

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
WAIMAKARIRI DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on the Proposed Waimakariri
District Plan (**PWDP** or **the Proposed Plan**)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Waimakariri District Plan by
Momentum Land Limited (MLL)

**MEMORANDUM OF COUNSEL FOR MOMENTUM LAND LIMITED IN RESPONSE
TO MINUTE 1: PROCEDURAL ISSUES**

Dated: 4 May 2023

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MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 1: PROCEDURAL ISSUES

TO: the Chair of the IPI Hearings Panel and the PDP Hearings Panel.

INTRODUCTION

1. This memorandum is filed on behalf of Momentum Land Limited (**MLL**) in respect of the Proposed Waimakariri District Plan (**Proposed Plan**) and Variation 1 to the Proposed Plan.
2. This memorandum raises some potential procedural issues arising from the Panel's Minute 1 as directed by paragraph 132 of that Minute (as amended by Minute 2) and proposes some suggestions for consideration by the Panel.
3. One of the central resource management issues raised by submissions on the Proposed Plan and Variation 1 is whether residential growth and intensification should be allowed to occur at Kaiapoi under the 50 dBA aircraft noise contour.
4. For the reasons discussed below, we consider that the hearing schedule in Minute 1 could be improved to provide for a more fair and efficient procedure for determination of this issue.

CONTEXT

5. MLL has an interest in two separate blocks of land containing 34.5 ha at north Kaiapoi (**MLL land**) that is zoned Rural Lifestyle Zone in the Proposed Plan.
6. Part of the MLL land is identified by the Canterbury Regional Policy Statement (**CRPS**) as Greenfields Priority Area and the balance is identified as Future Development Area. All of the MLL land is within the Kaiapoi Development Area under the Proposed Plan. The MLL land also lies beneath the 50 dBA aircraft noise contour identified in the CRPS. The MLL land and the above planning features are shown on the location plans at **Appendix A**.
7. MLL has filed submissions on the Proposed Plan and Variation 1 seeking that (in summary) the MLL land be rezoned to Medium Density Zone (**MDZ**). The Christchurch International Airport Limited (**CIAL**) has lodged further submissions opposing this outcome.
8. CIAL has lodged submissions on the Proposed Plan and Variation 1 seeking that (in summary) the Proposed Plan be amended to preclude residential growth and residential intensification under the 50 dBA noise contour at Kaiapoi. To achieve this outcome the CIAL submission seeks amendment to provisions spread across multiple chapters of the Proposed Plan.

9. MLL has lodged further submissions opposing this outcome. We understand other parties have also lodged further submissions in opposition to the CIAL submission.

KAIAPOI GROWTH ISSUE

10. The central resource management issue raised by these competing submissions is whether residential growth and intensification should be allowed to occur at Kaiapoi under the 50 dBA aircraft noise contour (referred to as the **Kaiapoi growth issue**).
11. This is a relatively complex issue that engages various objectives and policies of the National Policy Statement on Urban Development (**NPS-UD**) and the CRPS. We anticipate evidence regarding the Kaiapoi Growth Issue will address a range of matters including for example (in no particular order):
- a. Whether rezoning the MLL land will achieve CRPS objectives regarding Recovery Framework and Urban Form and Settlement¹ (and relevant supporting policies);
 - b. Whether rezoning the MLL land will achieve NPS-UD objectives by-
 - i. providing for a well-functioning urban environment at Kaiapoi;²
 - ii. improving housing affordability by supporting competitive land and development markets;³
 - iii. providing urban development that is integrated, strategic and responsive, particularly in relation to supply of significant development capacity;⁴
 - c. Whether rezoning of the MLL land will cause significant reverse sensitivity effects on the operations of Christchurch airport.⁵
 - d. Whether residential density and height controls within the MDZ should be modified for the purpose of ensuring the safe or efficient operation of Christchurch airport.⁶
12. The above matters are by way of example and are not intended to be comprehensive. There are other positive and negative consequences of allowing residential growth and intensification at Kaiapoi underneath the aircraft noise contours that will also need to be considered. All of the benefits, costs and other

¹ CRPS Objective 6.2.1 and 6.2.2 respectively

² NPS-UD Objective 1

³ NPS-UD Objective 2

⁴ NPS-UD Objective 6

⁵ CRPS Objectives 5.2.1.2.g, 5.2.2.2.b and 6.2.1.10 5

⁶ NPS-UD at Policy 4

relevant considerations in relation to the proposed rezoning need to be assessed and taken into account, without having decisions pre-determined on the basis of any one consideration.

13. It follows that an overall decision cannot be made without hearing all the evidence on relevant matters and, in particular, evidence from MLL regarding the costs and benefits of rezoning of the MLL land so that this evidence can be weighed against the costs and benefits of protecting Christchurch airport in the manner proposed by CIAL's submission on the Proposed Plan.
14. The evidence regarding all of the above matters needs to be weighed in light of all the relevant objectives (and supporting policies) of the NPS-UD and the CRPS to assess what outcome will best implement or give effect to such objectives. In doing so the Panel will most likely also need to consider whether and to what extent the relevant objectives and supporting policies of the CRPS give effect to the NPS-UD.
15. In our view the Panel's decision on the Kaiapoi growth issue will then determine whether the Proposed Plan needs to be amended, and if so, what those amendments should be across the various chapters of the Proposed Plan. Put another way, we consider that it not possible to reach a determination on individual provisions of the Proposed Plan on a chapter-by-chapter basis without first reaching an overall decision on how residential growth and intensification is to be managed at Kaiapoi underneath the aircraft noise contour.

MINUTE 1 AND HEARING STREAMS

16. At paragraph 90, Minute 1 provides:

These Hearing Streams have been put together with the objective of, as far as possible, hearing closely related topics and chapters in the same hearing. The intent is that this will reduce the demands on hearing participants, while recognising that some submitters may have to attend and participate in more than one hearing.
17. The Table at paragraph 92 provides 12 Hearing Streams that generally follow the order of the Proposed Plan commencing with higher order provisions like Definitions and Strategic Directions (Stream 1) and finishing with Maps and zoning requests (Stream 12).
18. While we see the merits of this approach generally, we have reservations about application of this approach to the Kaiapoi growth issue. The Proposed Plan and Variation 1 contain provisions spread across multiple chapters of the Proposed Plan that are subject to submissions by CIAL and other parties that will be affected by the Panel's determination of the Kaiapoi growth issue.

19. By our calculation there are six different hearing streams that are relevant to determination of this issue, as shown in the following table.

Hearing Streams relevant to the Kaiapoi growth issue

Hearing Stream	Topic and chapters	Date
Stream 1	Strategic Directions Urban Form and Development	15-18 May 2023
Stream 5	Noise Energy and Infrastructure Transport	21 August - 4 September 2023
Stream 7	Residential (including rezoning where technical evidence is unlikely)	22 November – 1 December 2023
	Variation 1 Housing Intensification	
Stream 8	Subdivision (Rural and Residential)	29-30 January 2024
Stream 10	Future Development Areas	21-23 February 2024
Stream 12	Rezoning requests (larger scale)	10 April - 24 May 2024

POTENTIAL DIFFICULTIES WITH HEARING SCHEDULE

20. We consider there are several potential difficulties with the current hearing schedule as it relates to the Kaiapoi growth issue.
- a. It requires MLL, CIAL, other submitters and reporting officers to attend multiple hearings dealing with different provisions of the Proposed Plan relating to the single issue of whether residential growth and intensification should be allowed to occur at Kaiapoi under the 50 dBA aircraft noise contour;

- b. It creates difficulty for submitters and reporting officers to determine with confidence the scope of evidence and legal submissions that need be presented at each hearing Stream, with potential for prejudice to the submitter if scope is underestimated or unnecessary duplication and repetition if scope is over-estimated; and
 - c. It segments the evidence and legal submissions relevant to the Kaiapoi growth issue across multiple hearings and makes it potentially difficult for the Panel to reach an integrated decision on this important issue.
21. We consider that the hearing schedule in Minute 1 could be improved to provide for a more fair and efficient procedure for determination of this issue. We also consider that dealing with the Kaiapoi growth issue as one topic would assist the Panel to make an integrated decision regarding all of the affected provisions of the Proposed Plan.

PROPOSED AMENDMENT TO THE HEARING SCHEDULE

22. MLL considers that the above concerns could be addressed by amending the hearings procedure in one of the following ways:
- a. By establishing a separate hearing stream that addresses all submissions and further submissions relevant to the Kaiapoi growth issue (other than those already addressed by Stream 1);
 - b. By enlarging Hearing Stream 12 to addresses all submissions and further submissions relating to the Kaiapoi growth issue (other than those already addressed by Stream 1); or
 - c. By granting leave for MLL to be excused from other hearing Streams related to the Kaiapoi growth issue (except for Hearing Stream 1) and allowing MLL to present its case on all aspects of this including MLL's response to CIAL's submissions on the Proposed Plan and Variation 1 at hearing Stream 12 (Maps and zoning).

REJUDICE TO OTHER PARTICIPANTS AND DISRUPTION TO HEARING PROCESS

23. We acknowledge that the Stream 1 hearing is scheduled to occur later this month and that this Stream addresses submissions by CIAL seeking to amend provisions regarding the Strategic Directions and Urban Form and Development, as well as further submissions in support and opposition. For the avoidance of doubt, the above proposed alterations are not intended to alter Stream 1.

24. We also acknowledge that the proposed amendments will entail some disruption to the hearing schedule outlined in Minute 1, with (a) above causing most disruption and (c) above causing least disruption.
25. Even so, the next hearing related to the Kaiapoi noise issue is not until August (Stream 5) which provides sufficient time for alteration to the schedule if the Panel is minded to do so.
26. We consider that other parties will not be unduly prejudiced by the above amendments and instead other parties with an interest in Kaiapoi growth issue may find it helpful for all matters related to this issue to be heard at the same time.
27. The proposed amendments are not intended to increase the overall hearing time required for the Proposed Plan and Variation 1 but rather redistribute time already scheduled across multiple Streams to enable the Kaiapoi growth issue to be heard as one topic. They may actually reduce hearing time by avoiding unnecessary duplication and repetition of evidence and submissions.
28. Overall, we consider the benefits of a more efficient and integrated hearing process regarding the Kaiapoi growth issue outweigh any potential prejudice or disruption that might arise from any of the above-mentioned alterations to the hearing schedule.

Dated: 4 May 2023



Chris Fowler / Margo Perpick
Counsel for Momentum Land Limited

MLL land location plans

Canterbury Regional Policy Statement

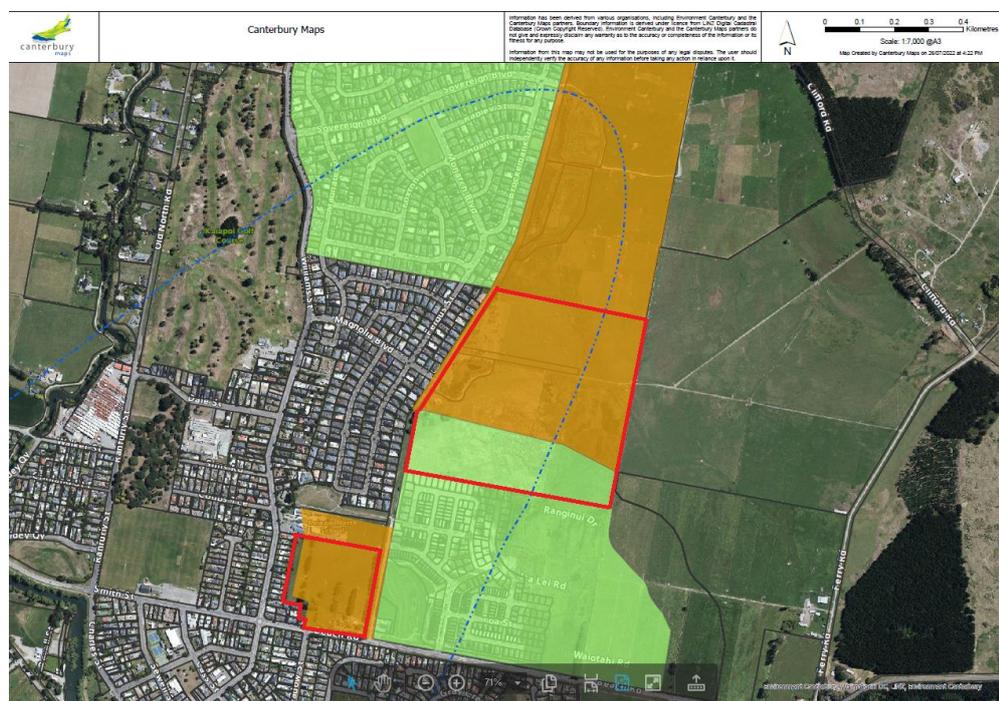


Figure 1: Snip from Canterbury Maps showing MLL land (in red) overlaid with Greenfield Priority Areas, Future Development Areas and the 50 dBA aircraft noise contour.

Proposed District Plan

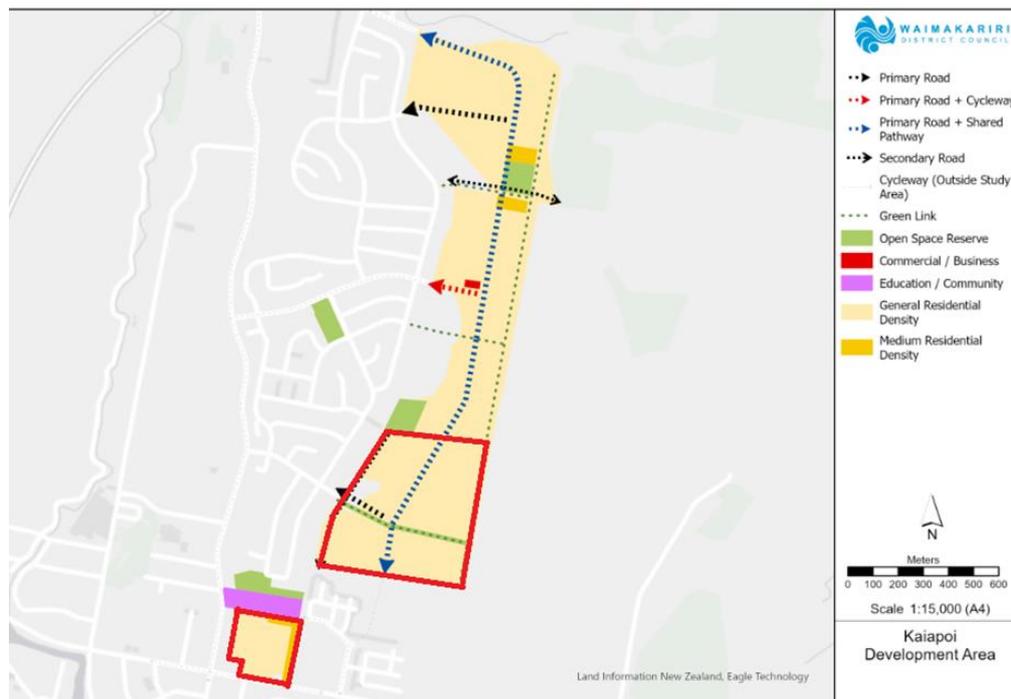


Figure 2: Snip from Proposed Plan showing MLL land (in red) and Outline Development Plan Area (North Kaiapoi)