

**Before the Independent Commissioners appointed by the Waimakariri District Council**

In the matter of            the Resource Management Act 1991 (**the Act**)  
and

In the matter of            Proposed Private Plan Change 31 (PC31) to the Waimakariri  
Operative   District   Plan   by   Rolleston   Industrial  
Developments Limited

**Legal submissions on behalf of Waimakariri District Council (as Submitter)**

---

Dated: 9 August 2023

Andrew Schulte (andrew.schulte@cavell.co.nz)  
Counsel for submitter

**CavellLeitch** >  
LIMITED

AJS-434615-177-200-V2-e

Level 3, BNZ Centre  
111 Cashel Mall  
PO Box 799, Christchurch  
T: +64 3 379 9940 F: +64 3 379 2408

## Legal submissions for Waimakariri District Council (as submitter):

### Introduction

1. These legal submissions are presented on behalf of the Waimakariri District Council as submitter (**WDC**) on the Private Plan change application by Rolleston Industrial Developments Limited (**RIDL** or **Applicant**) to enable urban development at Ōhoka: Private Plan Change 31 (**PC31**).
2. The WDC's submission explains why it took the unusual step of becoming a submitter on PC31. Rather than simply leaving the assessment of the application to expert Council Officers (or delegated consultants), whose professional opinions the WDC values and relies on, the WDC decided that it should register its objection to the proposed application at a governance level and present additional independent evidence.
3. The WDC's opposition is the product of genuine concerns regarding the suitability of the proposed site at Ōhoka for the level of intensification that is sought; and the WDC's opinion that the issue of intensification in this location is not, in fact, unanticipated but rather has been actively considered previously and rejected. In addition, the planning processes that have been put in place over many years and are currently being considered as part of the Proposed Waimakariri District Plan (**PWDP**), and which have been widely canvassed and consulted on with the local and wider community, represent a rational and sound approach to the planning issues that need to be confronted and as such, should be respected, and allowed to reach their conclusion.
4. The fact is that enabling the degree of intensification proposed to proceed at Ōhoka may also mean an opportunity cost in terms of the WDC's ability to also pursue more intensive development elsewhere in the District, in areas adjacent to existing urban areas that are, and are expected to grow as, predominantly urban areas.
5. The *potential* significance of the proposed development is generally accepted but on the basis that this *does not* overcome the issues with the site and *does not* mean that the proposal *must* be granted under the National Policy Statement on Urban Development (**NPS-UD**) or otherwise.

### Contents

6. These submissions discuss the following:
  - 6.1. Interpretation

- 6.2. The NPS-UD:
  - 6.2.1. Applicability
    - 6.2.1.1. The NPS-UD and the CRPS
    - 6.2.1.2. The NPS-HPL
  - 6.2.2. The NPS-UD - Substance
    - 6.2.2.1. Objectives highlighted by the Applicant (3, 4, and 6)
    - 6.2.2.2. Policies and implementation
    - 6.2.2.3. Does PC31 contribute to a well-functioning urban environment?
    - 6.2.2.4. Significant development capacity
- 6.3. Place of character
- 6.4. Strategic incompatibility
  - 6.4.1. The draft Greater Christchurch Spatial Strategy
  - 6.4.2. The District Plan
- 6.5. Development contributions, Developer agreements and potential burdens for ratepayers
- 6.6. Conclusions

## Interpretation

- 7. Both the Operative Waimakariri District Plan (**OWDP**) and the NPS-UD, as planning documents, are to be interpreted purposively and in accordance with the Court of Appeal's decision in *Powell v Dunedin City Council*<sup>1</sup>. In particular, in relation to the role of the plain and ordinary meaning of words and the need to consider those words in context. The Court held (at paragraph [35]) that:

... While we accept it is appropriate to seek the plain meaning of a rule from the words themselves, it is not appropriate to undertake that

---

<sup>1</sup> [Powell v Dunedin City Council \[2004\] NZCA 114; \(2005\) 11 ELRNZ 144; \[2004\] 3 NZLR 721; \[2005\] NZRMA 174 \(1 July 2004\) \(nzlii.org\)](#)

exercise in a vacuum. As this Court made clear in *Rattray*, regard must be had to the immediate context (which in this case would include the objectives and policies and methods set out in [relevant] section of the plan)) and, where any obscurity or ambiguity arises, it may be necessary to refer to the other sections of the plan and the objectives and policies of the plan itself. Interpreting a rule by a rigid adherence to the wording of the particular rule itself would not, in our view, be consistent with a judgment of this Court in *Rattray* or with the requirements of the Interpretation Act.

8. Accordingly, the immediate context is always relevant, not only in cases of doubt. For the NPS-UD, the immediate context must include all its objectives and policies.
9. In addition, the High Court in *Nanden v Wellington City Council* <sup>2</sup> also indicated that in cases of obscurity or ambiguity, interpretations should be preferred that:
  - 9.1. avoid absurdity:
  - 9.2. accord with the expectations of landowners: and
  - 9.3. are consistent with efficient administration.
10. It is also appropriate to consider the place of guidelines (such as the Ministry for the Environment Guidelines (**guidelines**) on the NPS-UD) in the process of interpretation. While these may be a good starting point, as the guidelines themselves indicate, they are not part of the planning document and do not constitute legal advice<sup>3</sup>.
11. The need for decision makers to reach their own conclusions on the meaning of provisions in planning documents, within the parameters of *Powell* and *Nanden*, was confirmed in *Gray v Dunedin City Council* <sup>4</sup> where the Environment Court noted:

[206] ... We refer to the High Court's observation [in *Opoutere Ratepayers and Residents Association v Waikato Regional Council* [2015] NZEnvC 105, at [97]] on the relevance of the Guidance Notes published by MfE for the NZCPS 2010 which we respectfully agree with and are in any event bound by:

---

<sup>2</sup> [2000] NZ 562 (HC)

<sup>3</sup> [Understanding and implementing responsive planning policies \(environment.govt.nz\)](https://environment.govt.nz/understanding-and-implementing-responsive-planning-policies/), states in the 2<sup>nd</sup> paragraph that: "It is not part of the NPS-UD and is not legal advice".

<sup>4</sup> [Gray v Dunedin City Council \[2023\] NZEnvC 45 \(14 March 2023\) \(nzlii.org\)](https://www.nzlii.org/nz/auk-nsf/docId/391111)

*The first question is what status should be given to the Department of Conservation's Guidance Notes. It is clear that they have no statutory basis, and that whilst helpful, they are not legally binding on the Court as necessarily properly interpreting the provisions of either the Act or the NZCPS. Whilst the Supreme Court may have referred to the Guidance Notes, not surprisingly it did not determine that the Guidance Notes are determinative, and indeed the Guidance Notes themselves include a disclaimer that they are not a substitute for legal advice, neither are they official government policy.*

[207] This position is further reflected in subsequent decisions of the Environment Court, including in *Federated Farmers of New Zealand v Northland Regional Council* [[2022] NZEnvC 16].

12. In other words, it is the words, purpose, and context of the NPS-UD that matter.

#### **The NPS-UD**

13. The NPS-UD was promulgated in response to housing affordability and supply issues. Its objectives are:

**Objective 1:** New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

**Objective 2:** Planning decisions improve housing affordability by supporting competitive land and development markets.

**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-served 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 5:** Planning decisions relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

**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.

**Objective 7:** Local authorities have robust and frequently updated information about their urban environments and use it to inform planning decisions.

**Objective 8:** New Zealand’s urban environments:

- (a) support reductions in greenhouse gas emissions; and
- (b) are resilient to the current and future effects of climate change.

14. The WDC’s position is that the purpose of the NPS-UD was to require local authorities to ensure that planning decisions weren’t adversely affecting property values. In other words, that supply could keep up with demand.
15. However, the WDC says it is not the case that NPS-UD gives carte blanche to develop, even if significant, anywhere. The ability to have new development capacity approved, especially unanticipated or out of sequence development, depends on several factors, in particular whether the development will contribute to a well-functioning urban environment, but also whether it can be provided for, with current or planned infrastructure and transport connections, amongst its other important goals.
16. In addition, given the parameters around more growth in areas that are centrally located, well serviced by public transport and where the area has *high* demand relative to other areas, the expectation is that most additional development should be located adjacent to, or as an extension to, existing urban areas with those attributes.

### *Applicability*

17. Unsurprisingly, the NPS-UD is intended to apply to “urban environments”, but not all urban environments. As the definition notes:

**urban environment** 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. The few cases involving the NPS-UD that have progressed through the Courts to date<sup>5</sup> have not considered this definition, with the area in question being plainly urban.
19. This is a definition that can be broadly applied and has been in areas such as Selwyn. However, while also falling within Greater Christchurch (**GC**), the areas to which the NPS-UD was applied there were all identifiably urban areas in their own rights<sup>6</sup>, the relevance of GC arguably being that it qualified townships that individually had populations of less than 10,000, as parts of a larger housing market.
20. Both parts of the definition obviously must be satisfied, as is demonstrated by the Applicant's fallback position that Ōhoka is also an urban environment in its own right. They say that is because the OWDP includes all settlements as urban areas. However, this is also something of a default position given that the Canterbury Regional Policy Statement defines activities on lot sizes smaller than 4ha as urban.
21. The upshot then is that an area such as Ōhoka, while it may be part of a larger housing market as part of the GC, is an area that on its face is a rural-residential area within a rural zone. To say that it is, or is intended to be, predominantly urban, and thereby should be a candidate for urban intensification on the scale proposed seems to go too far.
22. Mr Knott, an experienced urban designer, makes similar observations in his evidence (paras 19-29). He ties the application of the NPS-UD back to its purpose of increased opportunities for additional development adjacent to existing urban areas (with the MDRS increasing development capacity within existing urban areas). That purpose does not appear to require or promote additional greenfield development in more remote locations. This view is consistent with the need to integrate with planned and funded infrastructure and having access to existing and planned public transport networks.
23. If the NPS-UD automatically applies at Ōhoka as part of the broader GC area, it also raises issues as to scale. Especially when considering the contribution that a development, occupying a small fraction of the area being claimed to be the relevant urban environment, can make to the whole as a well-

---

<sup>5</sup> Specifically: [Eden Epsom Residential Protection Society Incorporated v Auckland Council \[2021\] NZEnvC 82 \(9 June 2021\) \(nzlii.org\)](#) and [Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Incorporated \[2023\] NZHC 948 \(27 April 2023\) \(nzlii.org\)](#)

<sup>6</sup> Rolleston, Lincoln, Prebbleton and West Melton

functioning urban environment. The impression is that even if PC31 might operate well in its own space, its contribution to wider Waimakariri and GC as a well-functioning urban environment will be – relatively – insignificant, with the potential for detracting given the need to respond to servicing and transport issues.

24. The question of scale also arises with the Applicant's position that aspects such as capacity must be considered on a district basis rather than a GC wide basis. If the relevant urban environment is the GC, then the NPS-UD requirement, under policy 10, that local authorities need to "work together when implementing this [NPS]", should equally apply to the implementation of the capacity requirements.
25. The definition of urban environment uses the phrase "*predominantly*", which means an area may also include other non-urban features but will mostly be, or be intended to be urban in nature. Again, the picture in GC is skewed somewhat with Christchurch City appearing to make GC appear highly urbanised. Yet the rural aspects in Selwyn and Waimakariri still retain spatial dominance in those areas and based on the contents of the proposed district plans in both districts, aside from planned urban growth (including plan changes attached to townships), they are intended to remain predominantly rural. That includes areas that cater for rural lifestyle. As discussed below the New Zealand Planning Standards (**Standards**) for the Rural Lifestyle Zone makes it clear that it is still a rural zone, within a rural environment.
26. As to the use of the phrase "*or is intended to be*". It is not immediately apparent what timeframe this meant to apply in, or whose intention is being considered. Given that most responsibilities in the NPS-UD fall on Councils, it seems logical to infer that it is their intentions, as recorded in strategy documents and plans, that matter in this regard. This is also consistent with the importance of a strategic approach to urban growth under the NPS-UD. Again, this is touched on below, but for the question of application it suggests that a strategic view remains relevant. To consider Ōhoka an urban environment when there has never been such an intention, rather quite the opposite, seems incongruous.
27. However, if the Panel agrees with the Applicant that Ōhoka represents an urban environment (or at least part of a much broader one), that simply provides an opportunity for the plan change to be considered. It still needs



to fulfil the requirements for plan changes as set out in *Colonial Vineyards v Marlborough DC*<sup>7</sup>. Those include:

- 27.1. giving effect to National Policy Statements, which in this context means, amongst other things, assessing whether particular regard should be given to PC31 (in terms of responsiveness):
  - 27.2. assessing each proposed policy and method (including rules) with regard to:
    - 27.2.1. their efficiency and effectiveness:
    - 27.2.2. whether they're the most appropriate way to achieve the district plan objectives:
    - 27.2.3. their costs and benefits and the risks of acting or not acting in the face of uncertainty: and
  - 27.3. in respect of new rules, considering the potential environmental effects of those proposed rules, with the existing RMA definition of the environment remaining relevant, if modified to some extent under Policy 6 of the NPS-UD.
28. The fact that potential environmental effects of rules need to be considered does raise the issue of whether leaving aspects of site testing, especially in this case of groundwater levels, should be left until resource consent stage. Without a more detailed understanding of the existing, it is difficult to assess whether potential solutions are likely to be effective, and therefore viable.

#### *The NPS-UD and the CRPS*

29. The Applicant's argument on the tension between the NPS-UD and the CRPS may be summarised as follows:
- 29.1. given the hierarchy of planning instruments under the RMA, and the requirement for regional policy statements to give effect to national policy statements:
  - 29.2. the NPS-UD requirement for responsiveness means the direction in the CRPS to avoid greenfield developments outside of identified areas (unless specifically provided for), should be read down with any 'gap' filled with words enabling exceptions, where the NPS-UD applies.

---

<sup>7</sup> [Colonial Vineyard Limited v Marlborough District Council \[2014\] NZEnvC 55 \(14 March 2014\) \(nzlii.org\)](#) at [17]

30. The contrary argument is that:
- 30.1. by virtue of Change 1 to the CRPS, Environment Canterbury (**Ecan**) and its GC partners have already given effect to the NPS-UD by identifying additional areas for urban expansion,
  - 30.2. this means the requirement to avoid additional greenfield development remains applicable and should be given particular regard under Policy 6 of the NPS-UD:
  - 30.3. the need for further greenfield development capacity has already been met with sufficient identification of development potential and capacity for projected demand: and
  - 30.4. given the stage of the Proposed Waimakariri District Plan (**PWDP**) process, still further development capacity may yet be identified.
31. The latter argument has been promoted by Environment Canterbury and the Christchurch City Council in the series of plan changes applied for within Selwyn District, but has not found favour. I understand that Ecan is running a similar argument before the panel , which as a fellow GC Partner, we support.
32. And it should also be noted that, even on the Applicant's approach, the CRPS requirement to avoid remains applicable if it was found that PC31 does not achieve the objectives and policies of the NPS-UD. That is, if it were found that particular regard should not be given to PC31 under the NPS-UD requirement for local authorities to be responsive.
33. In addition, even if the requirement to avoid is to be read down, the CRPS remains a relevant consideration as it still needs to be given effect to under the District Plan.

#### *The NPS-HPL*

34. The WDC accepts the position that, in accordance with the provisions of the NPS-HPL that govern its interim application<sup>8</sup>, it does not apply to land in areas where the Council has proposed changing the zoning from rural general to rural lifestyle under the PWDP.

---

<sup>8</sup> Clause 3.5(7), NPS-HPL 2022

35. The PWDP uses<sup>9</sup>, as it is required to<sup>10</sup>, the definition of Rural Lifestyle Zone found in the Standards, which provides:

<b>Rural lifestyle zone</b>	Areas used predominantly for a residential lifestyle <u>within a rural environment</u> on lots smaller than those of the General rural and Rural production zones, <u>while still enabling primary production to occur</u> .
-----------------------------	--

[underlining added]

36. However, to the extent that this changes anything, in terms of anticipated landscape or rural character outcomes, the rezoning makes very little difference. Regardless of the NPS-HPL applying, the OWDP provisions on soils and the maintenance of rural character still need to be considered. It is already the case that fragmentation down to 4ha is possible, with the Applicant saying that this is the likely outcome if PC31 is declined<sup>11</sup>.
37. Also discuss below are aspects of currently productive land that are sought to be retained and protected at a strategic level, which also suggest that developments such as PC31 may be considered inappropriate.

#### **The NPS-UD - substance**

38. Even if the panel determines that the NPS-UD is broadly applicable, and that the avoid policy in the CRPS should be read down, PC31 still needs to achieve the requirements of those documents. The Applicant has identified that it must show that PC31 offers significant development capacity and will contribute to a well-functioning urban environment to overcome the CRPS avoid requirement. The WDC agrees but notes that this approach appears to overlook or perhaps downplay the need (in order to be given particular regard on an unanticipated basis) for the development capacity to be “well-connected along transport corridors”<sup>12</sup> which, while an undefined term, is taken to mean more than just road corridors, and includes public transport accessibility (which is also an objective of the NPS-UD) and active transport facilities.

---

<sup>9</sup> As detailed in the section of Part 1 to the PWDP entitled *Te whakamahi māhere – how the plan works – General Approach* under the heading Zone names and descriptions. [Proposed District Plan - Proposed Waimakariri District Plan \(isoplan.co.nz\)](https://isoplan.co.nz/proposed-district-plan-proposed-waimakariri-district-plan)

<sup>10</sup> See: National Planning Standards, Part 8. Zone Framework Standard, Mandatory directions [national-planning-standards-november-2019-updated-2022.pdf \(environment.govt.nz\)](https://environment.govt.nz/national-planning-standards-november-2019-updated-2022.pdf)

<sup>11</sup> It might be more accurate to say that the more immediate effect will be that the Applicant can still pursue the rezoning under the PWDP, on which it has also submitted to achieve the same outcome as PC31.

<sup>12</sup> NPS-UD, 3.8(2)(b)

39. The WDC does not consider that these hurdles have been cleared, and says that this and other aspects of the NPS-UD that PC31 does not satisfy or achieve militate against approval.

*Objectives highlighted by the Applicant*

40. The Applicant has focused on Policies 3, 4, and 6. However, WDC says that the objectives must be read as a whole (as should the NPS-UD itself). A summary of the objectives, set out in full above, shows that:
- 40.1. The principle of well-functioning urban environments is an overarching consideration:
  - 40.2. Improving housing affordability is also a broad goal:
  - 40.3. The expectation is that more development is allowed to occur in areas close to job opportunities, areas well-served by public transport and areas that have a high demand relative to other areas within the urban environment:
  - 40.4. Urban environments will evolve according to changing needs:
  - 40.5. Te Tiriti o Waitangi is to be taken into account:
  - 40.6. Decisions should be informed by robust and current information:  
and
  - 40.7. Reducing greenhouse gas emissions and promoting resilience to climate change is another broad goal.

*Objective 3:*

41. Objective 3 provides:

**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-served 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.

42. The Applicant identifies objective 3(c) as providing the link with PC31. They have sought to establish that high demand for housing exists at Ōhoka. However, whether that demand sets Ōhoka apart, relative to other areas, must be more arguable. It is an area where demand for rural residential sites is already high, which is recognised in the proposed rural lifestyle zoning that is included in the PWDP. The hearings for the PWDP will also consider zoning changes that promote more large lot rural residential sections at Ōhoka and elsewhere.
43. Therefore, while the popularity of Ōhoka, based on one assumes at least in part on the levels of amenity and rural character it currently possesses, is accepted, whether that supports the argument that there is also a high demand for more intensive urban sized lots at Ōhoka relative to other areas, is less clear. This uncertainty may be illustrated by the off-the-cuff comment of Mr McLeod on day 2 of this hearing that “if you build them, they will come”, which might suggest that it will be the existence of more urban lots at Ōhoka that will fuel the demand, rather than PC31 meeting a need, or any existing *high* demand.
44. That impression is reinforced by the indications of expressions of interest, apparently without active marketing but presumably on the basis that PC31 was being considered or had been notified.
45. Again, the scale of the relevant urban environment comes into play, given the likely availability of similar lot sizes at other locations within the GC area such as Prebbleton and West Melton, areas which are more clearly on transport corridors as is predicated under the NPS-UD.
46. And given Objective 2 the question of high demand also needs to be seen through the lens of the contribution that meeting such ‘demand’ (if any) would make to the goal of housing affordability through a competitive market. The Applicant’s stated intention, to stage development and the release of lots based on the appetite in the market<sup>13</sup>, does not suggest a desire to influence housing affordability, rather to capitalise on that market appetite.
47. The existing demand is also another housing typology, which sees people still utilising rural lifestyle sections for some productive uses alongside lifestyle owners who do not rely on rural viability but who are sufficiently separated spatially to avoid reverse sensitivity becoming too common an

---

<sup>13</sup> Or rather “the staged development over an up to 10 year period can be phased with market demand” para 9 summary evidence of Garth Falconer.

issue for rural uses. Areas of larger lot rural residential sections already exist and serve a demand.

48. It is apparent through the NPS-UD, the Resource Management (Enabling Housing and Other Matters) Amendment Act 2021, which includes mechanisms for additional intensification under the NPS-UD, and the NPS-HPL, that there is an intention to reduce the reliance on remote urban greenfield development, unless the level of growth is catered for in terms of transport and other infrastructure planning, and contributes to a well-functioning urban environment.
49. Creating a new suburb with larger but still urban scale lots, which seek to capitalise on the proximity of an area representing the rural idyll, in an existing predominantly rural area where demand for rural living already exists, results in further fragmentation of the rural resource. It also introduces an expectation for urban levels of service which will need to be provided long after the developer has moved on.
50. As something of an aside, in this context the Applicant's reference to the reliance on covenants to protect levels of amenity is perhaps somewhat curious. It signals that as a developer he's prepared to limit the ability of future residents to capitalise on regulatory opportunities for 'change' yet sees no issue with impacting on the amenities currently enjoyed by people who have established at Ōhoka due to the very promise of planned protection of rural character that they value and which is clearly seen as important and requiring protection in an urban setting.
51. Also, the issue of the influence of covenants to preclude legislative intentions (currently anti-competitiveness (supermarkets) – and ensuring a competitive housing market is a stated goal under the NPS-UD), so the ability to utilise covenants in such ways may itself become limited in the future.
52. Returning to Objective 3(c), the short point is that it is not clear that the Applicant has done enough to convince WDC that there is an existing demand for the housing typologies they are promoting at Ōhoka.

#### *Objective 4*

53. Objective 4 provides:

**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.

54. A question raised by objective 4 is what “needs” are being met by PC31?
55. Needs mean more than desires or wishes. The use of the terms suggests that for a planning decision to be made, that changes to existing amenity values, even though such change in and of itself may not be an adverse effect, it needs to be in the service of a need. And that may be moreso, for an argument to be made to progress it as an unanticipated.
56. In the context of the NPS-UD, such needs must include affecting overall housing affordability, providing housing in closer proximity to more opportunities for employment and focusing new development in areas with access to transport options that will encourage mode shift and support reduced emissions. This interpretation is supported by the “*needs of households*” as to type, price and location of development being identified as part of contributing to a well-functioning urban environment under policy 1.
57. Whether the opportunity for a rural village lifestyle is such a need seems more arguable.

*Objective 6*

58. The third objective highlighted by the applicant is objective 6:

**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.
59. Unsurprisingly, the Applicant’s emphasis is on objective 6(c) and its directive that planning decisions be responsive. For infrastructure, the Applicant maintains that, based on the guidelines, all that must be shown is viability and the availability of funding, while little is said of the need for integration or a medium- and longer-term strategic focus.
60. To the extent that they are relevant, the guidelines do also suggest that the full costs of infrastructure, including increased demand on infrastructure

outside the development and ongoing servicing costs, should be considered<sup>14</sup>.

61. It is clear that the requirement to be responsive, which has a general application and is not just relevant for proposals of significance, does not override the need for integration with infrastructure planning and funding or the need to maintain a strategic perspective. Given that the timeframe for PC31 extends into the medium term (3-10 years) at least, the strategic component, and how the proposed development at Ōhoka fulfils strategic objectives, is clearly relevant.
62. This may be particularly so at the interface with infrastructure and funding. For example, the Applicant's proposal to utilise what, it says, is available capacity in the Mandeville to Rangiora wastewater pipeline is likely to impact development that is already plan enabled for Mandeville. Whether such utilisation (or cannibalisation?) of otherwise allocated capacity should be considered as contributing to a well-functioning urban environment or not seems arguable.
63. Scale could also again be relevant in terms of GC wide decisions on infrastructure planning and the strategic aspects revealed in the suite of strategic planning documents including "Our Space", and now including the draft Greater Christchurch Spatial Plan (**GCSP**).

#### *Policies and implementation*

64. The following NPS-UD policies appear the most relevant:

##### 64.1. Policy 1 – Well functioning urban environments

Planning decisions contribute to well-functioning urban environments, which are which are urban environments that, as a minimum:

- (a) have or enable a variety of homes that:
  - (i) meet the needs, in terms of type, price, and location, of different households; and
  - (ii) enable Māori to express their cultural traditions and norms; and
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

---

<sup>14</sup> [Understanding and implementing responsive planning policies \(environment.govt.nz\)](https://environment.govt.nz/understanding-and-implementing-responsive-planning-policies/) at page 5.



- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
- (e) support reductions in greenhouse gas emissions: and
- (f) are resilient to the likely current and future effects of climate change.

#### 64.2. Policy 2

Tier 1, 2, and 3 local authorities, 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.

#### 64.3. Policy 6

When making planning decisions that affect urban environments, decision makers have particular regard to the following matters:

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this [NPS]
- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
  - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
  - (ii) are not, of themselves, an adverse effect
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)
- (d) any relevant contribution that will be made to meeting the requirements of this [NPS] to provide or realise development capacity
- (e) the likely current and future effects of climate change.

#### 64.4. 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.

65. These policies are then implemented in Part 3 of the NPD-UD, however the Outline at 3.1 makes it clear that:

...nothing in this part limits the general obligation under the Act to give effect to [the] objectives and policies.

66. Subpart 1 relates to providing development capacity. This includes, at 3.2, the components for sufficient development capacity, which is clearly linked to Policy 2. It notes the expectation, at 3.2(b), that it must be *infrastructure ready*. What this means is detailed in 3.4(3). In the short term there needs to be adequate existing development infrastructure, while in the medium and long term its funding needs to be identified, respectively in a long-term plan, or infrastructure strategy. And 3.5(1) states that Local authorities must be satisfied that the additional infrastructure to service the development capacity is *likely to be available*.

67. While these requirements specifically apply to the local authorities, when it comes to the practical provision of infrastructure to a development (that is in addition to its viability), these should also be relevant considerations.

68. Subpart 2, at 3.8, relates to responsive planning. It provides:

**3.8 Unanticipated or out of sequence developments**

- (1) This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.
- (2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
  - (a) would contribute to a well-functioning urban environment; and
  - (b) is well-connected along transport corridors; and
  - (c) meets the criteria set under subclause (3).
- (3) Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

69. This provision, which was not provided in the preceding NPS-UDC, has been the catalyst for PC31 and the series of plan changes at Selwyn. It too has

not yet been the subject of consideration by the Courts. Several aspects of the provision need to be considered.

70. The first is the absence of any current regional council criteria on what plan changes are to be treated as adding significant development capacity, which is a threshold requirement. This means, as in Selwyn, Commissioners have had to make that determination themselves. This also raises the question of the extent to which it is open to Commissioners to identify and apply their own criteria. Especially as, while the means to assess the sufficiency of capacity is described in the NPS, significant capacity is not.
71. The Applicant has discussed the relevant issues of the significance of the development capacity it says will be provided and whether, in their view, PC31 will contribute to a well-functioning urban environment. However, little attention has been given to the criteria in 3.8(2)(b), whether the development capacity is well connected along transport corridors.
72. On its face this criteria is of equal importance to the others, which must all be satisfied, though for criteria (c), it can only be satisfied by implication. It is noted that the development capacity must be *well-connected*, so arguably, being able to be accessed by local or collector roads may not suffice. The use of the present tense “is” also suggests that the connection(s) should already exist.
73. The physical standard of those access roads should also be relevant given that what is expected is that the development capacity be well-connected along transport corridors. That use of the plural also suggests an expectation there will be more than one corridor, or perhaps multiple access options along the relevant corridor. The use of the term transport corridor certainly suggests multi-modal transport options, rather than just access via a rural road network, particular one with that exhibits limitations, as detailed in the combined traffic evidence.
74. The Applicant’s approach is that any such limitations can be overcome, however the question here is whether not being well-connected along existing transport corridors means that there is no requirement to have particular regard to the ‘unanticipated’ development capacity?
75. That is the WDC’s position, and seems logical as what is being sought is an exception to plan enabled development that, in this case is unanticipated to the extent that decisions to not allow additional develop are not recorded in a district plan.

76. Further issues in relation to transport are canvassed in the evidence of Mr Metherell, who remains concerned regarding the impacts of the proposed development on the safety of local and wider transport network.

*Does PC31 contribute to a well-functioning urban environment?*

77. In asking this question, it must be inferred that the relevant urban environment is GC, which raises the question, what does well-functioning look like and how should a development contribute?
78. On its face the primary contribution that PC31 makes, to GC or at Ōhoka, is the provision of additional dwellings, though despite a total figure being provided, how many dwellings over what time frame is not clear. The timeframe of 10 years, subject to market demand, has been mentioned, but the accuracy of that estimate is not established and, on the proposed rule changes for PC31, would be unenforceable. Whether development with that level of uncertainty should be seen as significant is discussed further below.
79. This initial view of the contribution, is perhaps unfair, at least as far as the likely quality of the development may be concerned. As noted at the outset, the principal concern of WDC is with the scale of the development and its likely impacts on Ōhoka and the surrounding area, not whether the Applicant will do a good job. In the end, if development is to be consented it will be to the Council's usual standards.
80. But looking at the other (minimum) criteria in Policy 1, Mr Boyes considers each in his evidence (paras 72-77) and concludes that it has not been demonstrated that PC31 will result in a well-functioning environment.
81. It is also noted, for what they are worth, that that Guidelines do also emphasise other matters. For example, that the issue of accessibility along Transport corridors is considered a central consideration that is in addition to the question of whether the plan change contributes to a well-functioning urban environment:

The well-functioning urban environment and well connected along transport corridors criteria together signal the importance of considering the location of a proposed development in relation to other areas and amenities, relative accessibility and transport infrastructure and/or options, when assessing any unplanned or out-of-sequence development proposals.

82. As it relates to transport, including public transport, the guidelines suggest that the transport infrastructure may not exist when a plan change is proposed but there needs to be confidence the infrastructure will be *funded*

*for delivery and maintenance* in the future. However, the wording in the NPS-UD objective 3 speaks of more than just viable public transport options, it refers instead to *existing or planned public transport networks*.

83. It would seem inconsistent for a development proposal that needs to include access to public transport in order to contribute to a well-functioning urban environment to be able to rely on less than a real likelihood of *planned* public transport services.

*Significant development capacity*

84. If the question of significant capacity is strictly a numbers game, then as Mr Boyes indicates in his evidence (para 68), the total number of dwellings PC31 says it will deliver would be significant.
85. However, there may be further details that affect that assessment. For example, whether significant development capacity is being provided, just as relates to sufficient development capacity, should include a consideration of whether the development can be considered *infrastructure ready*. The Applicant relies on the MfE guidelines, in relation to the view that provision for infrastructure funding need only be shown as being viable.
86. Viability must surely include both technical viability and practical viability (including financial viability). So even if the guidelines are correct, there needs to be the practical ability to achieve the development capacity. For PC31 there appear to be areas of uncertainty in this regard.
87. One relates to the interim connection for wastewater. Via that connection the Applicant seeks to rely on existing capacity in the wastewater pipe from Mandeville to Rangiora. It is not clear whether there has been confirmation of the availability of that capacity or any agreement that it be allocated to PC31. In any event, it is understood to be intended to provide for plan enabled demand within the Mandeville/Ōhoka area?
88. If that capacity cannot be provided, or is less than has been estimated, then presumably the only option will be to bring forward the provision of a separate wastewater pipe for PC31. It is also unclear what that eventuality would mean in terms of timing for the development under PC31.
89. Timing must be a relevant consideration to whether the development capacity is considered significant, especially where the development site is unanticipated. If there is likely to be a significant lag in the development, is there any imperative for it to be considered as a matter of urgency, with the

capacity being potential rather than realisable on a time frame that will affect issues such as affordability?

90. The same issue with timing might be raised in terms of the planned staging, which while it is indicated with proceed from Mill Road, the timing and sizes of any stages are unknown.
91. It may also be that given the untested nature of the groundwater levels across the entire site, there may be issues with whether the total number of dwellings can in fact be realised.
92. On these issues, while Mr Bishop has agreed with the Applicant's experts that the proposed solutions might be technically viable, his evidence also suggested that practical uncertainties still remain including in relation to potential consent issues if the assumptions on groundwater are not confirmed in subsequent testing, both for potable water supply and stormwater mitigation measures, and that the wastewater solution relied on agreement and the availability of interim capacity.
93. The transport issues may also be another area of uncertainty given that the matters the Applicant might need to address to realise their projected development capacity may rely on the decisions of others, in particular the roading authorities. The priorities that those organisations have may differ from the Applicant's needs and will likely be influenced by the strategic planning process they have also been involved in. That a decision on PC31 might (or might not) force the hand of such authorities should also be considered. If it did, then it might require the diversion of resources or affect the timing and/or priority of other planned works. If not, issues such as traffic safety, may not be adequately addressed.
94. Another issue as relates to whether the development capacity can be considered significant could be linked to a clear objective of the NPS-UD: whether the development will have any impact on housing affordability in the local or wider market? Mr Boyes notes in his evidence the limited number of additional housing typologies and the absence of any specified affordable housing (paras 72 and 73).

#### **Place of character**

95. This section discusses the impact of Objective 4 and Policy 6. Again, these provisions are untested by the Courts. This is noted because there is an apparent tension between the approach of these provisions, in particular Policy 6, on the issue of amenity, and what is provided for in s.7(e) of the RMA.

96. The direction in s.7(e) is that decision makers “must have particular regard to the maintenance and enhancement of amenity values”. That same standard is required of decision makers under Policy 6 for ‘changes’ that detract from amenity values for some but increase amenity values for others. This formulation appears to create a situation requiring balancing and judgement, which seems at odds with the approach under s.7(e), even if that has tended to be interpreted as meaning that amenity values should be maintained or enhanced.
97. And s.7, unlike s.5 is a section in Part 2 of the RMA that can have operative effect, though whether it must be referred to will depend in circumstances.
98. Mr Knott is of the view that the extent of the changes to the amenity that would be enjoyed by Ōhoka residents under PC31 is such that it goes beyond the level of change that the NPS-UD is seeking to authorise. Such change might be expected to impact urban amenity values rather than cause significant changes to rural character.
99. Mr Goodfellow’s view is that the level of change that will be occasioned by PC31 will have an adverse effect in the character of Ōhoka in the *moderate-high* range and would mean that the present rural character of Ōhoka would no longer exist.
100. Both Mr Goodfellow and Mr Knott have clearly identified the baseline for testing whether the degree of change proposed by PC31 is adverse. They have concluded that it will be based on the protections relating to character that are found in the OWDP. Therefore, the concerns relating to an excessive fear of change in the caselaw referred to by the applicant do not detract from their conclusions. Change, in itself, is not the concern, but rather the extent and the effect of the proposed changes on the character of Ōhoka and its surroundings.

### **Strategic incompatibility**

101. Mr Boyes’ evidence sets out the various planning documents that are relevant in considering PC31. At a strategic level he focuses on the CRPS given the issue regarding the avoidance requirement in Objective 6.2.1(3) and the Waimakariri District Strategy ‘Our District, Our Future’. However, those are two amongst several strategic planning documents relating to GC that have been produced which include the Ōhoka area.

*The draft Greater Christchurch Spatial plan*

102. The WDC position on the strategic inappropriateness of enabling the level of intensification proposed for Ōhoka is effectively summarised in the draft GCSP that is currently being consulted on.
103. While its status means that the weight the GCSP can be given is arguable, the GCSP clearly states that it does not represent a significant departure from the strategies and plans that it builds on<sup>15</sup>. Therefore, while some matters of detail may be open to amendment, the underlying strategic focus that the GCSP outlines represent a distillation and reassertion of the direction of growth for GC.
104. And, even putting the fact that Ōhoka is not identified as an area for intensive urban growth to one side, the GCSP notes, in a manner that is consistent with the NPS-UD, that in relation to the goal to “Focus and incentivise intensification of housing to areas that support the desired pattern of growth”<sup>16</sup> that the focus is to:

...encourage greater intensification and higher densities around centres and public transport routes [with] the benefits of intensification in line with this desired patter of growth includ[ing]:

- More people living in closer proximity to services and employment
- A competitive public transport system to encourage mode shift
- Less reliance on private vehicle use
- A reduction in greenhouse gas emissions
- Efficient and effective use of existing infrastructure
- More affordable and diverse housing choices
- Less need for urban expansion onto highly productive land

105. While the last of these benefits (re HPL) may appear less relevant given the proposed rural lifestyle zoning at Ōhoka, the relevance is brought back into focus in the discussion on the ongoing need for some greenfields development to be provided, which is what PC31 proposes at Ōhoka. The

---

<sup>15</sup> Greater Christchurch Urban Development Strategy 2007, updated 2016; Greater Christchurch Transport Statement 2012; Land Use Recovery Plan 2013; Greater Christchurch Resilience Strategy 2016; Our Space 2018-2048, 2018; Greater Christchurch Public Transport Futures Business Case 2018; and, Mass Rapid Transit Interim Report 2021.

<sup>16</sup> Draft Greater Christchurch Spatial Plan, at 4.3, page 70.



GCSP emphasises<sup>17</sup> that such development still “must achieve and not undermine other directions and principles”, and notes that to achieve this:

...successful future greenfield development needs to:

1. Be well connected with employment, services and leisure through public and active transport networks
2. Be integrated with existing urban areas
3. Meet a need identified by the latest Housing and Business Development Capacity Assessment
4. Be at the right scale, density and location to minimise impact on highly productive land and existing permitted or consented primary production activities.

106. The WDC says that the proposal for Ōhoka represents the opposite of what the GCSP considers would constitute a “successful future greenfield development”.

### **The District Plan**

107. Mr Boyes’ evidence also discusses relevant policies in the OWDP which provide for development at Ōhoka, including Policy 18.1.1.9.
108. His conclusions are that the creation of a “more significant node” at Ōhoka does not appear to fit with the communities expectations as articulated in the... policy framework” and that “the scale of the proposed development is far beyond what could be described as maintaining a rural village character...”.

### **Development Contributions, Developer Agreements and potential burdens for ratepayers**

109. While it is accepted that Development Contributions and Developer Agreements form the basis for how growth infrastructure is to be funded and therefore answers the funding viability question, these mechanisms will not necessarily ensure that PC31 will be cost neutral. Ōhoka would not be the first new town in recent Waimakariri history and while the context of Pegasus town is different, the additional costs to the Council, and therefore to ratepayers over the years, means that WDC remains cautious in relation to the size of the development in Ōhoka and its shifting of focus.

---

<sup>17</sup> Draft Greater Christchurch Spatial Plan, at 4.4: Provide housing choice and affordability, Greenfield, page 72.

110. PC31 will require changes to the Councils' planned infrastructure delivery strategy and long-term plan. Changes that may impact on planned growth elsewhere. While such changes won't be the end of the world, they are changes imposed on the Council that could affect the public purse. The Applicant is correct in so far as the Planning Tribunal Decision in *Bletchley* indicates that delay of permissions for an improper purpose such as securing funding agreements is unlawful. However, the decision may equally reinforce that care needs to be taken prior to changes being made to plans that set other processes in motion in which the potential of costs to the public becomes almost inevitable.
111. RIDL has indicated that PC31 will effectively be cost neutral for the Council, as they should be for a development of this nature.
112. However, and at the same time, the fact that PC31 sits well outside the strategic approach to planning at Waimakariri means that, even with Development Contributions, Developer Agreements and Direct Funding, the changes in direction required by approving PC31 will, as noted above, mean a potential opportunity cost to development elsewhere in the district.
113. An on-demand bus service to Ōhoka will plainly require changes in the current framework and approach for the provision of such services. Such changes are not guaranteed and, without them, the NPS-UD justification for PC31 appears to be potentially undermined. Especially given the importance that is placed on access and developments occurring on transport corridors.
114. Utilizing capacity at the Rangiora wastewater plant and in the pipes currently used to transport waste there from Ōhoka and Mandeville may also have, excusing the pun, flow on effects. What is the position regarding capacity if PC31 utilises the existing 'extra' capacity that is understood to have been earmarked for already planned development?
115. That the above also relates to a dwelling limit prior to the Applicant needing to provide more in terms of infrastructure (though whether the purported capacity exists still needs to be confirmed) and traffic improvements also presents potential issues that will not necessarily be straightforward without more in the way of guarantees or other commitments in advance.
116. The WDC accepts that these issues are not uncommon for plan changes seeking new developments but, in the case of Ōhoka, because this form of development has not been planned for or formed part of strategic calculations, the impacts of allowing this development could well go beyond

those that would normally be expected. The distance from planned services and the resultant need for new services that, as well meaning as they wish to appear now, the Applicant is unlikely to consider is their problem to resolve, will inevitably introduce further costs that will fall on the Council and therefore the ratepayers of the wider district.

## **Conclusions**

117. At the heart of WDC's opposition is the premise that PC31 is a proposal that goes beyond 'unanticipated development'. It is a development that is inconsistent with the strategic outcomes that the both the WDC and the GCP have been working towards, and the strategies and plans that underpin strategic growth across this wider planning context. It also runs counter to the clear wishes of the community.
118. The responses in the Applicant's evidence to issues raised, especially in submissions, including public transport, transport safety, education, services and infrastructure, suggest a view that, as with site specific issues such as stormwater, water supply and wastewater, 'viable' solutions *may be* available.
119. The WDC considers that there remain uncertainties underlying the practical viability of some of the proposed solutions, either in their availability or their likelihood for success. Potential issues also exist in relation to traffic safety and accessibility, including in particular access to public transport.
120. PC31 will result in a fundamental change in the character of Ōhoka.
121. However, importantly in terms of the NPS-UD, it remains unclear how PC31 will contribute to a well-functioning urban environment, especially on the scale at which it has been pitched as part of the urban environment of GC.
122. Whether it will provide significant development capacity remains an issue we will not know until all detailed investigations have been carried out, and the market has spoken. A development like PC31 seems destined to fuel rather than feed demand. Insofar as the goals under the NPS-UD of creating competitive housing markets and more affordable housing are concerned, it is questionable whether PC31 will make a marked contribution to either.
123. Given the uncertainties that WDC says remain. The NPS-UD should not be used to override the long-term strategic view for Ōhoka, and GC. That is not to say that some development consistent with the maintenance of rural

character should not occur. But PC31 goes far beyond that and will do little to contribute to a well-functioning urban environment.

**Dated:** 9 August 2023



---

Andrew Schulte  
Counsel for the Waimakariri District Council  
(as submitter)