

**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)

AND

IN THE MATTER OF

Stream 1 Hearing of submission on the
Proposed Waimakariri District Plan and
Variations 1 and 2

STREAM 1 LEGAL SUBMISSIONS FOR MOMENTUM LAND LIMITED

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STREAM 1 LEGAL SUBMISSIONS FOR MOMENTUM LAND LIMITED

INTRODUCTION

1. These submissions are filed on behalf of Momentum Land Limited (**MLL**) in respect of the Stream 1 hearing of submission on the Proposed Waimakariri District Plan (**Proposed Plan**) and Variation 1 to the Proposed Plan.
2. Hearing Stream 1 deals with Part 1, General Matters etc, Definitions, Strategic Directions, and Urban Form and Development. MLL is generally supportive of the notified version of these provisions.
3. MLL is generally opposed to the relief sought by the Christchurch International Airport Limited (**CIAL**) regarding the provisions within Stream 1, except where such changes do not influence or affect the relief sought by MLL.
4. For the reasons discussed below, MLL has not lodged expert evidence regarding Stream 1. However MLL intends to file evidence both in support of its submissions and in opposition to CIAL's submissions at a future hearing(s) of the Proposed Plan.

CONTEXT

5. MLL has an interest in two separate blocks of land containing 34.5 ha at north Kaiapoi (**Momentum land**) that is zoned Rural Lifestyle Zone in the Proposed Plan.
6. Part of the Momentum land is identified by the Canterbury Regional Policy Statement (**CRPS**) as Greenfields Priority Area and the balance is identified as Future Development Area. The Momentum land also lies beneath the 50 dBA aircraft noise contour identified in the CRPS. The Momentum land and the above planning features are shown on **Figure 1 of Appendix A**.
7. All of the Momentum land is identified by the Proposed Plan as within the Kaiapoi Development Area and the Outline Development Plan Area (North Kaiapoi)¹ that anticipate future residential development of land north of Kaiapoi (**Figure 2 of Attachment A**).

¹ DEV-K-APP1 – Kaiapoi Outline Development Plan

8. MLL has filed submissions on the Proposed Plan and Variation 1 seeking that (in summary) the Momentum land be rezoned to Medium Density Zone (**MDZ**). CIAL has lodged further submissions opposing this outcome.
9. 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. MLL has lodged further submissions opposing this outcome.

THE KAIAPOI GROWTH ISSUE

10. The central resource management issue raised by MLL and CIAL's 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. There are 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 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.
12. In our view the Panel's decision on the Kaiapoi growth issue will 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 addressed by Stream without first reaching an overall decision on how residential growth and intensification is to be managed at Kaiapoi underneath the aircraft noise contour.
13. We consider that a determination on the matters addressed in the Stream 1 hearing should not be made until an overall decision is made on the Kaiapoi growth issue. For this reason MLL intends to file expert evidence and additional legal submissions addressing the Kaiapoi noise issue at future hearings of the Proposed Plan and Variation 1. These legal submissions should be read together

with the more detailed submissions that will be filed by MLL in due course at future hearings.

SUITABILITY OF MOMENTUM LAND FOR REZONING TO MDZ

14. We consider that the Momentum land is well suited to rezoning to MDZ. In the following sections we highlight features of the site and planning provisions that support rezoning of the Momentum land. All these matters will be addressed by evidence and more detailed legal submissions for MLL at later hearings of the Proposed Plan.

MOMENTUM LAND - SITE ATTRIBUTES

15. The Momentum land comprises two separate blocks of land. Both blocks are of a good size, shape and location for residential development. The North Block contains 28.5 ha and is located immediately adjacent to existing residential development on its south and west boundary (**North Block**). The South Block contains 6.05 ha and is surrounded by residential development to the west, south and east, and by the Kaiapoi High School to the north (**South Block**).
16. Both blocks are capable of being serviced by council services and stormwater detention facilities will be integrated into site development. Both sites are low lying however flood hazard risk will be mitigated by raising land and floor levels to comply with the building code, and regional and local planning requirements. Based on the considerable analysis completed by MLL to date there are no significant environmental constraints affecting the suitability of the site for residential development.²
17. It is anticipated that excellent urban design outcomes can be achieved if the site is rezoned to MDZ. MLL's submission seeks to include a new Outline Development Plan (**ODP**) in the Proposed Plan that illustrates how the site will be developed. This has recently been updated and for illustrative purposes the most recent version is attached as **Figure 3 of Appendix A**.³ It's clear from the ODP that the Momentum land is the obvious next piece of the puzzle in terms of residential growth at Kaiapoi and, further, that development of the Momentum

² Geotechnical, land contamination, transportation, rural land productivity and cultural impact assessments have all been completed

³ A final version of the ODP will be included in evidence for MLL at a future hearing.

land will enable and support future residential development of land immediately to the north of the North Block.

18. The housing yield from Momentum land is anticipated to be considerable, in the order of 130 - 150 new residential units on the South Block (depending on lot configuration) and in the order of approximately 600-650 new residential units on the North Block (again depending on lot configuration).
19. The directors and shareholders of MLL have considerable land development experience and expertise. They have successfully developed "Beach Grove", a substantial residential development lying between the North and South Block. MLL is well placed to extend their work on "Beach Grove" to create an integrated and comprehensive urban environment within this area of Kaiapoi, as depicted in the attached ODP.

MOMENTUM LAND – ALIGNMENT WITH PLANNING INSTRUMENTS

20. We consider that the rezoning proposed by MLL gives effect to objectives (and supporting policies) of the National Policy Statement for Urban Development 2020 (**NPS-UD**) and the Canterbury Regional Policy Statement. The proviso to this is that the CRPS contains provisions that seek to protect the operation of Christchurch Airport by avoiding noise sensitive activities underneath the 50 dBA aircraft noise contour. However these provisions are subject to an exception for Kaiapoi. Application of the Kaiapoi exception in the circumstances of this case is discussed further below.

Consistency with Proposed Plan

21. The Momentum Land is zoned rural zone in the operative Waimakariri District plan and zoned Rural Lifestyle Zone in the Proposed Plan. Both blocks are within the Projected Infrastructure Boundary (**PIB**) for Kaiapoi⁴ and included within the Kaiapoi Outline Development Plan in the Proposed Plan that anticipates future residential development of land north of Kaiapoi (refer to abovementioned **Figure 2 of Appendix A**). This land is subject to an overlay which in conjunction with a proposed certification process provides a mechanism to transition the zoning of both blocks to Medium Density Residential Zone.

⁴ CRPS, Chapter 6, Map A

22. These provisions are designed to implement the urban form identified in the Waimakariri District Development Strategy 2048 (July 2018) (**WDDS**) which was developed to help inform the Council's response to the National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**). The WDDC proposed residential growth direction encompasses the Momentum land (refer **Figure 4** of **Appendix A**).
23. The rezoning proposed by Momentum is consistent with virtually all the notified objectives and supporting policies of the Proposed Plan relevant to the Stream 1 hearing.. An exception to this UFD-P10(1) regarding managing reverse sensitivity effects from new development which states (emphasis added):

Within Residential Zones and new development areas in Rangiora and Kaiapoi:

1. *avoid residential activity that has the potential to limit the efficient and effective operation and upgrade of critical infrastructure, strategic infrastructure, and regionally significant infrastructure, including avoiding noise sensitive activities within the Christchurch Airport Noise Contour, unless within an existing Residential Zone*
2. ...

24. Limiting the exception within Policy UFD-P10(1) to only "an existing Residential Zone" is inconsistent with the CRPS which expressly provides for residential development with Greenfield Development Areas identified on Map A.⁵ It is also inconsistent with other provisions of the Proposed Plan which clearly contemplate residential development within the Kaiapoi Development Area. See for example SD-O3 (Urban Development), UFD-P2(1) (Identification/location of new Residential Development Areas) and Noise -P4 (Airport Noise Contour) which provides as follows (emphasis added):

Protect Christchurch International Airport from reverse sensitivity effects by:

1. *avoiding noise sensitive activities within the 50 dBA Ldn Noise Contour by limiting the density of any residential unit or minor residential unit to a maximum of 1 residential unit or minor residential unit per 4ha, except within existing Kaiapoi Residential Zones, greenfield priority areas identified in Chapter 6 - Map A of the RPS (gazetted 6 December 2013) or any residential Development Area*

⁵ CRPS at Policy 6.3.5.4 via the so-called Kaiapoi exception

25. Greater consistency within the Proposed Plan and better implementation of the NPS-UD would be achieved if Policy UFD-P10(1) was amended to include the underlined text above.

Alignment with NPS-UD

26. We anticipate the evidence for MLL will show that rezoning the Momentum land to MDZ will implement the objectives of the NPS-UD substantially better than the alternative approach of precluding residential development of the Momentum land proposed by CIAL.
27. In particular, given the site attributes and other features discussed above, we consider that rezoning the Momentum land will implement NPS-UD objectives (and supporting policies) by:
- 27.1. providing for a well-functioning urban environment at Kaiapoi;⁶
 - 27.2. improving housing affordability by supporting competitive land and development markets;⁷
 - 27.3. enabling more people to live in areas of an urban environment with many employment opportunities, that is well serviced by existing public transport, and where there is high demand for housing;⁸
 - 27.4. providing urban development that is integrated, strategic and responsive, particularly in relation to supply of significant development capacity.⁹

Alignment with CRPS

28. We consider that the proposed rezoning implements the CRPS objectives and policies except insofar as the CPRS seeks to protect the operation of Christchurch airport by avoiding the establishment of noise sensitive activities within the 50 dBA noise contour. The CRPS contains a suite of provision designed to achieve this outcome.¹⁰

⁶ NPS-UD Objective 1

⁷ NPS-UD Objective 2

⁸ NPS-UD Objective 3

⁹ NPS-UD Objective 6

¹⁰ Refer Objectives 5.2.1.2ā.g, Objective 5.2.2.2.b, and Policies 5.3.2.2.b and 5.3.9.1; Objective 6.2.1.10 and Policies 6.3.3.9; 6.3.5.4; 6.3.11.5.h, and 6.3.12. 2 and 6.3.12.5

29. The CRPS also contains Policy 6.3.5 which deals with integration of land use and infrastructure. It provides that (emphasis added)-

Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by:

1. *Identifying priority areas for development and **Future Development Areas** to enable reliable forward planning for infrastructure development and delivery;...*
4. *Only providing 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, **unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 6-28) and enabling commercial film or video production activities within the noise contours as a compatible use of this land;***

30. The principal reasons and explanation for this policy refers to the Kaiapoi exception and states that-

The only exception to the restriction against residential development within the 50dBA LdN airport noise contour is provided for at Kaiapoi.

Within Kaiapoi land within the 50dBA Ldn airport noise contour has been provided to offset the displacement of residences as a result of the 2010/2011 earthquakes. This exception is unique to Kaiapoi and also allows for a contiguous and consolidated development of Kaiapoi.

31. We ascertain from the above that the Kaiapoi exception is intended to serve two inter-linked purposes, namely:

- 31.1. to offset displacement of Kaiapoi residents caused by the Canterbury earthquakes; and
- 31.2. to provide for displaced residents in a manner that allows for contiguous and consolidated development to occur at Kaiapoi.

32. The latter purpose is necessary because due to various geographic constraints the only feasible new location for displaced residents at Kaiapoi that allows for contiguous and consolidated development is beneath the noise contours.

Inclusion of FDA in Plan Change 1 to the CRPS

33. Future Development Areas (**FDA**) were included in the CRPS by Plan Change 1 (**PC1**). PC1 amended Chapter 6 of the CRPS by a targeted change to enable the Greater Christchurch councils to implement the growth strategy set out in *Our Space 2018-2048: Greater Christchurch Settlement Pattern Update Whakahāngai O To Hōrapa Nohooanga (Our Space)*.
34. PC1 was advanced through a streamlined planning process. PC1 was publicly notified on 16 January 2021 and included FDA at Kaiapoi and elsewhere. Various submissions were made on PC1. Further submissions are not part of the streamlined planning process requirements. No hearing was held for PC1 and there was no right of appeal.¹¹
35. PC1 proposed to make the following amendments to Chapter 6 and Map A of the operative CRPS.¹²
- Amend Map A to identify FDAs in Rolleston, Rangiora and Kaiapoi.
 - Insert a new policy (policy 6.3.12), to enable land with these FDAs to be rezoned by Selwyn and Waimakariri District Council's if required to meet their medium term (10 year) housing needs.
 - Make consequential changes to objectives, policies, text and definitions within Chapter 6 of the CRPS.
36. The PC1 Section 32 report explains that the land identified in *Our Space 2018-2048* and included as Future Development Areas under PC1 would help address projected housing capacity shortfalls for Selwyn and Waimakariri Districts over the medium to long term (ten to thirty years) in Rolleston, Rangiora and Kaiapoi.¹³
37. PC1 was approved as notified, including amending Map A of Chapter 6 of the CRPS to identify a Future Development Area at north Kaiapoi. However, as a consequence of a submission by CIAL, PC1 was amended to provide that FDA should be subject to the existing avoidance policies in the CRPS regarding noise-sensitive activities underneath noise contours.

¹¹ The Minister approved PC1 on 28 May 2021 and the changes were made operative on 28 July 2021.

¹² PC1 Section 32 Evaluation Report at page 9

¹³ PC1 Section 32 report at page 8

38. With respect, this is a surprising outcome as precluding residential development within a substantial area of the Kaiapoi FDA is incongruent with the stated purpose of PC1 which is (among other matters) to enable rezoning of land within FDA to meet housing needs at Kaiapoi.
39. The outcome is to create conflict within the CRPS between provisions that seek to enable rezoning to provide housing outcomes within FDA and provisions designed to avoid housing beneath noise contours. The Kaiapoi exception operates to resolve this conflict insofar as Greenfield Priority Areas are concerned but for whatever reason the Kaiapoi exception has not been extended to include land at Kaiapoi identified as FDA.
40. This has important implications for Kaiapoi because the geographical constraints that necessitated the Kaiapoi exception following the Christchurch Earthquake sequence remain equally as relevant today. Unlike other urban areas within Greater Christchurch affected by the 50 dBA noise contour, Kaiapoi does not have available alternative areas for growth that are outside the contour. For example, Rolleston lies just outside the noise contour and has further room to grow whereas most of Kaiapoi is already underneath the contour and has very limited options for growth that are not affected by the contour. **Figures 5 and 6** of **Appendix A** illustrates the difference between Rolleston and Kaiapoi with respect to the 50 dBA noise contour.

Hierarchy of planning documents

41. In *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38*¹⁴ the Supreme Court noted the three-tiered management system – national, regional and district – created by the RMA which established a “hierarchy of planning documents”¹⁵. Subordinate planning documents, such as regional policy statement, must give effect to National Policy Statements. This is expressly provided for by section 62(3) RMA. The Supreme Court held that-

41.1. the requirement to “give effect to” is a strong directive,¹⁶

¹⁴ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38* at [ABOAP 376].

¹⁵ At [ABOAP 381], paragraph [10].

¹⁶ At [80]

- 41.2. the notion that decision makers are entitled to decline to implement a National Policy Statement if they consider appropriate does not fit readily into the hierarchical scheme of the RMA,¹⁷ and
- 41.3. the requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.¹⁸
42. This hierarchy is an important consideration when determining weighting of National Policy Statements and lower order planning instruments, particularly when the national instrument is the most recent in time. In *Bunnings Ltd v Queenstown Lakes District Council*¹⁹ the Environment Court discussed the relationship between the Operative District Plan and Proposed District Plan (which each contained avoid policies intended to exclude non-industrial activities from industrial zones) and the NPS-UDC. The Court concluded that:

Accordingly we consider it is appropriate to put greater weight on the NPS-UDC and, if necessary, on part 2 of the RMA (especially section 7(b)). The NPS-UDC demands greater weight because it is a later document, is higher in the statutory hierarchy, and has better regard to section 7(b) RMA.²⁰

How should the Kaiapoi exception be interpreted and applied in the circumstances of this case?

43. There is considerable case law regarding the interpretation of resource management provisions which we do not propose to traverse at this Stream 1 hearing.
44. For present purposes we note that the recent decision of *Auckland Council v Teddy and Friends Ltd*²¹ provides a useful summary of the main principles which apply when determining the meaning of planning provisions created in the RMA context. The meaning must be derived from its text and in the light of its purpose and context. The context of a rule refers not only to its immediate context within the plan, but to relevant objectives, policies and other methods. The history of the plan is another relevant factor. Interpretation should be undertaken in a manner that avoids absurdity, is consistent with the expectations of property

¹⁷ At [90]

¹⁸ At [91]

¹⁹[2019] NZEnvC 59

²⁰ At paragraph [113]

²¹ *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128.

owners and consistent with the practical administration of the relevant provision.²²

45. Taking all relevant matters into account, the case for MLL will be that there is a strong argument to support a “purposive” approach to interpretation of the Kaiapoi exception rather than the “literal” approach advanced by CIAL. A purposive approach would enable the Kaiapoi exception to be read and applied in a manner that allows for residential development within the Kaiapio Growth Area and residential intensification within the MDZ at Kaiapoi whilst mitigating as far as practicable potential reverse sensitivity effects on the airport.

RESPONSE TO CIAL SUBMISSIONS

CIAL seeks a prescriptive and unbalanced approach contrary to NPSUD and Enabling Housing Supply Amendments

46. CIAL seeks to take a prescriptive approach which does not reflect or give effect to the NPS-UD and the Enabling Housing Supply amendments to the RMA. It seeks to prohibit residential development on the basis of one consideration, namely the potential reverse sensitivity effects on the Airport of residential development within the 50 dBA contour. In doing so, it seeks to have decision-makers ignore all of the other considerations which are relevant, particularly the benefits and necessity of making adequate provision for well-functioning urban environments.
47. CIAL’s submissions on the PDP (at paragraphs 15.1 and 15.2) and on Variation 1 (para 16.1 and 16.2) incorrectly assert that “a well-functioning urban environment is one in which:
- 47.1. infrastructure, particularly nationally significant infrastructure such as the Airport, is not adversely affected by incompatible activities; and
 - 47.2. urban growth is planned with infrastructure provision in mind, recognising that the two run hand-in-hand.
48. Neither of those statements is part of the definition of “well-functioning urban environment” in Policy 1 of the NPS-UD.

²² *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128 at paras [12]-[13].

49. Rather, the definition of “well-functioning urban environments” focuses on such things as:
- 49.1. providing or enabling a variety of homes that meet the needs, in terms of type, price, and location of different households;
 - 49.2. having good accessibility for all people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport;
 - 49.3. supporting, and limiting as much as possible adverse impacts on, the competitive operation of land and development markets.
50. These aims would be impeded by elevating a consideration such as potential reverse sensitivity effects to a “veto” on development throughout the very large area covered by the Airport’s noise contours. That would be exacerbated in Kaiapoi, where virtually all potential for further contiguous and consolidated residential development is within the contours.
51. Objective 5 of the NPS-UD does require that local authority decisions on urban development that affect urban environment are “integrated with infrastructure planning and funding decisions”, but that same Objective requires such decisions to be “responsive, particularly in relation to proposals that would supply significant development capacity”.
52. Similarly, although section 77I of the RMA, inserted by the Enabling Housing Supply Amendment Act, provides for Qualifying Matters (QM) including:
- (e) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure,*
53. That section states that a specified territorial authority **may** make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone, and **only to the extent necessary to accommodate** a qualifying matter (emphasis added).
54. The existence of a qualifying matter does not dictate that the territorial authority **must** put in place provisions which are less enabling than MDRS and policy 3, where a QM exists, simply that it has a **discretion** to do so. In exercising that discretionary power, the authority must take into account all relevant

considerations, not only the bare fact that a qualifying matter exists. A comprehensive, balanced approach is required.

55. CIAL's submission on Variation 1, at paragraph 41, notes the Explanation to Policy 12.1.1.12 in the Operative Plan, which is as follows:

For Christchurch International Airport the 50 dBA Ldn aircraft noise contour shows noise level boundaries encroaching onto land to the southwest and northeast of Kaiapoi. Within Kaiapoi, as defined in Chapter 6 of the Canterbury Regional Council Regional Policy Statement, consideration is given to balancing the provision of areas for future growth in Kaiapoi and for rehousing people displaced as the result of earthquakes against the 50 DBA Ldn aircraft noise contour constraint on subdivision and dwellinghouse development on areas below four hectares.

*For these defined areas of Kaiapoi, under the 50 dBA Ldn aircraft noise contour, consideration is made for the provision of residential development, **having regard for the form and function of Kaiapoi** and to offset the displacement of households within the Kaiapoi Residential Red Zone which were already within the 50 dBA Ldn contour and which were displaced as a consequence of the 2010/2011 Canterbury earthquakes. It also provides, as part of greenfields residential development, for Kaiapoi's long term projected growth. **Such development provides for the contiguous and consolidated urban development of Kaiapoi.** In recognition of the potential adverse effects of aircraft noise over Kaiapoi in the future, information relating to the 50dBA Ldn aircraft noise contour and the potential for increased aircraft noise will be placed on all Land Information Memoranda for properties within the 50 dBA Ldn aircraft noise contour for Christchurch International Airport. (emphasis added).*

56. This approach recognises that:
- 56.1. potential reverse sensitivity effects of residential development on the airport do not necessarily preclude residential development within the 50 dBA contour;
 - 56.2. there are other mechanisms, such as the provision of warnings on LIMs, to mitigate or avoid such effects;
 - 56.3. the benefits of making provision for housing in particular locations, and in a way which is contiguous and consolidated, can outweigh the potential

adverse reverse sensitivity effects of locating housing within the 50 Ldn contour.

57. The Court of Appeal judgment in *Canterbury Regional Council v Independent Fisheries*²³ did not in any way undermine that approach. That case set aside the decision of the Minister for Canterbury Earthquake Recovery to exercise his powers under section 27 of the Canterbury Earthquake Recovery Act to:

57.1. amend the Canterbury Regional Policy Statement by adding a new chapter 22 to set in place an airport noise contour around Christchurch International Airport within which noise sensitive activities, including residential activities, were to be avoided (excepting a limited number of households in Kaiapoi); and

57.2. revoke Proposed Change 1 to the 1998 Canterbury RPS and insert a new chapter 12A, which set an urban limit for greater Christchurch and provided for urban development of designated greenfield areas over the next 35-40 year, including space for 47,225 residential properties.

58. The High Court and the Court of Appeal held that, in exercising his powers, the Minister had failed consider whether it was necessary to proceed by way of section 27 rather than by way of the Recovery Strategy and/or Recovery Plans. Those latter processes would have involved public participation, whereas the use of section 27 did not, which meant that some landowners who argued that residential development should be allowed within the 50 Ldn contour throughout greater Christchurch were denied access to the Court by the Minister's decision.

59. The quote included at paragraph 39 of CIAL's submission on Variation 1 was, as noted, from a briefing paper given by the Canterbury Earthquake Recovery Authority to the Minister. The highlighted sentence, that "the larger the area exempted the greater the risk that the air noise contour will be undermined" would have been the opinion of a CERA report writer, but it was not a matter at issue before the High Court or the Court of Appeal. At paragraph 99 of the Court of Appeal judgment, the full quote is "the exceptions to the restrictions imposed by the noise level contour for residential development in Kaiapoi was clearly designed to assist the recovery of Kaiapoi and was therefore in accordance with the purposes of the Act". The matter being decided at that part of the judgment

²³ [2012] NZCA 601

was whether the Minister, in exercising his powers under section 27 of the CER Act, was acting in accordance with the purposes of that Act. The Courts were not being asked to decide whether a greater or lesser area of development within the airport noise contour increased or decreased any risk to the Airport.

60. A more recent example of this balanced, comprehensive approach is the case of *Colonial Vineyard v Marlborough District Council*,²⁴ confirmed by the High Court in *New Zealand Aviation Museum Trust v Marlborough District Council*,²⁵ where new residential zoning was being sought inside of the 50 Ldn airport noise contour, and in fact, partially inside of the 55 Ldn contour.
61. In coming to a decision to grant the zoning, the Environment Court recognised that the following positive consequences were likely:²⁶

- (a) *urgent demand for housing will be (partly) met;*
- (b) *the site has positive attributes for all the critical factors for residential development except for one. That is, the soils and geomorphological conditions and existing infrastructure and stormwater systems are all positive for such development. The exception is that the consequences for the roading network and other transport factors would be merely neutral;*
- (c) *of the (merely) desirable factors, the site only shows positively on one factor -the proximity of recreational possibilities. It is neutral in respect of community, employment and ecological factors, and is said to be negative in respect of landscape although we received minimal evidence on that point;*
- (d) *although the potential to develop land speedily is not a factor referred to in the district plan, we agree with CVL that it is a positive factor that the land is in single ownership and could be developed in a co-ordinated single way. The 2010 Strategy recognised that with the anticipated growth rates the site might be fully developed within 3.5 years.*

[70] The negative consequences of approving PC59 are likely to be:

- (a) *that versatile soils would be removed from productivity;*

²⁴ [2014] NZEnvC 55

²⁵ [2014] NZHC 3350

²⁶ *Colonial Vineyard*, para 69-72

- (b) *that some rural amenities would be lost;*
- (c) *that an opportunity for 'employment' zoning would be lost;*
- (d) *there is the loss of a buffer for the Omaka airfield;*
- (e) *there may be adverse effects on future use of Omaka airfield.*

62. The potential reverse sensitivity effects on the airfield were seen as just one of all relevant positive and negative factors, not a veto in a way which ruled out a balanced consideration.

New Zealand Standard 6805:1992.

63. The New Zealand Standard 6805:1992 is referred to in CIAL's submissions (para 24 of submission on PDP, para 64 of submission on Variation 1), as support for imposing an airport outer control boundary of 50 Ldn. However, that Standard makes no mention of 50 Ldn as an outer control boundary for airport noise.
64. What NZS 6805:1992 actually provides, at 1.1.5(d), is that noise control measures are required when the exposure of the residential community exceeds 65 Ldn, and may be necessary when the exposure exceeds 55 Ldn.
65. At NZS 6805:1992, 1.4.3.8, the Standard states that local authorities should mark the 65 Ldn contour in district plans as the air noise boundary, and the 55 Ldn contour as the outer control boundary. The Standard makes no mention of the 50 Ldn contour, nor the need for any measures to be taken when noise levels are between 50 and 55 Ldn.
66. The existence and applicability of the NZ Standard 6805 was discussed in *Colonial Vineyard*,²⁷ where it was recorded that the airport noise outer control boundary in the Marlborough District Plan is the 55 Ldn contour, not the 50 Ldn contour. As contemplated by the New Zealand Standard, that case allowed residential development between the 50 and 55 Ldn contours, and in fact, to some extent inside of the 55 Ldn contours.
67. The Standard says that noise control measures **are required** when noise exposure exceeds 65 Ldn, and **may be necessary** when the exposure exceeds 55 Ldn. In *Colonial Vineyard*, the Courts accepted that the use of restrictive "no complaints"

²⁷ Paragraph 45-51

covenants was an effective measure to adequately avoid or mitigate reverse sensitivity effects on the airport.

68. Prior to *Colonial Vineyard*, as is noted in the material supplied by CIAL in support of the airport noise QM, there were a number of Court decisions relating to residential development within the 50 Ldn contour around Christchurch Airport. Given that all of those cases pre-date the NPS-UD and the Enabling Housing Supply amendments to the RMA, they are of very limited, if any, guidance now that those provisions must be given effect to in RMA decision-making.
69. Similarly, the CRPS has not been updated to give effect to the NPS-UD and Enabling provisions, and as such, still prescribes an outdated and unbalanced approach to deciding whether land may be rezoned for residential development. The change in approach which has been effected by the introduction of NPS-UD (and NPS-UDC which preceded it) was noted in the *Bunnings v Queenstown Lakes District Council* case:²⁸

[148] The NPS-UDC directs a radical change to the way in which local authorities have approached the issue of development capacity for industry in the past. That has traditionally come close to the "Soviet" model of setting aside X ha for the production of pig iron. The ODP, PDP and even the PORPS all come close to that when they direct that non-industrial activities are to be avoided on land zoned industrial.

[149] In contrast the NPS-UDC's substantive policy PA3(b) requires us to have particular regard to providing choices for consumers. The proposal by Bunnings will do that.

70. The situation of older planning documents, such as the CRPS, containing outdated provisions is anticipated by the Enabling Housing Supply amendments to the RMA, as section 77G(8) provides that:

(8) The requirement in subsection (1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement.

CONCLUSION

71. The potential reverse sensitivity effects on the airfield should be considered as just one of all relevant positive and negative factors, not a veto on residential

²⁸ Para 148, 149

development underneath the air noise contour in a way that rules out a balanced consideration of the Kaiapoi growth issue.

72. The Momentum land is well suited to residential development and the evidence will show that the rezoning proposed by MLL gives effect to important objectives and policies of NPS-UD. The proposed rezoning also gives effect to most objectives and policies of the CRPS, save for provisions that do not support residential growth under the aircraft noise contour at Kaiapoi.
73. The Kaiapoi exception recognises the unique circumstances of Kaiapoi due to its pre-existing location beneath the 50 dBA noise contour. The exception was created to respond to the housing crisis at Kaiapoi following the Canterbury Earthquakes. The housing situation in New Zealand has changed markedly since then. The problems with housing supply are well documented with many commentators referring to it as a 'housing crisis'. The NPS-UD and the Enabling Housing Supply amendments to the RMA are expressly designed to provide a consistent national response to this problem. The case for MLL is that provisions of the Proposed Plan should respond to the need to provide at least sufficient development capacity and a well-functioning urban environment at Kaiapoi in the manner directed by the NPS-UD.

Dated: 8 May 2023



Chris Fowler / Margo Perpick
Counsel for Momentum Land Limited

Momentum land location plans

Canterbury Regional Policy Statement

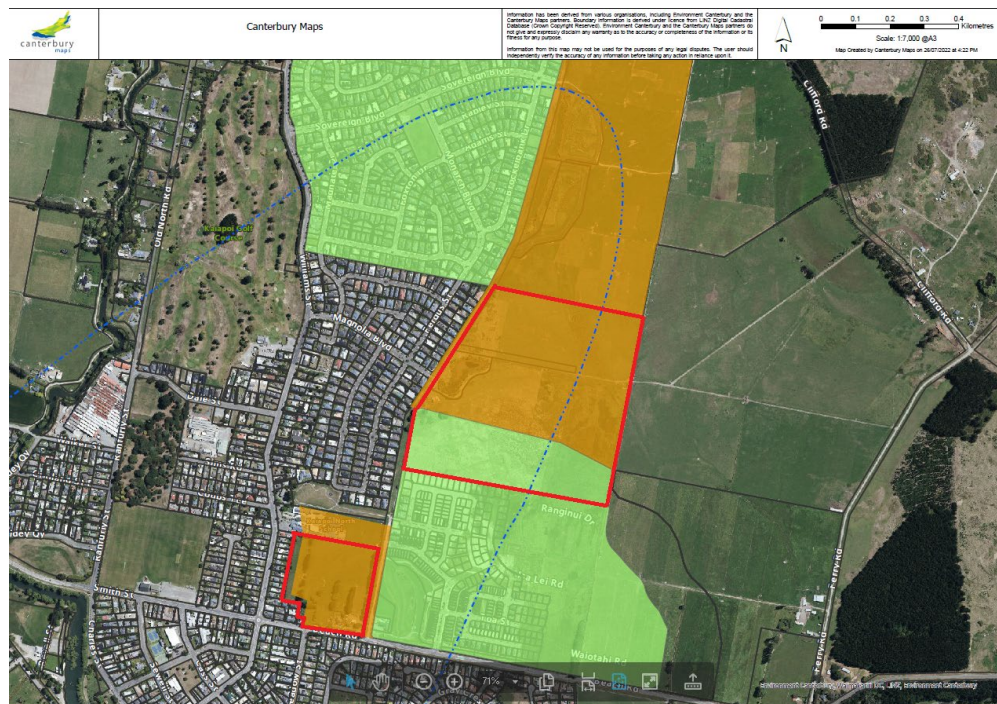


Figure 1: Snip from Canterbury Maps showing Momentum land (in red) overlaid with Greenfield Priority Area, Future Development Area and the 50 dBA aircraft noise contour.

Proposed District Plan

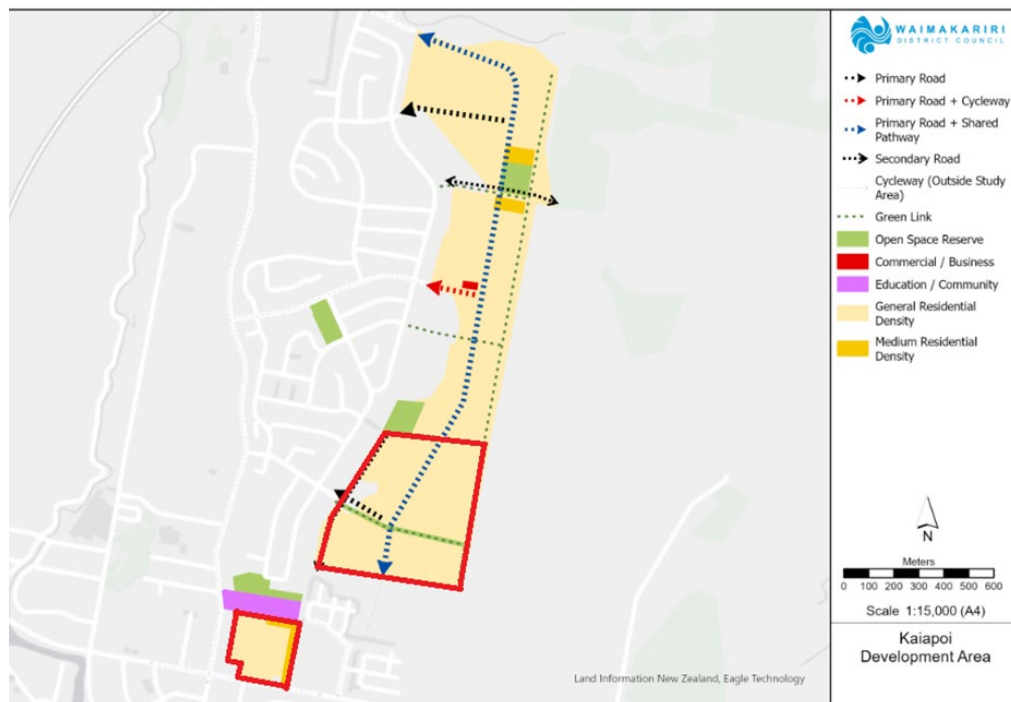


Figure 2: Snip from Proposed Plan showing Momentum land (in red) and Outline Development Plan Area (North Kaiapoi)

Indicative Outline Development Plan for Momentum Land

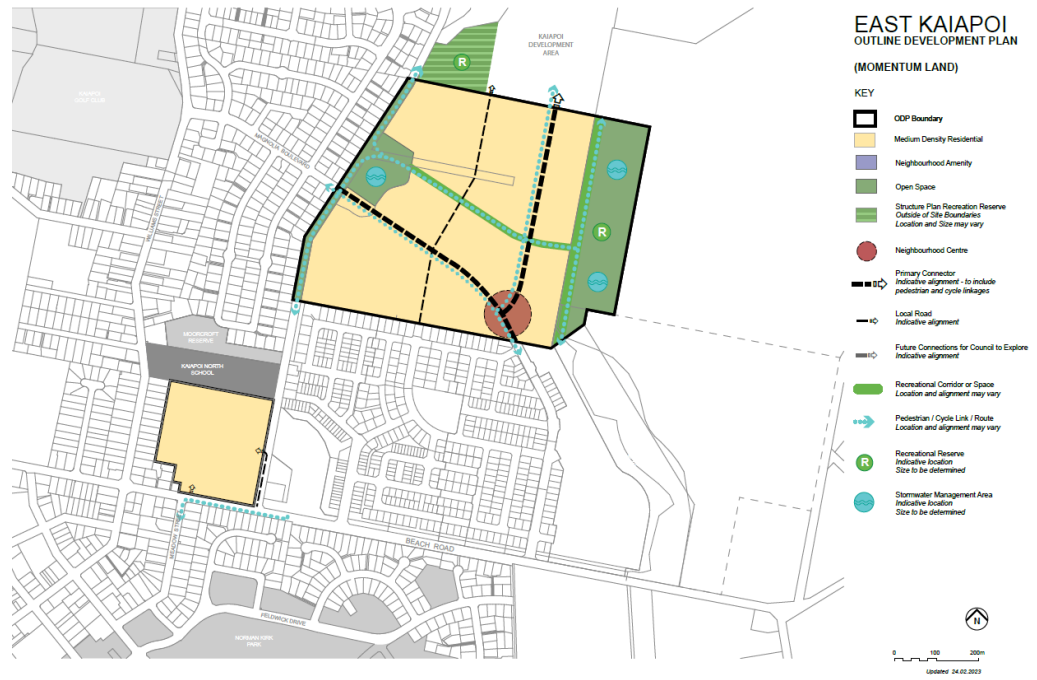


Figure 3: Indicative Outline Development Plan for Momentum Land

Waimakariri 2048 District Development Strategy 2018

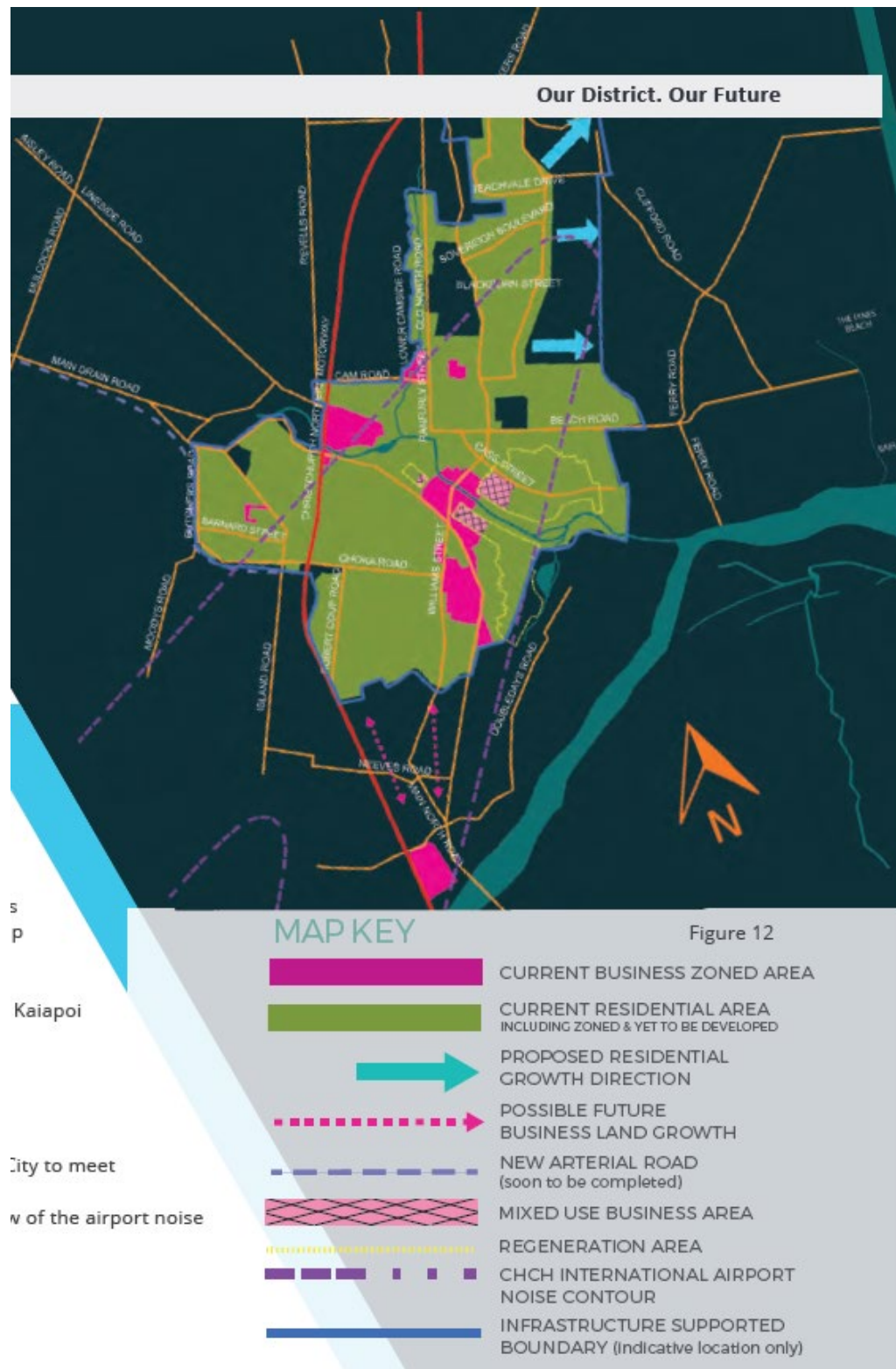


Figure 4: Snip from Waimakariri 2048 District Development Strategy 2018 showing proposed residential growth direction at Kaiapoi (page 41).

50 dBA noise contours – Kaiapoi and Rolleston

Extracts from Map A, Chapter 6, CRPS

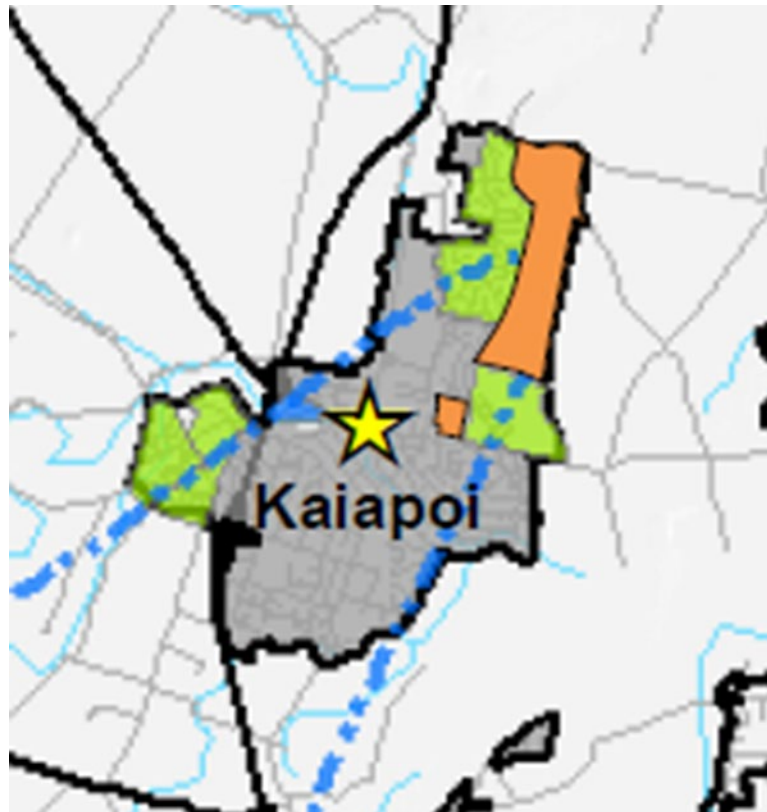


Figure 5: Snip showing 50 dBA noise contour and FDA at Kaiapoi

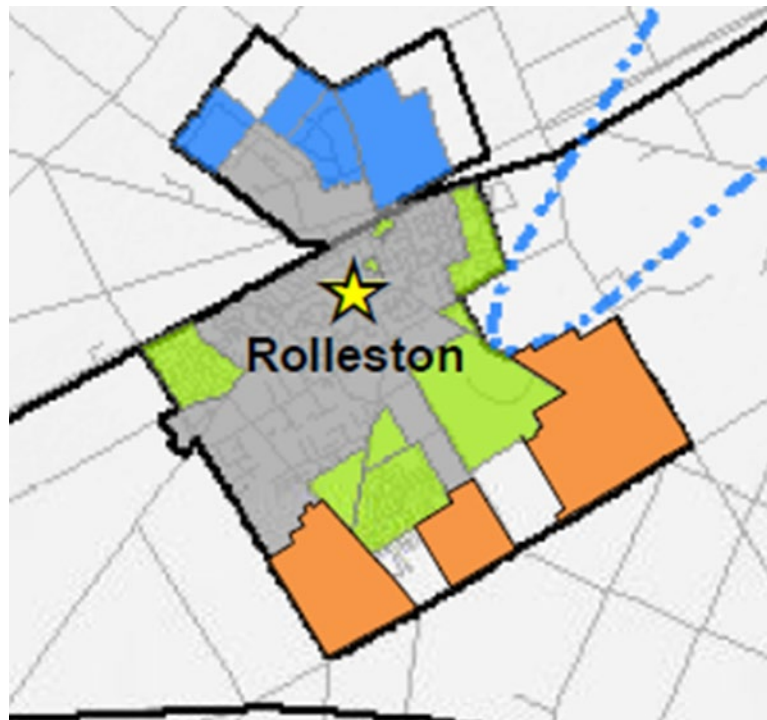


Figure 6: Snip showing 50 dBA noise contour and FDA at Rolleston