

**Before the Hearings Panels
At Waimakariri District Council**

Under the Resource Management Act 1991

In the matter of the Proposed Waimakariri District Plan

**Joint Witness Statement –
Airport Noise Matters and Certification
Release of land in development areas (Planning)**

Day 4

Date: 28 March 2024

INTRODUCTION:

1 This Joint Witness Statement ('JWS') relates to expert conferencing on airport noise and certification/release of land issues in respect of the submissions for rezoning.

2 It follows on from the Joint Witness Statements for urban environment matters (Day 1) and urban growth and development (Day 2).

3 This JWS has resulted from views exchanged via correspondence from 15 to 22 March 2024 and a meeting held on 28 March 2024.

4 The following participants were involved in this conferencing and authored this JWS:

(a) Mr Peter Wilson for Waimakariri District Council,

(b) Mr Neil Sheerin for Waimakariri District Council,

(c) Ms Joanne Mitten for the Canterbury Regional Council (Submitter 316),

(d) Mr Jeremy Phillips for Rolleston Industrial Developments Ltd (Submitter 160) and Carter Group Property Limited (Submitter 237),

(e) Mr Tim Walsh for Rolleston Industrial Developments Ltd (Submitter 160) and Carter Group Property Limited (Submitter 237),

(f) Mr John Kyle for Christchurch International Airport Ltd (Submitter 254),

(g) Ms Claire McKeever for 199 Johns Road Ltd et al (Submitter 266) - in relation to certification only

(h) Ms Patricia Harte for Momentum Land Ltd (Submitter 173)

(i) Ms Ruske-Anderson for Bellgrove Rangiora Ltd (Submitter 408) - in relation to the release of land / certification only.

(j) Mr Matthew Lindenburg for Kāinga Ora, noting that he was not in attendance for the discussion, due to an error in Council

administration, but was given the opportunity to record his position in writing.

- 5 In preparing this statement, the experts have read and understand, and abide by, the Code of Conduct for Expert Witnesses as included in the Environment Court of New Zealand Practice Note 2023¹.

PURPOSE AND SCOPE OF CONFERENCING:

- 6 The conferencing was focused on matters relevant to rezoning submissions, including as identified in Minute 20 from the Hearing Panel, dated 27 February 2024²:

- 7 The questions asked of experts by the Hearing Panel and their answers are as follows:

IN RELATION TO AIRPORT NOISE

Q1 - How is Clause 4 of Policy 6.3.5 to be interpreted in itself in respect to the Airport Noise Contour, then in conjunction with the remainder of the Regional Policy Statement (RPS) and the National Policy Statement on Urban Development (NPS-UD), taking into account the King Salmon and Port of Otago direction in respect to higher level documents and the meaning of avoid?

- 8 The experts record the following positions:

Mr Kyle's opinion

- 9 Mr Kyle considers that the *Port Otago* decision does not redefine the word 'avoid' in the context of planning documents³. Policy 6.3.5(4) seeks to provide "... for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport..." is clear and directive. The key

¹ <https://www.environmentcourt.govt.nz/assets/Practice-Note-2023-.pdf>

² https://www.waimakariri.govt.nz/__data/assets/pdf_file/0017/160190/Minute-20-Questions-for-Reply-Report-HS10-next-steps-HS10A-and-HS12.pdf

³ Para 2 of legal submissions from Ms Appleyard for Stream 10A

means to achieve its outcome is to avoid noise sensitive activities in the area subject to the contour.

- 10 Even if the Panel considers that ‘avoid’ requires a demonstration of material harm in light of the *Port Otago* decision the way the policy is drafted is such that the decision-maker has already set out that material harm would occur if noise-sensitive activities are not avoided within the 50dBA Ldn airport noise contour. Given this direction Mr Kyle holds the view that the policy should be given significant weight in the context of the other documents referred to in the panel's question.

Ms Harte’s opinion

- 11 Ms Harte considers that Policy 6.3.5(4) is badly written and that the decision-makers probably intended it to be directive as Mr Kyle states. The structure and drafting of the Policy is such that it is open to multiple interpretations.

Ms Mitten’s opinion

- 12 Ms Mitten has discussed the development of the policy with the Canterbury Regional Council s42A officers who drafted it, who state that the policy interpretation is as Mr Kyle sets out. It is Ms Mitten’s view that in this context avoid means avoid noise sensitive activities, in the context of the CRPS definition of ‘noise sensitive activities’.

Mr Wilson’s opinion

- 13 Mr Wilson considers that the Kaiapoi future development area is exempt from Policy 6.3.5(4) as it is a greenfield area. He also notes that part of the area proposed for development is a greenfield priority area and is also exempt.

Mr Sheerin’s opinion

- 14 Mr Sheerin considers the structure and wording of Policy 6.3.5(4) is badly written and is therefore open to differing interpretations. He considers the use of “including” after the first part of the policy, implies

'avoidance' of new noise sensitive activities within the Airport noise contour may not be an exclusive position. Other options for ensuring new development does not affect efficient Airport operations, could include managing new development in ways that avoid the risk of adverse reverse sensitivity effects arising with respect to efficient Airport operations.

Mr Walsh's opinion

- 15 Mr Walsh favours Mr Kyle and Ms Mitten's interpretation but considers it odd that a future development area would be included in Map A, CRPS if residential development within that area was not possible. Aside from this, Mr Walsh considers on the basis of good planning practice that residential development should not occur under the airport noise contour.
- 16 Separate to the airport noise issue, Mr Walsh does not consider that there is a policy pathway in the CRPS to resolve the flooding constraint on the future development area.

Mr Lindenberg's opinion

- 17 Mr Lindenberg generally agrees with the statement that the policy wording is directive in nature (with regard to its "avoid" intent), but considers the 'exclusions' within the policy wording (e.g. regarding the references to existing residentially zoned urban areas, residential greenfield area identified for Kaiapoi and residential greenfield priority areas identified on Map A) are a key to the 'avoid' directive of Policy 6.3.5(4).

The 'Kaiapoi exemption'

- 18 There are differing views amongst the experts on the nature and extent of the Kaiapoi exemption:
- (a) Mr Kyle does not consider that the exemption covers the future development area, as set out in paras 67-73 of his hearing stream

10A evidence, and his opinion has not changed from that expressed there.

- (b) Ms Mitten agrees with Mr Kyle in that the exemption does not cover the Kaiapoi future development area. Her opinion remains as set out in paras 40-43 of her hearing stream 10A evidence.
- (c) Mr Walsh favours the position of Mr Kyle and Ms Mitten but considers that the drafting is not clear or helpful.
- (d) Mr Wilson considers that the exemption does cover the future development area, as set out in his hearing stream 10A evidence, which describes the 'first test' of Policy 6.3.5(4).
- (e) Ms Harte agrees with Mr Wilson and her opinion has not changed from her hearing stream 10A evidence.
- (f) Mr Sheerin agrees with Mr Wilson, and considers that the reference to 'residential greenfield area' is a generic term that would include existing and future greenfield areas including future development areas.
- (g) Mr Lindenberg generally agrees with the position of Mr Wilson and Mr Sheerin, however notes he did not specifically address the issue of the Kaiapoi greenfield area in his hearing stream 10A evidence.

Q2 - Taking into account the response to the previous question Q1, what is the most appropriate means for managing noise-sensitive activities in the Airport Noise Contour?

- 19 Mr Kyle considers that in the Kaiapoi future development area that 'noise sensitive' activities as defined in the CRPS should be avoided. Where land is already developed for activities sensitive to aircraft noise, intensification should not occur and the conventional approach is to apply ventilation and/or insulation depending on the degree of exposure to aircraft noise. Ms Mitten agrees with Mr Kyle in relation to the first sentence of this paragraph.

- 20 Mr Walsh is less concerned about intensification within existing residential areas as this is not a chosen housing typology for Kaiapoi and does not pose a risk, but supports the statements of Mr Kyle and Ms Mitten.
- 21 Mr Wilson also considers that if even the area is not exempt as set out above under Q1, that the “avoid” requirement in Policy 6.3.5(4) does not mean ‘prohibit’, and that ‘avoid’ in this context means to reduce the noise sensitivity of housing developments on the ‘efficient operation of the airport’, not the operation of the airport overall. The reference to efficiency is presumably in relation to how noise complaints might impact the operation of the airport. Para 5 on pg 6 of the JWS from acoustic experts⁴ states that all acoustic experts agree that “houses between the 50 dB Ldn contour and the 55 dB Ldn contour will achieve the indoor design noise level of 40 dB Ldn with windows closed and with windows ajar”. This appears to apply to both modern buildings (which have higher insulation standards) and existing houses. As such, Mr Wilson considers that, even if the Kaiapoi exemption does not apply, that buildings, particularly modern buildings, reduce noise sensitivity and avoid the reverse sensitivity effect on the efficient operation of the airport.
- 22 Mr Sheerin and Mr Lindenberg agree with the comments of Mr Wilson in the above paragraph. In addition, Mr Sheerin and Mr Lindenberg consider the agreed opinion of the experts in the Acoustic JWS cited by Mr Wilson in the above paragraph suggest there is no adverse reverse sensitivity aircraft noise effect in the District to manage.

Q3 - Does the RPS require the PDP to use the 50db noise contour which is identified in Map A?

- 23 Ms Harte does not consider that the PDP is required to use the 50dB noise contour in ‘Map A’ due to the wording of Policy 6.3.5(4) as it does

⁴ https://www.waimakariri.govt.nz/__data/assets/pdf_file/0013/161410/STREAM-10A-ACOUSTIC-JOINT-WITNESS-STATEMENT.pdf

not refer explicitly to the 50 dB contour 'in Map A' – it refers to a 50 dB noise contour generally and may have been intended to provide flexibility over time.

24 Mr Phillips agrees with Ms Harte but acknowledges that the wording is unclear.

25 Mr Wilson and Mr Sheerin consider that the PDP must implement the 50 dB contour in Map A to give effect to the CRPS. This is primarily implemented through Policy 6.3.5 in the context of Kaiapoi.

26 Mr Walsh agrees with Mr Wilson and Mr Sheerin but considers that the 50 dB contour applies at a minimum.

27 Mr Kyle considers that Policy 6.3.5 of the RPS does require the PDP to give effect to the 50 dB noise contour for Christchurch International Airport. Mr Phillips and Mr Walsh agree with this. What this might mean in terms of Q4 is set out below.

28 Ms Mitten considers that the 50 dB contour in Map A is the operative contour, and that the proposed contours can only be made operative through a change to the RPS. The PDP must give effect to the operative CRPS.

29 Mr Lindenberg agrees with the position of Ms Mitten, as set out in his hearing stream 10A evidence.

Q4 - Is it appropriate for the remodelled contour (as sought through the submissions and further submissions) to be included in the PDP through our recommendations?

30 Mr Walsh, Mr Kyle and Mr Phillips consider that the operative 50 db contour is shown on Map A. The RPS anticipates the need to review the contours as set out in Policy 6.3.11(3). On that basis significant weight should be ascribed to the 2023 amended contours in the context of the PDP review. These experts appreciate that the amended contours need to go through a statutory process associated with the RPS review. Mr

Walsh, Mr Kyle and Mr Phillips hold the opinion that decisions on rezonings affected by the contours should be deferred until this matter is resolved. They consider that to do otherwise has the potential to expose new residents to the effects of aircraft noise.

- 31 Mr Wilson, Mr Sheerin, Mr Lindenberg and Ms Mitten consider that the draft remodelled contours have no weight and that the only contour that should be applied is the 50 dB contour in Map A. Ms Mitten considers that this contour is the operative contour in the CRPS and that the PDP must give effect to it.

IN RELATION TO RELEASE OF LAND / CERTIFICATION

Q1 - Are the certification process as notified in the PDP, the certification consent as set out in the s42A report, and the options presented in the preliminary responses to Panel questions appropriate to provide for the “release” of land for urban development, taking into account the provisions of the RPS and NPS-UD?

Q2 - Is there a more appropriate approach to provide for the release of land (than a certification/consent process) taking into account the JWS in respect to urban growth and development, and if so, is there scope within the PDP or Variation 1 submissions to use this approach?

- 32 The experts consider that rezoning via Schedule 1 is the most appropriate process. The nature of and need for an additional plan-enabled land-release process will be dependent on the rezoning recommendations and decisions, noting that almost all land in the future development areas are subject to a rezoning submission. Where rezoning is successful we see no need for a certification process to be subsequently available and applied.

- 33 Mr Wilson considers that this could be considered as a wrap-around recommendation on certification/land release following rezoning recommendations in his s42A report for hearing stream 12E, as indicated in his answers to preliminary questions for hearing stream

10A. Ms McKeever agrees with this position, having not been able to attend the conferencing due to a timing clash.

34 Ms Mitten considers that if such a process was provided for it would need to be consistent with the technical tests within the CRPS, including those matters set out in Policy 6.3.12. She does not consider that certification or a plan-enabled land-release policy should apply to the Kaiapoi development area, and that a schedule 1 plan change process would be appropriate for this area, as stated in her stream 10A evidence.

35 Mr Walsh, Mr Kyle and Mr Phillips do not consider there is a need for a certification process at all, and that a Schedule 1 plan change is most appropriate.

Ms Ruske-Anderson's comments

36 Ms Ruske-Anderson was not advised of the schedule change which pulled forward the certification conferencing to the morning and as a result was unable to attend. She agrees that rezoning via Schedule 1 is the most appropriate process for releasing land for urban development and notes the additional following considerations regarding the two questions raised:

Q1:

37 Some form of land release consent process (for the future development areas only) may be appropriate to provide for the 'release' of land for urban development, provided that the appropriate requirements in the CRPS, particularly Policy 6.3.12 'Future development areas' are met.

38 Building on her evidence for Hearing Stream 10A, Ms Ruske-Anderson considers that the certification provisions as notified, the certification consent as set out on in the s42A report, and the certification options presented in the preliminary responses to the Panel questions require additional work to ensure that they:

- i. appropriately give effect to the CRPS and specifically Policy 6.3.12;
- ii. are objective;
- iii. are clear;
- iv. are measurable;
- v. do not duplicate other processes already required (i.e., subdivision consent provisions); and
- vi. do not result in an unlawful delegation of powers.

Q2:

39 Rezoning via Schedule 1 as part of the pWDP is the most appropriate process for releasing land for urban development. Ms Ruske-Anderson considers it is the most responsive and consequently best gives effect to the Objective and Policies of the NPS-UD.

40 Alternative approaches that could provide for the release of land (i.e., a certification process, deferred zoning, private plan changes or the standard consenting pathway) all have reduced levels of responsiveness requiring additional assessment, uncertainty and/or potential delays with timely land release (e.g., the potential two year delay for private plan change requests under Clause 25(4) of Schedule 1).

Date: 28 March 2024

Signatories



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**Mr Peter Wilson, Principal Planner,
Waimakariri District Council**



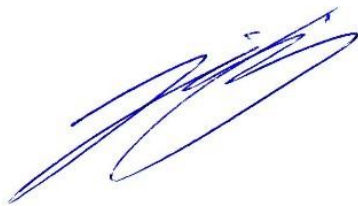
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**Mr Neil Sheerin, Senior Planner,
Waimakariri District Council**

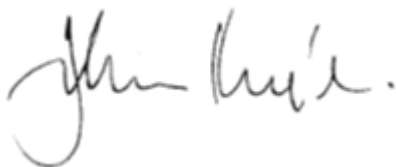


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