

LEGAL SUBMISSION SPEAKING NOTES ON BEHALF OF SUBMITTERS/PROponents OF REZONING REQUEST FOR ŌHOKA HEARING STREAM 12D

NPS-UD

The 'urban environment'

- 1 The starting point is an interpretation exercise as to what the 'urban environment' is. The NPS-UD which states that the Tier 1 urban environment **means** Christchurch and includes land within the Waimakariri District.¹
- 2 The Submitters position is that the urban environment is "Greater Christchurch", which:
 - (a) is, or is intended to be, predominantly urban in character; and
 - (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.
- 3 It is unclear how much difference, if any, remains between the Submitters and the Council on the 'predominantly urban' subclause (a) issue that is discussed in the planning JWS because Mr Willis says at paragraph [197] that on the balance of probabilities Ōhoka is likely "*within the urban environment*".
- 4 The difficulty is that Mr Willis does not articulate the geographical extent of the urban environment that he has assessed in terms of relevant provisions of the NPS-UD. There also seem to be differing views across Council Officers in separate hearing streams. It is also unclear whether Mr Willis' urban environment is the same as Mr Yeoman's.²
- 5 For the Oxford Ōhoka Community Board, Mr Boyes did not attend the planning expert conferencing and at paragraph [62] defers to Mr Schulte. In his PC31 evidence however he stated: ³

"I agree with the Summary of Evidence prepared by Mr Walsh at paragraph 43 that the PC31 site is located within the Greater Christchurch Urban Environment."
- 6 It is clear that the words 'predominantly urban' anticipate that areas that are non-urban (i.e. rural, open space, etc) in character also fall within the urban environment, provided that the character of the urban environment remains 'predominantly urban'. This supports the view that the definition is focused on wider areas (which may include a mix of urban and non-urban land), rather than specific settlements or urban zones which

Schulte on the Urban Environment:
[17]-[25]

Our legal subs on the Urban Environment:
[23]-[38]

Section 42A report on the Urban Environment:
[43]-[52], [197]-[204]

¹ Appendix, Table 1 of the NPS-UD.

² Mr Yeoman's evidence, at paragraph [4.2].

³ Summary of evidence of Mr Boyes for PC31, at paragraph [13].

would be exclusively urban and would not facilitate an urban environment that was able to provide any new greenfield growth.

7 In any event we go as far as saying that the Panel is not required to factually determine this question by examining the character of parts of the District, as other strategic documents have already done carried out that interpretation exercise:

7.1 Our Space states at page 6, "*the Partnership has determined that the Greater Christchurch area shown in Figure 1 should be the geographic area of focus for the Update and the relevant urban environment for the purposes of the NPS-UDC requirements.*"

7.2 Policy 6.2.1a of the CRPS requires that 'at least sufficient development capacity for housing is enabled for the Greater Christchurch urban environment' and the reasons and explanation for this policy unequivocally states that "*The Greater Christchurch Tier 1 urban environment is the area shown on Map A*".

7.3 The recent Spatial Plan uses the same area. At page 15 the GCSP states that "*The Spatial Plan satisfies the requirements of a future development strategy under the National Policy Statement on Urban Development.*" The Spatial Plan clearly indicates that Greater Christchurch is the urban environment for the purposes of the NPS-UD, and that Ōhoka (an existing urban area) is clearly within this.

7.4 The Selwyn District Plan review decisions accepted the Selwyn District Council's position that Greater Christchurch was the relevant 'urban environment' for the purposes of the NPS-UD. Noting in particular that the NPS-UD responsive planning provisions applied to West Melton:⁴

"Selwyn District Council is identified as a Tier 1 local authority, and the Tier 1 urban environment referred to in Table 1 of the NPS-UD is Christchurch. For the application of the NPS-UD, the urban environment is considered to explicitly relate to Greater Christchurch, as shown on Map A within Chapter 6 of the CRPS."

8 Mr Willis' position in paragraph [197] of the s 42A, that on the balance of probabilities Ōhoka is likely part of the 'urban environment', is understandable given that he sat on the Independent Hearings Panel which accepted submissions for rezonings in West Melton (on the basis that it was part of the 'urban environment').

⁴ Selwyn District Council Section 42A Report: Rezoning Framework, at paragraph [4.3].

- 9 Mr Schulte's submissions conflate the definition of 'urban environment' with 'urban area', both being terms used separately in the NPS-UD. 'Urban area' is undefined but is clearly something different to 'urban environment' which has its own definition.
- 10 Clause 3.2 of the NPS-UD expressly applies to "urban areas" and requires Tier 1 local authorities to meet expected demand for housing "in existing and new urban areas." This is a separate exercise to defining the wider urban environment in which urban areas will be located.
- 11 In terms of 'existing urban areas', Ōhoka is identified as an urban area in Our Space, the Spatial Plan, the CRPS including on Map A, and the operative and proposed District Plans. Ōhoka is therefore an 'urban area' for the purposes of clause 3.2 that lies within the 'urban environment'. As Mr Willis points out West Melton is similarly an 'urban area'.⁵
- 12 At paragraphs [20] and [52], Mr Schulte suggests that the fact Ōhoka and its proposed SETZ zoning is not included in the Council's Variation and has not had the MDRS applied to it, means that Ōhoka is not intended to be predominantly urban (as per subclause (a) of the urban environment definition). In response:
- 12.1 As set out above Ōhoka is an "urban area" and clause 3.2 of the NPS-UD applies to it.
- 12.2 The Enabling Act, while complimentary to the NPS-UD, was prepared for the specific purpose of increasing housing densities in specific residential zones only. The application of the MDRS to only those zones does not determine the extent of an 'urban environment' or 'an existing or new urban area'.
- 12.3 The Enabling Act applies to every 'relevant residential zone' in an 'urban environment', with the latter being defined in the same way as the NPS-UD.
- 12.4 That is not to say that the Enabling Act requires every zone in the 'urban environment' to apply MDRS, just specific residential zones.⁶ In other words, there will be non- 'relevant residential zones' within a wider 'urban environment'.
- 12.5 Notably Settlement Zones are described in the National Planning Standards as "Areas used predominantly for a

⁵ Section 42A, at paragraphs [130] and [244].

⁶ Noting 'relevant residential zone' means all residential zones but does not include: a large lot residential zone; an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment; an offshore island; or a settlement zone.

cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments”.

- 12.6 The above clearly indicates that Settlement Zones are urban in nature (albeit located in rural areas), and therefore are ‘predominantly urban in nature’ parts of the wider Greater Christchurch ‘urban environment’. This is why Ōhoka and other areas such as West Melton are described as ‘existing urban areas’ in documents such as the CRPS.
- 13 Finally on this point we agree with Mr Schulte and Mr Boyes where they say that the only relevance of the Greater Christchurch definition of ‘urban environment’, is that the rezoning submission is opened up to a proper merits assessment under the NPS-UD. It does not determine the submission.

Policy 1 – well-functioning urban environment

- 14 The Submitters position is that:
- 14.1 Policy 1 requires the Council to make planning decisions that, on balance, ‘contribute’ toward to Greater Christchurch as a ‘well-functioning urban environment’ overall.
- 14.2 Provided a proposal contributes to at least some, and does not substantially detract from the other criteria, on balance, that proposal would ‘contribute’ to the wider urban environment being well-functioning.
- 14.3 As demonstrated by the expert evidence, the proposal will contribute to all of the matters in subclauses (a)-(f) of Policy 1 for a well-functioning urban environment that is Greater Christchurch.

Schulte on Policy 1 / well-functioning: [23], [84]

Our legal subs on Policy 1 / well-functioning: [48]-[75]

Section 42A report on Policy 1 / well-functioning: [205]-[232]

- 15 At paragraph [23], Mr Schulte submits that the contribution of the proposed rezoning to the wider Waimakariri and Greater Christchurch urban environment will be relatively “insignificant”:
- 15.1 This is contrary to the evidence which demonstrates that not only will the site itself contribute to the well-functioning urban environment of Greater Christchurch, but the rezoning will also assist the existing urban area of Ōhoka to better contribute to the well-functioning urban environment of Greater Christchurch which it is a part of:
- (a) It will provide an existing urban area within Greater Christchurch with an option to use public transport that they would not otherwise have had.
- (b) It will provide a Local Centre Zone including new types of commercial activities to establish in Ōhoka, benefiting the existing residents by providing them greater accessibility to everyday needs.

- (c) It will enable a school and retirement village which are again likely to be used by the existing residents, increasing the variety of offerings in Ōhoka, and consolidating the town further.
- (d) It will provide a range of open spaces, as well as restored riparian corridors which will benefit all residents of Ōhoka in terms of amenity and environmental health of their township.
- (e) We note that all of the above will contribute to a reduced reliance on private cars to meet day-to-day convenience, amenity, and schooling needs.

16 At paragraph [84], Mr Schulte takes issue with staging of the development and says that the timing of development would be unenforceable. In response:

16.1 We are not clear what this has to do with any of the minimum criteria in Policy 1 related to well-functioning urban environments?

16.2 Given the NPS-UD looks right through to the long term (in 30 years' time) it is not relevant to the contribution of this proposal to a well-functioning urban environment, particularly given the evidence of the Submitters that states the capacity will be required in the medium-long term (which aligns with the indicated timing of the development).

Policy 1(f) - Contributing to supporting reductions in GHG emissions

17 The Council Officers in respect of the requirement for the rezoning to contribute to Greater Christchurch as a well-functioning urban environment that "supports reductions in GHG emissions" (Policy 1(f)), consider assessment under this criterion requires a comparison with new rezoning within Rangiora, Kaiapoi, or Woodend.

18 Firstly, the Submitters position is that nowhere in the NPS-UD does it require the proponent of a proposal to calculate the proposal's GHG emissions against another proposal elsewhere and demonstrate that the proposal's GHGs will be less than that scenario, whether that comparator be the existing land use (dairy farm), or other proposals for development in the district (which Council witnesses limit to being in Kaiapoi, Rangiora, or Woodend). It is not explained why the comparator does not include other proposals in the Ōhoka area or further afield.

19 We say it is enough that new development is of a form and design that practically takes steps to support people (i.e. residents of the proposed rezoning/development) in reducing their overall GHG footprint, such as those being proposed as part of this rezoning request.

Our legal subs on GHGs:
[68]-[74]

Section 42A report on GHGs: **[91], [128], [130]-[132]**

- 20 In this case, that is provided through the proposal being more than a housing proposal and in particular including:
- 20.1 Provision of a frequent and funded public transport solution for at least 10 years;
 - 20.2 Provision of a commercial area within to meet some of the residents' day-to-day needs;
 - 20.3 Provision of off-road pathways throughout the development, to support active (non-vehicular) travel;
 - 20.4 Provision of a school proximate to the proposal;
 - 20.5 Prohibition of the use of LPG other than for barbeques;
 - 20.6 Requiring the provision for solar generation in residential units;
 - 20.7 Requiring native planting throughout a site and restoration of riparian margins;
 - 20.8 Requiring dwellings are EV charging ready, to support a faster uptake of EVs.
- 21 However, even if we are wrong on this and a comparison is considered appropriate or helpful to make in assessing a proposal against Policy 1(f), the proper comparison would need to be made with the counterfactual of not accepting the Submitters' rezoning submission and how the market would respond.
- 22 We note this was the approach adopted by the independent hearings panel in the decision on private plan change 88 in Auckland. That Panel considered that, in the context of whether a proposal contributes to 'supporting reductions in GHG emissions':⁷

"We have approached this from the perspective that a 'business as usual' approach is not appropriate as that is unlikely to support reductions in greenhouse gas emissions. Rather, we should look to ensure that the proposal under consideration 'does better'. Therefore we consider a business-as-usual approach is the comparator that should be improved upon. We return to this topic at the conclusion of this section of our decision, after consideration of the ERP, Climate Plan and TERP."

"In reply submissions, Counsel for the Applicant sets out a useful example of a baseline based on a business-as-usual development, being a location also occurring in Beachlands, and goes on to summarise how PC 88 achieves emission reductions beyond that baseline."

⁷ At paragraphs [173] and [201].

Amongst comparisons with the business-as-usual baseline, Counsel for the applicant points to the increased trip internalisation that drives some of the reductions in VKTs and GHG emissions."

- 23 In the reply submissions referenced above in the PC88 decision, the appropriate comparator is further defined:⁸

"In our submission, an appropriate baseline for emissions reductions is a business-as-usual development. In this case, continuing the development pattern that currently exists in Beachlands is an appropriate starting point for comparison. We submit that there is no other feasible alternative baseline, as there is no quantified information on greenfield or brownfield development available."

"In terms of this baseline, a useful example is the recently consented Neil Construction Ltd and Fletcher Residential Ltd residential development in Beachlands. This consent application occurred prior to the climate change amendments in the Resource Management Act 2020 taking effect, therefore, the Fast Track Panel was not entitled to consider the effects of GHG emissions. While there was a cursory reference to GHG emissions in the decision, the consent conditions attached to the decision reflect the business-as-usual approach to development, whereby there was no conditions relating to reductions in GHG emissions."

"PPC88 supports emissions reductions well beyond what would ordinarily be the case by continuing the existing pattern of development in Beachlands, and beyond what occurred in the Neil / Fletcher developments... [by doing XYZ]"

- 24 Mr Jones in his evidence and supplementary evidence demonstrates that the people who are interested in purchasing residential land in the Ōhoka area (i.e. the demand the proposal is catering to) will not substitute their preferences for a property in Kaiapoi, Rangiora, Woodend/Pegasus.
- 25 This is supported in the supplementary evidence of Ms Hampson (paragraphs [60]-[62]) who does not agree with Mr Yeoman that the demand she has identified can be substituted for demand occurring in the three main townships. She considers the proposal will meet demand in the Ōhoka locality and if anything, this may draw some demand away from other settlements within Greater Christchurch outside of the main urban townships, but it will not draw demand away from the main townships.

⁸ At paragraphs [10.3] to [10.5].

- 26 Instead, under the 'reject the rezoning submission' option, buyers in the absence of what they are looking for in the Ōhoka area will:⁹
- 26.1 Opt for alternatives in the adjacent areas of Mandeville, Swannanoa, Fernside, or Clarkville which provide a similar offering to Ōhoka; or
 - 26.2 Opt for alternatives even further afield, including in different districts, such as Tai Tapu, West Melton, Marshland, or Oruruhia (again which provide a similar offering to Ōhoka); or
 - 26.3 Settle for a lifestyle block in the wider Ōhoka area, despite having no need for the 4ha+ of land these offer. This leads to under-utilised and inefficient use of land which could be avoided through the provision of more supply that provides a range of housing options in areas of high demand.
- 27 This above is the business as usual comparison against which the potential GHG emissions of the proposed rezoning must be considered.
- 28 None of these counterfactual options would provide the same benefits contributing to supporting reductions in GHG emissions as the proposed rezoning. This counterfactual would not require those same people to otherwise establish in houses which necessarily:
- 28.1 Provide a frequent and funded public transport solution for at least 10 years;
 - 28.2 Provide a commercial area within to meet some of the residents' day-to-day needs;
 - 28.3 Require native planting throughout a site and restoration of riparian margins;
 - 28.4 Prohibit the use of LPG other than for barbeques;
 - 28.5 Require the provision for solar generation in residential units;
 - 28.6 Provide off-road pathways throughout the development, to support active (non-vehicular) travel;
 - 28.7 Provide proximity to schooling;
 - 28.8 Require dwellings are EV charging ready, to support a faster uptake of EVs.

⁹ Supplementary evidence of Mr Jones, at paragraph [7.1].

- 29 The issue is particularly demonstrated when considering the buyers who will settle for the inefficient 4ha lifestyle block. We note here that Mr Carter’s evidence is that the Submitters will be subdividing the site down to 4ha if the rezoning is not approved, as Mr Sellars says that is its highest and best use in his supplementary evidence. The notified version of the Plan allows opportunity for that to occur beyond the site across significant areas of land on the western side of the District.
- 30 Some people who would have otherwise bought a residential section within the proposed rezoning site will settle for the larger and more expensive lifestyle blocks because of the desire to live in this part of the District. The 36 proposed lifestyle blocks for the site wouldn’t cater for all of the demand that has been evidenced and therefore subdivision down to 4ha would increase in the area to meet the demand, as well as others choosing to look for alternatives further away.
- 31 None of these options in paragraphs [26.1] – [26.3] above would have any of the benefits which support reductions in GHG’s listed above and included in the proposed rezoning.
- 32 Further, it will take more land to cater for the amount of demand, such that the inefficient and underutilised use of 4ha blocks for rural lifestyle development will increase, with those residents being reliant on private vehicles for travel.
- 33 This outcome also increases the potential for further fragmentation of land that might otherwise have productive potential (noting that despite the NPS-HPL not applying, the Rural Lifestyle Zone still contains LUC 1-3 soils), and would also foreclose any future large scale master planned development (such as that proposed in this rezoning) should the Council determine in the future that capacity is required and should be provided in the Ōhoka area.

The NPS-UD and the CRPS

- 34 The Submitters’ position on the interaction between the NPS-UD and the CRPS is set out in our legal submissions.
- 35 At paragraph [34], Mr Schulte sets out the counter-argument that Plan Change 1 to the CRPS has already given effect to the NPS-UD by identifying additional areas for urban expansion. In fairness he does accept that the argument has not found favour with any decision maker to date. We note that are not aware of this argument being put forward by ECan or CCC in any Selwyn appeals nor in relation to any Waimakariri rezonings.
- 36 In response to this point:
- 36.1 Whilst it is accepted that the CRPS as amended by PC1 does to some extent give effect to the NPS-UD this is at most a ‘partial effect’:
- (a) The scope of PC1 was restricted to only include additional land identified in the Our Space 2018-

Schulte on the NPS-UD v CRPS:
[34]

Our legal subs on the NPS-UD v CRPS: [106]-[116] and Appendix 1

Section 42A report on the NPS-UD v CRPS:
[50] and [275]

2048 process, initiated under the previous National Policy Statement on Urban Development Capacity 2016 (*NPS-UDC*).

- (b) Given the NPS-UDC required local authorities only to determine the 'sufficient development capacity' required in the short, medium, and long term, the CRPS (as amended by PC1) could only ever identify the minimum amount of development capacity that is required to be enabled by the NPS-UD. Noting that the NPS-UD now requires 'at least' sufficient development capacity to be provided for.
- (c) The various Reports prepared by ECan itself on PC1 expressly recognise that:¹⁰
 - (i) the purpose of PC1 is not to identify any additional areas appropriate for future rezoning;
 - (ii) the purpose of PC1 is to give effect to Policy 2 and clause 3.7 of the NPS-UD and that therefore this would give effect to the NPS-UD "in part";
 - (iii) PC1 does not purport to give full effect to the NPS-UD given the scope of PC1 under the streamlined planning process;
 - (iv) further changes to the CRPS would be required in order to fully give effect to the NPS-UD (including the introduction of the criteria required under clause 3.8 NPS-UD);
 - (v) further work to the CRPS is currently being undertaken and in the meantime, any plan change requests will need to be considered in light of the NPS-UD.

37 Mr Schulte (still at paragraph [34]) therefore considers the requirement to avoid additional greenfield development should be given particular regard under Policy 6 of the NPS-UD. In response:

37.1 At paragraph [8], Mr Schulte makes the point that the NPS-UD must be considered as a whole, including all of its objectives and policies. We agree.

37.2 We note however, that in the context of a proposal relying on Objective 6(c) and Policy 8 of the NPS-UD, which provides for unanticipated development, the other objectives and policies in the NPS-UD need to be read with

¹⁰ Section 32 Evaluation Report for Proposed Plan Change 1 to Chapter 6 of the CRPS, 2021.

that gloss. If not, then arguably no unanticipated development would ever be consistent with the balance of the NPS-UD provisions. It is not appropriate to read the provisions of the NPS-UD so strictly as to render the mechanism in Policy 8 nugatory.

37.3 The evidence of Mr Walsh and the legal submissions have carefully stepped through the most relevant provisions of the NPS-UD and demonstrated that the proposal can and will be consistent with these.

37.4 In respect of Mr Schulte's comment on Policy 6 of the NPS-UD, this is clearly a relevant policy for the proposed rezoning and we note that one of the matters under that policy (which decision-makers must have particular regard to when making planning decisions that affect the urban environment) is subclause (d): "*any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity.*" As demonstrated by the evidence, the rezoning would contribute significantly to this limb of Policy 6, and therefore the Panel must have particular regard to this subclause, along with the other matters listed in Policy 6.

Objective 3

38 Mr Schulte discusses Objective 3 from paragraph [46] of his submissions.

39 Objective 3 directs that "*district plans enable more people to live in... areas of an urban environment in which one or more of the following apply*". We say that each of the limbs of Objective 3 are met by the proposal (noting that only one need to be met) as the site is:

39.1 in an area that is in or near a centre zone or other area with many employment opportunities:

- (a) 'Near' is not defined in the NPS-UD, nor has anyone as part of this process (or other processes so far as we are aware) attempted to define this. It clearly means something different to 'adjacent'.
- (b) Mr Willis in the s 42A report considers Ōhoka is not "*particularly 'near' to Kaiapoi, Rangiora or Christchurch*" and then just leaves it at that. There is no analysis to support this assertion.
- (c) The Submitters say the proposed rezoning does meet this limb of the objective because:
 - (i) 'Centre zone' is defined in the NPS-UD as including a Local Centre Zone (LCZ). The rezoning proposal is not just a housing proposal because it includes the provision of an LCZ within the proposed rezoning with the

Schulte on Objective 3: [46]-[55]

Our legal subs on Objective 3: **footnote 21**

Section 42A report on the Objective 3: [236] - [246]

specific aim of being consistent with this limb of the objective.

- (ii) In Mr Walsh's view Ōhoka is near other areas with many employment opportunities such as Kaiapoi (approx. 7.5km away), Rangiora (approx. 9 km away), and Christchurch City (approx. 13km away). Noting that as set out in the supplementary evidence of Mr Jones and the evidence of Mr Davidson, Ōhoka's proximity, in particular to Christchurch City and the international airport, is one of the drivers to demand for housing in Ōhoka.

39.2 in an area that is well-serviced by existing or planned public transport:

- (a) A frequent connected bus service for 10 years is proffered as part of the rezoning proposal. To this extent, the land will be well serviced by planned public transport as it is now a requirement of the proposal. The reference to 'public' is to the ability of any member of the public to access the service rather than it being provided by a public authority. Accessibility is enhanced by the fact it is proposed to be free, or otherwise integrated with ECan's existing service.

39.3 there is high demand for housing or for business land in the area, relative to other areas within the urban environment:

- (a) This has clearly been demonstrated in the evidence of Mr Akehurst, Ms Hampson, Mr Jones, and Mr Davidson.
- (b) There is a clear demand for housing outside of the three main towns in the Waimakariri which is currently not being met and which is cannot be substituted for capacity within the three main towns.

40 On this last point relating to high demand in the area relative to other areas, it is submitted that:

40.1 On the evidence of the Submitters' economists (and we understand other economists acting for submitters on the PDP), the WCGM22 overestimates capacity in the district and therefore based on demand projections, there is a shortfall of capacity to meet demand for the district in the medium-term. In other words, the Council is not meeting its obligations under Policy 2 of the NPS-UD.

Our legal subs on Policy 2 and the requirement to provide sufficient development capacity:
[76]-[95]

40.2 The evidence of Mr Akehurst demonstrates clearly that there is demand for residential development capacity within Greater Christchurch outside of the three main Waimakariri District towns, and that at present, there is insufficient development capacity to meet this demand in both the medium and long terms.

40.3 We understand that Mr Yeoman is of the view that the NPS-UD does not require Councils to provide development capacity to meet specific locational demands.¹¹ This is not correct on a plain reading of the NPS-UD, the following provisions of the NPS-UD do not support Mr Yeoman's interpretation and clearly contemplate a 'locational' element to the provision of capacity to meet demand:

- (a) Objective 3 requires district plans to enable more people to live in "*areas of an urban environment*" where "*there is high demand for housing... relative to other areas within the urban environment*".
- (b) Clause 3.24(1)(b) which requires housing demand assessments to estimate demand in different 'locations'.
- (c) Clause 3.25(2)(a) which requires that within housing demand assessments the development capacity must be quantified as numbers of dwellings "*in different locations, including in existing and new urban areas.*"
- (d) Clause 3.2(a) requires a local authority to provide sufficient development capacity in '*existing and new urban areas*', and Map 2 of the Spatial Plan identifies a range of locations, including Ōhoka as an existing urban area.

40.4 We also understand that, irrespective of this, Mr Yeoman is of the view that the demand being demonstrated by Mr Akehurst can be accommodated through capacity in the three main towns. As we have discussed earlier, the evidence of Mr Jones, Ms Hampson and Mr Davidson does not support this view, and Mr Yeoman has not provided any evidence to support his bold assertions.

Objective 4

41 With respect to Objective 4, Mr Schulte at paragraphs [57]-[59] questions what 'needs' are being met by the proposed rezoning in the context of this Objective.

Our legal subs on location specific development capacity: [96]-[105]

Schulte on Objective 4/amenity: [56]-[60]

Our legal subs on Objective 4/amenity: [152]-[159]

¹¹ Evidence of Mr Yeoman, at paragraph [5.16].

- 42 When the NPS-UD is read as a whole, the 'needs' referred to in this objective must be taken to mean the demands for housing in this western part of the District, outside of the main townships, which are not currently met (refer to Objective 3(c) and Policy 1(a)(i) of the NPS-UD), as evidenced by Mr Akehurst, Ms Hampson, Mr Jones, and Mr Davidson.
- 43 Mr Schulte, at paragraph [103] of his submissions, notes Mr Knott's view that the proposed rezoning goes beyond the level of change anticipated/authorised by Objective 4 and Policy 6 of the NPS-UD.
- 44 Neither Mr Knott, nor Mr Schulte, have defined at what point change reaches their alleged threshold. Further, on a plain and ordinary meaning of the NPS-UD there is no suggestion at all that 'changes' in respect to amenity values are only appropriate or anticipated up until a certain point.
- 45 Mr Knott is reading words into the NPS-UD that aren't there and that cut across the intention of the NPS-UD which encourages proposals which are of significant scale including new areas in and near existing areas which will necessarily carry with them significant change to the existing area.
- 46 In respect of the issue of maintenance of the existing character of Ōhoka, it is submitted that:
- 46.1 Proposed SD-O2 and SETZ-O1 of the PDP must relate to the anticipated character in the PDP, and not the current level and composition of development. Noting that the proposed SETZ zoning allows for allotments with a minimum area of 600m². This in itself would not 'retain' the currently experienced character of the settlement either. The requested rezoning simply seeks to expand the same zone south of the existing settlement.
- 46.2 Should the rezoning request be approved, it would then form part of the 'existing character' in SD-O2 and SETZ-O1, as this would be the anticipated character enabled for Ōhoka by the District Plan.
- 46.3 The PDP process provides for comprehensive consideration of all the planning provisions for the district within the legislative context, and with any necessary consequential changes. In this sense, the proposed provisions are not yet set in stone. The Panel has full discretion to amend these provisions as appropriate based on:
- (a) Submissions on these provisions; and
- (b) The consistency of these provisions against other, higher-order planning documents such as the NPS-UD.
- 46.4 If proposed provisions SD-O2 and SETZ-O1 did in fact require retention of the currently experienced level of

Section 42A report on Objective 4/amenity: **[118]-[119], [247] and [307]-[319]**

development and character for settlements then the minimum allotment size for the SETZ zone would need to be substantially increased. In any case this would not be giving effect to the clear direction in the NPS-UD that change is acceptable and should not be arbitrarily precluded, in the sense that this would result in certain urban areas of the district being locked or frozen in time.

46.5 Ultimately, whether or not the Panel find on the evidence that there will be a change to the character of Ōhoka (whether that be existing or anticipated) does not in and of itself preclude the proposed rezoning.

Objective 6

47 Mr Schulte submits that there is little said of subclauses (a) and (b) of Objective 6, and that the Submitters emphasise primarily the direction to be responsive in subclause (c).

Schulte on Objective 6: **[61]-[66]**

48 Mr Schulte is not correct. The legal submissions and the evidence of Mr Walsh, set out how the proposal meets each of the limbs in Objective 6 in detail. In summary:

Our legal subs on Objective 6: **[43]-[47]**

48.1 In terms of subclause (c), the evidence demonstrates the proposed rezoning would supply significant development capacity.

Section 42A report on Objective 6: **[248]-[260]**

48.2 Subclause (a) needs to be read together with subclause (c) which requires decisions to be integrated with infrastructure planning and funding. To this end:

- (a) A proposal must demonstrate that it is at least viable for it to integrate, in time, with infrastructure planning and funding decisions.
- (b) Objective 6 requires infrastructure planning and funding decisions to themselves be responsive to proposals that would supply significant development capacity.
- (c) It would not be responsive and would not be in accordance with the NPS-UD, to decline proposals that would supply significant development capacity simply on the basis that they are not integrated with current infrastructure planning and funding documents as that would be circular and would render the NPS-UD nugatory.
- (d) The evidence demonstrates it is viable for the rezoning to be serviced by planned (noting this could be in the future) and funded infrastructure (noting the various funding mechanisms discussed in our legal submissions).

48.3 Subclause (b) requires the proposed rezoning to be strategic over the medium and long term. The proposed rezoning achieves this as:

- (a) There is an identified shortfall in capacity in the medium and long terms, and the proposal would contribute significantly to development capacity to meet this shortfall;
- (b) The site is located adjacent to an identified "existing urban area" within the Greater Christchurch urban environment with relatively few constraints to development when compared to other land across the District; and
- (c) The Proposal would contribute to the Greater Christchurch urban environment and would significantly improve the amenities and facilities of the existing Ōhoka urban area (including, for example, through the provision of public transport to the area which would not have occurred otherwise).

48.4 Mr Schulte does not engage with this analysis, nor does he provide any additional analysis on why he considers the proposal would not meet, in particular, the requirement to be "strategic over the medium term and long term" in subclause (c).

Clause 3.8(2)(b) – well connected along transport corridors

49 Mr Schulte at paragraphs [75]-[82] submits that the proposed rezoning is not well-connected along transport corridors.

50 Mr Schulte quotes a part of the MfE Guidance, we note however, the Guidance also states:

"The responsive planning policy can be applied to brownfield and greenfield locations. Being well connected along transport corridors will be achieved differently depending on the development's location and the existing and planned transport infrastructure. For example, a plan-change proposal in a brownfield location may already be well connected to the public transport network, whereas a greenfield location may require investment to ensure the area is well connected along transport corridors."

"Plan changes for urban development initiated under this policy should ensure the development is (or has clear and realistic plans to be) well connected to jobs and amenities along transport corridors."

"To trigger the responsiveness policies, the proposed development needs to be well connected along transport corridors. Ideally, the transport corridors should be connected via a range of transport modes or there should be plans for this in the future. At a minimum, the corridors should be designed to allow for a range of modes in the future."

Schulte on the Urban Environment:
[75]-[82]

Our legal subs on well-connected: [63]-[64]

51 The implication from Mr Schulte’s submission that the use of the present tense “is” requires that the connections should already exist is not supported on a purposive reading of the NPS-UD which he sets out at paragraphs [7]-[12] of his own submissions. These connections can also be planned for, or provided as part of, the proposal. The proposal, on the evidence, has demonstrated that it is along road corridors that will provide for a range of transport modes in the future, including by way of active and public transport, noting:

51.1 The site is located along a cycleway planned in the Council’s Walking and Cycling Network Plan; and

51.2 The proposal provides for a frequent public transport service for 10 years.

Significance in development capacity

52 Mr Schulte at paragraph [92] refers to the proposed timing and staging of the land and implies that because of the staging, the development may not be significant, and should not be given particular regard to.

Schulte on the significance of development capacity: [87]-[98]

53 Timing of a development is clearly a relevant consideration in determining its significance, and we discussed this in our legal submissions at paragraph [127.9].

Our legal subs on the significance of development capacity: [119]-[128]

54 We point out that, and as set out in the evidence of Mr Carter, the delivery of the first stage of the development will commence as soon as possible and is expected to be built and occupied by 2028, with the final stages estimated to be built and occupied by 2038-2040.

Section 42A report on the significance of development capacity: [262]-[272]

55 We say it is the commencement of development that is important in terms of considering significance of development capacity. Development will start as soon as reasonably possible.

56 Further, as is the case here, staging of development over a number of years does not take away from the significance of development capacity being provided given the evidence demonstrates the capacity will be required in the medium to long term.

Note on wastewater servicing

57 Mr Schulte at paragraphs [65], [90] takes issue with the temporary proposal by the Submitters that the rezoning could utilise the available existing capacity in the Mandeville to Rangiora pipeline. We clarify that the Submitters’ evidence demonstrates that this is not required in order to service the site for wastewater, but is simply one possibility for connection to wastewater in the short-term interim period while only a few lots

have been developed in the first stages and the site's dedicated wastewater mains are being constructed.¹²

- 58 We note Mr Roxburgh for the Council accepts that the site can be feasibly serviced for wastewater and that the details of this can be determined by consent conditions at the subdivision application or engineering approval stage. Mr Willis agrees (at paragraph [101] of the section 42A report).

¹² Evidence of Mr McLeod, at paragraph [21].