

Before an Independent Hearings Panel
Appointed by Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions on the Proposed
Waimakariri District Plan

and: Hearing Stream 10A: Future Development Areas

and: **Carter Group Property Limited**
(Submitter 237)

and: **Rolleston Industrial Developments Limited**
(Submitter 160)

Statement of evidence of Jeremy Phillips (Planning) on behalf of
Carter Group Limited and Rolleston Industrial Developments
Limited

Dated: 2 February 2024

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**STATEMENT OF EVIDENCE OF JEREMY PHILLIPS ON BEHALF OF
CARTER GROUP LIMITED AND ROLLESTON INDUSTRIAL
DEVELOPMENTS LIMITED**

INTRODUCTION

- 1 My full name is Jeremy Goodson Phillips. I am a senior planner and Director practising with Novo Group Limited in Christchurch.
- 2 I hold the qualifications of a Bachelor of Science from the University of Canterbury and a Master of Science with Honours in Resource Management from Lincoln University, the latter attained in 2001. I am an intermediate member of the New Zealand Planning Institute, a member of the Resource Management Law Association and a member of the Institute of Directors. I have held accreditation as a Hearings Commissioner under the MfE Making Good Decisions programme since January 2010 and have held endorsement as a Chair since January 2013.
- 3 I have 21 years of experience as a resource management planner, working within and for territorial authorities, as a consultant and as an independent Hearings Commissioner. I have particular experience in urban land use development planning in Greater Christchurch, predominantly as a consultant to property owners, investors and developers.
- 4 Of relevance to these proceedings, I have had extensive involvement in respect of the Proposed Selwyn District Plan and associated Variation (IPI) process, providing evidence for submitters on a number of chapters and rezoning proposals, where implementation of the NPS-UD and the RMA was a key consideration. I was also extensively involved in the hearings on the Replacement Christchurch District Plan and have provided evidence on Plan Change 14 to the Christchurch District Plan (an IPI).
- 5 In a Greater Christchurch context, I have significant experience in all forms of land use planning under the Christchurch, Selwyn and Waimakariri District Plans for projects ranging from small scale residential developments and individual houses, through to large scale residential, commercial and civic projects including Te Kaha, Te Pai, The Crossing, Riverside Farmers Market, large-scale suburban retail and industrial developments, and residential, commercial and industrial greenfield rezoning, subdivision and development projects. Through that experience I have an excellent practical understanding of the application and implementation of District Plan provisions in the region and the plan development process.

CODE OF CONDUCT

- 6 Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 7 My evidence relates to the submissions filed by Carter Group Property Limited ('CGPL') (Submitter 237) and Rolleston Industrial Developments Limited ('RIDL') (Submitter 160) (also referred to collectively as 'the submitters' throughout this evidence) on the proposed Waimakariri District Plan ('PWDP') and Hearing Stream 10A: Future Development Areas. More specifically, the submitters' further submission number 82 supported the Canterbury Regional Council's submission (submission number 316.190) to use a regular plan change process (for the rezoning of the Kaiapoi Development Area), rather than enable development through certification.
- 8 My evidence focuses on the appropriateness and rigour of the proposed certification process ('certification') as an alternative to the conventional Schedule 1 requirements for rezoning. In doing so, my evidence:
- 8.1 Provides an overview and evaluation of the DEV provisions as recommended in the Officer's report, focusing on the certification pathway proposed. In doing so, I examine the extent to which the DEV provisions effectively account for the matters that would otherwise be addressed for the rezoning of land through a conventional Schedule 1 process;
 - 8.2 Examines how the DEV provisions would apply to the Kaiapoi development area noting the range and significance of issues that require resolution prior to urbanisation of that land; and
 - 8.3 Considers whether the DEV provisions and proposed certification pathway is consistent with, and gives effect to, the Canterbury Regional Policy Statement ('CRPS') and National Policy Statement on Urban Development ('NPSUD'), and delivers plan-enabled development capacity.
- 9 In preparing my evidence, I have reviewed:
- 9.1 The submissions filed by CGPL and RIDL.

- 9.2 The section 42A report prepared by Mr Peter Wilson ('the Officer'), dated 12/01/2024, concerning the Proposed Waimakariri District Plan: Wāhanga Waihanga – Development Areas (DEV).
- 9.3 The relevant statutory planning documents, including the Resource Management Act 1991 ('the Act'), and the NPSUD.

SUMMARY OF EVIDENCE

- 10 In summary, my evidence concludes that:
- 10.1 The proposed DEV provisions essentially provide for the urbanisation of development areas ('DA') without the usual detail or scrutiny of a Schedule 1 process that determines whether land is in fact appropriate for urban zoning and development. For the reasons expressed in this evidence, I consider the provisions fail to address the relevant statutory considerations that would otherwise apply to the urban rezoning of Rural Lifestyle zoned land through a Schedule 1 process. In particular, the matters of discretion are open to interpretation, provide little certainty and fail to ensure urban development is appropriate and supports a well-functioning urban environment.
- 10.2 The proposed DEV provisions do not adequately address the range, complexity or significance of relevant issues and effects for urban development of the Kaiapoi DA. A number of the issues (particularly high flood hazard risks and airport noise contours) are of high significance and risk in the event that urbanisation and residential development is enabled, and such fundamental matters require more considered evaluation through a normal Schedule 1 process.
- 10.3 The enablement of development within the DA provided for by the DEV provisions will result in inconsistency with, and does not give effect to, the CRPS.
- 10.4 The DEV provisions and certification approach cannot be relied on to achieve NPSUD requirements for short- or medium-term 'plan-enabled' and 'infrastructure ready' capacity. The land subject to these provisions is not 'zoned for housing or business use' and to the extent that urban development is subject to a restricted discretionary consent pathway, the corresponding DEV provisions offer little certainty as to the enablement and delivery of housing. This issue is particularly acute for the Kaiapoi DA given the significant or fundamental issues associated with high flood hazards and airport noise contours.
- 10.5 The DEV provisions conflict with NPSUD Objective 1 and the overarching purpose of the Act in section 5, insofar that these

seek the wellbeing and health and safety of people and communities.

- 10.6 The DEV provisions are not the most appropriate way to achieve the purpose of this Act, nor do they represent good resource management practice.

DEV PROVISIONS

- 11 Appendix A of the Officer's report sets out recommended provisions for the chapter of the PWDP titled '*Wāhanga waihanga - Development Areas*' and includes new overarching provisions for existing and new DA.

DEV Objectives & Policies

- 12 In regards the objectives and policies for this chapter, I note the following (with my emphasis added):
- 12.1 A single broadly worded objective seeks that '*Development Areas **contribute to achieving feasible development capacity for the Waimakariri District***¹. On my reading, I would expect any/all DA to satisfy this objective, insofar that they would invariably make some form of contribution to development capacity.
- 12.2 Two (also broadly worded) policies that are process (rather than outcome) focused are proposed, that 'provide for' or 'allow' the development of DA through a land use consent process that evaluates relevant Plan provisions. More specifically:
- (a) DEV-P1 '**Provide[s] for future urban development in a Development Area in accordance with the relevant development area chapter provisions for that area through a land use consent process...**'.
 - (b) DEV-P2(1) '**allow[s] subdivision and activities**' subject to certification and where it is in accordance with the relevant Plan provisions.
 - (c) DEV-P2(2) '**allow[s] subdivision and activities**' to establish without (i.e. '**prior to**') a certification consent where it '*will not undermine or inhibit the future development of the Development Area*'. I understand that this provision is intended to address non-urban subdivision and land use that might occur prior to the development and urbanisation of land, or a certification process. However, the policy does not state that and conceivably it could apply to urban development proposals that are not certified or which do not satisfy

¹ DEV-O1.

the relevant matters of discretion in the certification rule. I am unable to locate a rule for subdivision or activities that are not subject to certification which may otherwise help to explain the intent of this policy, but I note from the table in paragraph 87 of the Officer's report that DEV-R3 is intended to apply where certification has not been approved and impose the Rural Lifestyle Zone rules. However, DEV-R3 is not included in Appendix A of the Officer's report.

- 13 In summary, I consider that the breadth and process-oriented nature of the objective and policies for the DEV chapter are such that they offer very little guidance or direction to users of the Plan or decision makers, and therefore they provide little to no direction for urban development proposals in DA.

DEV Rules

- 14 In regards rules, the Officer's report proposes three new rules (DEV-R1, DEV-R2, DEV-R4)².

- 15 DEV-R1 as now proposed in the Officer's report, is essentially the 'certification' rule and requires a restricted discretionary activity consent for '*residential or commercial development within a DA*' that meets the criteria in DEV-R1(1)-(4) and otherwise requires consent for a discretionary activity when compliance with those criteria is not achieved. I address the matters of discretion later in my evidence. Otherwise, in terms of this rule:

15.1 I am unclear how DEV-R1 (which applies to '*residential or commercial development*') would apply to non-residential or non-commercial development that is identified in an ODP. For example, ODPs in the DEV chapter include recreation/ open space reserves, education/ community activities, infrastructure/ stormwater requirements, transportation links and waterbodies that would not constitute '*residential or commercial development*'.

15.2 I am unclear how criteria DEV-R1(4) requiring that '*zoning within the land is in accordance with that ODP*' would ever be achieved given that DA are invariably subject to the Rural Lifestyle zoning. I assume that this is intended to require that the subdivision and land use proposed is consistent with the indicative land uses and zoning set out in the ODP, in which case the criteria should require that '*development within the land is in accordance with the indicative zoning shown in the ODP*' (or words to that effect).

- 16 DEV-R2 concerns '*General development and subdivision of land in Development Area where certification consent has been obtained*'.

² As noted above, I am unable to locate rule DEV-R3 in Appendix A of the Officer's report.

The rule does not reference DEV-R1, but given its reference to a 'certification consent' I presume that is the intent. On my reading, the rule aims to provide a 'link' between the indicative zones and areas shown on an Outline Development Plan and the corresponding District Plan rules that would apply if the land were rezoned. However, this method assumes that the standard zone rules are appropriate and that there are no localised issues or effects warranting different or bespoke rules.

- 17 DEV-R4 applies to '*Subdivision Activities in the Development Area if certification consent has been obtained*' and focuses on the subdivision of land and provides a basis for imposing the relevant subdivision standards (as distinct from the land use focus of rule DEV-R2). I am unclear why this rule is necessary, as on my reading it appears to simply duplicate what the rules in the SUB chapter otherwise specify. If the rule is needed in order to impose rules in the SUB chapter on the basis of the zones and areas on an ODP (rather than the actual rural lifestyle zoning), then I consider the rule could be abbreviated to simply say this and direct the reader to the SUB chapter and rules SUB-R1 to SUB-R11.
- 18 In summary, I consider the rules as drafted have a number of unresolved issues in terms of their drafting, clarity and application. Setting aside the more fundamental issues I have with enabling urbanisation by way of certification and consent rather than rezoning (as described elsewhere in my evidence), I consider these drafting and 'structural' issues with the rules would require resolution for the process to work as intended by the Officer.

Assessment Matters for DEV-R1

- 19 As described above, DEV-R1 requires a restricted discretionary activity consent for '*residential or commercial development within a DA*' that meets the relevant criteria in the rule. Applications obtaining consent under this rule are 'certified', enabling development to occur under rules DEV-R2 and DEV-R4 (potentially as a permitted activity, or otherwise subject to the residential and commercial zone and subdivision chapter rules that would apply as if the land were rezoned).
- 20 Given the restricted discretionary activity status of DEV-R1 and the broadly worded policy provisions (as described above), the content and scope of the assessment matters in this rule are of fundamental importance. As development would be enabled without the comprehensive assessment of a typical Schedule 1 process, these assessment matters would need to adequately cover the full range of issues, effects and statutory considerations that would otherwise apply to the urban rezoning of DA, including the matters in sections 32, 74 and 75 of the Act. Clearly, the matters of discretion proposed for DEV-R1 do not span the range of matters within those sections of the Act. Among other things, the matters listed in DEV-R1 will not necessarily ensure that the urbanisation and development of DA:

- 20.1 Gives effect to the CRPS, as required by s.75(3)(c). I elaborate on this later in my evidence.
- 20.2 Has regard to the various matters in s.74(2) or takes into account as relevant any relevant iwi planning document as required by s.74(2A).
- 20.3 Is the most appropriate way to achieve the purpose of the Act, accounting for other reasonably practicable options, efficiency and effectiveness, benefits and costs, and risks of acting or not acting, per s.32.
- 21 In addition to those primary concerns, I otherwise note that the matters to which discretion is restricted concern:
- 21.1 The extent to which the additional development capacity will **'help achieve or exceed'** demand (a criteria I would expect to be universally achieved by any proposal resulting in additional households).
- 21.2 **'Consistency with the ODP zone locations'**, which as worded would not give scope to consider inconsistency with other elements of the ODP that are not strictly related to 'zone locations' (e.g. ODP narrative, roading alignments and transport links, infrastructure, etc).
- 21.3 Water, stormwater and wastewater servicing considerations and capacity. However, such considerations may be otherwise within the scope of (and duplicate) provisions in the SUB chapter or may relate to more fundamental issues of zoning merit, such as infrastructure availability and development suitability for the locality or the timeframes for realising additional development capacity.
- 21.4 **'The extent to which...** [geotechnical and flood hazards] **...can be avoided or otherwise mitigated as part of subdivision design and consent'**, indicating that absolute avoidance is not envisaged and the discretion only extends to considering the subdivision design and consent (rather than the suitability of the land for urbanisation in the first instance). This matter does not appear to provide scope to consider the effects of any hazard mitigation (e.g. filling) on other land, infrastructure provision, development capacity or layout, or otherwise.
- 21.5 **'The extent to which recommendations within the** [transport effects] **assessment can be mitigated as part of subdivision design and consent'**. Aside from the wording suggesting the 'recommendations' (rather than the transport effects themselves) are to be mitigated, this matter does not envisage the potential need to avoid certain effects and again constrains its scope to the subdivision design and consent.

- 21.6 The provision of staging plans, with stipulations as to *what* is to be provided but no direction as to why this need be provided, what is envisaged, or where it may be unacceptable.
- 21.7 '*The provision of an agreement*' with the Council as to infrastructure and open space provision and funding, without any direction as to what nature or level of agreement is required or envisaged (e.g. agreement in principle, a legally enforceable agreement, agreement as to the timing, agreement as to ongoing ownership or maintenance of assets, etc).
- 21.8 '*Effects on landowners and occupiers within and adjacent to the ODP area*', without any specificity as to the nature, extent or acceptability of those effects. For example, changes to character and amenity arising as a result of urbanisation may be perceived to be significant adverse effects by some, and acceptable or inherent by others. As worded, this open-ended assessment matter provides no certainty to applicants, council consent planners, interested parties or decision makers and essentially amounts to a fully discretionary activity status for the consent.
- 22 In summary, the proposed DEV provisions essentially provide for the urbanisation of DA without the usual detail or scrutiny of a Schedule 1 process that determines whether land is in fact appropriate for urban zoning and development. For the reasons expressed above, I consider the provisions fail to address the relevant statutory considerations that would apply to the urban rezoning of Rural Lifestyle zoned land through a Schedule 1 process. In particular, the matters of discretion as currently drafted are open to interpretation, provide little certainty, and fail to ensure that urban development is appropriate and supports a well-functioning urban environment.

APPLICATION OF DEV PROVISIONS TO THE KAIAPOI DA

- 23 The Kaiapoi DA is presently zoned RLZ but is subject to an ODP in Appendix DEV-K-APP1 and under the proposed DEV provisions, subdivision and urbanisation of the land would be achievable following resource consent certification under rule DEV-R1, as described above, without the need for a plan change to rezone the land.
- 24 In short, I consider there are potentially significant issues for the Kaiapoi DA which require resolution in order to determine the appropriateness of rezoning and urbanisation in the first instance, and thereafter what regulatory framework is required to adequately manage or overcome those issues.

Natural Hazard Risks

- 25 Firstly, the Kaiapoi DA is subject to potentially significant natural hazard risks, associated with localised flooding events, river breakout events, and coastal flooding events (including Tsunami inundation).
- 26 The Kaiapoi ODP in the DEV chapter appended to the Officer's report acknowledges this issue to a degree and states that '*Filling of land and/or the construction of a bund **to mitigate the effects of these hazards** is anticipated to be required for residential development to occur*'.
- 27 However, the ODP does not acknowledge that the DA is largely within an area modelled by Council as being subject to High Hazard which the Council describes as '*Extremely high depth and/or water velocity. Potential for significant damage to buildings due to scour, flotation and debris impact. Possible danger to personal safety. Evacuation by trucks and/or wading difficult. High potential for water ingress into buildings*³. In the absence of any detailed evidence and evaluation, I am unclear to what extent hazards of this nature can be mitigated in the manner envisaged by the ODP and whether that is an acceptable or appropriate outcome that enables the wellbeing and health and safety of people and communities.⁴
- 28 This land is also subject to the CRPS definition of a High Flood Hazard Area (HFHA)⁵ and policy 11.3.1 which seeks the '**Avoidance of inappropriate development in high hazard areas**'. To the extent that policy 11.3.1 provides for some subdivision, use or development, its exemptions do not apply where such activity is '*likely to require new or upgraded hazard mitigation works to mitigate or avoid the natural hazard*' (i.e. the mitigation anticipated by the Kaiapoi ODP). Therefore, regardless of the ability to effectively mitigate flood hazard risks, development of the entire Kaiapoi DA would only be possible if the CPRS was changed to remove this policy barrier.
- 29 In my view, the susceptibility of the Kaiapoi DA to (potentially significant) natural hazard risks raises a fundamental question of whether (and if so, how) the land should be rezoned for urbanisation. It is a matter that cannot and should not be resolved through a restricted discretionary resource consent / certification process.

³ See

<https://waimakariri.maps.arcgis.com/apps/MapSeries/index.html?appid=16d97d92a45f4b3081ffa3930b534553>

⁴ Per RMA section 5, and NPSUD objective 1.

⁵ High hazard areas are defined in the Canterbury Regional Policy Statement as flood hazard areas subject to inundation events where the water depth (metres) x velocity (metres per second) is greater than or equal to 1, or where depths are greater than 1 metre, in a 0.2% AEP (1 in 500-year) flood event.

Airport Noise Contours

- 30 Airport noise contours and associated effects on amenity and strategic infrastructure are also a significant issue for the Kaiapoi DA.
- 31 Operative air noise contours currently apply to part of the DA and the remodelled air noise contours (as confirmed by the Expert Panel in a final report released on 5 July 2023), apply to all but approximately 8 hectares of the 90 hectare DA.
- 32 CRPS Policy 6.3.5(4) is directly relevant to this matter and reads:

*"Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by:
[...]"*

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; and [...]"

- 33 Given the requirement for the PWDP to give effect to this policy, I consider questions remain as to:
- 33.1 Whether the reference to 'the 50dBA Ldn airport noise contour' in this policy concerns the contour as shown on Map A (noting that the policy does not refer to 'the contour identified in Map A' or words to that effect), or the remodelled contour which is understood to more accurately define the extent of aircraft noise and will ultimately be incorporated in the CRPS and Map A.
- 33.2 Whether the exemption for '*an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area **identified in Map A***' applies to the Kaiapoi DA, which is a 'Future Development Area' as distinct from an existing urban area or greenfield area as identified in Map A⁶.

⁶ Note Map A uses the terms 'Existing Urban Area' and 'Greenfield Priority Area-Residential' which can be contrasted to the policy which refers to '**existing** residentially zoned **urban area**, residential **greenfield area** identified for Kaiapoi, or **residential greenfield priority area identified in Map A**'

- 34 Contrary to the Officer's view⁷ that this policy provides an exception for Kaiapoi where the noise contours do not apply, I interpret the policy as one that seeks to avoid urbanisation of the Kaiapoi DA. However, to the extent that a determination of what this policy requires and how it applies to the Kaiapoi DA is required, I consider this is a fundamental issue concerning the appropriateness of the land for residential development and any regulatory response or management. It is a matter that cannot, and should not, be addressed by the proposed certification framework and I note that it is not within the scope of the matters of discretion contained in DEV-R1.

Other Issues or Effects for Urbanisation

- 35 Other issues or effects that are relevant to the determination and particulars of rezoning but which are not addressed by DEV-R1, include (but may not be limited to):
- 35.1 Liquefaction susceptibility, the presence of highly productive land, Wāhi tapu and wāhi taonga- being matters identified for this location in the Greater Christchurch Spatial Plan 'Areas to Protect and Avoid' background report, dated February 2023.
 - 35.2 Stormwater management requirements, including legislative requirements relating to freshwater and the management of natural waterbodies and relatively high groundwater – being matters noted in the Kaiapoi ODP but which may be fundamental to the suitability, layout of, or management regime for rezoning.
 - 35.3 The implications of filling and/or the construction of a bund (required for hazard avoidance or mitigation), including on surrounding land, development feasibility and affordability within the DA, and infrastructure provision (especially sewer) – also being matters noted in the Kaiapoi ODP but not canvassed by rule DEV-R1.
- 36 In summary, I consider that the proposed DEV provisions do not adequately address the range, complexity or significance of relevant issues and effects for urban development of the Kaiapoi DA. As set out above, a number of the issues applicable to the Kaiapoi DA are of high significance and risk in the event that urbanisation and residential development is enabled, and such fundamental matters require more considered evaluation through a normal Schedule 1 process.

⁷ See paragraph 97, bullet point 4.

CONSISTENCY WITH THE CRPS AND NPSUD

CRPS

- 37 At paragraph 96, the Officer's report notes that the 'extent of the development area overlay is consistent with Map A of the CRPS, and as my recommendations to apply certification only to the development area overlay, my recommendations are thus consistent with the CRPS'. Whilst the spatial extent of the DA overlay may align with the Future Development Areas ('FDA') in Map A of the CRPS, I do not consider this necessarily means the DEV provisions are consistent with the CRPS generally.
- 38 Evidence filed by Ms Joanne Mitten on behalf of the Canterbury Regional Council for Hearing Stream 1 (dated 1 May 2023) relevantly summarises the CRPS framework for future development areas, which I agree with, and reproduce below with my emphasis added:

*72. ...Within the PIB, **the policy framework in Chapter 6 provides for the development of land within existing urban areas, greenfield priority areas, and future development areas where the circumstances set out in Policy 6.3.12 are met, at a rate and in locations that meet anticipated demand and enables the efficient provision and use of network infrastructure⁸. Urban development outside of these identified areas is to be avoided, unless expressly provided for in the CRPS⁹.***

73. However, simply because an area may be identified as an FDA under the CRPS provisions, this does not mean that it can automatically be developed. There are still other criteria that are required to be met (see Policy 6.3.12 of the CRPS), for example if the land that is in a high hazard area...'

- 39 The right of reply evidence of Mr Mark Buckley¹⁰ for Council on the Urban Form and Development chapter addressed Ms Mitten's evidence and also acknowledged the need for further analysis and evaluation of FDAs through rezoning decisions, stating:

'28. ...the criteria used to identify the potential development areas within Map A did not include a detailed analysis of site-specific constraints that may constrain development within these areas and consequently may alter the ability of the identified FDA

⁸ Objective 6.2.2

⁹ Objective 6.2.1 and Policy 6.3.1

¹⁰ Council reply on Urban Form and Development - planner Mark Buckley on behalf of Waimakariri District Council dated: 16 June 2023

areas to provide the development capacity required.

Our Space (2018-2048) states¹¹:

Further more detailed assessment of these future growth areas will be required, and undertaken as part of district plan reviews, and can address any new requirements relating to managing risks of natural hazards and mitigating impacts on versatile soils¹².

29. Our Space 2018-2048 clear[ly] identifies the need for further assessment of those growth areas within Map A. There is a potential that where the growth areas are not suitable, that Council would not be able to meet the requirements of the housing development capacity requirements of the NPSUD.

...31. As a result, I consider that it would be appropriate for [the question of whether FDS provide sufficient development capacity] to be answered following rezoning of the FUDA areas. If this assessment required areas to be included for development outside Map A, I agree with Ms Mitten¹³ that an evaluation of the degree to which the outcomes identified in Policy 6.3.11 of the CRPS would also be required...'

- 40 In terms of the relevant criteria for enabling urbanisation of FDA in CRPS policy 6.3.12 and accounting for my evidence above, I consider the DEV provisions (for the Kaiapoi DA as a minimum) will not adequately address or show how:
- 40.1 *'other potential adverse effects on and/or from nearby existing or designated strategic infrastructure (including requirements for designations, or planned infrastructure) will be avoided, remedied or appropriately mitigated¹⁴, accounting for airport noise contours insofar that these relate to the Kaiapoi DA;*
 - 40.2 *'other potential adverse effects on the environment, including the protection and enhancement of surface and groundwater quality, are to be avoided, remedied or mitigated¹⁵, accounting for high groundwater levels and the presence of natural waterbodies within the Kaiapoi DA; or*

¹¹ Section 5.7 page 37 last paragraph of "aligning with the strategic growth directions from the UDS"

¹² Underlining is Mr Buckley's emphasis.

¹³ Paragraph 126.

¹⁴ Policy 6.3.3(9)

¹⁵ Policy 6.3.3(10)

40.3 *'the adverse effects associated with natural hazards are to be avoided, remedied or mitigated as appropriate and in accordance with Chapter 11 and any relevant guidelines'¹⁶, accounting for the 'avoidance' directive in policy 11.3.1 for development in high hazard areas requiring 'new or upgraded hazard mitigation works' (such as the Kaiapoi DA). I emphasise that the limited exemption to this avoidance directive in policy 11.3.1(6) does not apply to FDA given it only applies to high hazard areas 'located in an area zoned in a district plan for urban residential, industrial or commercial use, or identified as a "Greenfield Priority Area" on Map A of Chapter 6, both at the date the Land Use Recovery Plan was notified in the Gazette...'*

41 Whilst I have not attempted to evaluate the DEV provisions against the CRPS comprehensively, I consider the evidence above sufficiently demonstrates that the enablement of development within the DA will result in inconsistency with, and does not give effect to, the CRPS.

NPSUD

42 At paragraphs 94-95, the Officer states that:

94. In recommending these changes I consider that the development capacity is still plan-enabled, as cl 3.4(2) NPSUD defines plan-enabled development capacity as where land is zoned for housing if the housing use is either a permitted, controlled, or restricted discretionary activity. A restricted discretionary certification consent does not change the plan-enabled capacity, and the development capacity assessments will not change as a result.

95. I note that if certification did not exist, and rezoning requests are not approved, then Council may not meet its NPSUD requirements for medium and long term plan-enabled capacity.

43 In regards these statements, I note that development capacity is deemed as 'plan-enabled' in the long term under clause 3.4(1)(c) of the NPSUD if it is **either** zoned for housing or business use in a proposed plan **or** it is identified in an FDS. Accordingly, a restricted discretionary certification pathway for the development of DA is not required for this to meet NPSUD requirements for long term capacity. It simply needs to be identified in an FDS.

44 Medium term plan-enabled development capacity is required to be zoned for housing or business use in a proposed district plan.¹⁷ However, I do not agree that the restricted discretionary status afforded to development through rule DEV-R1 will 'enable'

¹⁶ Policy 6.3.3(12) and Policy 6.3.12(6)

¹⁷ NPSUD cl. 3.4(1)(b).

development capacity as envisaged by clause 3.4(1)(a) or (b) of the NPSUD.

- 45 Clause 3.4(1)(a) and (b) refers to land being 'zoned for housing or business use' which is clearly at odds with the stated purpose of the Rural Lifestyle Zone in the PWDP as being *'to provide for primary productive activities, those activities that support rural activities and those that rely on the natural resources that exist in the zone, while recognising that the predominant character is derived from smaller sites'*.
- 46 To the extent that clause 3.4(2) of the NPSUD provides a more specific definition of the term 'zoned for housing...', the restricted discretionary status of rule DEV-R1 is, in my view, in name only. As noted in my evidence above, the related objective, policies and matters of discretion are so broad as to effectively make applications fully discretionary and offer little certainty as to the enablement and delivery of housing.
- 47 Further, given the range of (potentially significant or fundamental) matters that would need to be assessed and resolved before development could proceed, I consider the DEV provisions do not 'enable' housing. With reference to the unresolved issues I have identified for the Kaiapoi DA, there remains significant uncertainty as to the quantum, timeframes and form of housing capacity in this location and whether in fact any housing capacity should or could be enabled in this location.
- 48 The Officer's report does not consider the requirement in clause 3.2(2) for development capacity to be 'infrastructure ready' or the corresponding definition of this term in clause 3.4(3). However, for the reasons expressed earlier in regards stormwater management for the Kaiapoi DA, I also remain unconvinced that the DEV provisions could be relied on to meet the requirements for enabling sufficient development capacity in the short or medium term. Similarly, I do not consider the DEV provisions support NPSUD objective 6, insofar that this seeks decisions affecting urban environments to be *'(a) integrated with infrastructure planning and funding decisions; and (b) strategic over the medium terms and long term'*.
- 49 For these reasons, I disagree with the Officer's reliance on the DEV provisions and certification approach to meet NPSUD requirements for short- and medium-term 'plan-enabled' (and 'infrastructure ready') capacity in the absence of sufficient zoned land. Similarly, I do not consider these provisions will support or achieve those objectives and policies in the NPSUD seeking *enablement* and *sufficiency* of household capacity¹⁸ and *responsiveness* to proposals supplying significant development capacity.¹⁹ Finally, I would be

¹⁸ Objectives 1-3 and policies 1-4.

¹⁹ Objective 6 and policy 8.

concerned that enabling development (particularly for the Kaiapoi DA) through certification and without the rigour of a Schedule 1 process may detract from Objective 1, insofar that this seeks well-functioning urban environments and the wellbeing and health and safety of people and communities now and into the future.

SECTION 32AA EVALUATION

- 50 Section 32AA of the Act requires a further evaluation in accordance with sections 32(1) to (4) that contains a level of detail that corresponds to the scale and significance of the anticipated effects of any changes proposed to provisions.
- 51 Section 32(4) is not applicable here, and section 32(3) requires an evaluation of the provisions and objectives of the amending proposal and the objectives of the existing proposal to the extent they are relevant and remain.
- 52 Given my evidence concludes the DEV provisions are inappropriate and should be deleted from the Plan in their entirety (with DA instead subject to a conventional Schedule 1 process to determine rezoning), I consider this amending proposal does not alter the objective or policy framework of the balance of the PWPD. Accordingly, I have not undertaken a detailed further evaluation.
- 53 However, for completeness and in brief, I consider that requiring DA to instead be evaluated and rezoned through a Schedule 1 process would:
- 53.1 Be the most appropriate way to achieve the purpose of the Act and the objectives of the PWDP otherwise, given the issues outlined in my evidence and that a Schedule 1 process would provide for the comprehensive evaluation of urbanising and rezoning DA;
 - 53.2 Be more efficient and effective than the certification approach proposed, noting the shortcomings I have identified and the potentially significant costs of the environmental and economic (and potentially social and cultural) effects of inappropriately enabling urbanisation.
 - 53.3 Have no risks, in contrast to the significant risks of acting (and enabling urbanisation through the DEV provisions), particularly given that there is uncertain or insufficient information about the subject matter of the provisions.

CONCLUSION

- 54 In conclusion, I consider that the DEV provisions are not the most appropriate way to achieve the purpose of this Act, nor do they represent good resource management practice. Accordingly, I consider these provisions should be deleted in their entirety, with the urbanisation of the DA determined through a Schedule 1 process.

Dated: 2 February 2024

Jeremy Phillips