Before the Independent Hearings Panel
at Selwyn District Council

under: the Resource Management Act 1991

in the matter of: Proposed private plan change RCP31 to the Operative Waimakariri District Plan

and: **Rolleston Industrial Developments Limited**
Applicant

Opening legal submissions for Applicant

Dated: 3 August 2023

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OPENING LEGAL SUBMISSIONS FOR APPLICANT

INTRODUCTION

1 These legal submissions are made on behalf of Rolleston Industrial Developments Limited (*RIDL,* the *Applicant*) in relation to its request (*PC31*) to the Waimakariri District Council (the *Council*) to change the Operative Waimakariri District Plan (the *District Plan*) to rezone approximately 156 hectares of rural zone land at Ōhoka.

2 The core issue in determining this application is the proper interpretation of the National Policy Statement on Urban Development 2020 (*NPS-UD*). These legal submissions will largely focus on this matter, as well as legal issues relating to the following:

2.1 considerations around the timing of the provision of infrastructure;

2.2 the application (or not) of the National Policy Statement for Highly Productive Land (*NPS-HPL*); and

2.3 the potential for groundwater interception to give rise to a consenting issue.

3 It does however need to be emphasised at the outset that the application of the NPS-UD is as much an evidential matter as a legal matter. These submissions do not try to repeat all aspects of the relevant evidence which assess the proposal against that document.

THE CONTEXT IN WHICH THIS PROPOSAL IS TO BE DECIDED

4 PC31 comes at a time when New Zealand's objectives, driven by Central Government in response to an acute housing crisis, are:

4.1 to enable more people to live in urban environments which are capable of developing and changing over time in response to the diverse and changing needs of people, communities, and future generations;[1]

4.2 to improve housing affordability by supporting competitive land and development markets;[2]

4.3 to be responsive to urban development particularly where this supplies significant development capacity;[3]

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[1] NPS-UD, Objectives 3 and 4.

[2] NPS-UD, Objective 2.

[3] NPS-UD, Objective 6.

4.4 to ensure that at all times there is at least sufficient development capacity to meet the expected demand for housing and business land all the way out through to the long term.[4]

5 Through a more micro lens, PC31 is being determined in the context of a District that is not currently meeting the above objectives and that is required by legislation to act now by being responsive to plan changes which address the problem.

THE PROPOSAL ITSELF

6 PC31 would enable up to 850 residential sites, two small commercial zones, and provision for a school and retirement village. It is directly aligned and consistent with the objectives and national direction noted above.

7 PC31 is not just a residential subdivision proposal. It is a carefully considered and designed master plan development. Great care has been made to ensure that PC31 integrates with and enhances the existing Ōhoka village, including through:

7.1 additional commercial retail facilities that cater for local convenience shopping and services with potential for work and office spaces;

7.2 off-street parking;

7.3 a 106-stall park n ride facility for public transport;

7.4 a hardstand area that could cater for the local farmers' market in the winter season;

7.5 approximately 850 residential units, as well as a possible primary school, retirement village and a polo field and associated facilities;

7.6 a substantial blue-green network that provides opportunities for movement, recreation, and the ecological enhancement of waterways, open green spaces and riparian margins; and

7.7 a well-connected network of multi modal movement and high amenity streets and public facilities that complements the existing setting.

8 The Applicant has taken the time to read the submissions of the community and absorb feedback from these, and as a result proposed bespoke rules and Outline Development Plan (*ODP*)

[4] NPS-UD, Policy 2.

package which address concerns raised by the Council and submitters.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT

9 The most relevant NPS-UD Objectives to the PC31 proposal state:

> ***Objective 3:*** *Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*
>
> *(a) the area 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 high demand for housing or for business land in the area, relative to other areas within the urban environment.*
>
> ***Objective 4:*** *New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.*
>
> ***Objective 6:*** *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.*
>
> [emphasis added]

10 To achieve the objective[5] of enabling more people to live in areas which might previously have been unanticipated and therefore avoided, the NPS-UD has opened the doors to the previously strict regime for the rezoning of greenfield land in the Canterbury Regional Policy Statement (*CRPS*) and District Plans.

11 The NPS-UD directs a **responsive** approach to plan changes that will add significantly to development capacity and contribute to well-functioning urban environments even if unanticipated or out-of-sequence compared to that provided for planning documents such

[5] NPS-UD, Objective 3.

as the CRPS and the Waimakariri District Plan. It is the only reason applications like this plan change are able to be pursued in Canterbury.

12 As Policy 8 of the NPS-UD states:

> ***Policy 8:*** *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*
>
> *(a) unanticipated by RMA planning documents; or*
>
> *(b) out-of-sequence with planned land release*

13 The requirements set out in the Objective 6(c) and Policy 8 and relevant wider provisions of the NPS-UD are discussed in detail in these submissions.

What is the 'urban environment' for the purposes of the NPS-UD, and does this include Ōhoka?

14 Council evidence and various submitters have commented on whether Ōhoka (and this application) should be considered an 'urban environment' for the purposes the NPS-UD. This question goes to the core of whether the NPS-UD applies to PC31 essentially as a threshold question.

15 To summarise:

15.1 **Mr Willis** considered at the time of writing his section 42A report that insufficient evidence had been provided assessing the application of the definition of 'urban environment' to Ōhoka. **Mr Willis** also notes **Mr Yeoman's** views that Ōhoka and Mandeville (and therefore PC31) does not form part of the Greater Christchurch 'urban environment'. Despite these observations **Mr Willis** appears to have the view that it is likely that Ōhoka forms part of the 'urban environment'.[6]

15.2 **Mr Yeoman** considers the definition of 'urban environment' in the NPS-UD is ambiguous. His view is that 'on balance' Ōhoka and Mandeville are not part of the Greater Christchurch urban environment but he also appears to accept that it is difficult to form a definitive opinion.

15.3 **Ms Mitten** for the Regional Council acknowledges **Mr Willis'** uncertainty but for the purposes of her evidence has treated

[6] Section 42A report, at 7.3.13.

Ōhoka as being part of the urban environment for the purposes of the NPS-UD; and

15.4 **Mr Boyes** for the Council (as submitter) acknowledges that determining the 'urban environment' requires consideration at a larger scale than the immediate area but appears to want to hear more evidence on the issue. **Mr Boyes'** discussion also considers how PC31 'dominates' the existing Ōhoka village - but it is not clear what relevance this issue has to the interpretation exercise of whether Ōhoka forms part of an 'urban environment'.

16 While these witnesses all seek "additional evidence" on this point, the issue is actually just one of proper interpretation of the NPS-UD and other relevant documents.

17 'Urban environment' is defined in the NPS-UD:

> *means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:*
>
> *(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*

18 This is an extremely broad definition. In fact, 'urban environment' is defined so broadly that it appears to encompass a number of varying and overlapping urban environments. A plain and ordinary meaning indicates that:

18.1 the term can apply over large areas rather than discrete settlements;

18.2 the words 'predominantly urban' anticipate there will be areas of rural and open space that fall within the broad definition.

18.3 similarly 'part of a market' anticipates areas forming a component of a market rather than areas of a market within themselves.

19 In considering the application of the NPS-UD in this case, PC31 is pursued on the basis that the urban environment is the Greater Christchurch area which includes Ōhoka.

20 This interpretation is consistent with other recent plan changes and review processes in the Greater Christchurch area where the Regional Council has confirmed in legal submissions and evidence that the relevant 'urban environment' for the purposes of the NPS-

UD is Greater Christchurch (also consistent with **Ms Mitten's** evidence in this hearing).[7]

21 To expand further:

21.1 the NPS-UD Appendix, Table 1, defines "Christchurch" as a Tier 1 urban environment comprising of the Canterbury Regional Council, Christchurch City Council, Selwyn District Council, and Waimakariri District Council as its Tier 1 local authorities.

21.2 The CRPS requires that "at least sufficient development capacity" for housing is enabled in the Greater Christchurch urban environment and states explicitly that the Greater Christchurch area shown in Map A is the Tier 1 urban environment for the purposes of the NPS-UD;[8]

21.3 Our Space states at page 6 that the relevant urban environment for the purpose of the NPS-UDC[9] was Greater Christchurch. The NPS-UDC was the precursor for the NPS-UD;

21.4 the draft Greater Christchurch Spatial Plan which provides a blueprint for residential and business growth for the Greater Christchurch area notes that "it satisfies the requirements of a future development strategy under the NPS-UD" and that this includes setting out how well-functioning urban environments are achieved, and how sufficient housing and business development capacity will be provided to meet expected demand over the next 30 years:[10]

(a) future development strategies are required under the NPS-UD to be prepared by every Tier 1 local authority for the Tier 1 urban environment – it is submitted this must be Greater Christchurch; [11] and

(b) although it is acknowledged that one of the purposes of a future development strategy is to "*achieve well-functioning urban environments*" (emphasis on the

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7 Evidence of Keith Tallentire on behalf of Canterbury Regional Council and Christchurch City Council in respect of Plan Change 73 to the Operative Selwyn District Plan at footnote 6 and paragraph 57; Evidence of Keith Tallentire on behalf of Canterbury Regional Council and Christchurch City Council in respect of Plan Change 67 to the Operative Selwyn District Plan at footnote 6 and paragraph 57.

8 Canterbury Regional Policy Statement, Policy 6.2.1a - Principal reasons and explanation

9 National Policy Statement on Urban Development Capacity 2016.

10 Page 23, draft Greater Christchurch Spatial Plan 2023.

11 NPS-UD, clause 3.12.

plural), this again demonstrates the point that there could be and are varying and overlapping urban environments at play here.

21.5 one of the core duties of the Greater Christchurch Partnership is to manage urban growth in a strategic manner for Canterbury.

22 In this context the term 'urban environment' in the NPS-UD being referenced to Greater Christchurch is the only interpretation which makes sense. In the alternative, were a narrow interpretation adopted, that for example only included specific existing townships that would be to ignore how urban Canterbury functions, and would be contrary to the intent of the NPS-UD in that it would prevent responsiveness and prevent local authorities from adapting to emerging issues, such as climate change.

23 Turning to Ōhoka itself, Ōhoka is part of the Greater Christchurch urban environment (and this is the relevant urban environment under the NPS-UD) - and is itself an urban environment - on the basis that:

23.1 Chapter 15 (Urban Environments) of the District Plan states:

> *"The urban environment covers all the settlements. This includes Rangiora, Kaiapoi, Ravenswood, Oxford, Woodend and Pegasus, the beach settlements and small towns of Ashley, Sefton, Cust, Ōhoka and Tuahiwi."*

23.2 in the Proposed Waimakariri District Plan (notified post the NPS-UD), the definition for 'urban environment' is the same as that in the NPS-UD and goes on to specifically include Ōhoka:

> *"For Waimakariri District, the urban environment described in (a) and (b) comprises the towns of Rangiora, Kaiapoi, Woodend (including Ravenswood), Pegasus, Oxford, Waikuku, Waikuku Beach, The Pines Beach, Kairaki, Woodend Beach, the small towns of Ashley, Sefton, Cust, Ōhoka, Mandeville, and all Large Lot Residential Zone areas and Special Purpose Zone (Kāinga Nohoanga)."*

and

23.3 Greater Christchurch urban area map (or Map A) shows the Ōhoka as an 'existing urban area'. While the Greater Christchurch urban area map was created for different purposes prior to the NPS-UD, it is now used by the Greater Christchurch Partnership to determine compliance with the NPS-UD.

23.4 The evidence of **Ms Mitten** demonstrates this when she states that Plan Change 1 to Chapter 6 (which implements the actions of Our Space 2018-2048 and by among other things inserting Map A of the Greater Christchurch urban area) was intended to give effect to requirements in the NPS-UD.[12]

24 With respect to **Mr Yeoman's** point that the various Tier 1 Councils have proposed a spatial extent of their urban environments in their intensification streamlined planning processes (*ISPPs*) required under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the *Enabling Act*), he appears to be implying that because Ōhoka was not included in the notified scope of the ISPP for Waimakariri it cannot therefore be an urban environment. This is not correct:

24.1 the ISPPs are for the purposes of providing for the Medium Density Residential Standards (*MDRS*) under the Enabling Act, and not for the purposes of the NPS-UD. The Enabling Act, in brief, mandates specified Councils to incorporate the MDRS into every 'relevant residential zone'.

24.2 'Relevant residential zone' is defined in the Enabling Act as:

> *relevant residential zone—*
>
> *(a) means all residential zones; but*
>
> *(b) does not include—*
>
> *(i) a large lot residential zone:*
>
> *(ii) 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:*
>
> *(iii) an offshore island:*
>
> *(iv) to avoid doubt, a settlement zone*

24.3 the Council in its section 32 report for the ISPP appears to conflate the definition of 'relevant residential zones' with the definition of 'urban environment' in Waimakariri. That is incorrect and conflates two different definitions in two different pieces of legislation with different purposes.

[12] Evidence of **Ms Mitten**, at [62].

25 In summary, the NPS-UD does apply to PC31 because Ōhoka forms part of the Greater Christchurch Urban Environment.

Responsive planning under the National Policy Statement for Urban Development 2020

26 Objective 6 and Policy 8 of the NPS-UD establish what is now referred to as the "responsive planning framework".

27 One of the key issues for the Commissioners to determine is whether the plan change can be approved, given the objective in the CRPS directing that urban development falling outside of the greenfield priority areas is to be 'avoided' (Objective 6.2.1.3).

28 The question that is to be asked is how the CRPS is to be interpreted in light of the higher order and later in time NPS-UD? In more detail, this question needs to address how the express CRPS reference to "avoid" with respect to development outside areas identified in Map A when the NPS-UD contains Objective 6 and Policy 8 which require a "*responsive*" planning approach to out-of-sequence and unanticipated development.

29 As with any interpretive exercise where two pieces of legislation might look on their face to be in conflict with each other it is important to start with basic principles of statutory interpretation.

Principles of statutory interpretation

30 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase.[13]

31 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):[14]

31.1 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;

31.2 the language must be given its plain and ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan, have taken from" the planning document;

31.3 the interpretation should not prevent the plan from achieving its purpose; and

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

[14] *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

31.4 if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

32 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise. Where that meaning, however, creates an anomaly, inconsistency, or absurdity (such as is the case here where there is possible conflict between two pieces of legislation with one saying "avoid" and the other saying "be responsive") other principles of statutory interpretation must be considered to help shed light on how a planning document should properly be interpreted. We touch on some of those relevant concepts now.

33 It is widely accepted that the RMA provides for a three tiered management system – national, regional and district. This establishes a 'hierarchy' of planning documents:[15]

33.1 first, there are documents which are the responsibility of central government. These include National Policy Statements. Policy statements of whatever type state objectives and policies, which must be "given effect to" in lower order planning documents.

33.2 second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans; and

33.3 third, there are documents which are the responsibility of territorial authorities, specifically district plans.

34 Therefore, subordinate planning documents, such as a regional policy statement, must give effect to National Policy Statements. This is expressly provided in section 62(3) of the RMA. The Supreme Court has held that the "give effect to" requirement is a strong directive[16] and that the notion that decision makers are entitled to decline to implement aspects of a National Policy Statement if they consider that appropriate does not fit readily into the hierarchical scheme of the RMA.[17] The requirement to "give effect to" a National Policy Statement is intended to constrain decision makers.[18]

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

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

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

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

35 Where there is an apparent inconsistency between two documents, particularly where one is a higher order document, the Courts will first seek to reconcile this inconsistency and allow the two provisions to stand together.[19]

36 Where two provisions are totally inconsistent (such that they cannot be reconciled in a way that they can be read together), then it is appropriate to consider whether the doctrine of implied repeal applies. The doctrine provides that a provision that is later in time, impliedly repeals the earlier inconsistent provision. It is however a doctrine of last resort and should only be applied where all attempts at reconciliation fail.[20]

The extent of inconsistency between the CRPS and the NPS-UD

37 Objective 6.2.1.3 of the CRPS provides:

> *Recover, rebuilding and development are enabled in Greater Christchurch through a land use and infrastructure framework that: […]*
>
> *3. avoids urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS;*

38 Read in a vacuum, the objective provides that decision makers must not allow urban development outside of existing urban areas or the greenfield priority areas identified in Map A.

39 However adopting this interpretation of the CRPS would not reconcile the CRPS with Objective 6 and Policy 8 of the NPS-UD and would lead to the type of problems identified by the Court in *Powell* as the NPS-UD would be undermined. Namely, the interpretation would be contrary to the very purpose of Objective 6 and Policy 8, would prevent the NPS-UD from achieving its purpose and would interpret the word "*avoid*" outside the proper legislative context of reading the CRPS and the NPS-UD together.

40 Objective 6 and Policy 8 provide that:

> ***Objective 6:*** *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*

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19 *R v Taylor* [2009] 1 NZLR 654.

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

> *(c) responsive, particularly in relation to proposals that would supply significant development capacity.*
>
> ***Policy 8:*** *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*
>
> *(a) unanticipated by RMA planning documents; or*
>
> *(b) out-of-sequence with planned land release.*

41 Or, to put this another way - a rigid interpretation of the word "avoid" in the CRPS would practically prevent local authorities from being responsive in the way required by the NPS-UD, as it would prevent them from even considering the merits of a plan change that might otherwise add significantly to development capacity and contribute to well-functioning urban environments (i.e. the criteria for Policy 8 NPS-UD), despite such areas falling outside of greenfield priority areas.

42 This is further affirmed by the Ministry for the Environment's guide on understanding and implementing the responsive planning policies (the *MfE Guide*) which states that:

> "***Objective 6(c) recognises local authorities cannot predict the location or timing of all possible opportunities for urban development. It therefore directs local authorities to be responsive to significant development opportunities when they are proposed.*** *[…]*
>
> *Expected outcomes*
>
> ***The responsive planning policy in the NPS-UD limits a local authority's ability to refuse certain private plan-change requests without considering evidence.*** *This is because Policy 8 requires local authorities to make responsive decisions where these affect urban environments****. Implementing this policy is expected to result in more plan-change proposals being progressed where they meet the specified criteria*** *(see section on criteria below).* ***This will likely lead to proposals being brought forward for development in greenfield (land previously undeveloped) and brownfield (existing urban land) locations, which council planning documents have not identified as growth areas.*** *[…]*
>
> *Local authorities may choose to identify in RMA plans and future development strategies where they intend:*
>
> - *development to occur*

- *urban services and infrastructure to be provided.*

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

[emphasis added]

Reconciling the inconsistency?

43 It is necessary, as a matter of interpretation, to first attempt to try and reconcile the inconsistency between the two documents before reverting to the issue of implied repeal as a matter of last resort.

44 In this context, it is relevant that:

44.1 the NPS-UD provides a clear national level direction to enable development capacity and is therefore a higher order document than the CRPS in terms of the resource management hierarchy; and

44.2 the NPS-UD is also the most recent in time planning document. While PC1 to the CRPS did in part give effect to the NPS-UD this was not in relation to Policy 8 where it was noted[21] more work would be required to give full effect to the responsive planning framework established by the NPS-UD.

45 In light of this, it appears it is appropriate to 'read down' or 'soften' the interpretation of 'avoid' in the CRPS to give effect to the NPS-UD by grafting a further limited exception onto the objective but only in those limited circumstances where a development would meet the NPS-UD because it adds significantly to development capacity and contributes to a well-functioning urban environment.

46 Therefore, read in light of the NPS-UD, the objective in the CRPS should now be read as meaning "*except if otherwise provided for in the NPS-UD, avoid…*" or "*unless expressly provided for in the CRPS or by Objective 6 and Policy 8 of the NPS-UD*."

47 Further, the NPS-UD requires local authorities to give effect to it "*as soon as practicable*".[22] This interpretation of the CRPS (i.e. in light of the NPS-UD) requires the District Council to give effect to Objective 6 and Policy 8 even though the CRPS has not formally amended its wording yet. This is especially so given that an amendment to the CRPS is unlikely to occur for some time.

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[21] Report to Minister for the Environment on Proposed Change 1 to Chapter 6 of the CRPS, March 2021, Environment Canterbury at [133]

[22] NPS-UD, clause 4.1(1).

48 Finally, we note that clause 3.8(3) of the NPS-UD requires that regional councils are to include criteria in their RPS for determining what plan changes will be treated, for the purpose of implementing Policy 8, as "*adding significantly to development capacity*". This criteria has not yet been added to the CRPS and we would expect this to also be covered in ECan's intended review of the CRPS which is understood to not be notified until December 2024.

49 Nevertheless these criteria are not required for local authorities to give effect to Policy 8 in the interim (i.e. prior to the criteria being developed) and it is appropriate for a decision maker to consider whether a particular plan change would add significantly to development capacity on a case by case basis. This will necessarily involve hearing evidence on that topic from applicants and individual submitters. To date a number of plan changes have been approved after evidence has been given on this issue.

PC31 and the responsive planning framework

50 Having demonstrated that the responsive planning framework in the NPS-UD does apply to PC31 and that it is not precluded by the avoid objective in the CRPS, these submissions go on to consider whether this particular plan change would meet the NPS-UD by:

50.1 Adding significantly to development capacity; and

50.2 Contributing to well-functioning urban environments.

51 It is clear that this plan change is unanticipated by RMA planning documents, and is out-of-sequence in relation to planned land releases – in short, if it was anticipated or planned, it would have been identified in Map A of the CRPS and in the District Plan. Therefore the responsive planning framework is invoked and a decision maker must take it into account.

Well-functioning urban environment

52 Under Policy 8, the question of whether the development would "contribute to a well-functioning urban environment" must be considered.

53 A well-functioning urban environment is defined (in minimum terms) in Policy 1 to the NPS-UD and each of these points are covered in the evidence of the various experts on behalf of the Applicant which we will hear over the coming days, including with regard to:

53.1 enabling a variety of homes that meet the needs, in terms of type, price, and location, of different households;

53.2 enabling a variety of sites that are suitable for different business sectors in terms of location and site size;

53.3 having good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;

53.4 supporting, and limiting as much as possible adverse impacts on, the competitive operation of land and development markets; and

53.5 supporting reductions in greenhouse gas emissions, and being resilient to the current and future effects of climate change.

54 In this regard, Policy 8 requires PC31 to *contribute* to an existing well-functioning environment, and the list of matters in Policy 1 are not a criteria which must each be met by one particular proposal, but rather it is necessary to demonstrate that the proposal would contribute to at least one of those matters, and not substantially detract from the other matters (i.e. a balancing exercise). In any case, the Applicant's case is that PC31 would contribute to all of these criteria.

55 The Applicant's evidence demonstrates that PC31 will provide for a well-functioning urban environment and that evidence is not repeated here – albeit with further comment in respect of greenhouse gas (*GHG*) emissions and climate change considerations of well-functioning urban environments.

Greenhouse gas emissions

56 The section 42A report states that it has not been demonstrated that PC31 *will* support a reduction in GHG emissions. The evidence of **Mr Farrelly** identifies that the NPS-UD requires planning decisions to *contribute* to well-functioning urban environments, which are environments that "*support reductions in greenhouse gas emissions*" (Policy 1(e)).[23]

57 It is **Mr Farrelly's** expert opinion that, when considering the GHG emissions of a proposed development or land change, it is appropriate to consider the life-cycle emissions of the proposed development, and the net change in emissions compared to the emissions arising from the current land use.[24] **Mr Farrelly** also notes that the NPS-UD does not specify a geographical boundary in which the effect of greenhouse gas emissions should be considered.[25]

58 **Mr Farrelly** considers that that GHG assessments should be based primarily on how the development's net life cycle emissions (that is an evaluation of emissions before and after the development)

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[23] Evidence of **Mr Farrelly** at [29].

[24] At [30].

[25] At [31].

compares to alternative comparable development options within New Zealand, as opposed to whether the development, in and of itself reduces GHG emissions.[26]

59 **Mr Farrelly's** evidence identifies that:

59.1 greenhouse gas emissions, primarily methane, are currently being emitted from through the dairy farming land use occurring on the PC31 land;

59.2 these emissions are equivalent to electricity usage in 1,324 Canterbury households, or 5.1 million vehicle kilometres in a typical vehicle;[27]

59.3 the most significant source of emissions in New Zealand over a person's lifetime will be energy usage, followed by building materials;

59.4 PC31 envisages housing development that is lower in emissions compared to multi-story apartments, due to the nature of the building materials;

59.5 measures to reduce lifetime energy emissions include specification of energy efficient homes, the elimination of natural gas/LPG in developments, and encouraging a high uptake of solar PV panels; and

59.6 if a prospective buyer in is unable to find a suitable property in Ōhoka, they are likely to buy a similar property that may be further from Christchurch, resulting in a potentially worse outcome compared to PC31.

60 **Mr Farrelly** concludes that PC31 "*supports a reduction in greenhouse gas emissions*" through the removal of dairying land use and that the Applicant has taken practical steps to support and encourage the reduction of emissions arising from the development. PC31 creates the conditions for the uptake of low carbon living.

61 Unlike the issue of private vehicle movements and public transport, these initiatives are within the control of the Applicant and, in our submission, illustrate a genuine commitment on behalf of the Applicant to supporting the outcomes envisaged for well-functioning environments under the NPS-UD.

Transport emissions

62 The section 42A report has a particular focus on transport emissions. It is common ground that there will be new emissions

[26] At [37].

[27] At [61].

from travel by residents, with mitigating factors including emerging trends in the use of electric vehicles and alternative modes of transport, ready accessibility locally to work, recreational and shopping opportunities, and increases in working from home. However, as **Mr Farrelly** notes, it is "*extremely difficult*" to model or predict the level of transport related emissions that may occur from residents, which will depend greatly on their travel requirements.[28]

63 Ōhoka is already an established residential area, in which most, if not all, of the households will depend on private vehicle movements. That is unlikely to change unless and until there is sufficient population in Ōhoka to support an improved public transport service, as outlined in the evidence of **Mr Farrelly** and **Mr Milner**. That outcome will only be achieved through the release of additional residential lots, which would also assist in addressing the current housing supply shortages.

64 The fact that there will be new emissions from travel by residents does not detract from the fact that PC31 does, in other ways, contribute to a well-functioning urban environment that supports reductions in GHG emissions. Transport emissions are not a unique issue to this application, this is an issue that requires tackling at a far higher level than a specific plan change.

Resilient to the current and future effects of climate change

65 Of note, what appears to be overlooked in the section 42A and by submitters evidence, is PC31's strategic location in on a site that is resilient to the current and future effects of climate change.

66 This is very clearly demonstrated in the various constraint maps included in the evidence of **Mr Walsh** which shows the site as one of few locations in the Waimakariri District not subject to climate change related constraints (such as high hazard flooding, and coastal hazards).

Add significantly development capacity

67 Policy 2 of the NPS-UD requires that the Council "*at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*"

68 Clause 3.2(1) of the NPS-UD provides that the Council:

> *"must provide at least sufficient development capacity in its region or district to meet expected demand for housing:*
>
> (a) *in existing urban and new urban areas;*

[28] At [89].

(b) *for both standalone dwellings and attached dwellings; and*

(c) *in the short term, medium term, and long term."*

69 The word 'sufficient' is further defined in clause 3.2(2) of the NPS-UD as:

> *"In order to be **sufficient** to meet expected demand for housing, the development capacity must be:*
>
> *(a) plan-enabled (see clause 3.4(1)); and*
>
> *(b) infrastructure-ready (see clause 3.4(3)); and*
>
> *(c) feasible and reasonably expected to be realised (see clause 3.26); and*
>
> *(d) for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22)."*

70 It is the evidence of **Mr Akehurst** that:

70.1 the Council has not identified sufficient commercially feasible and reasonably expected to be realised land to cater for anticipated growth. Primarily due to issues with both the demand projections for Waimakariri District underestimating likely urban environment growth and the capacity estimates including land unsuitable for residential development.[29]

70.2 the Council is not in fact meeting its obligations in the NPS-UD as it is not currently providing sufficient development capacity to meet residential growth plus a competitive margin in the short to medium term or the long term.[30]

71 It is therefore incumbent on the Council to resolve this non-compliance and to be responsive to plan changes which would assist in providing the required capacity, as PC31 does.

72 Having set that context, these submissions now to whether PC31 would add significantly to development capacity under Policy 8.

73 As noted above, no criteria has been incorporated into the CRPS as to what would constitute adding significantly to development capacity. However, this does not prevent the Commissioners from determining on a case by case basis, what this might mean.

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[29] Evidence of **Mr Akehurst** at [9].

[30] At [71].

74 The MfE Guidance, for example, notes that such criteria could include:[31]

74.1 significance of scale and location;

74.2 fulfilling identified demand;

74.3 timing of development (i.e. earlier than planned land release); and

74.4 infrastructure provision, specifically, the extent to which the proposal demonstrates viable options for funding and financing infrastructure required for development.

75 The MfE Guidance also notes that the criteria should not undermine competitive land markets and responsive planning by setting unreasonable thresholds and that the criteria should have a strong evidence base.

76 The evidence of **Mr Akehurst**[32] and **Mr Walsh**[33] confirm that PC31 adds significantly to development capacity. **Mr Yeoman's** report concurs with this conclusion.

77 The capacity being provided by PC31 is particularly significant in the context of the Council itself not meeting its obligations to provide sufficient development capacity. This is accepted in the evidence of **Mr Boyes** where he states:[34]

> *"In my opinion any shortfall in projected development capacity does assist PC31 in the context of whether it is considered significant in terms of what is adds to current development capacity"*

78 There is no other economic expert evidence, other than that of **Mr Yeoman** and **Mr Akehurst** on the topic of whether Council is meeting its obligations in this respect.

79 **Ms Mitten** appears to rely on the capacity assessment documents (such as Our Space 2018-2048) as her own 'expert witnesses' on this matter, but without the Commissioners hearing from the authors of those reports to determine whether there is sufficient development capacity (including the required competitiveness margin) within Selwyn, Waimakariri and Christchurch City, to meet

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

32 At [110].

33 Evidence of **Mr Walsh** at [97].

34 Evidence of **Mr Boyes** at [67].

expected housing demand, little weight can attach to such 'assertions'.

80 **Mr Willis** and **Ms Mitten** take a different view as to what is meant by 'adds significantly to development capacity'.

81 **Mr Willis** considers that the lots anticipated to be provided by PC31 are significant and would meet that requirement of the NPS-UD if established.[35] However, he then goes on to assert that in order for PC31 to significantly contribute to development capacity, the lots need to be serviced by development infrastructure.[36]

82 **Mr Willis** (at least at the time of his report) considered there was sufficient uncertainty as to whether potable water and stormwater can be provided for, and that therefore, PC31 did not give effect to Policy 8, or Objective 6 of the NPS-UD.[37]

83 In her evidence **Ms Mitten** appears to agree with **Mr Willis** in that in order to significantly contribute to development capacity, the lots also need to be serviced with development infrastructure (in accordance with the definition of 'development capacity' and 'development infrastructure' in the NPS-UD).

84 While infrastructure is a relevant consideration as to whether a proposal adds significantly to development capacity (as has been recognised in the MfE Guidance discussed above) any suggestion that such infrastructure must already exist and be available immediately 'to site' is illogical (and wrong). Rather, the test in this respect, confirmed by the MfE Guidance is whether it can be demonstrated that there are viable options for funding and financing the infrastructure required for the development.

85 The Applicant has done this for PC31, and the evidence of **Mr Bishop** for the Council is now that there are viable options for the provision of three waters infrastructure to PC31.

86 Any suggestion that infrastructure would need to be in place and available to the proposal now would contradict the entire purpose of policy 8 which is to be responsive to plan changes even if these are unanticipated by RMA planning documents, or out-of-sequence with planned land release. Unanticipated and out-of-sequence proposals are by their very nature unlikely to have the required infrastructure existing and/or immediately available.

87 Finally, **Ms Mitten's** evidence with respect to adding significantly to development capacity, goes on to agree with the statement of **Mr**

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35 Section 42A report at [7.3.68].

36 At [7.3.70].

37 At [7.3.71].

Willis that "*it has not been demonstrated that the additional capacity proposed through RCP031 is necessary in the medium or long term, nor if it can be provided given the servicing uncertainties, and based on the above analysis, conclude that the proposal will not add significantly to development capacity*". It is not a requirement of Policy 8 that a plan change must demonstrate that the capacity of a proposal must be *required* in the medium to long term, though this might be one relevant factor in this consideration, as discussed above. The NPS-UD does not prevent (but in fact encourages) the zoning of additional land above what might be considered 'sufficient' development capacity. This is clear from the direction in Policy 2 of the NPS-UD for local authorities to "*at all times, provide at least sufficient development capacity…*"

THE PURPOSE OF A PLAN CHANGE AND ISSUE OF CONSISTENCY WITH PLAN PROVISIONS

88 Having addressed the NPS-UD, these submissions in some respects take a step back and cover off the alleged inconsistency between PC31 and relevant District and Regional Plan provisions – including the CRPS.

89 At is simplest, it important at the outset to emphasise that PC31 is a plan change and not a resource consent application. The two are distinct processes under the RMA with distinct characteristics. The tests within the RMA are also different, with plan changes being considered under section 32, while resource consents are considered under section 104.

90 To this end, much of the submitter evidence goes into or seeks detail on matters which are not typically covered at the plan change stage, but rather the resource consent, or detailed design stage of a development.

91 Further, the evidence of **Mr Boyes** considers PC31 against objectives and policies of the District Plan and suggests that PC31 does not accord with these. While objectives and policies of a District Plan are a relevant consideration to a decision on a plan change, plan changes inherently will not align or fit comfortably within an existing District Plan framework. That is of course one of the key reasons plan changes are sought instead of resource consents.

92 Plan changes are an appropriate process for enabling something not currently contemplated by a District Plan and in this case the NPS-UD supports that by its specific reference in Policy 8 to "plan changes" which are "unanticipated by RMA planning documents".

93 Further, **Mr Boyes'** (and **Mr Willis'** for that matter) consideration of PC31 against the rural zone provisions of the District Plan needs

to be approached carefully. These will only be relevant to the extent that PC31 if it is established that the plan change proposal could undermine the intended outcomes of the surrounding rural zones. The evidence of **Mr Milne** is that PC31 will not adversely affect the rural characteristics valued by the community to any greater than a low-moderate degree.[38] It is also important to have the intent and purpose of the NPS-UD in mind when considering this which contemplates in Objective 4 changing urban environments in response to peoples' changing needs.

THE ENVIRONMENT AND ACCEPTABLE LEVEL OF CHANGE

94 The environment in which PC31 proposes to establish is highly relevant to this application.

95 It is asserted in much of the submitter evidence, and the section 42A report that were this plan change not to proceed, the site would remain a dairy farm. This is simply not the case, as evidenced by **Mr Jones** and Attachment G of **Mr Walsh's** evidence.

96 The reality is that the cost of this land for the use of farming is not financially viable and if it was not sold to the applicant it would likely be sold to some other developer for residential development. This is because the Rural Lifestyle Zone allows land to be subdivided down to 4ha lots as a controlled activity.

97 Changes to the environment, including to the amenity of existing residents, must be considered in this context. To that end, it is emphasised that the RMA is not a 'no effects' statute:[39]

97.1 In *Yaldhurst Quarries Joint Action Inc v Christchurch City Council* [2017] NZEnvC 165 the Court accepted that a change to amenity does not mean that there is necessarily an adverse effect on amenity values, but rather the effect of the change must be evaluated:[40]

> *"Amenity values are not solely concerned with visual amenity, although in this proceeding visual amenity is an important consideration. We are also concerned here with the effect on amenity of any change in background levels of noise, dust, vibration and the increase in volume of heavy goods vehicles. That there will be further change in the environment if the land use consent were confirmed is certain.* ***That said, change per se does not mean that there is an adverse effect on rural character or an effect on amenity values. To test the proposition that the scale***

[38] Evidence of **Mr Milne**, at [71]-[72].

[39] *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* [2013] NZHC 1346 at [52]; and *Puke Coal Ltd v Waikato Regional Council and Waikato District Council* [2014] NZEnvC 223 at [111].

[40] At [116].

***and intensity of effects will be adverse, experts need first to establish the baseline environment against which the effects are evaluated**."*

97.2 The Court went onto outline its approach for assessing amenity values, being:[41]

"(a) identify the values of people and communities. Based on the topics above this will include the attributes and characteristics of the existing landscape, soundscape and air quality that are valued by them. [We expect the experts will explain how they ascertained the values of people and communities];

(b) ascertain whether the District Plan identifies any valued attributes or characteristics for the relevant zone, landscape or more broadly the receiving environment. These elements may also be identified from other documentation such as a Conservation Management Strategy;

(c) determine whether the amenity values are reasonably held. In that regard we expect the experts to objectively test the basis of the values that are derived from the environment. This is necessary because the residents' views on their existing amenity is subjective and influenced by personal feelings or opinions, including the strength of their attachment to this place;

(d) assess whether the proposal gives rise to adverse effect on the relevant attribute or characteristic;

(e) if it does, then to consider whether, in this case, rural character is maintained and second, whether there are any consequential effects on the existing amenity values; and

(f) finally, to assess those effects in light of the outcomes for the relevant resources and values under the District Plans."

97.3 In *Port Gore Marine Farms v Marlborough District Council* [2012] NZEnvC 72 the Environment Court held that:[42]

*"individual perceptions of the effects of a proposal on their future amenities will usually not be a sufficient guide to reasonableness of the effects: **people do tend to resist change simply because it is different to what they know. Essentially the test for effects on amenities is one of reasonableness in the given context and that can usually be better informed by reference to the district plan**."*

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41 At [117].

42 At [213].

97.4 In *Schofield v Auckland Council* [2012] NZEnvC 68 in commenting on the need to assess amenity values objectively the Court said:[43]

> *"The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s 7(c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activities they undertake there, and the emotions they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively."*

98 It is relevant that the NPS-UD also expressly recognises this in Objective 4 which provides:

> *"New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations."*

THE PROVISION OF INFRASTRUCTURE – DEVELOPMENT CONTRIBUTIONS AND FUNDING

99 As touched on above, the requirement with regard to infrastructure must be that it is *viable* for the proposal, as opposed to demonstrating that current existing infrastructure is sufficient to accommodate a proposal.

100 The Commissioners may be wondering what certainty they have to have in front of them with regard to such future infrastructure being built.

101 This is not an unusual issue in the development space, particularly in the context of a plan change of this kind and degree, as there needs to be some sort of demand to justify the establishment and funding of infrastructure. Infrastructure provision, more often than not, comes after and follows development. No one is going to be

[43] At [51].

establishing full wastewater networks to a site before they have any confidence that that site will be developed.

102 In terms of the funding of this infrastructure, and any potential cost that may be borne by the rate payer, there are a number of commonly used mechanisms that ensure infrastructure costs fall with the developer and are not borne by the rate payer.

Development contributions, agreements and infrastructure

103 Development contributions are the primary mechanism through which councils are able to obtain funding for infrastructure needed to cater for growth. The Government introduced the charges via the Local Government Act 2002 (*LGA*) to enable councils to recover growth infrastructure costs from developers.

104 Development contributions are assessed on water, wastewater, stormwater, reserves, community infrastructure, and transport activities. The LGA gives councils the power to charge development contributions and requires them to have a Development Contributions Policy in place to provide certainty about sources and levels of funding.[44]

105 A Development Contributions Policy specifies whether the requirement to pay development contributions occurs upon the granting of:

105.1 a resource consent under the RMA; or

105.2 a building consent under the Building Act 2004; or

105.3 an authorisation for a service connection.

106 This power to require development contributions is in addition to (and will eventually replace) the power to require financial contributions under the District Plan (authorised by the RMA),[45] but a Council may not require both for the same purpose in respect of the same development.[46] Public participation in decisions around development contributions occurs when a territorial authority

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[44] Local Government Act 2002, pt 8, subpt 5 (ss 197AA–211). "Development" is defined in s 197 as "any subdivision or other development that generates a demand for reserves, network infrastructure, or community infrastructure; but does not include the pipes or lines of a network utility operator". See *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275

[45] Local Government Act 2002, s 211. Under s 108(10) of the RMA, financial contribution conditions can be imposed in accordance with the purposes and level specified in the relevant district plan.

[46] LGA, s 200.

proposes to make, amend or renew its policy on development contributions or financial contributions.[47]

107 The Waimakariri District Council has recently approved its 2023/24 Development Contributions Policy and Maps.[48] The Policy states that development contributions will be invoiced when:[49]

107.1 a Section 224(c) application is received for a subdivision consent;

107.2 a building consent for a new residential or non-residential unit is uplifted;

107.3 an application to connect to a Council network service is made; or

107.4 Council deems a change of property use has occurred resulting in an increased demand for network services.

108 Development contributions are not, and cannot be, charged at the point at which land is rezoned, either through a public or private plan change.

Developer agreements

109 It is common practice for developers of large developments to enter into agreements with councils on the quantum or method for assessing both development contributions and financial contributions that may be applicable, and the timing of any such payments. Development agreements can facilitate opportunities for negotiation between developers and councils, to deal with unusual, complicated or lengthy development projects in a holistic and integrated way.

110 Either a developer or the territorial authority can request to enter a development agreement.[50] The Local Government Act 2002 outlines a process for requesting, amending or terminating a development agreement and the content of such an agreement. A development agreement cannot require a developer to provide infrastructure of a nature, type, scale or higher standard than that which would have

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47 Local Government Act 2002, s 106. However, the 2014 Amendment Act provides for some limited circumstances where increases in development contribution charges can occur without consultation, formality or a review of the development contributions policy.

48 See https://www.waimakariri.govt.nz/__data/assets/pdf_file/0022/28444/Development-Contributions-2023-24-with-Maps.pdf, which was approved at the Council meeting on 20 June 2023.

49 4.6.6 Timing of payment of contributions.

50 LGA, s 207A(1).

been provided if the developer had been required to make a development contribution.[51]

111 The Waimakariri District Council Development Contributions Policy relevantly states that:[52]

111.1 when a development contributions agreement is established the Council will work with the developer or developers of the area concerned to establish which party or parties will undertake various works;

111.2 the Council will only charge development contributions for infrastructure work that is undertaken and funded by the Council;

111.3 the extent of the infrastructure work undertaken by the Council in each development agreement will vary according to the nature of the development and the type of work involved;

111.4 the developer is responsible for providing infrastructure solutions for the proposed development area, where the Council requests additional capacity in the infrastructure or improvements to existing infrastructure affected by the development, Council will fund the extra-over portion of the work.

112 These submissions are not suggesting a development agreement is required right now. (and in fact, based on *Bletchley Developments v Palmerston North City Council*[53] it would appear to be inappropriate for a resource consent application – or by analogy, a plan change – to be put on hold while it negotiates with the applicant the cost of works it would like the applicant to do).

113 It is also important to recognise that the RMA and LGA provide mechanisms through which infrastructure required for development is funded or otherwise provided by developers. As the Tribunal made clear in *Bletchley*, it is not necessary or appropriate for the details of that arrangement to be worked out by the resource consenting stage (or plan change stage), let alone at the prior point when the land might be rezoned for development.

Infrastructure improvements and staging

114 It is common for developments to rely on future upgrades. As previously outlined, development itself can contribute significantly to

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[51] LGA, s 207E. However, a developer can agree to provide infrastructure of that kind, if they see fit to do so: LGA s 207E(2).

[52] Section 4.6.10.

[53] *Bletchley Developments Ltd v Palmerston North City Council* [1995] NZRMA 337

future upgrades through the development contributions scheme, developer agreements and similar mechanisms under the RMA.

115 In his evidence, **Mr McLeod** addresses the infrastructure requirements for the plan change request and demonstrates that:

115.1 a new wastewater reticulation system can be constructed to collect wastewater form within the development and convey to a centralised pump station, with a dedicated rising main required to convey the full development flow to the Rangiora wastewater treatment plant;

115.2 new water supply bores can be developed within the proposed plan change to provide sufficient potable water for the needs of the future residential properties. This can be supported with the transfer of existing water-take consents to Council or potentially a new community water supply take;

115.3 the site can be provided with adequate "on-demand" potable water by development of a new water supply headworks for treatment, storage and pumping. This could be integrated with the existing Ōhoka water supply network;

115.4 stormwater treatment and attenuation can be provided on-site to mitigate the effects of residential development on stormwater quality and attenuate run-off to pre-development levels;

115.5 flood conveyance across the site can be managed to ensure there is less than minor effect on neighbouring properties; and

115.6 power and telecommunication network can be extended or upgraded to supply the proposed development.

116 In short, while new and upgraded infrastructure will be required to service the development enabled by PC31, these can be readily achieved. Importantly, there is nothing in the CRPS or the NPS-UD which requires infrastructure to be in place now and the Commissioners can have confidence that there are mechanisms available to fund them as they are required.

THE NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND

117 The NPS-HPL came into force on 17 October 2022. It sets out a regime for the protection of highly productive land for use in land-

based primary production, both for now and for future generations.[54]

118 For PC31, the first determination required is whether the PC31 land is highly productive land to which the NPS-HPL applies. If it is not, the NPS-HPL need not be further considered.

119 Clause 3.5 of the NPS-HPL deals with the identification of highly productive land. Regional councils are required to map highly productive land in their regional policy statements within three years of the NPS-HPL coming into force.[55]

120 In the interim period before mapping occurs, land must be treated as highly productive land for the purposes of the NPS-HPL if it, at the NPS-HPL commencement date:

120.1 is:

(a) *clause 3.5(7)(a)(i)* – zoned general rural or rural production; and

(b) *clause 3.5(7)(a)(ii)* – LUC 1, 2 or 3 land; but

120.2 is not:

(a) *clause 3.5(7)(b)(i)* – identified for future urban development; or

(b) *clause 3.5(7)(b)(ii)* – subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

121 At the NPS-HPL commencement date, the PC31 land:

121.1 was zoned Rural under the Operative Plan;

121.2 was LUC 1, 2, or 3 land (being predominantly LUC 3 with a small portion of LUC 2 in the north-western corner);

121.3 was not identified for future urban development; **but**

121.4 was subject to a Council initiated, or an adopted, notified plan change to rezone it to rural lifestyle.

122 We consider that the NPS-HPL does not apply to the PC31 land for the reasons that follow.

[54] NPS-HPL, policy 1.

[55] NPS-HPL, clause 3.5(1).

'Council initiated, or an adopted, notified plan change'

123 The Council is currently reviewing its District Plan. The Council notified its Proposed Waimakariri District Plan (*Proposed Plan*) on 18 September 2021.

124 Under the Proposed Plan, the PC31 land is zoned Rural Lifestyle.

125 The NPS-HPL does not define a 'Council initiated, or an adopted, notified plan change' in clause 3.5(7)(b)(ii).

126 Section 43AA of the Resource Management Act 1991 (*RMA*) contains the following definitions:

> ***change*** *means*
>
> (a) *a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1, including an IPI notified in accordance with section 80F(1) or (2); and*
>
> (b) *a change proposed by any person to a policy statement or plan by a request under clause 21 of Schedule 1*
>
> ***plan*** *means a regional plan or a district plan*

127 The Proposed Plan is plainly a 'Council initiated… notified plan change' for the purposes of clause 3.5(7)(b)(ii) of the NPS-HPL.

128 The rationale for land that is subject to a 'Council initiated, or an adopted, notified plan change' being excluded from the application of the NPS-HPL is set out in the Ministry for the Environment's NPS-HPL Guide to Implementation. The Guide explains:[56]

> *Clause 3.5(7)(b)(ii) is intended to exclude land from the transitional definition of HPL if there is a council-initiated, or adopted, notified plan change to rezone the land to either an urban zone (defined in Clause 1.3(1) of the NPS-HPL) or to a rural lifestyle zone. If a territorial authority has progressed a plan change to rezone rural land to urban and this has already been notified, then the NPS-HPL does not undermine the work undertaken by territorial authorities and their communities to get to this point in the process.*

129 The wording of clause 3.5(7) is clear that the NPS-HPL does not apply to the PC31 land because it is subject to a Council initiated notified plan change to rezone it from general rural to rural lifestyle.

130 In terms of the evidence of others:

[56] National Policy Statement for Highly Productive Land: Guide to Implementation, p 17.

130.1 **Mr Ford's** report attached to the section 42A report states that all land classified as LUC1-3 is automatically considered as highly productive under the NPS-HPL, and goes on to consider the proposal against clause 3.10 of the NPS-HPL. This is wrong for the reasons we have set out above, the NPS-HPL does not apply;

130.2 **Mr Willis** in his section 42A report notes that he has not formed a view on whether the NPS-HPL applies but anticipates being able to provide an opinion on the matter after hearing the various arguments presented to the Hearing Panel. We do not agree with the alternative argument **Mr Willis** posits that the Proposed Plan is not a 'Council initiated plan change', for the reasons we set out above;

130.3 **Mr Boyes** for the Council (as do submitters) stay silent on the matter; and

130.4 **Ms Mitten** in her evidence initially agrees with the Applicant's legal interpretation of the NPS-HPL[57] but appears to suggest that perhaps it *should* apply because the Proposed Plan rezoning the site as 'Rural Lifestyle' pre-dates the NPS-HPL and therefore the implications of Proposed Plan zonings were not fully contemplated or apparent at that time.

131 The position is simple. The NPS-HPL provides a clear exclusion in the definition of highly productive land in the NPS-HPL. The NPS-HPL either applies to the site, or it does not.

132 For broader context (consistent with the position stated):

132.1 the Council has, since the commencement of the NPS-HPL, issued a number of subdivision resource consents for land zoned 'Rural Lifestyle' under the Proposed Plan without considering the strict tests for subdivision under the NPS-HPL.[58] In this respect, the Council itself has already accepted that land zoned 'Rural Lifestyle' under the Proposed Plan is not 'highly productive' for the purposes of the NPS-HPL.

132.2 the Council's reporting officer for the Proposed Plan Rural Zone chapters, **Mr Buckley**, concludes the NPS-HPL does not apply to the Rural Lifestyle Zone.[59] He notes this is based on

[57] Evidence of **Ms Mitten**, at [123].

[58] For example we understand there was a recent subdivision application granted for 47 Whites Road which comprises LUC 3 soils and zoned Rural Lifestyle in the Proposed Plan. The decision makes no mention of the NPS-HPL or analysis of the stringent tests that would have had to be met by the applicant (clause 3.8 NPS-HPL). We assume this is on the basis that the land was not considered to fall within the NPS-HPL.

[59] Memoranda to Hearing Panel prepared by Mark Buckley on the National Policy Statement on Highly Productive Land dated 30 June 2023 and 22 July 2023.

the plain and ordinary meaning of the words in clause 3.5.7 and his view that a district plan review is a plan change (or collection of plan changes). He too acknowledges the fact that the Proposed Plan predates the NPS-HPL and that therefore the zoning decisions within it were not cognisant of the NPS-HPL, but rightly goes on to state that the Rural Lifestyle Zone in the Proposed Plan was prepared with consideration of the 'rural lifestyle zone' descriptor in the National Planning Standards, which the NPS-HPL also uses.

Versatile soils still recognised and have been assessed

133 Despite the fact that the NPS-HPL does not apply, the fact that versatile soils (as defined by the CRPS, being LUC 1 and 2) are present on a proportion of the site is not denied by the Applicant, and the application, the evidence of **Mr Walsh**, and the evidence of **Mr Mthamo** address the issue of versatile soils with respect to the CRPS and the District Plan.

134 It is noted that **Ms Mitten** considers that policies 5.3.2 and 5.3.12 of the CRPS may not apply to the site as these policies are for the 'Wider Region' not the 'Entire Region'. In any case, we say that PC31 would achieve the outcomes of these policies on the basis of **Mr Mthamo's** assessment.

POLO FACILITY

135 A question was raised by **Mr Willis** as to whether the potential for a polo facility and proposed restricted discretionary rule 31.2.11 (and rule 31.4.7 as a discretionary activity where the requirements of that rule are not met) are within the scope of the plan change (noting the addition of this rule post the initial notification of the change).

136 In this regard, the issue appears ultimately not to be one relating to the scope of PC31 but rather what the scope of the Proposed and Operative Plans, with, for example:

136.1 the Operative Plan requiring consent for earthworks to create the playing field (either as a restricted discretionary or discretionary activity) and vehicle movements (on the basis that events would result in more than 250 vehicles per day); and

136.2 the Proposed Plan similarly requires consent for earthworks to create the playfield. The Proposed Plan also provides for a maximum GFA of 550sqm for any single building, which is likely to be exceeded and recreation facilities or major sport facilities ("*Recreation activities means the active or passive enjoyment of sports, recreation or leisure, whether competitive or non-competitive, casual or organised, and*

whether a charge is made for admission or participation or not.") require a discretionary resource consent. Traffic will similarly require consent for higher generating activity over 200 vehicles per day.

137 In short, similar consenting pathways are already provided for and PC31 is in effect replicating the existing planning regime (and if anything broadening the existing matters of discretion in the case of the restricted discretionary rule).

GROUNDWATER INTERCEPTION

138 **Mr Wilkins'** evidence suggests that the Applicant has underestimated general groundwater levels on the site and that therefore the stormwater designs do not have a pathway for obtaining resource consent if they intercept groundwater.

139 He refers to the evidence of **Ms Mitten** as discussing further the consenting uncertainties he refers to, but **Ms Mitten** does not elaborate in detail on these either.

140 There is a much wider interpretation issue at play. It is understood that a number of developers and consent applicants around Canterbury are of the view the Regional Council are misapplying their Regional Plan with respect to non-consumptive interceptions of groundwater. This is not explored further in these submissions as in relation to PC31 it is the evidence of **Mr O'Neill** simply that the stormwater management detention areas can be designed in such a way that no groundwater is intercepted (and similarly that the stormwater treatment areas (rain gardens and bioscapes) have a consenting pathway and will not intercept groundwater once constructed).

A BRIEF COMMENT ON THE EVIDENCE

141 Consistent with the approach set out at paragraph [3] above, these submissions have generally tried to avoid repeating the evidence and they have been advanced on the basis that the evidence will ultimately "speak for itself".

142 In terms of "what is still in issue", these submissions are also conscious of the directions provided in Minute 2 (i.e. that "*Mr Willis … provide the hearing panel with a memorandum … outlining the topics and issues or questions (cross referencing the s 42A Report and the relevant expert(s) evidence that he considers are resolved or remain unresolved by the expert evidence"*) and Mr Willis' subsequent response.

143 The Applicant is comfortable that all matters identified by **Mr Willis** have been addressed either via submission and/or evidence (noting

all Applicant witnesses will produce a short summary and reply addressing the relevant points), but it does also want to emphasise that:

143.1 **Mr Willis'** memorandum largely read as though he is providing a summary of the s42A Officer position and/or District Council as submitter case rather than providing any analysis or commentary on the positions of the "*relevant expert(s)*" which include the Applicant. He has made almost no reference to the evidence of the Applicant and more generally it appears not to have engaged in any discussion of the wider relative positions. He simply sets out what the relevant Council witnesses will say; and

143.2 the above is consistent with the process to date in relation to the plan change. Unusually (i.e. compared the Applicant's experience elsewhere) there has been almost no engagement between **Mr Willis** (or the other Council witnesses) with the Applicant's experts in relation to the issues despite attempts to engage.

144 The Applicant would welcome any requests for experts (including planners) to participate in expert conferencing on any particular topics.

CONCLUSIONS AND WITNESSES TO APPEAR

55 To conclude, the evidence supports the Commissioner granting this plan change. All concerns and issues raised in the Officer's Report and in submissions have been addressed adequately by the proposed rules package and amended ODP.

56 The following witnesses will speak to their evidence:

56.1 **Tim Carter** on behalf of the Applicant;

56.2 **Tony Milne** – Landscape;

56.3 **Dave Compton-Moen** – Landscape;

56.4 **Nicole Lauenstein** – Urban Design;

56.5 **Garth Falconer** – Urban Design;

56.6 **Nick Fuller** – Transport;

56.7 **Simon Milner** – Public Transport;

56.8 **Greg Akehurst** – Economics;

56.9 **Chris Sexton** – Spatial Analysis;

56.10 **Natalie Hampson** – Commercial Economics;

56.11 **Chris Jones** – Real Estate;

56.12 **Gary Sellars** – MDRS;

56.13 **Paul Farrelly** – Greenhouse Gases;

56.14 **Gabrielle Wall** – Education;

56.15 **Tim McLeod** – Infrastructure;

56.16 **Carl Steffens** – Water Supply;

56.17 **Eoghan O'Neill** – Stormwater And Wastewater;

56.18 **Ben Throssell** – Flooding;

56.19 **Bas Veendrick** – Hydrology;

56.20 **Mark Taylor** – Ecology;

56.21 **Laura Drummond** – Ecology;

56.22 **Victor Mthamo** – Soils; and

56.23 **Tim Walsh** – Planning.

Dated: 3 August 2023

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Jo Appleyard / Lucy Forrester
Counsel for Rolleston Industrial Developments Limited