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 Variation 1 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 **Mike Greer Homes NZ Limited** (**MGH**)

STREAM 10A LEGAL SUBMISSIONS FOR MOMENTUM LAND LIMITED AND MIKE GREER HOMES NZ LIMITED

Dated 9 February 2024

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INTRODUCTION

1. These submissions are filed on behalf of Momentum Land Limited (**MLL**) and Mike Greer Homes NZ Limited (**MGH**) in respect of the Stream 10A hearing of submissions on the Proposed Waimakariri District Plan (**Proposed Plan**) and Variation 1 to the Proposed Plan, dealing with Airport Noise Contours in relation to Urban Growth at or near Kaiapoi. The locations of the MLL and MGH land are shown in Appendix A.

2. Both MLL and MGH lodged submissions on the Proposed Plan seeking to have their land, currently zoned Residential Lifestyle, rezoned to Residential Medium Density. They did not seek any other changes to the Proposed Plan, as in their view, the Proposed Plan as notified supports and enables the rezoning of their land, giving effect to the National Policy Statement on Urban Development (**NPS-UD**) and the purpose and principles of the RMA.

3. The rezoning submissions of MLL and MGH were opposed in the further submissions of Christchurch International Airport Limited (**CIAL**), which also opposed 12 other submissions seeking residential rezoning on the basis of airport noise considerations (see attached map at Appendix B), as well as submissions seeking intensification of residential development within the L_{dn} 50 dB airport noise contour (**the 50 contour**). CIAL's original submission on the Proposed Plan seeks a wholesale rewriting of many provisions in the plan, from strategic directions down through objectives, policies, rules and other methods in an attempt to create an unjustified buffer zone for the airport on land owned by other people.

4. The further submissions of MLL and MGH oppose this re-writing of the Proposed Plan and seek to support the notified version of the Proposed Plan, with the rezoning requested. The same "dueling banjos" of submissions and further submissions has ensued through Variation 1. The Proposed Plan as notified, and Variation 1, correctly strikes the balance between reasonable protection of the airport's operations from potential reverse sensitivity effects and the required provision of residentially zoned land to meet the housing needs of people in the District.

CONTEXT

5. MLL has an interest in two separate blocks of land at north Kaiapoi (**MLL land**) that is zoned Rural Lifestyle in the Proposed Plan, as follows:

   a. The South Block, being 6.04ha of land at 310 Beach Road (Lot 2 DP 83191); and

   b. The North Block, being 28.5 ha of land at 177 Ferry Road (Lot 2 DP 4532, Lot 1 DP 5010 and Lot 5 DP 313322).

6. The MLL land is:

   a. within the Kaiapoi Development Area, where residential development is anticipated by the Proposed Plan, in accordance with the Kaiapoi Outline Development Plan (North Kaiapoi)[1]; and

   b. partly within a Greenfields Priority Area identified by Map A in Chapter 6 of the Canterbury Regional Policy Statement (**CRPS**), with the balance identified as Future Development Area on that Map.

7. The MLL South block lies within the L_{dn} 50 dB aircraft noise contour identified in the Canterbury Regional Policy Statement (**CRPS**) and in the Operative and Proposed Waimakariri District Plans, but well outside of the L_{dn} 55 dB (which is not identified in those documents). The MLL North block lies partly within the 50 contour.

8. MGH has an interest in land at south Kaiapoi (**MGH land**) that is zoned Rural Lifestyle in the Proposed Plan, as follows:

   - Pt RS 37428 (CB701/7) limited to the land to the west of the Main Trunk Railway Line; and

   - RS 39673; and

   - Lot 1 DP 19366

   all of which lies inside the 50 contour, but well outside of the 55 contour.

[1] DEV-K-APP1 – Kaiapoi Outline Development Plan

The Proposed Plan and Submissions

9. MLL and MGH lodged submissions on the Proposed Plan, seeking rezoning of their land from Rural Lifestyle to Residential Medium Density. They did not seek changes to the notified versions of the Strategic Directions, Objectives, Policies and Rules of the Proposed Plan, because the rezoning they seek would be consistent with the notified versions of the provisions listed above. Those provisions as notified correctly strike the balance amongst all relevant considerations, giving effect to the purpose and principles of the RMA and the National Policy Statement on Urban Development (**NPS-UD**), and enabling residential development on the MLL and MGH blocks.

10. Christchurch International Airport Limited (**CIAL**) lodged a submission on the Proposed Plan, seeking substantial changes to the notified versions of the Proposed Plan, aimed at preventing residential development within the L_{dn} 50 dB noise contour of the airport. CIAL's submissions are based on its unjustified assertion that residential development between the L_{dn} 50 dB and L_{dn} 55 dB airport noise contours will adversely impact CIAL's operations. CIAL seeks to elevate its perception of this one issue to the level of a veto on residential development in this large area of land (and well outside of it), rather than implementing the balanced assessment required by the RMA, the NPS-UD, and expressed in the Proposed Plan provisions as notified.

11. MLL and MGH lodged further submissions, in opposition to CIAL's submissions, and CIAL also lodged further submissions, in opposition to MLL's and MGH's submissions, as well as 12 other submissions which sought rezoning of land from rural to residential.

Variation 1 and Submissions

12. Variation 1 as notified retained Rural Lifestyle zoning on the MLL and MGH land. It also contained a proposed Qualifying Matter (**QM**) relating to airport noise, limiting density within the Operative L_{dn} 50 dB airport noise contour to one dwelling per 200m^2.

13. MLL's and MGH's submissions on Variation 1 once again sought that their land be rezoned to Medium Density Residential. They supported the proposed density standard of 200m^2 within the QM area, but disputed that the spatial extent of the QM was correctly shown in Variation 1.

14. Regarding the spatial extent of the L_{dn} 50 dB airport noise contour, Variation 1 uses the 2008 contour from the CRPS, Operative District Plan and Proposed District Plan. However, by the time Variation 1 had been notified, the 2008 contour had been remodelled to take account of updated flight patterns and other information. The remodelled L_{dn} 50 dB (annual average basis) is smaller in its coverage of Kaiapoi.[2] In particular, the remodelled contour only covers part of the MLL South Block, and does not include the MLL North Block or the MGH land.[3]

15. CIAL lodged a submission on Variation 1, once again seeking substantial amendments throughout the Proposed Plan and Variation 1, aimed at precluding residential growth and residential intensification within the L_{dn} 50 dB noise contour at Kaiapoi. In particular, CIAL sought that, within the 50 contour, residential densities should be limited to the Operative District Plan standards of 300m^2/dwelling for the Residential 1 zone, and 600m^2/dwelling for the Residential 2 zone.

16. MLL lodged a further submission opposing the CIAL submission, and CIAL lodged a further submission opposing the MLL submission.

Evidence for MLL and MGH

17. MLL and MGH have called the following evidence:

    a. Professor John-Paul Clarke as to acoustic engineering and airport management issues;

    b. William Reeve as to acoustic engineering, the airport noise contours, and complaints about airport noise;

    c. Fraser Colegrave as to economic assessments and compliance with the requirements of the NPS-UD;

    d. Patricia Harte as to regional and district planning provisions;

[2] This remodelled Annual Average L_{dn} 50 dB contour is shown in the submission lodged by CIAL on Variation 1, at Appendix B(I), as a red line. That diagram also shows another remodelled L_{dn} 50 dB contour, referred to as "Outer Envelope", as a yellow line. The Outer Envelope contour is greater in extent at Kaiapoi than the 2008 contour.

[3] It is acknowledged that the updated noise contours have not yet been formally incorporated into any RMA instrument. That will take place as part of the review of the CRPS.

e. Brian Putt as to town planning and resource management issues from a national perspective.

THE KAIAPOI GROWTH ISSUE

18. The central resource management issue raised by MLL's, MGH's and CIAL's competing submissions is whether residential growth and intensification should be allowed to occur at Kaiapoi within the L_{dn} 50 dB aircraft noise contour.

19. This issue engages various objectives and policies of the NPS-UD and the CRPS. There is a need to provide further land for residential development at Kaiapoi, in order to give effect to the NPS-UD, and the positive consequences which will flow from that.[4] Conversely, some provisions in the CRPS allude to a need to protect the operations of CIAL from potential reverse sensitivity effects of further residential development within the L_{dn} 50 dB aircraft noise contour.

20. The only way in which these competing provisions can be reconciled, having regard to their respective places within the hierarchy of RMA documents is to recognise that the CRPS provisions which seek to avoid residential development within the L_{dn} 50 dB contour cannot act as an absolute and unsubstantiated veto on such development. Rather, where provisions of the CRPS direct that residential developments be avoided within the L_{dn} 50 dB contour, the decision-maker must consider whether such development would result in material harm to CIAL operations, and if so, take that account in the overall balance in determining whether the development should occur.

21. That approach is consistent with the recent decision of the Supreme Court in *Port Otago Limited v Environmental Defence Society Incorporated*,[5] affirming the previous decision of that Court in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*, that the concepts of mitigation and remedy may serve to meet the "avoid" standard by bringing the level of harm down so that material harm is avoided. The Court in Port Otago said:

> *[66] In summary, the Court in* Trans-Tasman *said that decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean: (i) material harm will be avoided; (ii)*

[4] Evidence of Fraser Colegrave, para 62-68, 77, 86-88

[5] *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112

> *any harm will be mitigated so that the harm is no longer material; or (iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material…*

22. Such harm cannot be assumed, even if objectives and policies in documents such as the CRPS refer to it. It must be a matter of evidence in every case. The evidence of Professor John-Paul Clarke and William Reeve is that residential development between the L_{dn} 50 and 55 dB contours of the airport will not result in material harm to CIAL, because there will not be sufficiently high levels of annoyance amongst the people living in those locations to cause complaints and resulting reverse sensitivity effects on CIAL.

23. At the time of the earlier Court decisions cited by CIAL (I deal with these in greater detail later in these submissions), there was little or no pressure to provide land for housing supply in Greater Christchurch. Those cases were decided prior to the Canterbury earthquakes and subsequent red-zoning of land, prior to any real recognition of climate change induced risk of sea level rise, and prior to the housing crisis which prompted the NPS-UDS (2016), the NPS-UD, and the Enabling Housing amendments to the RMA.

24. The approach taken in the Proposed Plan and Variation 1 as notified and supported by MLL and MGH recognises that:

    a. The New Zealand Standard 6805:1992 identifies the L_{dn} 55 dB aircraft noise contour as the point at which a Council could impose measures such as acoustic insulation in housing, without needing to prevent housing within that contour. The NZS 6805:1992 does not recognise the L_{dn} 50 dB aircraft noise contour at all.

    b. There are many Court decisions in New Zealand which have enabled housing development up to and even beyond the L_{dn} 55 dB aircraft noise contour. The evidence in those cases, and in this one, is that no material harm to the airport can be anticipated from enabling housing between the L_{dn} 50 and 55 dB aircraft noise contours, so it does not need to be avoided.

    c. Land between the L_{dn} 50 and 55 dB aircraft noise contours should not be sterilised by the airport's desire to have an unjustified buffer composed of other people's land if that land could be used to meet housing demand in a consolidated way, as that does not correctly reflect the costs

and benefits of that method, does not give effect to the NPS-UD, and does not best achieve the purpose and principles of the RMA,

SUITABILITY OF MLL AND MGH LAND FOR REZONING TO MDZ

25. The MLL and MGH blocks are very well suited to rezoning to MDZ, for reasons which will be provided in much more detail at the Stream 12 Rezoning hearing. The L_{dn} 50 dB noise contour should not be allowed to operate as an absolute veto on residential development which has many positive attributes and is consistent with higher level planning documents.

26. Each of the blocks is of a very good size, shape and location for residential development:

    a. The MLL North Block contains 28.5 ha and is located immediately adjacent to existing residential development on its south and west boundary.

    b. The MLL 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.

    c. The MGH block…..

27. These blocks are capable of being connected to District Council services, and stormwater detention facilities will be integrated into site developments. Although the sites are somewhat low lying, flood hazard risk is able to 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 and MGH to date, there are no significant environmental constraints affecting the suitability of the sites for residential development.[6]

28. Excellent urban design outcomes will be achieved if the sites are rezoned to MDZ. These blocks are the next pieces of the puzzle in terms of residential growth at Kaiapoi to meet the demand which exists.

[6] Geotechnical, land contamination, transportation, rural land productivity and landscape / visual impact assessments have all been completed and will be provided as part of the Stream 12 evidence

ALIGNMENT WITH PLANNING INSTRUMENTS

29. The rezoning proposed by MLL and MGH gives effect to the relevant objectives (and supporting policies) of the NPS-UD and the CRPS. The proviso to this is that the CRPS contains provisions that seek to protect the operation of Christchurch Airport by avoiding noise sensitive activities within the L_{dn} 50 dB aircraft noise contour. However these provisions:

    a. are qualified in that they only relate to residential development which would have an adverse effect upon CIAL operations; and

    b. at any rate, are subject to an exception for Kaiapoi. Application of the Kaiapoi exception in the circumstances of this case is discussed further below.

30. In particular, Policy 6.3.5(4) of the CRPS states that:

    "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."

31. The plain and ordinary meaning of Policy 6.3.5(4) is that it only operates in respect of new development which <u>will</u> affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure. The phrase "including by avoiding noise sensitive activities within the 50 dBA Ldn airport noise contour for Christchurch International Airport, unless…" is a subclause of the primary clause which precedes it. Unless the evidence establishes conclusively that a proposed development <u>will</u> affect all of the following: the efficient operation, use, development, appropriate upgrading <u>and</u> safety of the existing CIAL infrastructure, the policy does not operate against it.

32. The onus is upon CIAL to prove that all of the listed effects will occur. Only then will the policy be a factor which may weigh against granting the development. The evidence for MLL and MGH shows the opposite; that they will not occur.

33. However, even if those effects are shown, an exception has been carved out of the policy in respect of Kaiapoi, because such a substantial part of its urban area had to be red-zoned as a result of the Canterbury Earthquakes, and the 2008 contours gave no room for replacement of those households without creating an unconsolidated urban area and/or running into flooding hazards which could not be appropriately mitigated. That is, even if CIAL was able to prove that residential development within "*an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A*" would adversely affect the efficient operation, use, development, appropriate upgrading and safety of the existing CIAL infrastructure, Policy 6.3.5(4) would not weigh against the proposal.

34. Notably, the Canterbury Regional Council has not lodged a submission in opposition to MLL's submission for rezoning. This confirms that the rezoning would not be contrary to Policy 6.3.5.(4), given that Section 84 of the RMA provides that, while a policy statement or a plan is operative, the regional council or territorial authority concerned, and every consent authority, shall observe and, to the extent of its authority, enforce the observance of the policy statement or plan.

Statutory Framework for Proposed Plan Change Decisions

35. The approach to be taken in making decisions on proposed plan changes was summarised in the recent Environment Court decision of *Middle Hill Ltd v Auckland Council*,[7] following the decision of *Colonial Vineyard Ltd v Marlborough District Council,*[8] but incorporating the current requirement to give effect to the NPS-UD, as follows:

[7] [2022] NZEnvC 162 at [29]
[8] [2014] NZEnvC 55 at [17]

> *[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:*
>
> *(e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the RMA;*[9]
>
> *(f) whether they accord with Part 2 of the RMA;*[10]
>
> *(g) whether they give effect to the regional policy statement;*[11]
>
> *(h) whether they give effect to a national policy statement;*[12]
>
> *(i) whether they have regard to [relevant strategies prepared under another Act];*[13] *and*
>
> *(j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.*[14]
>
> *[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Auckland Unitary Plan by:*
>
> *(a) identifying other reasonably practicable options for achieving the objectives;*[15] *and*
>
> *(b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:*[16]
>
> *i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:*
>
> *- economic growth that are anticipated to be provided or reduced;*[17] *and*
>
> *- employment that are anticipated to be provided or reduced;*[18] *and*
>
> *ii. if practicable, quantifying the benefits and costs;*[19] *and*
>
> *iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*[20]

36. In *Colonial Vineyard Ltd* the Court adopted an approach of identifying and evaluating the potential positive consequences and potential negative consequences of the two different options that were being assessed by the Court as a means to evaluate the risks of acting or not acting in respect of each

[9] RMA, ss 31 and 74(1)(a)
[10] RMA, s 74(1)(b)
[11] RMA, s 75(3)(c)
[12] RMA, s75(3)
[13] RMA, s74(2)(b)
[14] RMA, s76(3)
[15] RMA, s 32(1)(b)(i)
[16] RMA, s 32(1)(b)(ii)
[17] RMA, s 32(2)(a)(i)
[18] RMA. S 32(2)(a)(ii)
[19] RMA, s 32(2)(b)
[20] RMA, s32(2)(c)

option.[21] No one factor was seen as a "veto", in the way that CIAL is seeking in this case.

Hierarchy of planning documents

37. In *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*[22] the Supreme Court noted the three-tiered management system – national, regional and district – created by the RMA which established a "hierarchy of planning documents"[23]. 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-

    37.1. the requirement to "give effect to" is a strong directive,[24]

    37.2. 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,[25] and

    37.3. the requirement to "give effect to" a National Policy Statement is intended to constrain decision makers.[26]

38. 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*[27] 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.*[28]

[21] *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [68] – [71]
[22] *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38* at [376]
[23] At [381], paragraph [10]
[24] At [80]
[25] At [90]
[26] At [91]
[27] *Bunnings Ltd* v *Queenstown Lakes District Council* [2019] NZEnvC 59
[28] At paragraph [113]

39. In the *Bunnings* case, the Environment Court held that the NPS-UDC required a different approach to deciding whether land may be rezoned for development than had been taken up until that time, when it said (our emphasis added):[29]

> *[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…*
>
> *[150]* ***Importantly NPS-UDC policy PA3(b) requires us to promote the efficient use of urban land…*** *We find that on the facts the proposal is a more efficient use of the site than waiting for an industrial activity to occur.*
>
> *[151]* ***The final "outcomes" policy, PA3(c), requires us to have regard to limiting - as much as possible — the adverse impacts of, in this case the Industrial zoning, on the competitive operation of land markets.*** *The proposed activity is not prohibited, and so the undoubted adverse effect on competition in the land market should be limited by granting consent to this unusual application.*
>
> *[155] There are further, major, problems with the Council's approach to PA1 which become obvious when the NPS-UDC is read as a whole.* ***The spirit and intent of the substantive objectives is to open development doors****,* ***not to close them****…*

40. More recently, the Environment Court in the above-mentioned *Middle Hill*[30] decision summarised the NPS-UD as follows:

> *[33] The National Policy Statement on Urban Development 2020 (NPS-UD) is a document to which the plan change must give effect. The NPS-UD has the* ***broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments****…*

41. Policy 2 of NPS-UD requires:

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[29] At [148 – 155]

[30] [2022] NZEnvC 162

> ***Policy 2:*** *Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term*

42. "Short term", "short-medium term", "medium term" and "long term" are defined in NPS-UD as follows:

    (a) **short term** means within the next 3 years;

    (b) **short-medium term** means within the next 10 years;

    (c) **medium term** means between 3 and 10 years; and

    (d) **long term** means between 10 and 30 years.

43. It follows that the NPS-UD is future looking and is intended to apply over a time span of at least 30 years. The Council is required by Policy 2 to provide at least sufficient development capacity to meet the expected demand for housing and for business land for the next 30 years.

44. One of the minima of a well-functioning urban environment is that is has or enables a variety of homes that meet the needs, in terms of type, price, and location, of different households.[31]

45. In *Colonial Vineyard*,[32] the Environment Court gave this analysis of the relationship between shortage of housing supply and housing prices (my emphasis):

> ***4.3 Residential supply and demand***
>
> *[98] Prior to 2011, there was a demand for between 100 and 150 houses a year and an availability of approximately 1,000 greenfield sites. Based on that, counsel for the Omaka Group submitted there is no evidence that the alleged future shortfall will materialise before further greenfield sites are made available. We are unsure what to make of that submission because counsel did not explain what he meant by "shortfall". There is not usually a general shortfall.* ***Excess demand is an excess of a quantity demanded at a price. In relation to the housing market(s), excess demand of houses (a shortfall in supply) is an excess of houses demanded at entry level and average prices over the quantity supplied at those prices.***
>
> *[99] Mr Hayward gave evidence for CVL that there has been "a subnormal amount of residential land coming forward from residential development in Marlborough". He also stated that there was an imbalance between supply and demand, with a greater quantity demanded than supply. Further, none of the witnesses disputed Mr Hawes' evidence that the Strategies are clear that*

[31] NPS-UD Policy 1(a)
[32] [2014] NZEnvC 55 at [98] – [101]

> *there is likely to be a severe shortfall of residential land in Blenheim if more land is not zoned for that purpose.*
>
> *[100] Plan Changes 64 to 71 would potentially enable more residential sections to be supplied to the housing market. However, in view of the existence of submissions on these plan changes, we consider the alternatives represented by those plan changes are too uncertain to make reasonable predictions about.*
>
> *[101]* ***We find that one of the risks of not approving PC59 is that the quantity of houses supplied in Blenheim at average (or below) prices is likely to decrease relative to the quantity likely to be demanded. That will have the consequence that house prices increase.***

Alignment with NPS-UD

46. The Stream 12 evidence for MLL and MGH will show that rezoning the land to MDZ will implement the objectives and policies of the NPS-UD substantially better than the alternative approach of precluding residential development of the land, as sought by CIAL.

47. In particular, given the sites' locations, attributes and other features, rezoning the MLL and MGH land will implement the NPS-UD Objectives by:

    47.1. providing for a well-functioning urban environment at Kaiapoi;[33]

    47.2. improving housing affordability by supporting competitive land and development markets;[34]

    47.3. 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; [35]

    47.4. providing urban development that is integrated, strategic and responsive, particularly in relation to supply of significant development capacity.[36]

48. In terms of Policy 1, a decision to rezone the MLL and MGH land would contribute to well-functioning urban environments, that, as a minimum:

    48.1. have or enable a variety of homes that meet the needs, in terms of type, price, and location, of different households; and

[33] NPS-UD Objective 1
[34] NPS-UD Objective 2
[35] NPS-UD Objective 3
[36] NPS-UD Objective 6

48.2. have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

48.3. support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

48.4. support reductions in greenhouse gas emissions; and

48.5. are resilient to the likely current and future effects of climate change.

49. The approach advocated by CIAL, which seeks to elevate protection of the airport, at all costs, and to the exclusion of all other considerations, even where it has not been shown that such protection is required on the facts of the case or in the location under question, is not supported by the provisions of the NPS-UD. Protection of infrastructure from reverse sensitivity effects of housing development is not a feature of the NPS-UD; rather, the NPS-UD requires that housing and business land development be integrated with infrastructure: Objective 6 provides that "Local authority decisions on urban development that affect urban environments are:

(a) integrated with infrastructure planning and funding decisions; and

(b) strategic over the medium term and long term; and

(c) responsive, particularly in relation to proposals that would supply significant development capacity.

50. Although "nationally significant infrastructure" is a defined term in the NPS-UD and includes "any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers", the only place that the term is used in the NPS-UD is in relation to a Future Development Strategy. Even there, clause 3.15(2)(e) simply requires that, when preparing a draft FDS using the special consultative procedure in section 83 of the Local Government Act 2002, local authorities must engage with relevant providers of nationally significant infrastructure, amongst others. There is no requirement for an FDS, or any other instrument required by the NPS-UD or the RMA, to protect nationally significant infrastructure from urban development.

Alignment with CRPS

51. The proposed rezonings implement the CRPS objectives and policies. Although the CRPS contains a suite of provisions[37] designed to protect the operation of Christchurch Airport from reverse sensitivity effects, those provisions cannot be interpreted as an absolute veto on all noise sensitive activities within the 50 dBA noise contour, and a requirement to disregard all of the positive aspects of such development, particularly those aspects which would give effect to the NPS-UD. To be consistent with and give effect to the higher order documents, the provisions in the CRPS must enable a decision-maker to have regard to all relevant considerations when considering the residential rezoning of land.

52. The principal reasons and explanation for CRPS Policy 6.3.5 are illustrative:

> *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.*

53. The policy acknowledges that there was displacement of Kaiapoi residents caused by the Canterbury earthquakes, and that providing for residential development within Kaiapoi will enable contiguous and consolidated development to occur. 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.

54. That is, the CRPS policies acknowledge that the airport noise contours can not and do not act as an automatic veto, to the exclusion of all other relevant considerations. A decision-maker faced with a rezoning request must have regard to all relevant matters, particularly those that relate to the higher-order document, the NPS-UD.

[37] 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

Inclusion of FDA in Plan Change 1 to the CRPS

55. Future Development Areas (**FDA**) were included in the CRPS by Plan Change 1 (**PC1**). PC1 amended Chapter 6 of the CPRS 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**).

56. 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.[38]

57. PC1 proposed to make the following amendments to Chapter 6 and Map A of the operative CRPS.[39]

- 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.

58. 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.[40]

59. 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.

[38] The Minister approved PC1 on 28 May 2021 and the changes were made operative on 28 July 2021.
[39] PC1 Section 32 Evaluation Report at page 9
[40] PC1 Section 32 report at page 8

60. That amendment should not be interpreted as automatically preventing residential development with those parts of FDAs that are within the L_{dn} 50 dB contour. Rather, it must be interpreted within the stated purpose of PC1, which is (among other matters) to enable rezoning of land within FDA to meet housing needs at Kaiapoi. How could precluding residential development within a substantial area of the Kaiapoi FDA be seen as implementing that purpose?

61. 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.

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

62. The recent decision of *Auckland Council* v *Teddy and Friends Ltd*[41] 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 owners and consistent with the practical administration of the relevant provision.[42]

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

63. Taking all relevant matters into account, the case for MLL and MGH is that there is a strong argument to support a purposive and balanced approach to interpretation of the Kaiapoi exception rather than the unilateral 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 Kaiapoi Growth Area and residential intensification within the MDZ at Kaiapoi whilst mitigating or avoiding potential reverse sensitivity effects on the airport.

64. In relation to that, and referring back to the Supreme Court decision in *Port Otago*, there are mitigating steps which can be taken to ensure that residents in the L_{dn} 50 to 55 dB area are not annoyed by airport noise and so will not complain and cause reverse sensitivity effects. Those measures – double glazing of windows, mechanical ventilation, and notices on LIMs - are already included in the proposed Plan as notified, and assessed in Fraser Colegrave's evidence as being better options than sterilising the land by preventing residential development, from the view of costs and benefits.[43]

65. If the CRPS were interpreted as preventing all residential development between the L_{dn} 50 and 55 dB contours, regardless of whether any material harm to CIAL had been shown as likely to result from such development, it would prescribe an outdated and unbalanced approach (which was evident in the rather meaningless and seemingly pre-determined PC1 process, insofar as the airport noise contour issue was concerned). However, the "avoid" provisions in the CRPS must be interpreted in line with the *Port Otago* decision, and in the light of the superior documents which now outrank the CRPS.

66. 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*[44] case:

> *[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.*

[43] Evidence of Fraser Colegrave, paragraph 158-170
[44] Para [148]-[149].

> *[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.*

67. 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*.

Consistency with Proposed Plan

68. The rezoning sought by MLL and MGH is consistent with all of the notified objectives and supporting policies of the Proposed Plan. Even UFD-P10(1), relating to managing reverse sensitivity effects from new development, does not weigh against the MLL submission, when properly construed:

> *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*;

69. As canvassed above, the primary clause of this condition is "avoid residential activity <u>that has the potential to limit</u> the efficient and effective operation and upgrade of critical infrastructure, strategic infrastructure, and regionally significant infrastructure", which places an onus upon the party claiming that an activity has the potential to limit the efficient and effective operation and upgrade of particular infrastructure to prove that matter. The sub-clause, "including avoiding noise sensitive activities within the Christchurch Airport Noise Contour" must be construed within that context; only those noise sensitive activities within the contour which have the potential to limit the efficient and effective operation and upgrade of CIAL's infrastructure are affected by this policy.

70. CIAL has adduced considerable evidence of its own economic importance within Greater Christchurch, the South Island, and the country. Having regard

to that, it is not credible that the strategically significant operations and upgrades of CIAL could be limited by further residential development in Kaiapoi. Almost the entire town is already within the CIAL 50 contour. The evidence of William Reeve shows that, in the 6½ years from February 2017 to September 2023, only 2 noise complaints from Kaiapoi were made to CIAL. Within Christchurch City, in areas much closer to the airport, there are also very few complaints made about airport noise. And even if a small number (or even a large number) of complaints is made, that does not necessarily justify a conclusion that CIAL's operations and upgrades will be limited.

71. Knowing everything that CIAL has to say about its economic significance, what reasonable decision-maker would decide to limit CIAL's operations and upgrades on the basis of a few complaints, particularly from people who had come to their properties in full knowledge of the existence of the airport's noise contours (as shown in the district plan)?

72. The "belts and braces" approach taken by WDC is to ensure that people purchasing property within the 50 dB contour are forewarned, by placing notices on the relevant LIMs. That may well have limited the number of complaints which have been made over recent years, as may have modern building insulation / double glazing techniques. There is nothing in the evidence to support the notion that further residential development in Kaiapoi has the potential to limit the efficient and effective operation and upgrade of CIAL infrastructure.

73. Policy UFD-P10(1), in referring only to "an existing Residential Zone", does not fully give effect to Policy 6.3.5(4) of the CRPS, which expressly provides for residential development within Greenfield Development Areas identified on Map A.[45] It is also inconsistent with other provisions of the Proposed Plan which clearly contemplate residential development within the Kaiapoi Development Area, such as 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*

[45] CRPS at Policy 6.3.5.4 via the so-called Kaiapoi exception

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;

74. 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.

AIRPORT NOISE CASES

75. As part of CIAL's s32 analysis on the Airport Noise Qualifying Matter contained in Variation 1, it refers to a handful of cases that were decided in the early 2000s. These decisions were not strong authorities at the time, for the reasons which I will next go into, and can no longer be regarded as any sort of authority given that there have since been:

a. the Canterbury earthquakes resulting in red-zoning of large areas of Christchurch and Kaiapoi; and

b. a housing supply shortage in New Zealand, including in Waimakariri District, resulting in large increases in house prices and lack of affordable housing; and

c. the NPS-UD and Enabling Housing legislation, as well as caselaw indicating that the pre NPS-UD approach to the supply of land for housing is no longer appropriate or correct.

Cases Referred to by CIAL

76. In *BD Gargiulo* v *Christchurch CC*,[46] there was no real case mounted against CIAL's assertions that Mr Gargiulo's proposal to subdivide one 4ha lot into two lots, with one additional house, would have an adverse effect on the airport's operations. The evidence for Mr Gargiulo consisted of a horticultural consultant, a planner, and Mr Gargiulo himself. CIAL called an acoustic expert (Mr Day), a registered valuer, a psychologist, and 3 planners.

46 *BD Gargiulo* v *Christchurch CC*, C 137/2000

77. The acoustic, valuation and psychological evidence was not contested by opposing evidence, so even though it was not strong evidence, the Court did not have much choice but to rely on it. Mr Day presented a literature review carried out by a different acoustics expert, rather than giving any actual evidence of people suffering material harm from living between the 50 and 55 contours, or of people in that situation adversely affecting airport operations. Mr Staite (the psychologist) did not recognise the difference, which has been explained in the present case by Professor John-Paul Clarke, between the different survey methods regarding noise annoyance, and how they may produce significantly different results. As is explained by Professor Clarke,[47] people being asked about noise annoyance in a face-to-face or telephone survey will report tolerate noise 5 dB – 10 dB higher than when asked about noise annoyance in a written survey, as was the case with the Taylor Baines survey.

78. *Robinsons Bay Trust v Christchurch CC,*[48] was another early case, decided well prior to the earthquakes, the housing supply shortage, and the NPS-UD. The Court recorded at paragraphs [20] – [21] that:

> *[20] (1) The parties agree that the [NZS6805:1992] Noise Standard is generally appropriate for use at the Christchurch Airport. … The major distinction between the parties is whether the outer control boundary should be at the 55 dBA Ldn specified in the Noise Standard (clause 1.4.2.2) or should be at the 50 dBA Ldn contour line shown in the Proposed Plan.*
>
> *(2) Having assessed the evidence of all the witnesses, we conclude it is common ground of the parties that the standard is a guide rather than a mandatory requirement and that it has been utilised in various ways throughout New Zealand.* ***The Noise Standard does not recommend using the 50 dBA Ldn contour line, nor has it been used elsewhere in New Zealand….***
>
> *(4) ….Notwithstanding the suggestions that the 55 dBA contour line would be contrary to the RPS, Mr McCallum, called for the Regional Council, later accepted in answer to questions that the Proposed Plan did not prohibit development within these contours. He acknowledged that there were other policies and objectives which also militated against development within these contours. He accepted the Proposed Plan as promulgated by Council was not contrary to the RPS on this issue.* ***We conclude that neither would a 55 dBA Ldn contour line be contrary to the RPS. In fact, Mr McCallum indicated, surprisingly, that some urban residential development within the 50-55 dBA Ldn contour***

[47] Evidence of John-Paul Clarke, para 42

[48] *Robinsons Bay Trust v Christchurch* C 60/2004

could be justified under the Proposed Plan. We conclude he could only hold such a position if such development is not contrary to the RPS.

[21] We have concluded, having regard to the provisions of the Plan not in dispute, that either the 50 or 55 d BA Ldn contours could be inserted into Policy 6.3.7 in the Proposed Plan without causing any violence to either the objectives and policies of the Proposed Plan or to the Regional Policy Statement. The reasons for this conclusion are:

(1) The Proposed Plan permits a level of residential development to the 65 dBA Ldn contour. The controls on development below this noise contour arise in a number of different ways. Policy 6.3.7 is but one policy constraint;

(2) The 55 dBA Ldn contour for the outer control boundary is in the Noise Standard and represents a notional balancing of the various positions of parties. This standard is also noted in both the Regional Policy Statement and in the Proposed Plan;

(3) Either line represents an approach to the balance required between the interests of the landowner and the airport operating with minimal constraints.

79. The crux of the *Robinsons Bay* case is recorded at paragraphs [48] and [50]:

[48] However, as we have already discussed, there are a wide range of other policies, rules and other provisions of the Proposed Plan [not relating to airport noise] which would still apply to any development in the area. Having regard to that limitation, it must be said that the established policies and objectives and other provisions of the Proposed Plan already form a formidable matrix restricting development…. Thus its application to the 55 dBA Ldn contour line "releases" only the land between 50-55 dBA Ldn which is affected by other policies and on which the development is still non-complying.

[50] Against the use of the 50 dBA Ldn contour is the additional limitation or barrier this would place on landowners being able to develop their land in an unrestricted way. ***Because of the significant limitations on the use of this land in any event, we are unable to see this as effectively disenabling these residents if the contour was fixed at 50 dBA Ldn. The land has historically not been available for urban development, nor does this Proposed Plan provide for such urban development.***

80. That is, for reasons other than airport noise issues, the relevant land between the 50 and 55 contours could not have been used for residential development anyway, so there was not the sort of opportunity costs to housing development and supply which have been described by Fraser Colegrave in the MLL/MGH case. In contrast, the Court recognised in *Robinsons Bay* at paragraph [58]:

> *[58]* *By the same token,* ***we are unable to conclude firmly from the evidence that we have heard that there is in fact any significant cost imposed upon the airport from the imposition of the 55 dBA Ldn as opposed to the 50 dBA Ldn contour…Having heard all the evidence, we have concluded that a curfew due only to the inclusion of buildings between the 50 and 55 dBA Ldn noise contour is unlikely.***

81. The Court in *Robinsons Bay* was not dealing with the type of situation which Waimakariri has at Kaiapoi, where almost all of the developed town is already within the 50 contour, as is the land which would best provide opportunities for consolidated growth and a well-functioning urban environment.

82. Also, in *Robinson's Bay,* the Court placed some reliance on the Taylor Baines 2002 residential postal survey of Christchurch residents.[49] As has been explained to this hearing panel by Professor John-Paul Clarke and William Reeve, there are 2 reasons why that survey should not be relied upon in relation to determining whether the 50 contour or the 55 contour should be used to control residential development:

    a. respondents to a written survey such as the Taylor Baines survey are likely to show annoyance at levels 5-10 dB lower than respondents to a verbal survey;[50] and

    b. the Taylor Baines study only divided people into those living between 45 and 50 dB L_{dn}, and those living between 50 and 65 dB L_{dn}, so it tells us nothing about the difference in annoyance between those living between the 50 and 55 contours, as opposed to those living between the 55 and 60 or 65 contours. This can be contrasted to the Collette study, which found that annoyance of people living in the 50-55 zone was slightly less than those living in the 45-50 zone, and significantly less than those living in the 55-65 zone.[51]

83. Even with those limitations, it is telling that the Taylor Baines study shows[52] that roughly the same percentage of people (17.1%) are "highly annoyed" by airport noise as are annoyed by neighbourhood noise (17.4%) or industrial noise (20.6%), while a significantly higher proportion (39.7%) are highly annoyed by road traffic noise at the same level.

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[49] *Robinsons Bay v Christchurch CC*, para 25
[50] Evidence of John-Paul Clarke, para 56
[51] Evidence of John-Paul Clarke, para 57
[52] *Robinsons Bay v Christchurch CC*, para 25

84. The case of *National Investment Trust v Christchurch CC*,[53] is another which long pre-dates the Canterbury earthquakes, red-zones, housing shortage and NPS-UD. The Environment Court said:

> *[112] … The amenity impact of allowing development within the 50 dBA contour cannot be measured in monetary terms but this does not make it any less important. Benefits are personalised to the landowner developing the site* ***and there is no wider benefit because there is not a current limit on the range of housing opportunities in Christchurch.***

85. This clearly exhibits a pre- NPS-UD approach, not just in the factual situation being one of ample sufficiency of housing opportunity, but also in the assumption that only the developing landowner benefits from housing development. The correct approach under NPS-UD is that sufficient housing capacity must be provided in order to maintain housing affordability.

86. Also, as was the case in *Robinsons Bay*, there were reasons in *National Investment Trust,* other than the airport noise contours, why it was not appropriate to grant the rezoning sought:[54]

    a. the submitter sought rezoning over a large area of land which it did not own or have an interest in, and without providing the Court with the landowners' views on the proposed rezoning;

    b. there were major unresolved issues as to the appropriateness of the land for urban use, such as stormwater, traffic, and other infrastructure issues;

    c. no Outline Development Plan was provided to the Court.

87. *Independent News Auckland Ltd v Manukau City Council,*[55] was an appeal against the granting of a resource consent to construct 4 apartment tower blocks in an area where current aircraft noise was L_{dn} 62 to 64 dB, and predicted to rise by another L_{dn} 4 to 5 dB.[56] It is not relevant to this Panel's deliberations about whether residential zoning should be enabled between L_{dn} 50 and 55 dB.

88. *Ardmore Airfield Tenants and Users Committee v Ardmore Airport Ltd*,[57] concerned the Ardmore Airport which, at that time, was the busiest airport in

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[53] *National Investment Trust v Christchurch CC*, C 41/2005
[54] *National Investment Trust v Christchurch CC*, para [117]
[55] *Independent News Auckland Ltd v Manukau City Council,* (2003) 10 ELRNZ 16
[56] *Independent News Auckland Ltd v Manukau City Council,* para [67] – [69]
[57] *Ardmore Airfield Tenants and Users Committee v Ardmore Airport Ltd*, A23/2005, 23 February 2005

New Zealand in terms of aircraft movements.[58] In spite of that, and the fact that it was located about 1.5km away from the Metropolitan Urban Limits in the Papakura District, the district plan did not contain an Air Noise Boundary (at L_{dn} 65 dB) nor an Outer Control Boundary (at L_{dn} 55 dB) as required by the NZS 6805:1992. The case was simply about inserting those contours into the District Plan. There was no discussion about having an Outer Control Boundary at L_{dn} 50 dB, instead of L_{dn} 55 dB, as is sought in this case by CIAL, so the case is not relevant to the Panel's deliberations.

Cases Not Referred to by CIAL

89. In *Wellington International Airport Limited* v *Wellington City Council,*[59] the Court dismissed the appeal by the airport against the granting of consent to build a four-level building, containing four household units, within the Airport Noise Boundary L_{dn} 65 dBA contour. The Court found that the then current noise level at the site was around L_{dn} 63 dBA, with future levels allowed for at L_{dn} 67 dBA. Even so, the decision to grant consent was confirmed, on the basis that noise insulation and mechanical ventilation would achieve indoor noise levels not exceeding L_{dn} 40 dB,[60] which was judged by the Court to be acceptable to mitigate reverse sensitivity effects on WIAL.

90. *DJ & AP Foster v Selwyn District Council*,[61] concerned the zoning of a number of rural and rural-residential zones on the outskirts of Rolleston, lying between the L_{dn} 50 and 55 dB contours, as part of the District Plan review, and whether the blocks' previous zoning should be changed to Living 2A. CIAL not only opposed the change to Living 2A zoning, it sought to have one of the blocks which had previously been zoned rural-residential rezoned to rural.

91. Professor John-Paul Clarke was called as a witness for the Fosters and other landowner/appellants. Witness conferencing took place between the experts, and eventually a consent memorandum was filed with the Court, so that consent orders could be made without the Court having to decide on contested matters. Importantly, CIAL agreed to the Living 2A zoning of a number of blocks lying between the L_{dn} 50 and 55 dB contours.

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[58] *Ardmore Airfield Tenants and Users Committee v Ardmore Airport Ltd* para [17]
[59] *Wellington International Airport Limited* v *Wellington City Council* W55/05
[60] *Wellington International Airport Limited* v *Wellington City Council*, para 128
[61] *DJ & AP Foster v Selwyn District Council*, C 138/2007

92. In relation to CIAL's attempt to have previously rural-residentially zoned land rezoned to rural, the Court commented:

> *[10] In respect of block A, this 9 hectare block has also traditionally been zoned as Rural Residential and was confirmed by the Selwyn District Council as Living 2A after hearing submissions.* ***The CIAL sought Rural zoning simply because it has yet to be developed. They have now changed their position and accept that, due to its historical Rural-Residential zoning, it should be included within the Living 2A Zone.*** *Accordingly CIAL now withdraw their appeal in that regard*
>
> *[11] We conclude that A is a block of historical Rural-Residential land which should be included in Living 2A. It would seem counter-intuitive to this Court that people should be punished for not developing land in accordance with its highest zoning use and we do not see that there is any proper basis for this land to be excluded from Living 2A zoning.*

93. In *BP Cammack v Kapiti Coast District Council*,[62] the Paraparaumu Airport's private plan change request sought to create a business park around the airport and also sought to have a buffer zone of 14.2 ha separating the airport from new residential uses. The Outer Control Boundary for that buffer zone was set at L_{dn} 58 dB, rather than L_{dn} 55 dB, as the Court accepted that house insulation studies had shown that a noise reduction of 18 dB (outside to inside) could be achieved in a standard house with the windows ajar for ventilation.[63] Between the OCB of L_{dn} 58 dB and the ANB of L_{dn} 65 dB, new noise sensitive activities were restricted discretionary, and additions to houses were permitted subject to the sound insulation standard. The plan change also provided for a warning about louder than normal aircraft noise to be placed on the LIMs of properties inside of the L_{dn} 58 dB Outer Control Boundary. I note that this airport has a night-time curfew, not as a result of residential development between L_{dn} 50 and 55, but due to historical development around the airport at much higher noise levels.

94. The most recent and highest authority is *Colonial Vineyard v Marlborough District Council,*[64] confirmed by the High Court in *New Zealand Aviation Museum Trust v Marlborough District Council,*[65] where new residential zoning was granted inside of the L_{dn} 50 dB airport noise contour, and in fact, partially inside of the L_{dn} 55 dB contour.

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[62] *BP Cammack v Kapiti Coast District Council*, W 069/2009
[63] *BP Cammack v Kapiti Coast District Council*, at para [110]
[64] *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55
[65] *New Zealand Aviation Museum Trust v Marlborough District Council* [2014] NZHC 3350.

95. In coming to a decision to grant the zoning, the Environment Court recognised that the following positive consequences were likely:[66]

> *(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;*
>
> *(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.*

96. 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.

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

97. 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

[66] *Colonial Vineyard,* para [69]-[72].

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.

98. 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:

98.1. infrastructure, particularly nationally significant infrastructure such as the Airport, is not adversely affected by incompatible activities; and

98.2. urban growth is planned with infrastructure provision in mind, recognising that the two run hand-in-hand.

99. Neither of those statements is part of the definition of "well-functioning urban environment" in Policy 1 of the NPS-UD.

100. Rather, the definition of "well-functioning urban environments" focuses on such things as:

100.1. providing or enabling a variety of homes that meet the needs, in terms of type, price, and location of different households;

100.2. having good accessibility for all people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport;

100.3. supporting, and limiting as much as possible adverse impacts on, the competitive operation of land and development markets.

101. 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.

102. 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".

103. 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*,

104. 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).

105. 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.

106. 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 L_{dn} 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 L_{dn} aircraft noise contour constraint on subdivision and dwellinghouse development on areas below four hectares.*
>
> *For these defined areas of Kaiapoi, under the 50 dBA L_{dn} 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 L_{dn} 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 L_{dn} aircraft noise contour and the potential for increased aircraft noise*

will be placed on all Land Information Memoranda for properties within the 50 dBA L_{dn} aircraft noise contour for Christchurch International Airport. (emphasis added).

107. This approach recognises that:

107.1. potential reverse sensitivity effects of residential development on the airport do not necessarily preclude residential development within the L_{dn} 50 dB contour;

107.2. there are other mechanisms, such as the provision of warnings on LIMs, to mitigate or avoid such effects;

107.3. 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 L_{dn} 50 dB contour.

108. The Court of Appeal judgment in *Canterbury Regional Council v Independent Fisheries*[67] 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.

109. The Minister had purported to exercise his powers under the CERA by:

109.1. amending 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

109.2. revoking Proposed Change 1 to the 1998 Canterbury RPS and inserting 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.

110. The High Court and the Court of Appeal held that, in exercising his powers, the Minister had failed to 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

[67] *Canterbury Regional Council* v *Independent Fisheries* [2012] NZCA 601.

use of section 27 did not, which meant that some landowners who argued that residential development should be allowed within the L_{dn} 50 dB contour throughout greater Christchurch were denied access to the Court by the Minister's decision.

111. 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 report writer employed by the Authority, but it was not a matter at issue before the High Court or the Court of Appeal.

112. 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 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.

New Zealand Standard 6805:1992.

113. 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 L_{dn} 50 dB. However, that Standard makes no mention of L_{dn} 50 dB as an outer control boundary for airport noise.

114. 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 L_{dn} 65 dB, and may be necessary when the exposure exceeds L_{dn} 55 dB.

115. At NZS 6805:1992, 1.4.3.8, the Standard states that local authorities should mark the L_{dn} 65 dB contour in district plans as the air noise boundary, and the L_{dn} 55 dB contour as the outer control boundary. The Standard makes no mention of

the L_{dn} 50 dB contour, nor the need for any measures to be taken when noise levels are between L_{dn} 50 dB and L_{dn} 55 dB.

116. The existence and applicability of the NZ Standard 6805 was discussed in *Colonial Vineyard*,[68] where it was recorded that the airport noise outer control boundary in the Marlborough District Plan is the L_{dn} 55 dB contour, not the L_{dn} 50 dB contour. As contemplated by the New Zealand Standard, that case allowed residential development between the L_{dn} 50 dB and L_{dn} 55 dB contours, and in fact, to some extent inside of the L_{dn} 55 dB contours.

117. The Standard says that noise control measures **are required** when noise exposure exceeds L_{dn} 65 dB, and **may be necessary** when the exposure exceeds L_{dn} 55 dB. In *Colonial Vineyard*, the Courts accepted that the use of restrictive "no complaints" covenants was an effective measure to adequately avoid or mitigate reverse sensitivity effects on the airport.

CONCLUSIONS

118. The potential reverse sensitivity effects on CIAL's operations should be considered as just one of all relevant positive and negative factors, not a veto on residential development underneath the air noise contour in a way that rules out a balanced consideration of the Kaiapoi growth issue.

119. The MLL and MHG land is well suited to residential development. The evidence to be produced in Stream 12 will show that the rezoning proposed by MLL gives effect to important objectives and policies of NPS-UD, while the evidence produced in this hearing shows that the rezoning will not result in any material harm to the airports operations, and so does not need to be avoided in order for the proposed Plan to give effect to the objectives and policies of the CRPS. CIAL has not shown that there would be significant costs to it, or the wider economy, by enabling residential development on the MLL and MGH land, whereas it has been shown that such development will create significant economic benefits by providing significant housing capacity, and that there would be significant opportunity costs if the development was prevented as sought by CIAL.

[68] Para [45]-[51].

120. The Kaiapoi exception recognises the unique circumstances of Kaiapoi due to its pre-existing location beneath the L_{dn} 50 dB 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, and even more markedly since the early Christchurch decisions that gave some support to the L_{dn} 50 contour as an outer control boundary. The significant shortage of housing supply which is now being experienced has resulted in housing costs rising to the point of unaffordability for many people. 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 and MGH is that the rezoning their submissions request is needed to provide at least sufficient development capacity and a well-functioning urban environment at Kaiapoi in the manner directed by the NPS-UD, and will not cause any material harm to CIAL operations.

Dated: 9 February 2024

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Chris Fowler / Margo Perpick
Counsel for Momentum Land Limited
and Mike Greer Homes NZ Limited

APPENDIX A

Momentum land location plans

Canterbury Regional Policy Statement

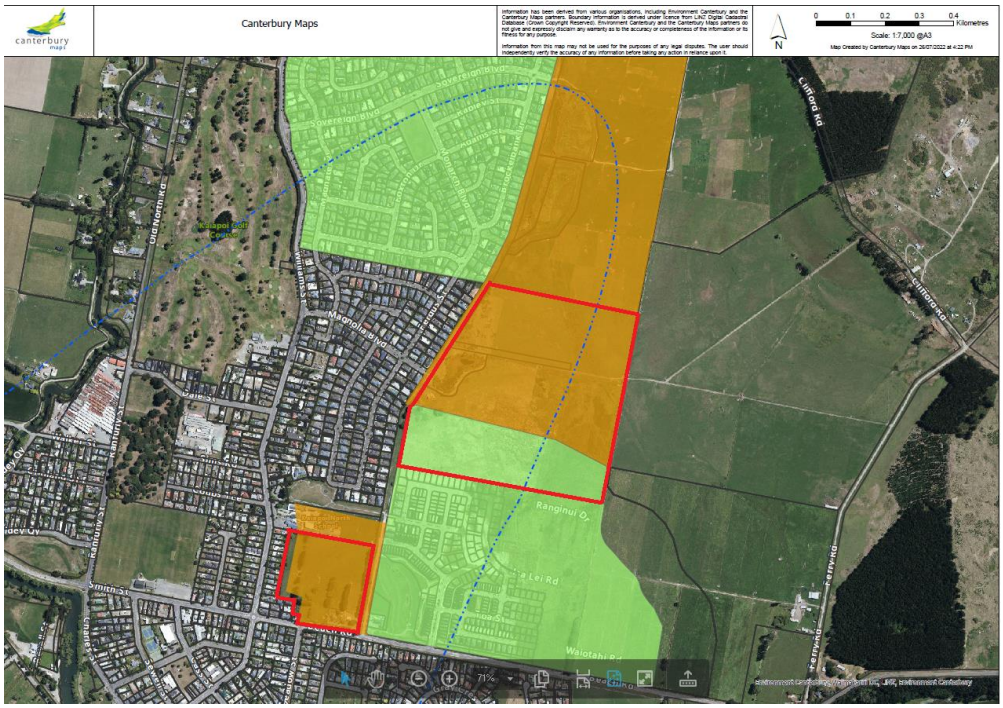

Figure 1: **Snip from Canterbury Maps showing Momentum land (in red) overlaid with Greenfield Priority Area, Future Development Area and the 50 dBA aircraft noise contour**

Proposed District Plan

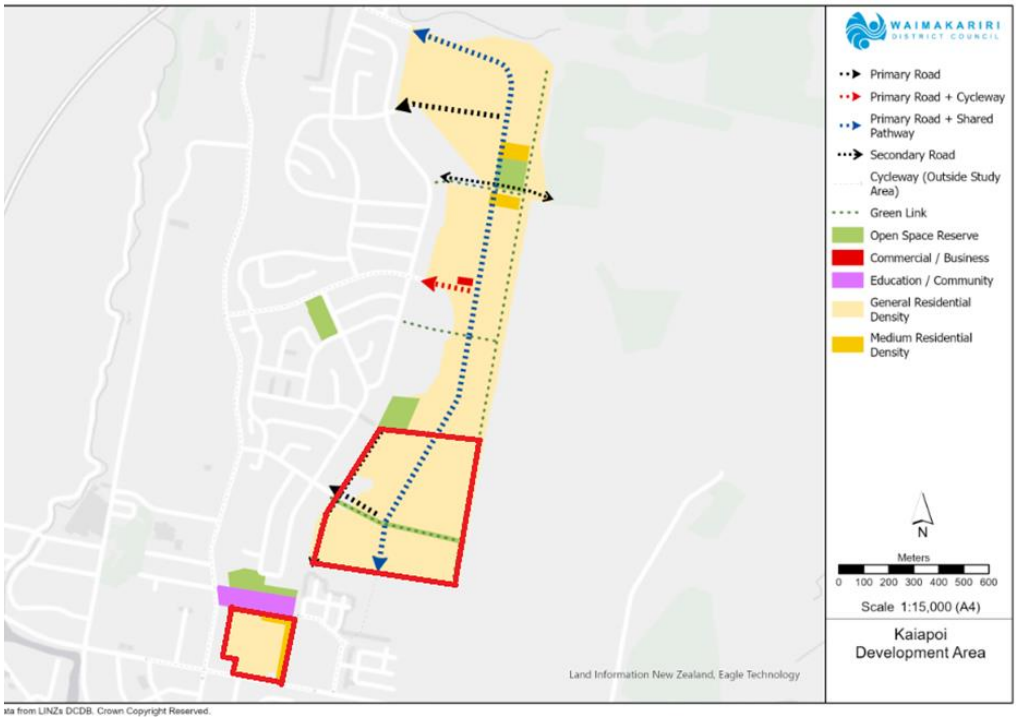

Figure 2: **Snip from Proposed Plan showing Momentum land (in red) and Outline Development Plan Area (North Kaiapoi)**

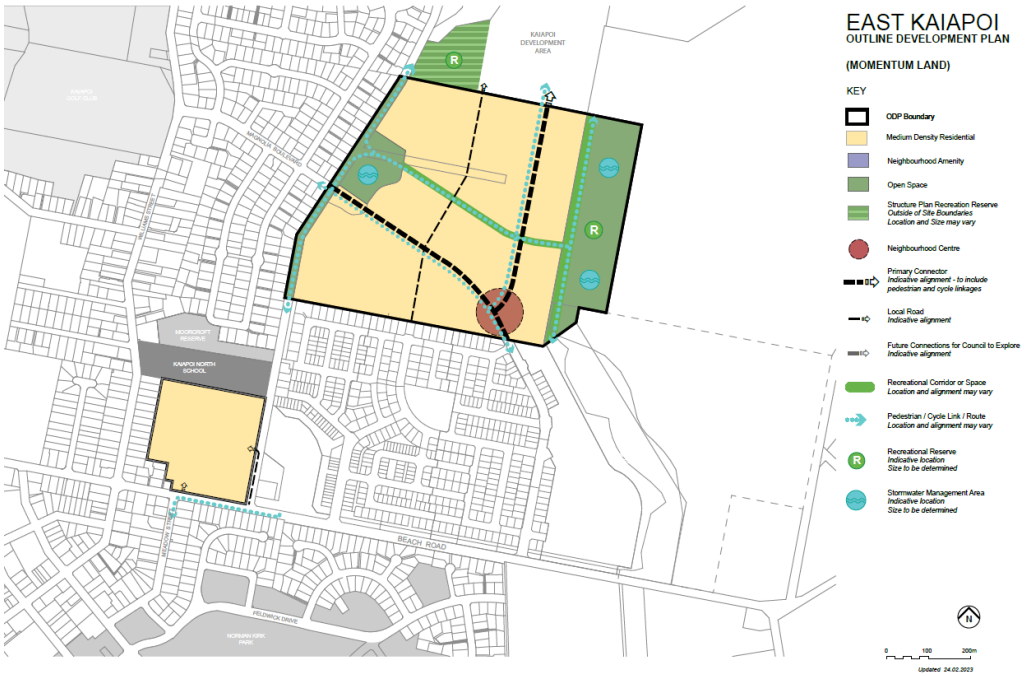

Figure 3: **Indicative Outline Development Plan for Momentum Land**

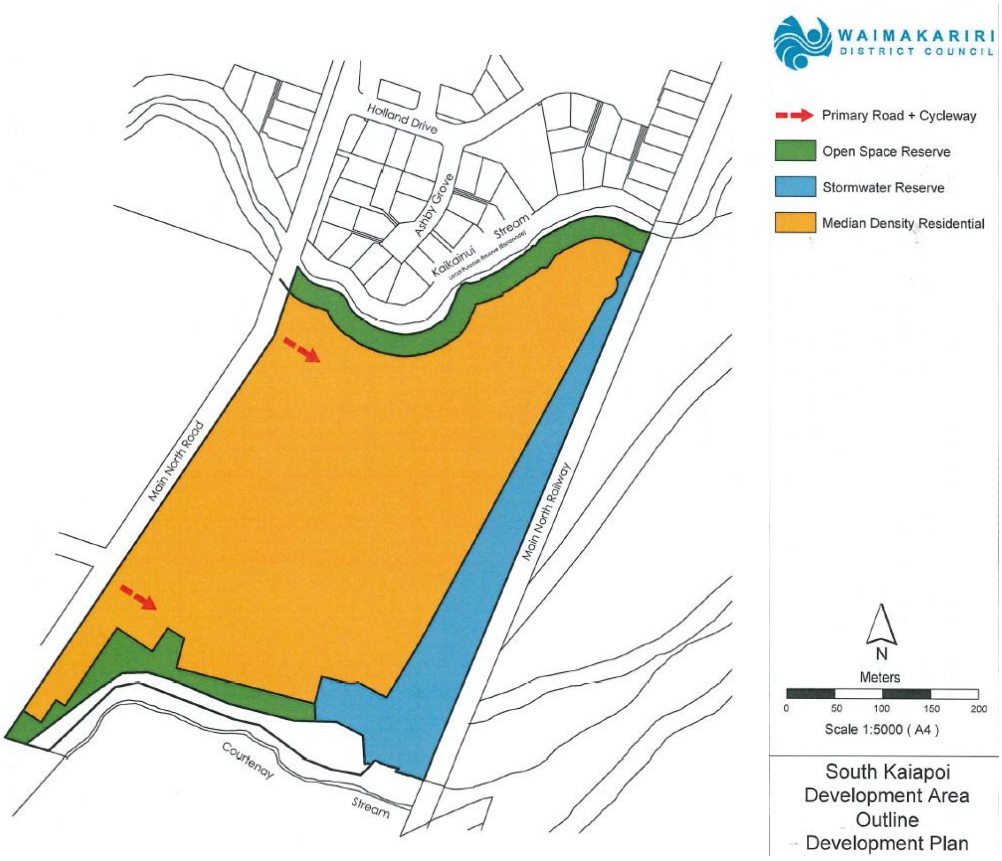

Figure 4: **Indicative Outline Development Plan for Mike Greer Homes NZ Ltd South Kaiapoi**

Waimakariri 2048 District Development Strategy 2018

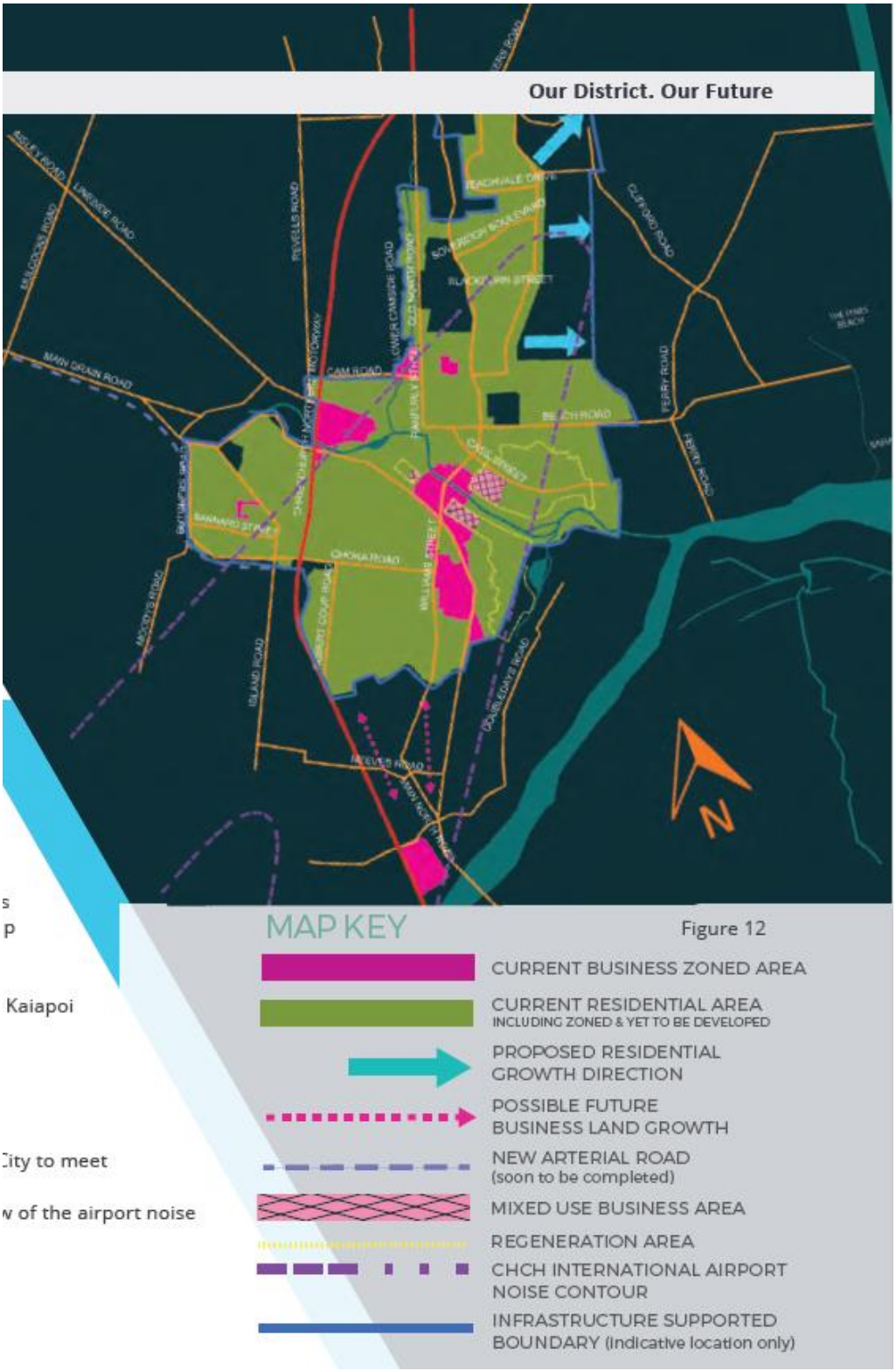

Figure 5: Snip from Waimakariri 2048 District Development Strategy 2018 showing proposed residential growth direction at Kaiapoi (page 41).

50 dBA noise contours – Kaiapoi and Rolleston

Extracts from Map A, Chapter 6, CRPS

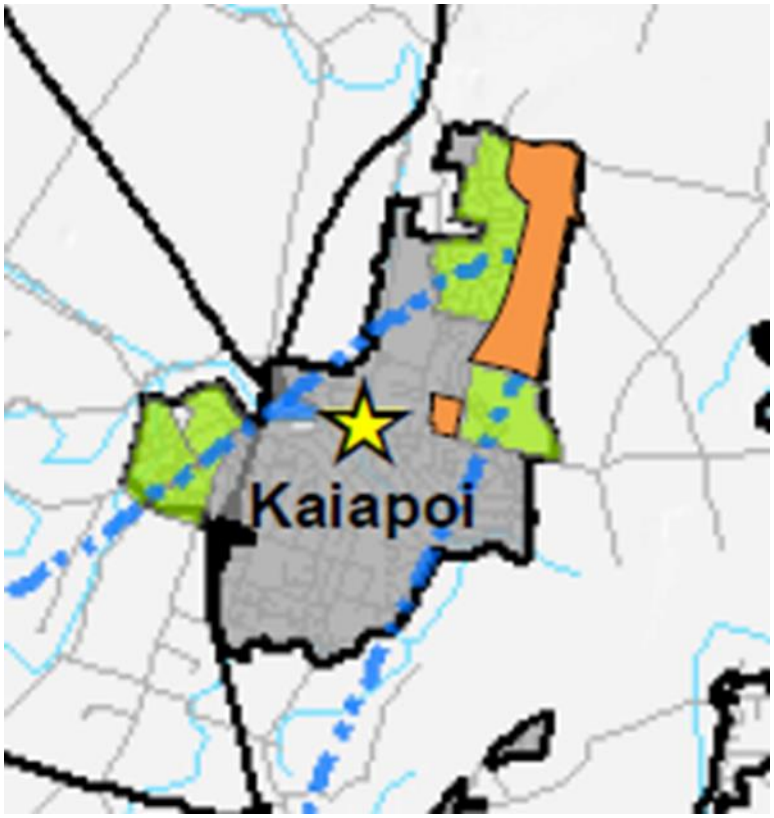

Figure 6: Snip showing 50 dBA noise contour and FDA at Kaiapoi

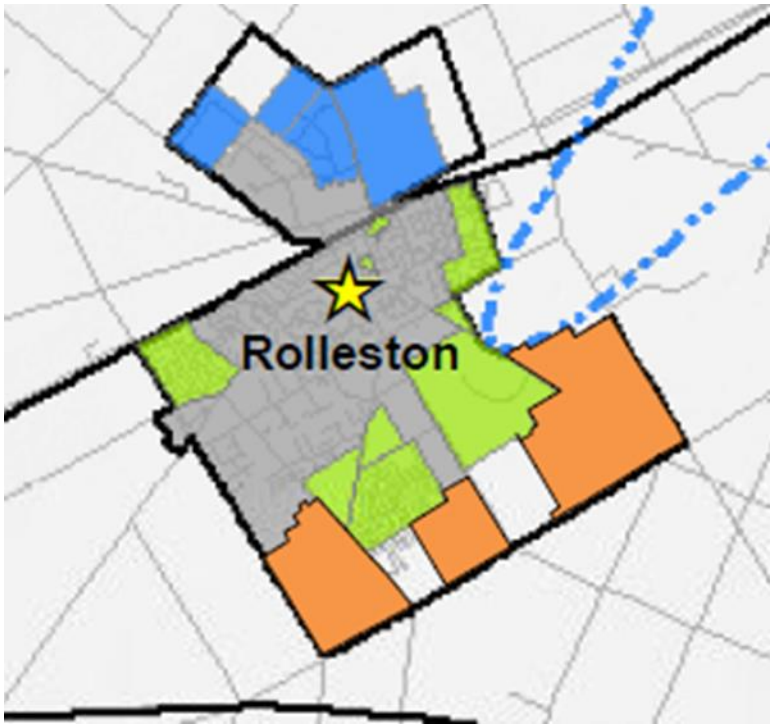

Figure 7: Snip showing 50 dBA noise contour and FDA at Rolleston