape Matters and Visual Assessment prepared by Ms Lauenstein. For the purpose of that assessment, it was the combined ODP 4 and ODP 14 (5) which was determined to be the site. The existing site character was defined in the assessment noting that there were no natural landscape or heritage features on the site of any significance. The assessment addressed the landscape characteristics of the receiving environment including the residential developments to the west and to the north. The assessment included a number of mitigation measures which were identified and discussed. The assessment concluded that the proposed plan change site would naturally extend the existing residential development at Levi Road and Lincoln Rolleston Road respectively with similar density to that edge of the township.
89. In terms of visual amenity effects, the most significant effects without mitigation were identified as those to be experienced by the small rural lifestyle properties to the south and southeast of Nobeline Drive. In terms of residential neighbours, it considered there were no adverse effects on openness for most residents along Lincoln Rolleston Road and Levi Road as the views were largely blocked by the vegetation and shelterbelts but there would be a change from rural to suburban.
90. Ms Lauenstein addressed this topic in her evidence and in her Summary presented at the hearing. In terms of character and amenity, she considered PC71 to promote social interaction and neighbourhood cohesion through the inclusion of a variety of open spaces and neighbourhood reserves. She considered the integration of the green corridor and other green links contributed positively to the character and visual amenity of the street scape. She advised that sensitive responses were proposed. She did not consider there would be any adverse

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<sup>24</sup> *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25



effects on the key characteristics of the Rolleston township noting that the surrounding land was zoned on two sides by urban residential land and on the other two sides by rural residential and a proposed future district park.

91. Mr Nicholson considered PC71 would have a moderate to low impact on landscape character reflecting the change from rural residential and rural landscape to a residential one. In terms of visual effects, he considered these would be on neighbouring houses, and the effects on those properties on Lincoln Rolleston Road, Levi Road and Nobeline Drive would be moderate to low. This reflected the setbacks and aspect, the existing hedges and shelterbelts, and the existing rural residential land use.

#### *Finding*

92. In my view, landscape and visual effects have been well considered and addressed in the application and in the evidence. Those matters are appropriately identified in the ODP plan and text and can be further addressed at subdivision stage.

#### Reverse Sensitivity

93. The issue of reverse sensitivity was raised by Paula (PC71-0001) in relation to residents being affected from motorcycle riding on her property. CIAL (PC71-0004) opposed the Request on the basis that it was contrary to both the SDP and the CRPS particularly in relation to noise sensitive activities within the 50 dBA Ldn air noise contour. This was raised on the basis of the need to reduce the number of occupants subject to higher noise sensitive levels and associated amenity effects and avoiding reverse sensitivity effects on the Airport. It submitted that the deferred zoning and further residential zoning prior to the remodelling being undertaken and completed would undermine the integrity of both the SDP and the CRPS. It also expressed concerns regarding the creation of expectations of residential development.
94. CRC (PC71-0008) also identified that a third of the site was located within the noise contour. It acknowledged the work being undertaken to remodel the contours but considered the deferred status for urban development under the existing contours was presumptuous given that it had not been completed and that the matter was better considered as part of the full review of the CRPS.
95. Foodstuffs (PC71-0009) submitted that the proposed changes in PC71 would create an unanticipated and significant change in the environment surrounding its land, which would have adverse effects given its intended use for a non-residential activity. The adverse effects of PC71 on the submitter (and including particularly reverse sensitivity) were not appropriately provided for in PC71.

#### *Analysis*

96. In terms of the matters raised by Paula, I agree with Ms White that residential zones adjoining rural zones is extremely common and while the plan change alters the current location of the

interface, there is nothing particular about either the site or the surrounding rural use that warrant either declining the Request on the basis of potential reverse sensitivity effects arising in relation to existing rural activities, or requires particular mitigation at the site. Again as noted by Ms White, the southern part of the site is identified as an FDA and within the UGO in the PDP.

97. In relation to the Foodstuffs submission, Mr Cleary advised in his closing submissions that the Applicant had reached an agreement with Foodstuffs South Island Limited which would incorporate a package of measures to address the interface between the respective sites should consent be granted for a Pak n Save supermarket. In light of that he considered it was no longer necessary to address me on the issue of the weight to be given to the consent application lodged with SDC. In those circumstances, I simply note that it would be somewhat novel to rely on reverse sensitivity effects on a proposal which was still subject to notification, submissions and hearing.

#### *CIAL – Contours*

98. Mr Cleary submitted the contour should not be determinative, particularly as it is based on outdated analysis and information. Mr Cleary submitted further that to the extent that the contour should be considered a constraint, which is not accepted, it is temporary only. He submitted that in reliance on the best and most current information available, the Applicant says there is a very high probability that the constraint will disappear in the very near future.
99. Mr Cleary submitted, consistent with the position he advanced in relation to other prescriptive objectives and policies in the CRPS, the blanket avoidance policy (CRPS 6.3.5.4) needs to be evaluated in light of the provisions of the NPS-UD and it should not be determinative of the outcome. He submitted that the best available information demonstrated the analysis underpinning the contour is out-of-date, inaccurate, and therefore entirely unreliable. He submitted further that the best available information supports a clear conclusion that the land will not be affected either by the level of movements anticipated in 2008, or the revised ultimate runway capacity figure of 200,000 used as the basis for remodelling the contours.<sup>25</sup>
100. Mr Cleary spent some time discussing the 2008 contour modelling exercise and submitted that it had proven over time to be wildly inaccurate. He advised that the aircraft movements predicted by CIAL in developing the contour had “quite simply failed to materialise”. He submitted there was no evidence that future landowners would have their amenity affected to an extent that would lead to complaints against the Airport and that the concept of reverse sensitivity which underpins the prescriptive policy approach in 6.3.5.4 would “simply not materialise”. He submitted that CIAL and its witnesses were relying on a policy based on an outdated technical analysis and the development of the site would not “... affect the efficient operation, use, development ...of the Airport”.

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<sup>25</sup> Submissions on Behalf of Four Stars Development Limited and Gould Developments Limited 8 February 2022 at para [6.6]

101. Mr Cleary submitted the Applicant had adopted a deferred zoning in light of the then information as to the prospects of the contour lines moving and while that remained an option, it was now suggested that the deferral could be removed as soon as the upcoming peer review report confirms the 50 dBA contour no longer applies to any of the PC71 land, or alternatively, the affected land could be rezoned now with a consenting mechanism in place which ensures the status/implications of the contours can be addressed at the subdivision stage. This could include either a non-complying activity rule or a restricted discretionary activity rule, with preference being for the latter.<sup>26</sup>
102. Ms Aston addressed the planning aspects in her evidence at some length. She also addressed it in her comprehensive summary provided and read at the hearing. She noted the area subject to the 50 dBA Ldn noise contour had a potential yield of 220 of the total approximately 660 plus dwellings which would be enabled by PC71. She considered the PC71 process was part of a “fluid statutory planning environment” where a mix of outdated documents and airport noise contours, other planning processes that are underway, and recently proposed new legislation, can cloud the decision-making process.
103. Ms Aston accepted the evidence of Ms Blackmore and Mr Bonis in terms of Christchurch International Airport being vital to the economic performance of Christchurch, Canterbury and New Zealand as a whole, and she did not dispute that the Airport is strategic infrastructure as identified in Policy 6.3.5.4 of the CRPS and nationally significant infrastructure in terms of the NPS-UD.
104. She considered the resource management issue here was one entirely of process and timing. Within the context of the current housing crisis, she identified the issue as whether the deferred zoning of land affected by the contour (or alternatively rezoning the contour affected land now and making development subject to a resource consent where the result/implications of the peer review exercise can be taken into account) is the most efficient and effective method of achieving the purpose of the RMA. She identified that a non-complying activity status had been proposed but, in her view, a more targeted restricted discretionary activity status would be appropriate given the single issue and nature of the constraint. She considered that the outcome sought by the CRPS in relation to the protection of the safe and efficient operation of the Airport could be safeguarded by either option.
105. Ms Aston spoke to the process and her understanding that there were three sequential processes to be completed before CRC and CIAL would agree to the land under the 50 Ldn contour being considered for rezoning. The first was the technical process where the noise remodelling is carried out, peer reviewed and reported to CRC. This is set out in Policy 6.3.11 of the CRPS. The second process in the sequence she described is the statutory process leading up to the review of the CRPS. Ms Aston advised that she had heard anecdotally that would be notified in December 2024. If the revised airport noise contours were included in the CRPS review and/or used for guidance and/or a directive matter to be taken into account in

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<sup>26</sup> Submissions on Behalf of Four Stars Development Limited and Gould Developments Limited 8 February 2022 at para [7.11]

determining suitable urban growth areas, experience says this would likely be contentious, drawn-out and with potential to cause delays. She identified that she was aware of parties who favour the urban growth restrictions applying at 55 not the 50 Ldn contour, and her expectation was that this could take a significant time to resolve.

106. Ms Aston described the third process in the sequence as the inserting of the contours into the district plan and amending the zoning to enable development within suitable areas no longer affected by the contour. If SDC notified a plan change to give effect to the CRPS review, that would potentially be a significant change as it would basically be a reset of the urban growth framework for the district. Again, she considered there was likely to be a high level of submitter interest and would take some time to progress through the statutory process.
107. Overall, she considered the above process did not amount to a responsive process within the context of Rolleston's housing market nor one that would achieve integrated management of the effects of the use, development or protection of land as required under s31. At best, she considered it would leave two isolated and disjointed blocks of land and a large public space without access, and at worst no land could be rezoned in a way that could be efficiently serviced in the long term.
108. Ms Aston identified and discussed the key policies being CRPS Policy 6.3.5.4 and SDP Policies B4.4.3.71 which is to avoid rezoning land for new residential development in an area shown under the contour. She noted Policy B2.1.26 which is to avoid new residential development and other noise sensitive activities occurring on land which is located underneath the airport flightpath noise contour shown on Planning Map 013 for 50 dBA Ldn or greater. Ms Aston considered that PC71 did not conflict with Policy B4.4.3.71 as the deferred zoning was not "providing for residential development under the current noise contour". The activity would remain restricted discretionary or non-complying until such time as the Expert Panel findings were public. Again she considered this to be an integrated approach but would only enable residential development once the Expert Review Panel confirmed the contour no longer applied.
109. She considered a responsive approach was enabling the rezoning now subject to a rule which focused on the single issue. Ms Aston did not accept Mr Bonis' expectation for development view. Finally Ms Aston identified that it was open to me to defer a decision on PC71 land under the noise contour until the Review Panel findings on the remodelled contours were made public and if the contours no longer affected the site there would be no need to delay zoning.

*Findings in relation to reverse sensitivity effects raised by CIAL and CRC*

110. In terms of the noise contour, that raises issues of some complexity and it is difficult to address it purely as a reverse sensitivity effect. As it stands, the central area of ODP 14 remains under the 50 dBA Ldn airport noise contour. The evidence is clear that the contour is undergoing review but it remains in place.

111. Under the current planning framework, both the SDP and the CRPS contain clear and directive avoidance policies in relation to residential activities under the contour. PC71 as notified did not request any changes to the relevant SDP policies.
112. There was considerable evidence from Ms Aston on the merits of the contour. This was also a focus of Mr Cleary's submissions. I do not consider this to be the correct forum for assessing the merits or otherwise of those planning provisions. In my view, the issue is what is the most appropriate method to achieve or give effect to the policy framework. That is, whether the parts of the site under the contour should remain rural; subject to a deferred zoning; be rezoned to LZ with non-complying or restricted discretionary activity rules; or, as raised by Ms Aston, deferring a decision on that land until the Review Panel findings on the remodelled contours are public. I will address those issues, and the evidence and submissions from the opposing submitters, in my subsequent s32 discussion and analysis of the relevant planning documents.

### The Form of Urban Growth

113. As noted by Ms White, a number of submitters raised concerns in relation to the form of urban growth from the perspective of inconsistency with the UDS, CRPS and NPS-UD.<sup>27</sup> From a merits perspective, Mr Nicholson considered that the *"proposed plan change area is an appropriate location for urban growth linking Rolleston with the district-wide reserve to the east, and rezoning a block of rural land which has existing residential land to the north and west"*.<sup>28</sup> I also note Mr Nicholson's report and evidence that if the noise contour remains, it is still appropriate for the remainder of the site to be rezoned and considered that it would promote a more compact urban form and more efficient use of land and infrastructure given the proximity of the site to the centre of Rolleston and adjacent residential areas.<sup>29</sup> As noted by Ms White, the site is located closer to the Town Centre than many other development areas identified in both the operative and proposed district plan.
114. Mr Nicholson confirmed in his summary presented at the hearing his view that a spatial planning exercise was unlikely to reach a different conclusion with regard to the use of this land, given the 50 dBA noise contour, together with the new district park proposed in the RSP, set the parameters for the urban form of this part of Rolleston.<sup>30</sup>
115. Similar to Mr Nicholson, Ms Lauenstein considered the proposal could be considered in part as infill development and in part as greenfield development within an FDA. She considered it to be an important part to complete a gap in the urban form of Rolleston noting that it would link the existing Rolleston township and the proposed district park to the east.
116. I accept the expert evidence of Mr Nicholson and Ms Lauenstein in regard to this issue. The rezoning of the site, either in whole or in part, will ultimately contribute to a compact and appropriate urban form for Rolleston.

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<sup>27</sup> CCC (PC71-0007), Waka Kotahi (PC71-0006); CRC (PC71-0008) and Foodstuffs (PC71-0009)

<sup>28</sup> Hugh Nicholson Report 17 January 2022 at para [2.6]

<sup>29</sup> Hugh Nicholson Report 17 January 2022 at para [2.6] and [5.13]

<sup>30</sup> Summary of Hearing Report of Hugh Anthony Nicholson 10 February 2022 at para [1.2] and [1.4]

### Geotechnical and Contaminated Land Considerations

117. The Request included a geotechnical assessment of the appropriateness of the land for residential development and a Preliminary Site Investigation (PSI). This was peer reviewed by Mr Ian McCahon of Geotech Consulting Limited who agreed that there was minimal to no liquefaction potential of the site, that the land was equivalent to TC1 technical land classification, and that the report was sufficient for a plan change. As advised by Ms White, the PSI had been reviewed by the Contaminated Land Team at CRC.
118. I accept Ms White's conclusion that on the basis of the technical reports and peer reviews, there are no geotechnical or contaminated land issues that preclude the rezoning of the site for residential purposes.<sup>31</sup>

### Other Matters

119. Ms White identified the submissions of Paula (PC71-0001), which queried the timing of the development; I & B Court (PC71-0005) who supported it but sought clarification in relation to ODP services and roads and deferral timeframe; and CCC (PC71-0007) which referred to the Social and Affordable Housing Action Plan. Further, Foodstuffs (PC71-0009) considered that PC71 would create an unanticipated and significant change to the environment surrounding the property and that the proposed changes to ODP Area 4 were not feasible given their intended use of the property.
120. I accept Ms White's analysis and conclusions at paragraph [106] – [109] of her s42A Report and conclude that none of the "other matters" raised are such as to render the proposed rezoning inappropriate.

### Conclusion On Effects and Other Matters Raised in Submissions

121. Overall, having considered all of the submissions, the evidence and the reports, there is nothing which has been raised which renders the rezoning of at least parts of the site inappropriate, or that retaining of the present zoning over the whole site is the most appropriate method.

### **Statutory Analysis**

122. I have identified the statutory framework in paragraphs [15] to [17] above. I do not repeat those paragraphs here.

### **Functions of Territorial Authorities**

123. Ms White identified the relevant functions of territorial authorities pursuant to s31.

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<sup>31</sup> s42A Report 17 January 2022 at para [101]

124. SDC has the function of the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the District; the establishment, implementation and review of objectives, policies and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the District; and the control of any actual or potential effects of the use, development or protection of land, including for the specified purposes.
125. Ms White considered that both the current zoning and the proposed zoning accorded with the functions of SDC in terms of management of effects. She considered the plan change was “not necessary” to provide sufficient housing development capacity and therefore it was not necessary for SDC to meet this aspect of its functions under the RMA. She noted, for the avoidance of doubt, the proposal was not inconsistent with this function.
126. I do not consider that s31 requires that the plan change be necessary to provide sufficient housing capacity. The issue is whether it accords with and assists the local authority in carrying out its functions. In a general sense I consider it does.

### **Statutory Documents**

127. Ms White again identified that the district plan must give effect to any operative national policy statement (s75(3)(a)) and any regional policy statement (s75(3)(c)); have regard to any management plan or strategy prepared under other Acts (s74(2)(b)(i)); take into account any relevant planning documents recognised by an iwi authority and lodged with the territorial authority (s75(2A)); and not be inconsistent with any regional plan (s75(4)(b)).

### **NPS-UD**

#### Responsive Planning

128. As has been the case in a number of other proposed private plan changes, the relationship between the NPS-UD and the CRPS has been identified as an issue. I have addressed this in various recommendations including PC67, PC69 and PC73. Again, to summarise the issue, it is essentially whether the avoidance objective and policies in the CRPS, implemented by Objective B4.3.3 and Policy B4.3.1 of the SDP, mean that the proposal must be declined, or, whether the NPS-UD responsive planning provisions offer a pathway whereby appropriate plan changes can be approved.
129. This was the subject of detailed submissions from Mr Wakefield on behalf of CCC and CRC and Mr Cleary for the Applicant. I have considered those submissions in full.
130. Mr Wakefield identified the central concerns for CCC and CRC were that:
- (a) The Request did not qualify for consideration under the responsive planning framework under the NPS-UD; and

- (b) PC71 was either inconsistent with or contrary to a number of the important policy directions in the CRPS.
131. Mr Wakefield noted that the CCC/CRC position on the approach to reconciling and applying the NPS-UD and the CRPS has been traversed through earlier private plan change hearings and through the PDP review hearings to date and relied on those submissions to the degree relevant. Mr Wakefield was conscious of avoiding repetition of the earlier submissions that he had made on PC67, PC69, PC72 and PC73. He focused his submissions on responding to matters raised by Mr Cleary.
132. Mr Cleary submitted that given the NPS-UD post-dates both the CRPS and the SDP, care must be taken to ensure prescriptive objectives and policies within those subordinate documents are not interpreted or applied in such a manner as to prevent private plan change applications being considered on their merits. He considered that the requirement to variously give effect to or implement such provisions must be read or interpreted in this light.<sup>32</sup>
133. Mr Cleary submitted that reduced to its simplest form, the key legal issue raised in submissions and evidence was whether or not the responsiveness provisions of the NPS-UD can be reconciled with Chapter 6 of the CRPS. He identified the responsiveness provisions as Objective 6(c) and Policy 8. He submitted the implementation of Objective 6(c) and Policy 8 was addressed in Subpart 2 – Responsive Planning. He referred expressly to Clause 3.8 which provides:
- (1) *This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.*
  - (2) *Every local authority must have particular regard to the development capacity provided by the plan change if that development 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 subclause (3);*
  - (3) *Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.*
134. Again Mr Cleary identified the “contest” as between those provisions and the prescriptive objectives and policies of Chapter 6 which entrench a “hard limit” approach to urban development in Greater Christchurch. Mr Cleary identified CRPS Objectives 6.2.1 and 6.2.2, Policy 6.3.1 and Policy 6.3.5.
135. Mr Cleary’s submissions on this issue were comprehensive. He addressed the background to the NPS-UD, its development and the Minister’s decision. He submitted that the full rationale

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<sup>32</sup> Submissions on Behalf of Four Stars Development Limited and Gould Developments Limited 8 February 2022 at para [2.2]



behind its development by both the MfE and the Ministry for Housing and Urban Development could be found in *Planning For Cities – A discussion document on a Proposed National Policy Statement on Urban Development* (August 2019). Mr Cleary identified that the Ministers' opening message pointed to a "startling array" of indicators that there was a problem and as a consequence there was a need for urban land and housing markets to work better and be more competitive by significantly increasing the number and type of development opportunities to the market.

136. Mr Cleary referred to various excerpts from the discussion document including "*urban land markets that do not enable housing development to keep up with growth and ensure land is affordable ...*"; and the need to "*remove unnecessary restrictions on development to allow growth up (e.g., higher density housing near existing services and infrastructure) and out (e.g., well connected houses in greenfield areas with good infrastructure)*".<sup>33</sup>
137. Mr Cleary identified the greenfield growth aspects of the discussion document which identified that to meet growth requirements local authorities may need to provide for growth out as well as up. It further identified that an important part of this work is to ensure outward development is managed in the best way possible to deliver quality urban environments, while being responsive to development beyond areas planned for.
138. Mr Cleary then addressed the *Recommendations and decisions report on the National Policy Statement on Urban Development, Wellington: Ministry for the Environment and the Ministry for Housing and Urban Development* which was released in July of 2020. He discussed Chapter 12 of the decision document which addresses responsive planning. He emphasised the conclusions in relation to the responsiveness policy. He highlighted the key aspects including that the responsiveness approach would address the possibility raised by submitters and the Panel for local authorities to entrench hard urban growth boundaries in their RPSs which could undermine the intent of the NPS-UD, because RPSs are not subject to private plan changes under the RMA.
139. He submitted that the proper interpretation of the prescriptive CRPS policies in light of the NPS-UD is that they can no longer act as an unresponsive veto or barrier to the assessment of private plan changes of the type which local authorities must have particular regard to (i.e. they must be given genuine attention to).<sup>34</sup> Mr Cleary submitted that Policy 8 should be read in the context of the purpose behind the NPS-UD which had been developed to address the Government's stated priority to address the housing market and the issues that were "so obviously present".<sup>35</sup> He identified Objective 1, Objective 2 and Objective 3 as giving expression to that purpose, together with Policy 1 and Policy 2. Mr Cleary referred to the opinion provided by Adderley Head to SDC on 13 September 2021 and particularly paragraphs [46] and [47] of that opinion. He considered those paragraphs "neatly encapsulate" how the

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<sup>33</sup> Planning for Successful Cities – page 8

<sup>34</sup> Submissions on Behalf of Four Stars Development Limited and Gould Developments Limited 8 February 2022 at para [4.19]

<sup>35</sup> Submissions on Behalf of Four Stars Development Limited and Gould Developments Limited 8 February 2022 at para [4.21]

responsiveness provisions are to be regarded as a more agile tool for responding to urgent land supply issues. This, Mr Cleary submitted, was in contrast to strategies and plans which by their very nature can take many years to develop.<sup>36</sup>

140. Mr Wakefield, in his response, submitted that the responsive planning provisions are in effect non-substantive. They open the door but do not provide all answers in terms of whether a proposal should be accepted or not on their merits.
141. He clarified that it was not his submission that any plan change requests outside of Map A should not be considered. He noted that SDC's acceptance of PC71 and others for processing appears to be consistent with the intention of the responsive planning provisions in the NPS-UD by requiring consideration of out-of-sequence or unanticipated development.
142. He submitted that neither Policy 8 nor the balance of the NPS-UD give rise to any presumption of acceptance of PC71 on its merits. Instead, he submitted decisionmakers on any plan change are required to consider the statutory framework, the language used in the relevant provisions and then reach a view as to how to reconcile those provisions. If the decision is to recommend approval, that would, in his submission, be in the knowledge that the SDP would end up non-compliant with the CRPS.
143. He responded to Mr Cleary's submission that the CRPS provides the "foundation for future growth" but that the NPS-UD provides the more fulsome "articulation in terms of how growth is to be enabled through a range of plan changes and processes". Mr Wakefield noted that the NPS-UD is a higher level document that is expressed at a greater level of abstraction than the CRPS. He submitted the CRPS provided the more directive regional and sub-regional provisions that deal with a multitude of RMA issues, not only limited to urban growth as per the NPS-UD. He submitted that there was no provision in the NPS-UD that directs the enablement of development by way of plan changes or other processes, and any plan change process will engage all relevant RMA matters and the relevant statutory framework.
144. He submitted that the NPS-UD and the CRPS could be reconciled together with an additional local authority decision by either SDC or CRC or both required before this or any other plan change can be approved in a way that satisfies s75(3).
145. Mr Wakefield also advised that CCC and CRC have considered a contingent or deferred approval of PC71 pending a change to the CRPS but identified issues with that approach, particularly that it would involve an approval that was meaningless until a statutory decision is made by a different local authority (CRC) with no certainty that PC71 could ever be implemented until after that decision had been made. This would create potential uncertainty for plan users, the community, the landowner, SDC and other key stakeholders.
146. Mr Wakefield submitted that Policy 8 opened the door and provided a pathway (which he described as an administrative pathway) that provided for the assessment of plan changes on

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<sup>36</sup> Submissions on Behalf of Four Stars Development Limited and Gould Developments Limited 8 February 2022 at para [4.25]

their merits against a statutory framework but recorded that the *“problem that we are facing in this instance is that the decision that needs to be made at the end of that process runs foul of the regional policy statement and its highly directive avoid framework”*. Mr Wakefield’s submission went on to state that there is no presumption through Policy 8 or the NPS-UD that accepting it for processing means that it is also able to be granted on its merits.

147. Mr Cleary, in his submissions in reply, submitted that to accept such a proposition would render Policy 8 of the NPS-UD functionally meaningless or impotent, referring to my earlier conclusion in my Recommendation on PC67 where I recorded that Policy 8 specifically addresses responsiveness to plan changes, must be given some meaning, and that “unanticipated” must be read to include circumstances where planning documents (here the CRPS as reflected in the SDP) contain avoidance objectives. I concluded that development in the areas outside of those identified in Map A is clearly “unanticipated” and concluded that to read otherwise would amount to a significant watering down, or even undermining, of the responsiveness provisions of the NPS-UD.

### *Findings*

148. I do not intend to unnecessarily lengthen this Recommendation by recording my full analysis and reasoning. For the reasons expressed in earlier plan change hearings and summarised in my conclusion in PC67 which is referred to above, I remain of the view that the NPS-UD and Policy 8 and associated provisions provides jurisdiction to consider, and, if appropriate, approve qualifying plan changes on their merits. Again by the use of the word “qualifying”, I am referring to plan changes which contribute to well-functioning urban environments, provide significant additional development capacity, and meet the other relevant objectives and policies of the NPS-UD.
149. I record that I have been assisted in my consideration of this issue by the planning evidence of Ms Aston and Mr Langman in particular. I also note that while the evidence of Mr Bonis recorded that he did not assess the issue, in his summary of evidence he noted that the NPS-UD was gazetted after the CRPS and operative plan but both the CRPS and the operative plan remained relevant as part of the framework that should be considered. He agreed with Ms Aston that Policy 8 of the NPS-UD opens the door but in his view, it was not ultimately determinative alone in terms of whether the plan change should be approved in full, in part or rejected.
150. I agree that Policy 8 is not “ultimately determinative alone”. There was a degree of commonality in the submissions and planning evidence in that regard. Overall I consider that Policy 8 and the relevant provisions of the NPS-UD do provide a pathway for unanticipated or out-of-sequence plan changes to be fully considered. The difference between CCC/CRC and the Applicant (and others) was where that pathway can ultimately lead. I consider, having considered the text, the purpose, and the context of the responsive planning provisions of the NPS-UD, that appropriate qualifying plan change requests can be approved on their merits notwithstanding the avoidance objectives and policies in the CRPS and the SDP. The ability

to act in a responsive manner would be severely curtailed in Greater Christchurch if I were to find otherwise. The NPS-UD is a higher order document and is later in time.

## NPS-UD Assessment

### *Planning Evidence*

151. Ms White addressed the NPS-UD in her s42A Report in some detail.<sup>37</sup> She noted the Applicant had identified the provisions within the NPS-UD they considered to be relevant and that the Request included an assessment as Appendix 20. Ms White summarised that assessment and the Applicant's position before identifying the submissions where the NPS-UD had been raised. These included Waka Kotahi (PC71-0006), CCC (PC71-0007), CRC (PC71-0008).
152. It was also identified as an issue by CIAL (PC71-0004) in its submission, submitting that it was not in accordance with the NPS-UD and in particular it did not meet the criteria for consideration of out-of-sequence plan changes contained in Policy 8, and that out-of-sequence zoning of land under the air noise contour would not contribute to a well-functioning urban environment. CIAL also lodged a further submission in support of the CRC submission points and further supported the submission of CCC. It largely supported CCC's submission points other than those in relation to an increased minimum density.
153. Ms White addressed Policy 1. She considered that the Request would enable a variety of homes to meet the needs of different households and would support the competitive operation of land and development markets.<sup>38</sup>
154. In terms of accessibility for all people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport, she shared the concern expressed by some submitters that the proposal would provide limited accessibility between the proposed housing and *jobs* (her emphasis) by way of active transport. That was as a result of her understanding that there were not enough employment opportunities within Rolleston itself for the additional households created by the plan change. The distance to employment opportunities in Christchurch would therefore mean active transport opportunities were not practicable. She accepted that the changes suggested by Mr Collins and Mr Nicholson in relation to active transport options would ensure active transport accessibility between the site and local jobs and facilities.
155. She also agreed with concerns raised by submitters that the proposal may not support reductions in greenhouse gas emissions as it would introduce additional households into the area that is dependent on private vehicle movements. It was her view that the same situation arose in relation to existing zoned land or land identified for future development and was not a particular feature of the Request. She therefore did not consider the proposal to be contrary to Policy 1 in that regard.<sup>39</sup>

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<sup>37</sup> s42A Report 17 January 2022 at paras [115] – [137]

<sup>38</sup> s42A Report 17 January 2022 at para [125]

<sup>39</sup> s42A Report 17 January 2022 at para [127]

156. Ms White addressed accessibility by public transport. She addressed Objective 6 and the integration of local authority decisions on urban development that affect certain developments being integrated with infrastructure planning and funding decisions, strategic over the medium term and long term, and responsive in relation to proposals that would supply significant development capacity. She identified various directions in Part 3. These included what Ms White described as Policies 3.2, 3.5 and 3.8. I will refer to those provisions as clauses.
157. Overall, Ms White concluded that, on balance, particular regard must be given to the development capacity provided by the proposal. She recorded her understanding that development capacity did not of itself act as a “trump card” and automatically require approval of the plan change; rather the significance of the capacity provided needed to be weighed up against other matters.
158. Addressing capacity, she considered and discussed the Memorandum on “Growth Planning in the Selwyn District” 19 August 2021 which had been prepared by Mr Ben Baird. She noted that Memorandum outlined the various strategic documents prepared over the last 15 years and how that influenced the growth in the District and the identification of areas intended for growth. Ms White emphasised that the various growth planning documents seek to provide consolidated and compact settlement patterns which are integrated with infrastructure, and that there is a preference for providing capacity in Rolleston.<sup>40</sup>
159. Overall it was her view that the rezoning of that portion of the site outside the FDA was not required in order to give effect to the minimum requirements of the NPS-UD, nor had it been considered necessary in more localised assessments of capacity and planning for growth. It was her view that the portion of the site located within the noise contour had not been considered for growth because of the application of those contours. Regarding the northern portion of the site not affected by the contours, while she considered it was not required to meet NPS-UD capacity directives, the rezoning was consistent with the provision of additional capacity in Rolleston and would contribute towards achievement of the outcomes sought with respect to Rolleston.<sup>41</sup>
160. Ms Aston’s ultimate opinion was that PC71 gives effect to the NPS-UD. She considered it would help provide a variety of homes to meet estimated market demand for feasible development capacity, its development was within the medium-term timeframe provided for in the CRPS, and would support the competitive operation of land and development markets both within Selwyn District and the Greater Christchurch subregion. Ms Aston identified and responded to the matters raised by CCC/CRC noting that she did not rely entirely on Policy 8 as part of the site was not unanticipated or out-of-sequence given its identification as an FDA. Ms Aston’s evidence provided, as Appendix 2, an updated assessment of the NPS-UD objectives and policies. That assessment was provided in tabular form and provided a comprehensive summary.

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<sup>40</sup> s42A Report 17 January 2022 at para [136] referencing Mr Baird’s Memorandum at para [69] and Our Space at page 28

<sup>41</sup> s42A Report 17 January 2022 at para [137]

161. Mr Langman again provided comprehensive evidence in relation to the NPS-UD. In his summary he confirmed his opinion remained that PC71 did not provide for significant development capacity; that sufficient development capacity had been identified to meet expected housing demand over the medium term for the Greater Christchurch urban environment; and the proposed housing typologies did not go far enough to align with the housing needs stated in the 2021 HCA. He considered it would not contribute to a well-functioning urban environment that is well connected along transport corridors.
162. Mr Langman identified that the NPS-UD contains 8 objectives and 11 policies, none of which are expressed to have priority over another. He also noted that the NPS-UD sets out the implementation of the objectives and policies in Part 3, providing for implementation methods set out at 3.3 – 3.38.
163. He identified the key issues related to Objective 1 and its requirement in relation to well-functioning urban environments. He also identified and discussed other objectives and policies which he considered to be of particular relevance. This included: Objective 2 – that planning decisions improve housing affordability; Objective 3 – enable more residents and jobs in areas of an urban environment in or near employment centres, (and/or) well-served by existing or planned public transport, (and/or) where there is high demand relative to other areas.
164. He also identified Objective 6 – decisions on urban development are integrated with infrastructure planning and funding, strategic over the medium term and long term, and responsive to significant development proposals; Objective 8 – urban environments support reductions in greenhouse gas emissions and are resilient to the effects of climate change.
165. In terms of the policies, he identified Policy 2 – sufficient development capacity to meet expected demand; Policy 6 – particular regard to the planned urban built form anticipated by RMA planning documents, the benefits of changes resulting from urban development, and relevant contribution to provide or realise development capacity; and Policy 8 – responsiveness.
166. For completeness, Mr Langman also identified Policy 10 – local authorities that share jurisdiction over urban environments work together and engage with infrastructure providers to achieve integrated land use and infrastructure planning.
167. Mr Langman discussed Clause 3.2.2 which directs that at least sufficient development capacity is provided to meet expected demand with 'sufficient development capacity' being defined. Secondly, in relation to Policy 8 he identified Clause 3.8 which requires local authorities must have particular regard to the development capacity provided by the plan change only if the development capacity:
  - (a) Would contribute to a well-functioning urban environment; and
  - (b) Is well-connected along transport corridors; and

- (c) Meets the criteria set out in a regional policy statement that determine what plan changes will be treated as adding significantly to development capacity. He recognised that CRC has not formulated and included the criteria in the CRPS in response to Clause 3.8(3).
168. Mr Bonis focused on the matters he saw as being particularly relevant to CIAL including the recognition provided in Clause 3.32(c) as a qualifying matter for the application of Policy 3/Policy 4 which seeks to otherwise enable further development capacity. He discussed Objective 1. He acknowledged the housing capacity enabled by PC71 would provide additional housing capacity but noted the CRPS identified areas where additional capacity should be provided first through GPAs and FDAs, neither of which applied to the land within the 50 dBA Ldn air noise contour. He identified Objective 6 in relation to integrating with infrastructure planning and funding. In discussion, Mr Bonis also queried, given the number of private plan change requests in Rolleston, whether there was any shortage in development capacity.
169. Mr Allan again focused on provisions which were most relevant to Foodstuffs' concerns. He identified Objective 1, Objective 7 and Policy 1(d) in particular.
170. Having considered the submissions and evidence, I consider that the key issues identified are:
- (a) Will the plan change add significantly to development capacity?
  - (b) Is there at least sufficient development capacity to meet expected demand as required by Policy 2?
  - (c) Will the plan change contribute to well-functioning urban environments?
  - (d) Will development capacity enabled by the plan change be well connected along transport corridors?
  - (e) Can it be integrated with infrastructure planning and funding, and can it be strategic and responsive?

*Will PC71 add significantly to development capacity?*

#### Applicant's Evidence

171. Mr Ballingall addressed this question in his evidence in chief and in his summary presented at the hearing. In his summary, Mr Ballingall advised that he had used a figure of 660 dwellings proposed under PC71 to inform his analysis but that he had since been advised that, based on a rough updated calculation by Mr Salmond, the land in question could yield up to 715 dwellings if the northern portion of the site increases from 12 hh/ha to 15 hh/ha. He noted that would drop to a minimum of 540 dwellings if the "correct area" under the noise contours was deferred. In his opinion, a yield of between 540 to 715 dwellings was clear evidence that PC71

would make a significant contribution to dwelling supply in Selwyn in the medium term (2021-2031).<sup>42</sup>

172. In response to Mr Langman's evidence, Mr Ballingall stated that it appeared, at least until further guidance is provided, significance was in the eye of the beholder. He confirmed his view providing dwellings for between 540 and 715 families seeking a home in Selwyn is "certainly significant".<sup>43</sup> He advised that the 540 to 715 dwellings now proposed would account for between 4.7% and 6.2% of the new Selwyn District supply from private plan changes that Mr Langman had identified in his table at paragraph [79]. He considered 4.7% to 6.2% to be a "significant" share given that PC71 is within Rolleston where the highest demand is evident.
173. Ms Aston responded to the CCC submission in relation to the need for significant development capacity to be considered in the context of Greater Christchurch. It was her opinion that such an interpretation could lead to perverse results. She provided an example of Christchurch City's theoretical long term capacity of 60,700 creates a surplus of 46,766 households for Greater Christchurch and would mean that there was no need for any more capacity in the other two districts. In her view, meeting housing demand needed to be more nuanced in terms of market dynamics at a localised level.<sup>44</sup>
174. Ms Aston noted that the NPS-UD's requirement is that district plans of each district must enable at least sufficient capacity. It was her view that significant development capacity should be considered in the context of each township and the particular context in which it is provided. She considered that approach was likely to lead to a number of development areas around Greater Christchurch providing greater locational choice, increasing competition, and minimising effects on infrastructure. It would also enable more developers to enter the market which would provide a greater likelihood of housing being delivered. She also considered that approach would lead to broader support for local businesses and social infrastructure and thereby contribute to the social and economic wellbeing of a greater cross-section of communities.
175. In responding to Mr Langman's evidence, Ms Aston confirmed her view that it is appropriate to consider Greater Christchurch as the urban environment for the purpose of the subregional land use and transport integration, and scenario development for the purpose of growth allocation, but it made little sense, in terms of being responsive to short and medium term housing needs and providing a competitive development sector, to consider significant development at that high level.<sup>45</sup> Ms Aston discussed the MfE guidance on factors to consider when assessing this issue. She noted that one of the factors identified was significance of scale and location. In that context, she advised it would help address the shortfall in development capacity to meet short and medium term housing needs in Rolleston. She recorded that not all FDA land at South Rolleston is likely to be available for some time noting

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<sup>42</sup> Summary Evidence of John Ballingall 8 February 2022 at para [12]

<sup>43</sup> Summary Evidence of John Ballingall 8 February 2022 at para [20]

<sup>44</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [104]

<sup>45</sup> Summary Evidence of Pauline Fiona Aston 9 February 2022 at para [22]



that around 20-25% of that area was not the subject of rezoning submissions or private plan change requests. She also addressed the fulfilling of identified demand criteria. She considered that was clearly established on the evidence of Mr Ballingall and Mr Kennard.

176. Mr Langman confirmed his opinion that the relevant urban environment context in which significant development capacity should be considered is Greater Christchurch. He also noted that a portion of the quantum (220) may be unable to be realised and is dependent on a separate planning process, and that the remaining 440 households proposed was not considered to meet a threshold of significant in the context of Greater Christchurch and would not make a substantial contribution to the housing bottom lines.

#### Assessment

177. I have carefully considered this issue and the evidence and submissions made. The criteria guidance notes provided by MfE are helpful.<sup>46</sup> I consider that assessing criteria only by reference to Greater Christchurch would require plan changes to meet an unreasonable threshold and would risk undermining competitive land markets. I consider that a more nuanced approach is available to decisionmakers in determining significance. There are a number of policies within the NPS-UD which indicate this. For example Objective 3 is to enable more people to live in, and more businesses and community services to be located in, areas of the urban environment which one or more of the following apply:

- (a) It is in or near a centre zone or other area with many employment opportunities;
- (b) The area is well serviced by existing or planned public transport; and
- (c) There is a high demand for housing or for business land in the area, relative to other areas within the urban environment.

178. Policy 1 itself identifies urban environments are to have, as a minimum:

- (a) *Have or enable a variety of homes that:*
  - (i) *Meet the needs, in terms of type, price, and location, of different households;*

179. I agree with Ms Aston that the NPS-UD's requirement that district plans of each district must enable at least sufficient capacity is relevant to the determination of context. All of the matters that I have addressed above indicate to me, quite clearly, that a more nuanced approach than that suggested by CRC and CCC is available and indeed is required. Overall, I consider that PC71 does enable significant capacity. I recognise that that is perhaps by somewhat of a fine margin given the area of land subject to the air noise contour but with the proposed increase in density in the northern portion, I am comfortable with that conclusion.

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<sup>46</sup> Ministry for the Environment (2020) – National Policy Statement on Urban Development 2020, Understanding and implementing the responsive planning provisions at pages 5-6

*Is there at least sufficient development capacity to meet expected demand at all times?*

180. Policy 2 requires Tier 1, 2 and 3 local authorities, at all times, to provide at least sufficient development capacity to meet expected demand for housing and for business over the short term, medium term and long term.

181. Clause 3.11 of the NPS-UD directs that when making plans, or changing plans, in ways that affect the development of urban environments, local authorities must:

...

*(b) use evidence, particularly any relevant HBAs, about land and development markets ... to assess the impact of different regulatory and non-regulatory options for urban development and their contribution to:*

...

*(ii) meeting the requirements to provide at least sufficient development capacity.*

182. Again, Clause 3.2 provides that every Tier 1, 2 and 3 local authority must provide at least sufficient development capacity in its region or district to meet the expected demand for housing:

(a) In existing and new urban areas;

(b) For both standalone dwellings and attached dwellings; and

(c) In the short, medium and long terms.

183. To be sufficient in order to meet expected demand for housing, the development capacity must be:<sup>47</sup>

(a) Plan enabled – that is, in relation to the short term, zoned in an operative district plan; in relation to the medium term, zoned in an operative or proposed district plan; and in the long term, zoned or identified for future urban use or intensification in an FDS;<sup>48</sup>

(b) Infrastructure ready – in the short term, development infrastructure is adequate to support the development of the land; in the medium term, either there is adequate existing developed infrastructure or funding for adequate infrastructure to support development is identified in an LTP; or in the long term, identified in a local authority's infrastructure strategy;<sup>49</sup>

(c) Are feasible and reasonably expected to be realised;<sup>50</sup> and

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<sup>47</sup> NPS-UD 2020 Part 3 – Subpart 1 – Clause 3.2(2)

<sup>48</sup> NPS-UD 2020 Part 3 – Subpart 1 – Clause 3.4(1)

<sup>49</sup> NPS-UD 2020 Part 3 – Subpart 1 – Clause 3.4(3)

<sup>50</sup> NPS-UD 2020 Part 3 – Subpart 1 – Clause 3.26

- (d) For Tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitive margin.<sup>51</sup>

#### Applicant's Evidence

184. Mr Kennard has been active in property development in Selwyn since 1992. He advised that he had been involved in the development, marketing and sale of in excess of 3,000 sections of which over 550 had been in Rolleston. His evidence related to the issue of a shortfall in developed and available land for sale and building in the Rolleston market. He identified the reasons why Rolleston had become an attractive location to live, including accessibility, employment opportunities, growing amenity and urban quality, growing suite of services and amenities, growth and development of Rolleston close to source of second incomes for households, and excellent Council utility services. He advised that he was certain that a key contributing factor to the significant rise in house and section prices in Rolleston was a lack of availability – that is zoned and titled sections to meet the high level of demand. He noted that post the 2011 earthquakes a surplus of zoned land was available and that had the beneficial effect of maintaining housing affordability but in the last five years or more there had been little if any “proactive zoning” by local authorities. He identified a number of other factors that he considered contributed to the limitation of land available for development including forecasting, delays in subdivision, multiple ownership and large developers holding large tracts of land.
185. His evidence was that in all of his 35 years in the real estate industry he had never seen the market as it is today. He provided a table of sales records for land which he had developed which clearly illustrated an increase of between 100 and 110% in average values from January 2021 to January 2022. He also advised that he had a database of over 150 people still looking for sections whereas in August 2021 they were averaging over 10 inquiries a week. Based on his experience with the Rolleston market, he considered that the pressure on land will continue for the foreseeable future and discussed the benefits of competitive land supply and surplus.
186. Mr Ballingall identified that the house and vacant section prices in Selwyn had surged in the past year with demand for housing clearly outstripping supply and consequently putting further pressure on housing affordability and rental prices. He noted that the rolling annual average median house price in Selwyn rose by 29% in 2021. It was his view that that price growth would not be seen in a housing market where there was adequate supply to cater for current and expected future demand. He identified a key reason for the strong demand was population growth in Selwyn being considerably higher than expected, partly driven by families being priced out of suitable homes in Christchurch City.
187. He considered the actual housing capacity in Selwyn to be lower than those expected in the housing demand and capacity assessments. This was particularly so in terms of the short to medium term, noting some errors in the HCA 2021. The errors included the inclusion of 2,256 plan enabled dwellings in Darfield and Leeston. Given they are outside the Greater

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<sup>51</sup> NPS-UD 2020 Part 3 – Subpart 1 – Clause 3.22

Christchurch urban area as identified in Our Space they should not be, in his view, part of that supply. He also considered the assumptions in relation to 75% of greenfield sites being available for residential development was optimistic and a more appropriate assumption was 60% of existing greenfield sites would be available for housing. A further reason he identified was that a significant area of the FDA had been described by Mr Sellars (in evidence given to other hearings) as long term potential land.

188. He discussed a “false precision” in terms of population growth and local supply. He noted that over a 30 year period all experts will be wrong as it is impossible to make such predictions with absolute confidence. It was his opinion that Councils should consider the balance of the evidence, use a range of plausible assumptions and projections, and ultimately decide whether it seems more likely that demand will outstrip supply or will there be sufficient supply to cater for demand.
189. He considered that the balance was clearly leaning towards demand outstripping supply which would lead to a housing shortage and worsening home affordability. His analysis was that in the immediate term, the potential balance ranges from a surplus of 526 dwellings to a shortage of up to 963 dwellings. There was a shortage of between 2,089 to 6,920 dwellings for the 2021-2031 period when FDAs were not included. He further considered there was a surplus of between 167 to 4,961 dwellings for 2021-2031 if all FDAs were included in capacity at a density of 15 hh/ha unless the highest demand and lowest capacity scenario occurs in which case there would be a shortfall of 1,213. Finally, he considered there were significant shortages in the longer term with demand projected to outstrip capacity by between 8,498 and 19,639 dwellings by 2051.
190. Mr Langman accepted the demand for housing in Rolleston was high but he understood that was the nature of the whole of the Christchurch housing market at present. He described it as a perception of high demand that had partly been because of the release of GPAs in Rolleston for development which would show a pattern of high uptake for newly developed sections. It did not, in his view, mean that it is the optimal location for further greenfield expansion, particularly if there is not an increase in employment being provided. He considered that the 2021 HCA was generally consistent with the requirements of preparing an HCA as outlined in Subpart 5 of the NPS-UD, including the use of population projections, and the 2018 HCA incorporated a peer review process including from an economist and officials representing MfE and the Ministry for Housing and Urban Development and was generally considered to be fit for purpose.
191. He noted that Change 1 was now operative and the FDAs identified on Map A and three private plan changes (75, 76 and 78) were “in train” which would enable nearly 1,200 households. He also noted that the EPA had granted consents under the COVID-19 Recovery (Fast-track Consenting) Act for 970 lots that would extend the Faringdon subdivision in Rolleston. He considered that met the medium term capacity figures in Table 3 of the 2021 HCA.

192. Mr Langman also observed that the rise in house prices is not specific to Rolleston and there can be a range of reasons for this at a national level including low interest rates, inflation, increasing liquidity for investors due to housing price rises and increased capital costs for new buildings which influence sale prices. He considered these effects were being felt nationwide. He considered the three year cycle for completing HCAs ensures that any new information, methodological improvements, and views from the development sector can be considered in an orderly manner and across the entire urban environment rather than just at a local level.
193. Mr Langman also responded to Mr Ballingall's evidence in relation to the impact of the RM Amendment Act<sup>52</sup> and his view that multi-dwelling sites are more likely to occur where land prices are very high relative to existing capital. Mr Langman was of the view that Mr Ballingall had not considered the uptake of new vacant land for multi-unit development which will be enabled through the Medium Density Residential Standards (MDRS).
194. Mr Ballingall responded to that in his summary. He advised that the cost/benefit analysis of the MDRS conducted for the MfE included multi-unit development across all existing properties in the ratings database, including vacant land. He acknowledged that yet to be plan enabled land was excluded from the analysis.<sup>53</sup> He noted that the analysis also suggested that the expansion of capacity enabled by the MDRS – primarily close to Christchurch City – would be demanded partly by residents of the urban area and partly by those from outside of the urban area in roughly equal proportions. That is, intensification around Christchurch City will not reduce the demand for housing in Selwyn on a one-for-one basis.

#### Discussion and Findings

195. The evidence in my view establishes that despite the application of the high growth scenario in the SCGM, the demand for new dwellings has significantly exceeded SDC's predictions and that does raise a potential risk of SDC not meeting Policy 2 of the NPS-UD or its function under s31(aa).
196. I acknowledge the decisions on PC75, 76 and 78. Mr Cleary made the point that zoning should never be confused with the volume of sections available at any one time to meet demand, citing appeal in *Wanaka Inc v Queenstown Lakes District Council*.<sup>54</sup> The Court there stated that there was no direct relationship between the number of sections theoretically able to be cut out of land zoned residential and the number of sections actually on the market at any one time. I accept that is correct. The number of sections actually on the market is not a matter within Council's control. I accept Mr Langman's evidence that private plan changes which have been approved are relevant in determining whether there is sufficient development capacity, once they are outside the appeal period or operative. The private plan changes have been sought on the basis that development will follow and their approval must be something which is considered in the overall assessment.

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<sup>52</sup> Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

<sup>53</sup> Summary Evidence of John Ballingall 8 February 2022 at para [30]

<sup>54</sup> [2015] NZEnvC 196 at para [113]

197. I accept that the NPS-UD does not endeavour to restrict supply to sufficient capacity. That is clear from the use of the wording “at least”. Mr Ballingall, in his summary of evidence, considered that the increase in house prices, and the level of demand, was clearly illustrated by what Mr Ballingall described as a concrete example in the evidence of Mr Sellars in PC64 in relation to the 970 lots in the Faringdon subdivision. Mr Ballingall’s understanding was that all 970 lots were sold within five months of consent being received, which he considered was clear evidence of high demand for housing that is running ahead of supply and forcing prices up. He provided other examples of price rises concluding that the evidence was that the local housing demand is far outpacing supply, it is not perception. Further, Mr Ballingall was clear that from an economic perspective a ‘no regrets’ approach should be taken to the amount of capacity that is made available via rezoning decisions.
198. I note Mr Langman’s concern that an oversupply could impact on intensification, particularly within Christchurch City. There is no evidence that is occurring, and indeed substantial intensification in Central Christchurch is progressing at pace.
199. In terms of Change 1, that was, on my understanding, essentially limited to include only the FDAs already identified through the Our Space process. Submissions seeking to add additional land were considered to be not on the plan change and therefore determined to be out of scope. I also accept that the legal and statutory framework assessment accompanying Change 1 specifically acknowledged that Change 1 is not intended to give full effect to the NPS-UD.
200. There is no doubt SDC and CRC have taken steps to address capacity issues. Areas within the FDAs identified in Rolleston have been subject to plan change requests and recommendations have been made and accepted in relation to PC75 (280 residential sites), PC76 to enable approximately 155 residential sites, and PC78 which would enable approximately 750 residential sites. Their approval is relevant, but on balance, in this particular plan change, I do not consider their approval means that a responsive approach is not available.

*Will the plan change contribute to well-functioning urban environments?*

201. Policy 8 of the NPS-UD identifies that local authority decisions are to be responsive not only to plan changes that add significantly to development capacity and contribute to well-functioning urban environments.
202. Clause 3.8(2) specifies that for unanticipated or out-of-sequence developments that provide significant development capacity, particular regard to the development capacity is to be had if that development capacity:
- (a) Contributes to a well-functioning urban environment;
  - (b) Is well-connected along transport corridors; and

(c) Meets the criteria set out in subclause (3). As noted, no criteria has been set.

203. Policy 1 directs that planning decisions contribute to well-functioning urban environments that as a minimum:

- (a) *Have or enable a variety of homes that:*
  - (i) *Meet the needs, in terms of type, price, and location of different households; and*
  - (ii) *Enable Māori to express their cultural traditions and norms; and*
- (b) *Have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *Have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) *Support, and limit as much as possible adverse effects on, the competitive operation of land and development markets; and*
- (e) *Support reductions in greenhouse gas emissions; and*
- (f) *Are resilient to likely current and future effects of climate change.*

204. **Policy 1(a)** – The Living Z Zone framework includes medium density housing and the option for comprehensive development. The Request facilitates an increase in density by proposing a minimum of 12 hh/ha. As noted by Ms Aston, this is consistent with the policy direction in the CRPS, Our Space and the greenfield development occurring in the surrounding area.<sup>55</sup>

205. Ms Lauenstein and Mr Nicholson have identified, and the ODP now includes, an area where density around 15 hh/ha would be appropriate from an urban design perspective. I agree with Ms Aston's opinion that what is now proposed is consistent with outcomes sought both by the NPS-UD and the CRPS in providing a mix of housing typologies and encouraging intensification closer to centres and open space.<sup>56</sup> I note Ms White agreed.<sup>57</sup>

206. I did not hear any evidence in relation to enabling Māori to express their cultural traditions and norms. The Request addressed the MIMP and noted that there were no identified sites of significance within the site, nor any known areas of Mahinga kai given the site had a long history of use for lifestyle and grazing purposes.

207. **Policy 1(b)** – In terms of business sectors, I note that no commercial zoning is proposed in the Request. Given the location of the site and its proximity to the Rolleston Town Centre, and to local business areas and other residential zones, I do not consider this to be an issue. Indeed, it supports those sites.

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<sup>55</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [150]

<sup>56</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [151]

<sup>57</sup> s42A Report 17 January 2022 at para [125]

208. In relation to **Policy 1(c)**, Ms White shared the concern of some of the submitters that the proposal would provide limited accessibility between proposed housing areas and jobs by way of active transport. This was due to locational issues. Ms White's concern was that there are not enough employment opportunities within Rolleston itself and the distance to employment opportunities in Christchurch would therefore mean active transport options were not practicable. She did note that Mr Collins and Mr Nicholson had made recommendations to improve active transport options and Ms White accepted that with those there would be better active transport accessibility between the site and local jobs and facilities.
209. I agree that there is likely to be some limits on accessibility by way of active transport to jobs outside of Rolleston. Rolleston is progressively becoming a more significant source of employment as it grows. Industrial development in IZone, IPort and the Inland Port, combined with the growth of the commercial area of Rolleston, do supply jobs. Mr Ballingall identified the growth in employment in Selwyn. The growth in secondary jobs was identified by Mr Kennard.
210. I accept that active transport opportunities for employment outside of Rolleston are not likely to be practicable for the majority of residents.
211. I note Mr Langman, in addressing Policy 1(c), and Policy 8 and Clause 3.8, noted that unanticipated or out-of-sequence plan changes must be well connected along transport corridors. He referred to the MfE guidance which states that ideally transport corridors should be connected by a range of transport modes and proximate to amenities and services, and if possible, should not need to rely solely on private vehicles to travel to other urban areas or to access essential services such as employment, health and community services. He noted the guidance further states that ideally developments under this policy should be transit orientated with mixed land uses and densities. He did not consider PC71 to achieve Policy 1(a) or (c) nor that it was currently or will be well connected to transport corridors.
212. Overall, I consider that Policy 1(c) and the other provisions referred to by Mr Langman are largely met. The changes in relation to accessibility and connectivity to the site will be beneficial. I have addressed the transportation and network effects earlier in this Recommendation. Certainly from meeting local needs and for accessing local employment opportunities, in my view the access and connectivity is well provided both by the plan change itself and in light of its location.
213. **Policy 1(d)** – On the basis of the evidence of Mr Ballingall in particular, I am satisfied that the proposal can be seen as supporting and limiting as much as possible impacts on the competitive operation of land and development markets.
214. **Policy 1(e)** – Greenhouse gas emissions were identified by a number of submitters. Waka Kotahi (PC71-0006) identified that New Zealand has a net zero carbon target by 2050 and that the transport sector was a significant contributor to greenhouse gas emissions through carbon emissions resulting from vehicle use. It identified that the Request would likely further contribute to transport associated carbon emissions as there appeared to be a reliance on



private vehicle use due to the limited job opportunities and local amenities in Rolleston resulting in private commuter traffic. Again CCC (PC71-0007) raised issues in relation to reliance on car-based transport resulting in increased emissions, as well as congestion and longer journey times. It sought rejection of the plan change unless urban form and development controls were applied to ensure a funded and implemented public transport system prior to residential development.

215. Ms White agreed with the submitters' concerns that the proposal may not support reductions in greenhouse gas emissions because of the use of private vehicles but was of the view that the same situation arose in relation to existing zoned land or land identified for future development within Rolleston and was not a particular feature of this Request. She did not consider the proposal to be contrary to Policy 8 in that regard.<sup>58</sup>
216. Ms Aston considered that PC71 supported reductions in greenhouse gas emissions through current and future Council and GCP transport initiatives and investment and that relative to other potential urban growth locations it was in close proximity and readily accessible in particular to the Rolleston District Centre and the neighbouring key activity centres at Christchurch and Lincoln.
217. Mr Langman was of the view that no aspect of the proposal looked to achieve the requirement to support reductions in greenhouse gas emissions, noting there was no quantification of those emissions, nor any proposal as to how reductions might be achieved. He considered the current analysis of the issue to be inadequate and overall he considered it was difficult to understand how a conclusion can be reached that the proposal would contribute to a well-functioning urban environment in the absence of any robust evidence or analysis.<sup>59</sup>
218. He identified that through Change 1 to the CRPS the land identified for future development had been considered through a detailed comprehensive spatial planning exercise which comprised multiple facets. He acknowledged that not all land within the GPAs and FDAs may deliver on every NPS-UD or CRPS policy, it could reasonably be expected that this would occur as a result of the strategic planning and infrastructure that would unlock the land for development including public transport development. The distinction he saw with PC71 is that it is unplanned and should be required to demonstrate it will support a reduction in greenhouse gases, which he considered it had not.<sup>60</sup> He also advised that the recent mode shift plan for Greater Christchurch prepared by Waka Kotahi with the GCP stated that land transport emissions currently account for 41% of greenhouse gas emissions in Greater Christchurch which he considered recognised the significant contribution of private vehicle use to greenhouse gas emissions and climate change.
219. I have carefully considered the evidence. I accept there has been no quantification of greenhouse gas emissions. I do note however that part of the site has been identified within

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<sup>58</sup> s42A Report 17 January 2022 at para [127]

<sup>59</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [160]

<sup>60</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [161]

the Rolleston FDA. The urban design/landscape witnesses all concluded that it would contribute to a compact urban form for Rolleston, a point accepted by Mr Langman. It is in accordance with the various growth planning documents which seek to provide consolidated and compact urban settlement patterns and there is a clear preference for providing capacity in Rolleston.<sup>61</sup>

220. Mr Cleary in his reply, raised the question of how could the non-FDA portion of the land be said to be inconsistent with the reduction of greenhouse gases component of a well-functioning urban environment if the opposite conclusion has, self-evidently, been reached in Change 1 for all FDAs in Rolleston. He referred to the report provided to the Minister on Change 1 at paragraphs [90] – [92] in particular. Paragraph [91] of that report states:

*While the Report accepts that the potential effect on greenhouse gas emissions and climate change are essential considerations, it notes that this must be balanced with other considerations, including the need to meet future demand for housing and business. CRC considers that the settlement pattern promoted through Change 1 will produce a compact urban form that will in fact support reductions in emissions.*

221. Overall I accept Mr Cleary's submission that approving consolidated development such as PC71 inherently supports the minimising of energy use and provides greater modal choice. I accept that the consolidated and compact urban form, located in and around a township that is specifically identified as the focus of growth in Selwyn, can be seen as supporting reductions in greenhouse gas emissions.
222. **Policy 1(f)** – Resilient to likely current and future effects of climate change. Given the location of this site being inland and not subject to natural hazard risks associated with sea level rise or, on the evidence of Mr Mthamo, flood risks, it is resilient to the likely current and future effects of climate change.

#### Overall Findings on Policy 1

223. Overall, having considered all of the evidence and submissions, and subject to my subsequent s32 analysis, I am satisfied that enabling the plan change request would contribute to well-functioning urban environments, subject to my resolution on the most appropriate method to address that part of the plan change which is presently within the 50 dBA Ldn noise contour.

#### *Well connected along transport corridors?*

224. Again, pursuant to Clause 3.8(2)(b), the local authority must have particular regard to the development capacity provided by the plan change if that development capacity is well-connected along transport corridors.
225. Mr Langman identified Clause 3.8 requiring that unanticipated or out-of-sequence plan changes must be well-connected along transport corridors.<sup>62</sup> Mr Langman referred to the MfE

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<sup>61</sup> Ben Baird, Growth Planning in Selwyn District, 19 August 2021 at para [69] referencing Our Space at page 28

<sup>62</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [154]

guidance which he advised states that ideally transport corridors should be connected via a range of transport modes and proximate to amenities and services.

226. Ms White, on the basis of the evidence of Mr Collins and Mr Nicholson, considered the site to be well-connected along transport corridors.

#### Finding

227. I note the MfE guidelines referred to by Mr Langman and I have considered that, noting that it is guidance. Overall I consider that the site is well-connected along transport corridors. In terms of the wider transportation network, Levi Road is a critical through movement corridor between Rolleston and Christchurch, and its importance was recognised by both Ms Williams and Mr Collins. In terms of the more local connections, as already noted in my view it is well connected to community facilities and commercial/retail services.

#### *Can it be integrated with infrastructure planning and funding?*

228. Objective 6 provides:

*Local authority decisions on urban development that affect urban environments are:*

- (a) integrated with infrastructure planning and funding decisions; and*
- (b) strategic over the medium term and long term; and*
- (c) responsive, particularly in relation to proposals that would supply significant development capacity.*

229. Objective 6 refers to integration with infrastructure planning and funding decisions and strategic over the medium and long term as well as being responsive. Responsiveness does, in my view, indicate that a degree of flexibility is acceptable. Clause 3.5(1) provides that local authorities must be satisfied that the additional infrastructure to service the development capacity is likely to be available. A degree of pragmatism is perhaps appropriate when considering servicing about sequenced development proposals.

230. The evidence of Mr England was thorough and our discussions at the hearing were useful. As I have found earlier, and after considering Mr Mthamo's evidence in particular, I consider it is likely that infrastructure to address that issue will be available. As noted earlier, I consider the rule proposed by Ms White adequately addresses that issue.

#### Other Relevant Objectives and Policies in the NPS-UD

231. I have considered all of the relevant objectives and policies of the NPS-UD. A number of the key issues are addressed by the analysis of Policy 1 and through my earlier assessment of effects, matters raised in submissions and other matters needing to be resolved.

232. In terms of Objective 1, the key matters have been addressed in my assessment of Policy 1. In terms of Objective 2, again that has been addressed in my consideration of Policy 1(d).

233. Objective 3 seeks the enabling of more people to live in, and businesses and community services to be located in, areas of an urban environment in which one or more of the following apply. These are: (a) it is in or near a centre zone or other area with many employment opportunities; (b) the area is well serviced by existing or planned public transport; (c) there is a high demand for housing or for business land in the area, relative to other areas within the urban environment.
234. The site is close to the Rolleston Town Centre and the IZone and IPort business areas. In general terms, Rolleston is well serviced by public transport including to the city and Lincoln with a park and ride scheme in Central Rolleston. I also consider that this is an area of high demand relative to other areas within the urban environment. In terms of Objective 4, which recognises change to New Zealand's urban environments including their amenity values, this is in my view met by the change from rural to urban. In terms of Objective 5, it was not raised as an issue in this Request or in the hearing of it.
235. Objective 6, I have addressed. Objective 7 in relation to local authorities having robust and frequently updated information and use it to inform planning decisions, I have considered the HCA and Mr Baird's Memorandum and the information provided. I have also considered the evidence of Mr Ballingall and the information provided therein.
236. In terms of Objective 8, I have addressed those issues in my discussions on Policy 1. I agree with Ms Aston's assessment that the area adjoins the existing built-up areas of Rolleston, is close to public transport links, adjoins the proposed Council reserve and has accessibility to Rolleston which is expanding in terms of business and service sectors. I acknowledge that private vehicle trips to Christchurch are likely to remain in the foreseeable future. Again I have addressed the effects of climate change and resilience in my discussion of Policy 1. In relation to Policy 3(d) I am satisfied that the density of urban form is appropriate, noting the increase in density in the northern part of the site.
237. In relation to Policy 6, I am not aware of any RMA planning documents that have given effect to the National Policy Statement that are relevant to Rolleston. In relation to changes to the area and amenity, I am largely satisfied that amenity values are appropriately addressed, and there are benefits of urban development on the site.
238. I consider that urban development on the site, in a general sense, is consistent with well-functioning urban environments. I have also given particular regard to the contribution that will be made to meeting the requirements to provide a realised development capacity, and as noted, I have had particular regard to the likely current and future effects.
239. Policy 7 is not a matter for me to set. Policy 8 has been addressed. Policy 9, in relation to taking into account the principles of the Treaty of Waitangi, that was not a matter which featured in the plan change evidence or submissions. In terms of Policy 10 and the working together, I have addressed that in my commentary on the evidence of Mr Langman, but I see that policy as having a wider focus than this private plan change.

240. In terms of Policy 11, I do not consider that is of particular relevance given the plan change proposes in essence to adopt the Living Zone standards. Policy 11(b) is clearly not aimed at private plan change requests.

## **CRPS**

241. A number of submissions identified inconsistencies with the CRPS. These included Waka Kotahi (PC71-0006), CCC (PC71-0007), CRC (PC71-0008), Foodstuffs (PC71-0009) and CIAL (PC71-0004).

242. The Request included an assessment of the plan change provisions against the CRPS as Appendix 15. Ms White identified the objectives and policies addressed in that assessment, noting that in terms of Objectives 6.2.1 and 6.2.2 there was an acknowledgment the Request was contrary to those parts of those provisions that direct where urban growth is to be located.

243. Ms White also considered Objective 16.2.1 to be relevant. This seeks that development is located and designed to enable the efficient use of energy including maintaining an urban form that shortens trip distances. Ms White broadly agreed with the assessment undertaken by the Applicant and addressed the areas where she did not.

244. Relying on Mr Nicholson's evidence, she considered that Objective 5.2.1 which seeks development is located and designed so that it functions in a way that achieves a consolidated and well designed growth was met. She noted that in the context of this Request, various subclauses of Objective 5.2.1 were also particularly relevant with respect to Christchurch Airport given it is regionally significant infrastructure. Ms White identified subclause 2(f) which seeks that such development is compatible with and will result in the continued safe, efficient and effective use of regionally significant infrastructure. She also identified subclause 2(g) which seeks that development avoids adverse effects on significant natural and physical resources including regionally significant infrastructure and, where avoidance is impracticable, remedies or mitigates those effects. She identified that subclause 2(i) broadly seeks that development is located and designed to avoid conflicts between incompatible activities.

245. Ms White identified the relevant parts of Objective 6.2.1 which seeks that recovery within Greater Christchurch is enabled through a land use and infrastructure framework that, relevantly:

9. *integrates strategic and other infrastructure and services with land use development;*
10. *achieves development that does not adversely affect the efficient operation, use, development, appropriate upgrade, and future planning of strategic infrastructure and freight hubs;*
11. *optimises use of existing infrastructure.*

246. Ms White identified Policy 6.3.5 that directs the recovery of Greater Christchurch is to be assisted by integration of land use development with infrastructure by various methods including:
4. *Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50 dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A ...*
247. Ms White considered the direction outlined was particularly relevant and in her view required that the development facilitated by the Request did not affect the continued operation and optimal use of the airport, nor result in conflict between the proposed residential use and the airport. She accepted that the Applicant was not proposing the contours be disregarded and that development would not be provided for within the proposed Living Z deferred areas unless and until the noise contour shifted. She remained concerned that there was no certainty that the remodelled contours would result in the site being located outside the contours and applying deferred status implies this will occur and the land will be suitable for residential development in the future. She considered that cannot be determined until the remodelling is completed and it would therefore be inconsistent with the CRPS to rezone the land within the noise contour even with a deferred status. It was her view that in its current form, the Request did not give effect to Objectives 5.2.1 and 6.2.1 and Policy 6.3.5.
248. She further discussed Objective 6.2.1 in relation to integration and Policy 6.3.5(2) which directs that the nature, timing and sequencing of new development is coordinated with development, funding, implementation and operation of infrastructure. She noted Mr England's view in relation to the priority of water allocation needing to be to those developments within the RSP. If consented water could not be made available to service the demand for that part of the site, then the rezoning of the whole site would, in her view, be in conflict with the relevant objectives and policies.
249. Ms White identified Objective 6.2.4 in terms of planning of transport infrastructure so that it maximises integration with identified priority areas and new settlement patterns and facilities the movement of people and goods and services in Greater Christchurch while achieving a number of outcomes including reduction of dependence on private motor vehicles. It was her understanding of the objective and the related policy direction that it is aimed towards planning of transport infrastructure and the lack of current public infrastructure to the site did not, in her view, conflict with the policy. She considered there was nothing about the site which would impede the ability for transport planning to be integrated with this development.
250. In relation to Policy 6.3.3, she noted that provides direction in relation to outline development plans and that applies to greenfield priority areas. She considered the directions still to be relevant including the references to community facilities or schools, transportation options, potential adverse effects on and/or by existing or designated strategic infrastructure. She

confirmed that she had addressed and considered those issues in relation to traffic effects and connectivity, community facilities and potential reverse sensitivity effects.

251. Ms Aston addressed the CRPS in some detail in her written evidence and in her summary presented at the hearing. Ms Aston confirmed that the southern part of the site was within an FDA as depicted on Map A with the remainder of the site subject to Policy 6.3.1.3 which is to avoid urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS.
252. Ms Aston queried why the FDA and PIB, also shown on Map A, were positioned where they are given they extend out to Weedons Ross Road to the north-east of the site and infilling all the land from the Lincoln Rolleston Road. She considered it logical in terms of urban form for the area to extend to Levi Road and considered the sole and obvious reason to be avoiding enabling noise sensitive activities inside the 50 Ldn airport noise contour.<sup>63</sup> She noted that without the contour it would have made sense from an integrated planning perspective to include all of the site within the PIB and noted that view was shared by Mr Nicholson where he concluded that the plan change area was an appropriate location for urban growth linking Rolleston with the proposed district-wide reserve to the east and rezoning a block of rural land which has existing residential land to the north and east. In her view, the exclusion of the area north of the contours appeared to be based solely on the CRPS policy approach in Policy 6.3.5.4.
253. In terms of Policy 6.3.5.4 Ms Aston queried what restrictions were necessary to provide an appropriate level of protection given that there are opportunity costs to landowners associated with the protection. It was her view if there was a way to avoid or reduce those costs without any increase in risk to the airport operations, then that should be taken in terms of promoting the purpose of the RMA.<sup>64</sup>
254. Given the deferral, it was her view that there was no fundamental conflict between the plan change and Policy 6.3.5.4 because it was “not providing for new development” while the noise contour affects the site.<sup>65</sup>
255. Ms Aston addressed Policy 6.3.5 in some detail. She noted the intention is to include a mechanism within the plan change, either through a deferred zoning or a sunset non-complying rule (or potentially a restricted discretionary activity rule), to ensure that Policy 6.3.5.4 is given effect to. Ms Aston noted that the issue of the noise contour had been identified at the outset and advised that she was aware that the changes to the location of the contours shown on the CRPS and all subordinate district plans were on the immediate horizon. Ms Aston advised that as part of the Experts Agreement reached in late January 2008, a review was scheduled for 2018 and that CIAL had engaged a team of experts on noise modelling and aviation to commence the review. She advised that she had subsequently learned the majority

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<sup>63</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [47]

<sup>64</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [50]

<sup>65</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [51]

of the technical analysis had been completed in late 2019 and was due to be provided to CRC in 2020. She further advised that she was familiar with the outcomes of the Performance Based Navigation Trials undertaken by the Airport in 2018 to 2019 and that in particular the associated reports illustrated a change in the 50 Ldn contour was such that it did not affect the site. Ms Aston referred to discussions with Mr Boswell from CIAL at a meeting in February 2020 and further explained that she was aware that the CRPS was due for a full review in 2023 and that part of that would include an examination of the existing 2008 contours.

256. Ms Aston then spent some time going through the background to the inclusion of the 50 Ldn contour. She concluded, that in the context of any potential risk of reverse sensitivity effects on Christchurch Airport occurring from the development of all of the PC71 land, it appeared highly questionable as to whether or not this land would ever be subject to levels of aircraft noise that may impact on the amenity of future residents.<sup>66</sup>

257. Ms Aston then spent some time in her evidence addressing steps which had occurred from the time the plan change was notified including the *2021 Christchurch International Airport Expert Update of the Operative Plan Noise Contours – For Review by Environment Canterbury’s Independent Expert Plan*. She explained her understanding of the contours and provided excerpts in relation to the outer envelope boundary noting that the site was no longer restricted by the 50 Ldn contour irrespective of the approach which was ultimately taken. On that basis, she concluded that the current policy of avoiding residential development of the land can no longer be justified on the basis of protecting the airport.

258. Ms Aston addressed Objective 5.2.1:

***Location, design and function of development (Entire Region) Development is located and designed so that it functions in a way that:***

- 1. achieves consolidated, well designed and sustainable growth in and around existing urban areas as the primary focus for accommodating the region’s growth; and ...*

259. Ms Aston’s assessment against that objective was that part of the site was in an FDA and adjoins the existing urban area to the west whereas to the north the proposed district park provided a defensible boundary for further urban spread if necessary. Ms Aston referred to Ms Lauenstein’s evidence where she stated:<sup>67</sup>

*Within this urban (Rolleston Structure Plan) context I consider that the proposed development will further consolidate the urban form of the township and ensure a well-functioning urban environment is achieved.*

260. In terms of Objective 6.2.2 – Urban form and settlement patterns, Ms Aston considered that there was no sound resource management reason why, if and when the noise contours move, the entire site should not be recognised as an FDA in the Greater Christchurch spatial plan.

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<sup>66</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [66]

<sup>67</sup> Statement of Evidence of Nicole Lauenstein – Urban Design 24 January 2022 at para [5.1]



261. Ms Aston addressed Policy 6.3.1 – Development within the Greater Christchurch area. She considered that policy to be outdated given it referred to recovery and rebuilding, and contrary to the NPS-UD through promoting a rigid urban limit that is not responsive to new proposals. Ms Aston noted that the NPS-UD requires CRC to incorporate criteria into the CRPS to provide for a more flexible and nuanced approach to urban growth and management and that this had not occurred.<sup>68</sup>
262. Ms Aston addressed Policy 6.3.7 in relation to residential location, yield and intensification. Ms Aston then addressed Policy 6.3.12 – Future Development Areas, noting that it was relevant to that part of the site identified in the Urban Growth Overlay in the PDP and FDA in the CRPS Map A. She identified and discussed the criteria contained in that policy.
263. Mr Langman considered that PC71 does not give effect to Objective 6.2.1(3), Objective 6.2.2, Policy 6.3.1(4) and Policy 6.3.5(4). In essence, these are the avoidance objectives and policies in the CRPS, including the avoidance of noise sensitive activities within the 50 dBA Ldn air noise contour (unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi).
264. Mr Langman considered that a key feature of Chapter 6, and the UDS, is to provide for sustainable growth, along with certainty about where and how this is to occur, by providing a framework that enables greenfield growth in the Greater Christchurch area as outlined in Map A of Chapter 6, and also provides for intensification within existing urban areas. He noted the targets set in Objective 6.2.2 for intensification through the period to 2028. He identified that the explanation to Objective 6.2.2 recognises there is a need for greater intensification within Christchurch's urban areas, and that this will in turn reduce the need for further expansion of peripheral areas.
265. He considered that development of greenfield land outside of that planned in the CRPS has a twofold impact. It increases the amount of land for greenfield development and as a proportion of the overall supply of housing then impacts on the ability to achieve intensification targets within Greater Christchurch. In his view, if greenfield development is significantly increased above levels anticipated, that will have a flow-on effect of proportionally reducing the success of delivery of housing through intensification of existing brownfield areas.<sup>69</sup>
266. He spent some time in his evidence focusing on the certainty provided by the avoidance of urban development outside of the areas identified in Map A and the focus on intensification. He considered the framework generated certainty for development, encouraged the sustainable and self-sufficient growth of the key Greater Christchurch towns, enabled efficient long term planning and funding for strategic, network and social infrastructure, and protects significant natural and physical resources.<sup>70</sup>

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<sup>68</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [57]

<sup>69</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [47]

<sup>70</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [52]

267. Mr Langman then addressed Change 1 and considered that it provides for the development of land within existing urban areas, greenfield priority areas and FDAs (where the circumstances set out in Policy 6.3.12 are met) at a rate and in locations that meet anticipated demand and enables the efficient provision and use of network infrastructure.<sup>71</sup>
268. Mr Langman identified a number of other provisions of the CRPS that are relevant including Objective 6.2.1a – that sufficient, feasible development capacity for housing is enabled in Greater Christchurch in accordance with the targets set out in Table 6.1; Objective 6.2.4 – which prioritises the planning of transport infrastructure so that it maximises integration with priority areas, and Policies 6.3.4 and 6.3.5 which support that objective. He also identified Policy 6.3.5 in relation to the 50 dBA Ldn air noise contour, Policy 6.3.7 in relation to minimum densities, and Policy 6.3.11 which prescribes the monitoring and review methods to demonstrate there is an available supply of residential and business land and provides the circumstances for initiating a review.
269. Mr Bonis' evidence for CIAL focused on the matters relevant to CIAL's concerns. He advised that there was nothing in his evidence that would preclude the remaining households in those areas not subject to the air noise contour from being enabled (and adding to district-wide and Greater Christchurch household capacity), were I to conclude that such were appropriate in terms of the balance between the NPS-UD and the operative provisions of the CRPS as these relate to urban boundaries and the FDA.<sup>72</sup>
270. Mr Bonis identified that the operative 50 dBA air noise contour was inserted into Chapter 6 of the operative CRPS by the Land Use Recovery Plan 2013 which also inserted Policy 6.3.5(4) which includes the avoiding of noise sensitive activities within that contour. He noted that the contours and associated statutory provisions and impediments on noise sensitive activities have been applied in a cohesive and consistent manner within the operative CRPS and the plans of Christchurch City, Waimakariri District and Selwyn District. He considered this recognises the need for a systemic approach to airport operations, reverse sensitivity and amenity effects, which in his view were not appropriately considered in an incremental or disjointed manner. He advised that the historical background to the contours identifies that the planning certainty that they provide is relative, but that the contours in the CRPS are the operative statutory contours and should be able to be relied on to provide planning certainty accordingly until they are reviewed and amended.
271. Mr Bonis identified Objective 5.2.1(f), and Objective 6.2.1(10) noting that that focuses more specifically on reverse sensitivity effects including those that may limit the efficient operation, use and development of regionally significant infrastructure. Again he identified Policy 6.3.5 Clause 4 and the express avoidance provision. Mr Bonis also identified Policy 6.3.11 – Monitoring and review, and then explained that process. He noted that he was not an expert in noise modelling and aviation but from a planning perspective, he noted that the contour

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<sup>71</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [56]

<sup>72</sup> Statement of Evidence of Matthew William Bonis 31 January 2022 at para [20]

remodelling process was only partway through and the outcome was unknown. He considered it was not correct to assume that the contours would be fully removed from the PC71 site as that was yet to be determined by a panel of experts. Basically he considered that until the process of review was complete, the operative air noise contours remained.

272. Again Mr Allan addressed the current and proposed planning and legislative framework in so far as it related to the Foodstuffs interest in PC71. I also received detailed submissions from Mr Cleary, Ms Appleyard and Mr Wakefield in relation to the CRPS.

### Analysis and Findings

273. As with the other private plan changes that I have been addressing that are outside of the FDAs, the issue of whether or not PC71 gives effect to the CRPS is of course complicated by the strong avoidance objectives and policies. I have reached the view that those avoidance objectives and policies do not preclude the approval of PC71. But I consider those objectives and policies and the reasons underlining them remain relevant and are clearly an important part of the overall planning matrix. I did not understand there to be any dispute between Ms Aston, Ms White, Mr Langman, Mr Bonis or Mr Allan, or indeed counsel, in relation to that view.
274. In relation to the objectives and policies seeking a compact urban form, I am satisfied that PC71 is consistent with those. There appeared to be no dispute in relation to that and indeed Mr Langman agreed.
275. I referred to Mr Langman's evidence in relation to the development of greenfield land outside of that planned in the CRPS in paragraph [265]. This is an issue which was touched on in relation to the NPS-UD, particularly on the issue of the impact on intensification targets within Greater Christchurch. I acknowledge that developing greenfield land outside of that planned in the CRPS does result in an increase in the amount of land for greenfield development. I consider that is a consequence recognised and enabled in the NPS-UD.
276. Mr Ballingall noted the different markets. Ms Aston provided extracts from the July 2021 HCA which she considered acknowledged the complexity of the housing market. I consider it is worthwhile including the excerpt in the text of this Recommendation. This provides:

*The dynamics of the housing market are complex, and there are many factors that contribute to why any particular area experiences strong or weak demand and consequently growth. Locational preference may be driven by many reasons, including the availability of sections and houses, lifestyle, job, education, family, financial circumstances, and at least in part, to where people want to go, and how often these trips need to be taken.*

*Many suburbs in Christchurch's older areas are rejuvenating despite strong greenfield growth in recent years, while some are not. Most of the inner city suburbs, and the Central City appear to be functioning well at the present time through providing residential medium density well above the minimum permitted levels, while others have historically struggled, for example Linwood and New Brighton. These patterns are apparent in the HDCA which notes that 'Building consent data continues to show a strong uptake of redevelopment capacity in the*

*Christchurch zones that enable intensification. This is particularly evident in the inner-suburbs, close to the Central City. The Central City has also seen development activity increase in the last two years. Consequently the majority of new homes supply in Christchurch is now from redevelopment rather than greenfield'.<sup>73</sup>*

277. While Mr Langman's concerns are properly raised, Mr Ballingall's evidence, and the excerpts from the HCA, in my view clearly establish that the issue is considerably more complex than one of proportionality. As stated in the HCA, the dynamics of the housing market are complex.
278. In relation to the objectives and policies addressing infrastructure provision, there is a clear direction in relation to the need for integrated management and coordination but other than in respect of potable water (which I consider can be addressed appropriately by a rule), I am satisfied that those objectives and policies are met.
279. Ms Aston's assessment in relation to the area of land contained within the FDA was thorough and given that none of the submitters, nor the reporting officers, raised any concerns in rezoning of the land within the FDA, I accept Ms Aston's evidence in relation to the appropriateness of the rezoning of that land. I accept that is the most efficient and effective use of that part of the site and agree that it would meet the purposes of the RMA and the relevant planning objectives and policies.
280. In terms of traffic and transport infrastructure, I am satisfied that the proposed rezoning is consistent with the CRPS.
281. PC71, in so far as it relates to the land within the 50 dBA Ldn noise contour, clearly does not give effect to the provisions relating to infrastructure protection. For the remainder of the site, I am satisfied that the plan change is consistent with the relevant objectives of the CRPS other than those which are directive of location.

#### **CLWRP and CARP**

282. Pursuant to s75(4)(b) of the RMA the SDP cannot be inconsistent with relevant regional plans. The establishment of activities within the site will either need to meet the permitted activity conditions of those plans or resource consents will be required. I also note, as identified by Ms White, that CRC did not raise any concerns with the incompatibility of development of the site for residential purposes with the provisions of the CLWRP in particular, nor the CARP.

#### **MIMP**

283. The MIMP is a planning document which is recognised and has been lodged with SDC. Pursuant to s74(2A) of the RMA, in considering this plan change, I must take account of the MIMP. The Request included an assessment of the relevant provisions of the MIMP at paragraphs [180] to [186]. That assessment noted that in terms of the general objectives and policies the proposed plan change and application site would not affect landscapes, sites of

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<sup>73</sup> 2021 HCA at page 53

cultural heritage or significance, does not contain any areas of significant biodiversity and seeks to include landscaping within the reserves and in road corridors adding to the overall biodiversity of the Canterbury Plains. It considered the full reticulation of the three waters and was considered to be consistent with the objectives and policies contained in Chapter 5.3 and 5.4 of the MIMP.

284. Ms White agreed with the assessment undertaken. I agree and have taken the assessment and the MIMP into account.

### **Consistency with Plans of Adjacent Territorial Authorities**

285. Ms White advised that matters of cross-boundary interest are outlined in the SDP (Section A1.5 of the Township Volume). She considered that of relevance to PC71, it included effects on the strategic and arterial road network from people commuting between Selwyn and Christchurch. She identified that the methods state that this is identified as an effect of residential growth in the SDP and notes that CCC can submit on proposals to rezone land for growth. She noted the CCC had submitted on the plan change and identified concerns regarding cross-boundary effects arising from the proposal.

286. I do not consider there are any directly relevant provisions in the district plans for neighbouring territorial authorities that are affected by PC71.

### **Other Management Plans and Strategies**

287. Ms White identified the RSP as a strategy prepared under the Local Government Act. She considered it to be a relevant matter to have regard to under s74(2)(b)(i). She advised that was developed as part of delivering the UDS and seeks to provide a strategic framework to manage the rapid growth occurring and anticipated within Rolleston. She identified its stated purpose as being *“to consider how existing and future development in Rolleston should be integrated in order to ensure that sustainable development occurs and makes best use of natural resources”*. She noted that the RSP then identified principles for future development rather than detailed planning for individual growth areas.
288. Ms White considered the site to be located outside the area covered by the RSP and noted that the urban design statement accompanying the Request included identification of six development principles from the RSP which were stated as having guided the planning for the site’s development.
289. Ms Aston did not agree that the site was located outside the area covered by the RSP. She noted that the RSP identified a green corridor and main road linking the Foster Park Recreation Precinct with the proposed district park. She advised that green link goes directly through the site as an extension of Broadland Drive and considered that leaving the site undeveloped as rural land would continue to block the connection between the recreational precinct and the

district park essentially leaving a 'no man's land' in between.<sup>74</sup> She identified that the RSP was adopted in 2009 and some elements were now out of date and noted that the staging provisions had not been followed with SDC adopting a more flexible approach to enabling infrastructure in response to development needs.<sup>75</sup>

290. She identified that there were other elements of the RSP which had not been followed including the centres hierarchy and provision for higher density residential development around the centres.
291. Ms Lauenstein addressed the RSP in her evidence. She considered it provided the underlying urban form, the overarching connectivity and green network and has guided urban growth for the wider Rolleston township. In that context she considered the proposed development would further consolidate the urban form of the township and ensure a well-functioning urban environment, and in particular she referred to the proposed east-west green corridor extending from Broadlands Drive through the site and connecting the Foster Park recreational areas with the future district park. She considered that to be a significant contributor to the wider green network and urban connectivity with Rolleston.
292. Mr Nicholson, in his evidence and in discussions, talked about the importance of the Broadlands Drive connection which would provide more direct access to facilities including Foster Park, the Selwyn Aquatic Centre, Rolleston College and Clearview Primary School.
293. Mr Collins, in his report forming part of the s42A Report, identified that PC71 was inconsistent with the RSP in that it was outside the anticipated urban areas. Mr England, as noted earlier in this Recommendation, identified that the plan change area was partly within the RSP area and partly outside.
294. Overall, while the RSP is of some antiquity, it is still of some assistance in guiding development. The connection through to the proposed district park is relevant and informative.
295. The Request included an assessment of Our Space 2018-2048 Greater Christchurch Settlement Update 2019 and overall considered it to be out-of-date as it did not reflect or give effect to the new requirements of the NPS-UD 2020 (as was also the assessment in relation to the RPS and the SDP).
296. Selwyn 2031 was also identified. This is Selwyn's District Development Strategy. This was assessed in the Request noting that the key growth concepts included:
  - (a) Establishment of a township network, which provides a support framework for managing the scale, character and intensity of urban growth across the whole district;

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<sup>74</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [93]

<sup>75</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [95]

- (b) Establishment of an activity centre network, which provides a support framework for managing the scale and intensity of business areas throughout the district townships; and
  - (c) Encouraging self-sufficiency at a district-wide level.
297. Strategic Direction 1 seeks to ensure that there is enough zoned land to accommodate projected households and business growth, while promoting consolidation and intensification within existing townships. The key objectives support the strategic direction. Growth is concentrated in the Greater Christchurch area. It provides for most of the growth capacity around Rolleston and to a lesser extent Prebbleton and Lincoln.
298. Selwyn 2031 supports a hierarchy of centres including supporting ongoing expansion and retail service activities in Rolleston which has a number of advantages including contributing to improvements of amenity for the Rolleston Town Centre and by contributing to achieving critical mass.
299. Overall I consider the plan change supports the strategic directions and key objectives of Selwyn 2031. Rolleston is identified as a district centre with an estimated population in the range of 12,000+ and it functions as the primary population, commercial and industrial base of the district.

### **Consideration of Alternatives, Costs and Benefits – Section 32**

300. The proposal did not include any new objectives, or changes to the existing objectives contained within the SDP. The assessment required under s32(1)(a) relates to the extent that the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA. Assessment is also required of whether the provisions in the proposal are the most appropriate way to achieve the objectives of both the proposal and the existing district plan objectives, having regard to the efficiency and effectiveness of the provisions and having considered other reasonably practicable options (s32(1)(b)).
301. The purpose of the proposal is to enable the residential development of approximately 53 ha of land (the site) at Rolleston bounded by Levi and Lincoln Rolleston Roads and Nobeline Drive. The purpose notes that the land under the CIAL noise contour will adopt a deferred zoning reflecting that it is anticipated the contour will shift off the site, or otherwise contract in the immediate future.<sup>76</sup>
302. The objective was also described in paragraph [7] of the s32 RMA assessment. That states:

*The objective of the application is to change the zoning of the application site in the Operative District Plan from Rural Inner Plains Zone to Living Z Zone in a controlled and managed way through an Outline Development Plan (Area 5) and*

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<sup>76</sup> Request to Change the Selwyn District Plan under Clause 21 of the First Schedule of the Resource Management Act 1991, 1 June 2021 at page 7

*by adopting, as far as possible, planning zones and subdivision, activity and development standards of the operative plan.*

#### Operative Selwyn District Plan

303. The Request also included, as Appendix 16A, an assessment against the operative district plan objectives and policies. That was a comprehensive assessment in tabular form and occupied some 15 pages.
304. Ms Aston identified in her circulated evidence that four options had been evaluated being:
- Option 1: status quo/do nothing;
  - Option 2: rezone the whole 53.9 ha site for residential use;
  - Option 3: rezone only the FDA/PDP Urban Growth Overlay land as Living Z and retain the existing Rural Inner Plains zoning to land affected by the 50 Ldn noise contour; and
  - Option 4: rezone the entire Site Living Z but require a resource consent for a non-complying activity for any subdivision and/or residential or other sensitive land use activity for that part of the site within the 50 Ldn noise contour.<sup>77</sup>
305. Attached to Ms Aston's summary of evidence as Appendix C was an evaluation of options assuming the peer review of modelling confirms that the 50 Ldn no longer prevents PC71 being developed in its entirety. The options identified were again the status quo; deferred zone until Expert Panel confirms noise contour no longer applies; rule non-complying activity; and rule restricted discretionary activity with discretion restricted to the extent to which the site legally described as x is affected by remodelled CIAL airport noise contours as recommended by the 2022 Expert Independent Review Panel.
306. Ms White referred to the assessment contained in the Request. She agreed with that assessment except in relation to matters which she addressed.<sup>78</sup>
307. Ms White noted the assessment identified that the proposal would not achieve Objective B4.3.3 which seeks that within the Greater Christchurch area, new residential development is contained within existing zoned areas or priority areas identified within the CRPS. She did not agree that the plan change was required to meet the minimum requirements for capacity required under the NPS-UD but confirmed her view that she considered Policy 8 of the NPS-UD allows for consideration of the capacity provided by the proposal, despite it being unanticipated under the current planning framework.<sup>79</sup>
308. Ms White addressed Objective B3.4.3 which seeks reverse sensitivity effects between activities are avoided. She considered this applied to the noise contours and, consistent with

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<sup>77</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [183]

<sup>78</sup> s42A Report 17 January 2022 at para [166]

<sup>79</sup> s42A Report 17 January 2022 at para [167]



her earlier comments, she accepted that the proposed deferred zoning achieved that. She remained of the view that the deferred status was not appropriate when there is no certainty that the criteria for lifting the deferred status will be met.

309. Ms White also identified Policy B4.3.3 which seeks to avoid zoning patterns that leave land zoned rural surrounded on three or more boundaries with land zoned Living or Business. She considered that the Request in its entirety would align with that provided the deferral was lifted, but if that land were to be excluded, as she considered appropriate, it would not meet the policy. Ms White referenced Mr Nicholson's evidence that the site is a small block of rural land surrounded on three sides by proposed residential land uses, with a proposed district reserve on the fourth side. In her view, the present state would not align with the policy either.
310. From an urban form perspective, she considered that overall, it was more appropriate to rezone the northern land outside the noise contour due to its proximity to the centre of Rolleston and adjacency to other residential areas. She noted that while that strictly conflicted with Policy B4.3.3, that was a consequence of the existing and anticipated zoning of the surrounding area and the impact of the noise contour, rather than being a consequence of the Request.
311. Mr Langman also identified Objective B4.3.3 and Policy B4.3.1. He also identified PDP Policy UG-P3 and UG-P13. He considered PC71 to be inconsistent with those as the intent of those provisions was, in his view, to give effect to the relevant provisions of the CRPS. He considered that given there were no amendments proposed to the operative objective and policy, it would be difficult to understand how the proposal for urban development meets the legal requirements for consideration of plan changes.<sup>80</sup>
312. Mr Bonis identified Objective B2.1.5 of the Township Volume and associated Policy B2.1.26. Objective B2.1.5 seeks that the future, unrestricted operation of Christchurch International Airport is not jeopardised by "reverse sensitivity" effects from residential development in the Selwyn District. Associated Policy B2.1.26 is, as Mr Bonis noted, directive. That policy is to avoid new residential development and other noise sensitive activities occurring on land which is located underneath the airport flightpath noise contours shown on Map 013 for 50 dBA Ldn or greater. He also identified Objective B3.4.3 which seeks that reverse sensitivity effects between activities are avoided and Policy B4.3.72 which seeks to directly avoid rezoning for new residential development in areas that are under the airport flightpath noise contours for 50 dBA Ldn or greater.
313. Mr Bonis also addressed the PDP noting that weighting is very limited, noting that there were a number of submissions on it, and no decisions on any of the chapters had been released by the Commissioner Panel. In essence he considered that the PDP covered similar matters to the SDP in relation to the 50 dBA air noise contour and noted that only the portion south of the 50 dBA Ldn air noise contour was contained within the Urban Growth Overlay. Mr Bonis

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<sup>80</sup> Statement of Evidence of Marcus Hayden Langman 31 January 2022 at para [112]

considered that the plan change could not be said to implement Policy B4.3.72 and neither was it effective nor efficient in achieving that policy which seeks to directly avoid rezoning for new residential development under the operative 50 dBA air noise contour. He agreed with Ms White that the land on the proposed ODP identified as Living Z deferred should be excluded.

314. Mr Langman in his summary confirmed his opinion that the “limited new provisions” sought through PC71 were not the most appropriate to achieve the objectives of the SDP and in particular Objectives B4.3.1, B3.3.3, B3.4.5, B3.4.4, B4.3.1, B4.3.3 as they relate to land outside the FDA, and B4.3.72 as it relates to the airport noise contour. He considered the deferred zoning to be contrary to Policy B4.3.72 which seeks to avoid *rezoning* (original emphasis) land for new residential development under the airport noise contour.
315. For completeness, Mr Allan considered Objective B3.4.3 of the SDP to be of particular relevance in terms of reverse sensitivity effects on the proposed supermarket.

#### Discussions and Findings on the Relevant Objectives and Policies of the SDP

316. I have considered the evidence and submissions in relation to the objectives and policies of the SDP, together with the assessment provided in Appendix 16.
317. There is some tension with Objective B1.1.2. There was no evidence before me that the new residential activity would create a shortage of land or soil resource for other activities in the future. I have addressed Policy B1.1.8 earlier in this Recommendation. The explanation to the policy states that:

*Other sites are only alternatives for erecting buildings if these sites do not have other resource management constraints [sic] to urban expansion such as – flooding or ‘reverse sensitivity’ with surrounding activities. The Act does not recognise adverse effects of activities on soils as having primacy over adverse effects on other parts of the environment.*

318. In relation to the land within the FDA, the issues relating to versatile soils have clearly been considered and addressed through the process leading to the FDAs. I acknowledge there will be some loss in the remainder of the site.
319. Regarding Policy B1.2.2, there is nothing to indicate that servicing in relation to water supply, effluent and stormwater disposal cannot be done without adversely affecting groundwater or surface water bodies. I note the explanation to the policy identifies that the Council “does not think” it promotes sustainable management to rezone land to expand townships if it cannot be serviced with water supplies and effluent and stormwater disposal. Policy B1.2.3 again requires the water supply provided to be to drinking water standard and be reticulated and is not directly relevant. I have addressed the evidence of Mr Mthamo in relation to water supplies earlier in this Recommendation. I do not consider there is anything to establish that the potable water supplies cannot be serviced. Indeed, on the basis of Mr Mthamo’s evidence, and given

the significant capacity in the current Council consents, I am satisfied that water will be available. Ms White's proposed rule addresses that.

320. In terms of Objective B2.1.1 – the integrated approach to land use and transport planning – there is nothing on the evidence to indicate that the efficient operation of the District's roads, pathways and similar will be compromised by adverse effects.
321. Objective B2.1.2 again is not identified as an issue. I am satisfied that the objectives and policies in relation to transportation issues have been appropriately addressed.
322. Objective B2.1.5 is *“The future, unrestricted operation of Christchurch International Airport is not jeopardised by “reverse sensitivity” effects from residential development in the Selwyn District”*.
323. Policy B2.1.26 provides:

*Avoid new residential development and other noise sensitive activities occurring on land which is located underneath the airport flightpath noise contours shown on Planning Map 013 for 50 dBA Ldn or greater.*

324. The objective and policy is critical in relation to the land under that contour. The explanation and reasons notes that it is intended to restrict new residential development at urban densities or other noise sensitive activities in areas subject to aircraft noise. The reasons are to reduce the potential for people trying to restrict the operation of CIAL in the future, as a means of mitigating noise effects, and also to avoid adverse effects on the amenity of persons living within the contours.
325. The objective and Policy B2.1.26 are explained as recognising that reverse sensitivity effects on CIAL must be avoided because of the importance of the unrestricted operation of CIAL to the region's and district's economy.
326. There is clearly an issue in relation to Objective B3.4.3 which is that reverse sensitivity effects between activities are avoided. Policy B4.3.72 is in my view critical. This was a policy which received some focus from Mr Langman and Mr Bonis. Mr Langman considered the rezoning to be directly contrary to Policy B4.3.72 as this is a rezoning of that land. Mr Bonis shared a similar view. Ms Aston did not consider PC71 to conflict with that policy as the proposed deferred zoning is not providing for residential development under the noise contour as such activity would remain restricted discretionary (or non-complying) until such time as the Expert Panel findings are public.
327. Ms Aston, during discussions and in her summary of evidence, clearly recognised the clear issues posed by Policy B4.3.72. She suggested additional wording in essence providing an exception for this land. Ms Aston did not consider there to be any scope issues with that amendment. I am not convinced that there is scope for a change to a policy which was clearly not sought but in any event, I do not consider that such an exception is justified or appropriate at the present time.

328. In terms of community facilities, Objective B2.3.2 is not relevant as that relates to effects from community facilities. Policy B2.3.8 in relation to reserve areas is met.
329. In relation to the objectives and policies relating to natural hazards, I have addressed that issue earlier. Given my findings, I consider the proposal is entirely consistent with those specific objectives and policies.
330. In relation to the quality of the environment, I consider the proposal is entirely consistent with the objective seeking that townships are a pleasant place to live and work in are met. Objective B3.4.4 in relation to the growth of townships in a compact urban form is, on the basis of the evidence, clearly met as is Objective B3.4.5 in relation to connectivity.
331. In relation to the growth of townships objectives and policies, in my view it is generally consistent with the relevant objectives other than those directing residential development to be provided within existing zoned or priority areas. The land outside of the FDA clearly does not meet that but I do not consider that fatal in light of my discussions in relation to the NPS-UD.
332. In my view, the proposal assists in meeting Objective B4.3.5 which is to ensure that sufficient land is available in the District Plan to accommodate additional households. In terms of density, it clearly meets Objective B4.3.6 and exceeds the density requirements. Again it does not meet Policy B4.3.1, other than the area identified in the FDA but as recorded earlier, I am of the view that the NPS-UD allows qualifying plan changes to be assessed on their merits. Policy B4.3.3, I have discussed earlier. In terms of Policy B4.3.6, again clearly this is assisting in encouraging townships expand in a compact shape and it meets the policies relevant to ODPs.
333. It is clearly inconsistent with, and does not implement the objectives and policies relating to development of noise sensitive activities, or rezoning of land for residential activities, under the 50 dBA Ldn contour.

#### Benefits and Costs

334. As noted earlier, Ms Aston identified the four options assessed in the Request and addressed those further.
335. Overall, it was her view, in light of the results of the latest remodelling of the noise contours, that Option 4 was the most appropriate, that being to rezone all of the PC71 area LZ and use a resource consent process to enable residential development once the 50 Ldn restriction had been removed. She considered that to be the most appropriate option for reasons she specified. These can be summarised as follows:
- (a) The LZ zone is in the short, medium and long term the most efficient land use for the site;
  - (b) Retaining a rural zoning over all or part of the land would perpetuate the continuation of low intensity rural lifestyle activity and ongoing interface challenges which she stated

was severely curtailing the existing All Star horse training operation and that more intensive farming options were not feasible. She considered the retaining of the rural zoning was not an efficient use of land, in particular at a time when there is a “severe shortage of land” for housing at Rolleston and that the PC71 site is eminently suitable for urban development, including because it is closer to the existing Town Centre. She considered it to be superior in terms of urban form/accessibility “than any other part of the FDA”;

- (c) The rezoning was consistent with and give effect to the SDP and RPS objectives and policies other than those which are inconsistent with and do not give effect to the NPS-UD;
- (d) That it was a logical extension to the developed and developing residential land adjoining the site while achieving a compact and efficient urban form;
- (e) The proposed method provides certainty of the final form and integration of the rezoned area including its proposals for reserves, roading, future linkages and similar. It was her view that retaining a rural zoning over the airport contour would result in a disjointed ODP in two halves with a gap in the middle; and
- (f) The rezoning would facilitate access to the proposed reserve as depicted in the RSP.<sup>81</sup>

336. Ms Aston considered there was little, if any, risk that the airport contours peer review would reinstate all or part of the site as under the contour. Overall, Ms Aston concluded that the inclusion of the LZ zone for all of the site was appropriate to achieve the long-term sustainable development and certainty for Rolleston. She further considered the economic, social and environmental benefits of the proposal outweighed the potential costs of the proposed rezoning. Her overall conclusion was that the proposed rezoning was the most appropriate, efficient and effective means of achieving the purpose of the RMA.

#### *Consideration*

337. The s32 assessment included with the Request, and the further assessment attached to Ms Aston’s evidence, largely identified the relevant benefits/costs of the four options. I have considered the initial assessment and the update provided by Ms Aston carefully. I note Ms Aston’s benefits/costs assessment attached to her summary of evidence was based on Mr Ballingall’s summary evidence at paragraphs [13] and [14].

338. Section 32(2) provides that in assessing the efficiency and effectiveness of the provisions in achieving the objectives, the assessment must identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provision, including opportunities for economic growth that are

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<sup>81</sup> Evidence of Pauline Fiona Aston 24 January 2022 at para [184]

anticipated and employment that is anticipated to be provided or reduced and, if practicable, to quantify the benefits and costs.<sup>82</sup>

339. Mr Ballingall assessed the economic benefits. These included reducing housing affordability pressures. In terms of direct economic benefits, Mr Ballingall focused on the construction period. He considered the construction of around 660 dwellings would generate substantial economic activity which would promote community well-being. He considered that the proposed development would support an estimated 99 full-time equivalent jobs for a period of eight years. At an average construction income of \$55,805 per annum, that represented \$5.2 million in wages per year for eight years being injected into the local community.
340. In addition, a housing construction project of this scale would require the purchase of around \$47 million per year of immediate inputs and it was reasonable to expect most of those inputs to be sourced locally, providing a further source to the local community. He concluded that the direct impact of the development on the local economy would be around \$13.4 million per year of value-added (or GDP) or \$107 million over an eight year construction period (derived from Stats NZ's input output tables released in December of 2021).<sup>83</sup>
341. Mr Ballingall considered the only quantifiable economic cost associated with the proposed plan change was the potential loss of output from existing uses of the land in question. He outlined his understanding of the current use including the All Stars standardbred horse training facility and a number of lifestyle blocks fronting Lincoln Rolleston Road and Nobeline Drive. By reference to the Stats NZ 2019 regional GDP by industry data and the Agricultural Census 2019, he noted that in the Canterbury region GDP per hectare for all agricultural land types is around \$940 per year, and that that suggested even if all the existing rural zoned land was used for farming purposes, its GDP contribution would be around \$50,500 per year. He noted that the Stats NZ 2019 regional GDP assessment may underestimate the GDP per hectare of productive land but considered that even if his estimate was out by a factor of 10 or 100, the opportunity cost of that land in its current use is still very small.
342. He also identified an analysis of productive land in Selwyn which had been undertaken for the pNPS-HPL. He identified that this concluded that preserving 2,310 hectares of highly productive soils would yield annual economic benefits of \$6.6 m by 2028 which corresponded to a value per hectare of \$2,857. Applying a value of \$2,857/ha, the PC71 parcel would contribute around \$153,500 to GDP per year which he considered, by an order of magnitude, to be "tiny" compared to the potential GDP associated with constructing the dwellings proposed.<sup>84</sup> He noted the horse training facility was not dependent on having highly productive soils and that the pastoral grazing component of the facility could be economically achieved on lower quality soils. He agreed with Ms White's view that the activity could take place elsewhere in the district. If that occurred it would have no material negative impact on district level GDP.

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<sup>82</sup> s32(2)(a) and (b)]

<sup>83</sup> Statement of Evidence of John Stacey Ballingall 21 January 2022 at para [14.0] – [14.4]

<sup>84</sup> Statement of Evidence of John Stacey Ballingall 21 January 2022 at para [1.54]

343. In our discussions during the hearing, Mr Ballingall was reasonably frank in his view of what was the most appropriate outcome from an economic perspective. Mr Ballingall considered there to be a housing crisis while there was no agricultural land crisis. He considered that there was no evidence of demand for the land in its existing use and there was clearly significant evidence of significant demand for housing. He considered that from an economics perspective, it was essentially a “no brainer”.
344. In relation to costs regarding the intensification in Christchurch City versus urban development in Selwyn District, he advised that it was not a direct reference. He advised that it was not a direct trade-off. He advised that if there were 100 multi-unit developments in Christchurch, that did not mean there would be an equivalent number of families who were no longer looking for properties in Selwyn.
345. In questioning, I explored with Mr Ballingall the potential head winds for residential development in terms of increasing interest rates, tighter lending restrictions and similar. Mr Ballingall was very confident, given the capacity/demand equation was so “out of whack in Selwyn”, there is unlikely to be a significant drop in demand.
346. Mr Ballingall’s evidence is clear and undisputed. None of the other parties provided economic evidence. I accept his evidence even if not all the land is rezoned.

#### Overall Assessment of Options

347. In terms of the status quo option – Option 1, I conclude, on the basis of all of the evidence provided by the Applicant, including that of Mr Ballingall, the costs of retaining the status quo would far outweigh any benefits. I consider that Option 1 is clearly not the most appropriate option.
348. In terms of Option 2, the rezoning of the whole site for residential use, that has a number of benefits including the full construction related benefits assessed by Mr Ballingall. It also has the benefit of ensuring that the whole site can be developed in an integrated manner. However, it clearly would not give effect to the relevant objectives and policies of the CRPS and the SDP in particular. It is not an option which was supported by any of the participants, including the Applicant.
349. In relation to Option 3, which was described as the rezoning of only the FDA/PDP urban growth overlay land as Living Z and retain the existing Rural Inner Plains zoning to land affected by the 50 Ldn noise contour, in my view the evidence clearly illustrates that both the land to the north of the contour, and the FDA area to the south, can and should be rezoned. The option of rezoning the land to the north and the south of the contour was carefully considered in the relevant expert evidence, and particularly by Ms Lauenstein and Mr Nicholson, and by Ms Williams and Mr Collins.
350. Ms White considered, subject to inclusion of rules and amendments she proposed, that the PC71 land outside of the noise contour could be appropriately be rezoned.

351. I am satisfied on the evidence, and particularly the analysis undertaken by Ms Aston, that the rezoning of the FDA land is entirely appropriate and meets the relevant objectives and policies. I am also satisfied, on the basis of all the evidence and submissions, that the rezoning of the remainder of the land, excluding that affected by the 50 dBA noise contour, is the most appropriate method for achieving the objectives of the proposal, the SDP and ultimately the purpose of the RMA.
352. The real issue in my view is whether it is more appropriate for the land presently under the contours to remain Rural Inner Plains; whether it should be subject to a deferred zoning; or Ms Aston's Option 4 of rezoning all of the land but including specific non-complying or restricted discretionary activity rules in relation to the 50 dBA noise contour. There are benefits from the inclusion of that land within the overall ODP. However the inclusion of that land, even on a deferred basis, in my view presents some real issues. I accept those issues may be matters of timing, but that is not clear.
353. Deferred zonings are of course an appropriate planning tool. It is one that has been used reasonably extensively in Selwyn (and other district plans). However any deferral must, in my view, be very clear and transparent, and there needs to be some certainty, or at least significant likelihood, that the issue to which the deferral relates can be achieved. The difficulty I have with the mechanism as proposed is that it is uncertain, at this point in time, and I am unable to conclude that it is the most appropriate method of giving effect to the objectives of the CRPS, and the ODP in so far as it relates to the noise contour.
354. I acknowledge the evidence and submissions from CIAL, and also acknowledge Ms White's concerns in relation to efficiency. Rezoning the land under the contour, at this point in time, even on a deferred basis, would in my view create expectations that the lifting of the deferral is only a question of time. Ultimately, the air noise contour and its location are not matters within the control of either the Applicant or SDC. The contour, its location, and ultimately its effect from a planning perspective, is subject to a prescribed process. In my view, a deferred zoning based on the findings of the Expert Review Panel would be inefficient and presumptuous. As identified by Ms Aston, the noise contours and their planning consequences are contentious and potentially could be subject to challenge and cross-challenge and litigation over many years. Until the noise contour issue is finally resolved and incorporated into the relevant planning documents, there is no certainty at all as to what the ultimate outcome will be.
355. I have carefully considered the option of rezoning of the entire site with a non-complying or restricted discretionary activity status for residential development within the areas under the noise contour. In my view, that would give rise to the difficulties which have been identified by the Courts in terms of addressing effects on the operation of the airport on an incremental basis. The contour is shown on the relevant CRPS and SDP planning maps. It is supported by a very strong policy framework, reflecting the national and regional significance of the airport.



356. On balance, I consider the exclusion of the land within the contour from the Living Z Zone, and the retention of its Rural Inner Plains zoning is, at this time, the most appropriate option. This is a finding that I have reached after carefully considering all of the information before me. But for the noise contour, in my view the rezoning to Living Z of that land would have real benefits, including the strategic benefits related to the connection through to the proposed district park and to the overall site's contribution to a compact urban form. I acknowledge this will have some costs for the landowners. I address this land further in paragraph [376].
357. I have carefully considered the option raised by Ms Aston, albeit reluctantly, of delaying the decision on that part of the site affected by the air noise contour. Given the fluid statutory environment we are operating in at the moment, given the prescribed process for the contour review, and given the likely contentious nature of any planning recommendations stemming from the Expert Review Panel's recommendation, I do not consider there is any benefit in delaying my Recommendation and ultimately Council's decision.

### **Risks of Acting or Not Acting**

358. Overall I am satisfied that I have sufficient information before me to identify the risks associated with acting or not acting and those risks have been addressed in the Recommendation and in the s32 report and evidence.

### **Section 32AA**

359. Section 32AA requires a further evaluation for any changes that have been made to the proposal since the evaluation report was completed. I note and have had regard to Ms Aston's updated s32 analysis provided with her summary of evidence. Most of the proposed changes have been identified and discussed in the body of this Recommendation. I have considered the efficiency and effectiveness, the risks of acting and not acting and the benefits and costs of the changes proposed.
360. I have considered the changes proposed by Ms White in her s42A Report and in her summary presented at the hearing. I have considered Ms White's assessment, Ms Aston's evidence and assessment, and the matters raised in Ms Lauenstein's evidence in reply and Mr Cleary's closing submissions. I note that a number of the changes proposed by Ms White have been incorporated into the reply version of the ODP text.

#### *ODP Development Plan Area 4*

361. A number of amendments were proposed by Ms White in relation to the text to the ODP in Area 4 as identified in Ms White's Appendix 1. Ms Aston provided an amended overall plan for Area 4 which clearly identifies the indicative primary route and pedestrian/cycle link in relation to the Broadlands Drive extension including a note that the exact location of the indicative primary route be determined at the time of subdivision consent.

362. A number of changes that were proposed by Ms White were adopted in Ms Aston's Appendix 2 and I consider those changes are appropriate. Other than the connection through the site to enable the Broadlands Drive extension, there did not appear to be any particular issues of contention remaining from the Foodstuffs submission. I have addressed the importance of the Broadlands Drive extension earlier in this Recommendation.

*ODP for Area 14*

363. In relation to ODP for Area 14, Ms White made a number of changes to the text. These were provided in Attachment 1 to her Summary of Evidence.

364. A number of the changes to the ODP text simply reflected Ms White's view in relation to the status of the area under the noise contour. Given my conclusion in relation to that issue, I consider they are largely appropriate.

365. One of the changes proposed was the removal of the deferral on the land along the Lincoln Rolleston Road frontage which is not directly under the air noise contour. That was proposed by Ms Aston. Ms White considered there were benefits with that approach but did raise the issue of scope.

366. Mr Cleary addressed that scope issue in his reply. Overall I accept his submissions in that regard. The change can be said to fairly relate to the submission of Ivan and Barbara Court (PC71-0005) in terms of the questions identified relating to the timing of the deferral. Mr Court was very clear in his views that a deferral was not needed from an effects perspective.

367. Ultimately that amendment alters nothing, other than timing. It does lead to some landholdings having a split zoning which I would generally not consider to be appropriate. However, given my findings in relation to the retention of the Rural Inner Plains zoning over the land identified as within the 50 dBA Ldn noise contour, there are, in my view, real benefits in including the land fronting Lincoln Rolleston Road in ODP 14 at this time. In particular, it will assist in addressing connectivity issues between the northern and southern areas.

368. The other changes largely reflect matters addressed at the hearing including the separated shared pedestrian/cycle ways, the upgrades to the Lincoln Rolleston Road and Levi Road frontages, the roundabout at the intersection of Levi Road and Ruby Drive, and the roundabout at the intersection of Lincoln Rolleston Road and Broadlands Drive and its extension over ODP 14.

369. Ms White's amendments also included the following:

*In the event that a supermarket is established to the east of this ODP, in ODP Area 4, residential development should be designed to appropriately manage this interface and avoid potential reverse sensitivity effects arising. This may include minimum setbacks for residential dwellings from this interface and acoustic insulation standards.*

370. In my view, and in light of Mr Cleary's closing submissions, I do not consider that is necessary or indeed appropriate.
371. In the right of reply version, further amendments were included. These were helpfully explained in the commentary. In relation to comment A1, given my findings in relation to the land under the contour, the amendments proposed are not appropriate and Ms White's wording should be incorporated.
372. In terms of comment A2, that removed the reference to the supermarket being established on ODP 4. I consider that appropriate.
373. In comment A3, the text incorporated the staging to align with the formation of a roundabout at the intersection of Lincoln Rolleston Road and Broadlands Drive, and the extension of Broadlands Drive over ODP Area 4 to ODP Area 14, and that it be formed to an urban standard.
374. It included additional wording which reflected Ms Lauenstein's reply evidence. I prefer the approach supported by Mr Collins and Mr Nicholson in relation to the 'development line' and associated rule. The words "construction of any part ..." through to "... ODP 4" can be deleted. I do however consider that the following wording remains appropriate even with the adoption of the development line approach:

*Should the main connection west across ODP 4 to Lincoln Rolleston Road not yet be available, a temporary walking and cycle connection is to be provided to Lincoln Rolleston Road via the shortest possible alternative route.*

375. In relation to the pocket park in the northern portion, the ODP needs to be amended to show that as a neighbourhood park for the reasons that I have addressed.
376. Ms White was of the view that the area under the noise contour should not be incorporated into the ODP because it remains rural. In my view there are benefits in that land remaining within the ODP, notwithstanding that it remains, at this time, rural. But for the existing contour issues, it is in my view ideally suited for residential development. From a strategic perspective, I consider it appropriate that the land under the contour remain within the ODP. It could be identified as potential future residential or similar. I consider that this is a more integrated approach. If there are any unforeseen consequences of that, then I reserve leave for that to be addressed by way of Memoranda.
377. Other than where expressly stated, I consider the changes by Ms White are appropriate.

### **Section 31**

378. There are some issues in relation to servicing. These relate to potable water. On the evidence of Mr Mthamo I am satisfied that it is likely that water will be available. I consider that PC71 as amended by this Recommendation can achieve integrated management of effects. As noted

it will enable additional residential capacity and choice in a manner which in my view can be achieved without the creation of any more than minor potential effects on the environment.

## **Part 2**

379. I have considered the relevant Part 2 matters. There are no matters of national importance identified in terms of s6. In relation to s7, and the matters to which I am to have particular regard, I consider it is an efficient use and development of natural and physical resources which will enable the maintenance and enhancement of amenity values and the quality of the environment.
380. I of course acknowledge that there will be some loss of productive or versatile soils as I have addressed. But overall I consider the proposal as amended to be an efficient use and development of the natural and physical resources.
381. In terms of s8, it requires that I take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). I accept that there are no explicit s8 matters in play in this particular application and nothing has been identified in relation to this site which raises any flags.
382. In terms of s5 and the ultimate purpose, I accept that in general terms the purpose can be largely assessed in the detailed breadth of the operative objectives and policies, notwithstanding the PDP. Overall I am satisfied that the purpose of the RMA is achieved, subject to the finalisation of the plan provisions to give effect to this Recommendation.

## **Overall Conclusion**

383. Subject to my following direction, I consider that PC71, as amended by this Recommendation, is efficient and effective. It provides a number of benefits as outlined above. It provides additional supply and choice in the residential housing market. It has economic benefits that I have discussed above. It contributes to a compact urban form and ultimately it is my view that PC71 as amended is the most appropriate means of achieving the objectives and ultimately the purpose of the RMA.
384. I have had particular regard to the wider strategic planning framework and in particular the CRPS. In my view, in the wider context of a housing crisis, and the more localised issues of capacity and demand which were addressed by Mr Ballingall in particular, and my conclusions that it will add significant development capacity and contribute to a well-functioning urban environment, the rezoning of the site, other than that land located underneath the 50 dBA Ldn noise contour, is the most appropriate option.

## **Further Direction**

385. While my findings are final, given the various changes proposed in the evidence and submissions, and the various ODP versions which have been provided, I consider it is appropriate, and more efficient to have the Applicant, in consultation with the Reporting Officer and the other parties who provided planning evidence (should they wish to be involved), to

provide a final version of the changes to be included into the SDP to give effect to this Recommendation. I stress that this is not an opportunity to make further submissions or provide further evidence on my findings. Rather, that is to give effect to those.

386. The Applicant will be anxious to have this Recommendation finalised. I also wish to ensure that it is finalised as soon as possible. While I do not make any directions in relation to the timing for the Applicant to engage and provide the final proposed package, it needs to be with me as soon as is possible. If there are any difficulties with finalising that package, or any uncertainties arising from my Recommendation, I reserve leave for those issues to be raised by way of Memorandum.
387. On receipt of the amended provisions, and if I am satisfied that they meet the intent of this Recommendation, then I will issue a Final Recommendation, including the summary of decisions in relation to submissions and further submissions.

A handwritten signature in blue ink, reading "D Caldwell", is positioned above a horizontal line.

**David Caldwell**  
Hearing Commissioner

Dated: 7 June 2022

**From:** [Gabi Newman | SAUNDERS & CO](#)  
**To:** [Audrey Benbrook](#)  
**Cc:** [Chris Fowler | SAUNDERS & CO](#)  
**Subject:** Mike Greer Homes NZ Limited - Summary of Legal Submissions dated 20 August 2024  
**Date:** Tuesday, 20 August 2024 4:22:14 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[0.png](#)  
[6822737 - Interim Recommendation by Commissioner David Caldwell.pdf](#)  
[6822713 - Mike Greer Homes- Summary of Legal Submissions - Stream 12E .pdf](#)  
[6819780.v2 - Mike Greer Homes- Summary of Legal Submissions - Stream 12E.docx](#)

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Dear Audrey

Please find **attached** PDF and Word Versions of Mr Fowler's Summary of Legal Submissions for Mike Greer Homes NZ Limited. The Summary adopts the Summary of Legal Submissions filed by Momentum Land Limited on Stream 12E (attached at **Appendix A**) subject to all necessary alterations to account for differences between the two Sites. The Summary also includes at **Appendix B** and **Appendix C** a copy of the documents circulated by Mr Fowler at the Mike Greer Homes Hearing earlier today.

Please also find **attached** a full copy of the Interim Recommendation by Commissioner David Caldwell on Plan Change 71 to the Operative Selwyn District Plan dated 7 June 2022 mentioned in the Summary.

Kind regards



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**My hours:**  
Mon to Fri 8:30am - 5:00pm



**2024**  
**SEASON PARTNER**

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