

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

IN THE MATTER OF The Resource Management Act 1991 (**RMA**
or **the Act**)

AND

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

AND

IN THE MATTER OF Hearing of Submissions and Further
Submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan

AND

IN THE MATTER OF Submissions and Further Submissions on the
Proposed Waimakariri District Plan by **Mike
Greer Homes NZ Limited**

**LEGAL SUBMISSIONS FOR MIKE GREER HOMES NZ LIMITED
REGARDING HEARING STREAM 12E**

DATED: 9 August 2024

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INTRODUCTION

- 1 These submissions are filed on behalf of Mike Greer Homes NZ Limited (**Submitter**) in respect of the Stream 12E hearing of submissions on the Proposed Waimakariri District Plan (**Proposed Plan**).
- 2 The Submitter seeks, through its submissions on the Proposed Plan, to rezone its currently rurally zoned land to residential. The Submitter's land is an area of approximately 14ha ha at the southern entrance to Kaiapoi (**Site**). The Submitter's land is zoned Rural under the Operative District Plan and Rural Lifestyle Zone (**RLZ**) in the Proposed Plan.
- 3 In its submission on the Proposed Plan, the Submitter sought Medium Density Residential Zoning (**MDRZ**), which would enable a yield in the order of approximately 190 dwellings, with subdivision and development guided by an ODP and provisions of the Proposed Plan (**Proposal** or **proposed rezoning**).
- 4 Residential zoning of the Submitter's land would give better effect to the National Policy Statement for Urban Development 2020 (**NPS-UD**), and in doing so, better give effect to Part 2 of the RMA, than would the Proposed Plan as notified.
- 5 The evidence provided by the Submitter is listed at **Appendix A**, including evidence filed on 2 August in reply to the s42 Officer Report (**Officer Report**). This evidence is filed by the Submitter in support of its submission on the PWDP and Variation 1 seeking rezoning the Site to MRZ. For the avoidance of doubt, this evidence is relied on by the Submitter in respect of hearing Stream 12E(A) and Stream 12E(B).
- 6 The evidence filed by the Submitter shows that there are significant positive consequences that will arise from the proposed rezoning and little, if any, negative consequences. Conversely, the opposite is true in relation to the zoning in the Proposed Plan. Accordingly, the risks of accepting the Submitter's proposed rezoning are much less and will provide greater potential benefits than the zoning in the Proposed Plan. These positive consequences can be realised via a responsive planning decision under the NPS-UD even though residential development in this location is not anticipated under lower order planning documents.

KEY ISSUES

- 7 The issues to be addressed arising from the Mike Greer Homes submission are as follows:
- (a) What is the relationship between the NPS-UD and lower order planning instruments such as the CRPS and the Proposed Plan;
 - (b) What are the potential positive consequences of the proposed rezoning compared to the Proposed Plan;
 - (c) What are the potential negative consequences proposed rezoning compared to the Proposed Plan;
 - (d) Does the proposed rezoning better give effect to the NPS-UD than the Proposed Plan;
 - (e) Does the proposed rezoning better give effect to the CRPS than the Proposed Plan;
 - (f) Does CRPS Policy 6.3.5(4) regarding noise sensitive activities beneath the 50 dBA Ldn airport noise contour preclude the proposed rezoning;
 - (g) Does CRPS Policy 6.3.1 regarding 'urban limits' preclude the proposed rezoning; and
 - (h) Reply to the Officer Report and evidence of Mr Kyle.

STATUTORY FRAMEWORK FOR PROPOSED PLAN CHANGE DECISIONS

- 8 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*,¹ (following the decision of *Colonial Vineyard Ltd v Marlborough District Council*²), but incorporating the current requirement to give effect to the NPS-UD, as follows:

[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,³*
- (f) whether they accord with Part 2 of the RMA,⁴*
- (g) whether they give effect to the regional policy statement;⁵*

¹ [2022] NZEnvC 162 at [29]

² [2014] NZEnvC 55 at [17]

³ RMA, ss 31 and 74(1)(a)

⁴ RMA, s 74(1)(b)

- (h) whether they give effect to a national policy statement;⁶*
- (i) whether they have regard to [relevant strategies prepared under another Act];⁷ and*
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.⁸*

[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;⁹ and*
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:¹⁰*
 - 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;¹¹ and*
 - employment that are anticipated to be provided or reduced;¹² and*
 - ii. if practicable, quantifying the benefits and costs;¹³ and*
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.¹⁴*

9 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 option.¹⁵ I have adopted that approach in these submissions.

STATUTORY PLANS

10 There are a range of statutory documents that need to be considered when assessing the merits of the Proposal, including:

- (a) National Policy Statement for Urban Development (**NPS-UD**);
- (b) National Policy Statement for Highly Productive Land (**NPS-HPL**);

⁵ RMA, s 75(3)(c)

⁶ RMA, s75(3)

⁷ RMA, s74(2)(b)

⁸ RMA, s76(3)

⁹ RMA, s 32(1)(b)(i)

¹⁰ RMA, s 32(1)(b)(ii)

¹¹ RMA, s 32(2)(a)(i)

¹² RMA, S 32(2)(a)(ii)

¹³ RMA, s 32(2)(b)

¹⁴ RMA, s32(2)(c)

¹⁵ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [68] – [71]

- (c) Canterbury Regional Policy Statement (**CRPS**); and
- (d) Management plans and strategies prepared under other Acts, relevantly:
 - (i) Greater Christchurch Spatial Plan (**GCSP**);
 - (ii) Mahaanui Management Plan; and
 - (iii) Waimakariri 2048 District Development Strategy July 2028 (**WDDS**).

11 Each of these statutory documents are discussed in the planning evidence of Ms Harte.¹⁶ The Officer Report supports the interpretation adopted by Ms Harte regarding the NPS-UD and the CRPS, as is indicated by the Officer Report's generally positive response to the Proposal. It is noted the recommendation at the time of publication is to decline due to insufficient evidence to assess flooding issues. This matter has now been addressed by supplementary evidence filed by the Submitter (discussed below).

WHAT IS THE RELATIONSHIP BETWEEN THE NPS-UD AND THE PROPOSED PLAN?

Hierarchy of planning documents

12 In *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*¹⁷ the Supreme Court confirmed that there is a three-tiered management system – national, regional and district – created by the RMA which established a “hierarchy of planning documents”¹⁸. Subordinate planning documents, such as a district plan, must give effect to National Policy Statements. This is expressly provided for by section 75(3)(a) RMA. The Supreme Court held that-

- (a) the requirement to “give effect to” is a strong directive,¹⁹
- (b) 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,²⁰ and
- (c) the requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.²¹

¹⁶ Planning evidence of Patricia Harte at [62]-[85]

¹⁷ [2014] NZSC 38 at [ABOAP 376]

¹⁸ At [ABOAP 381], paragraph [10]

¹⁹ At [80]

²⁰ At [90]

- 13 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*²² 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 2016. This document has been superseded by the NPS-UD 2020 however the following comments of the Court remain highly relevant:

*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.*²³

Different approach required under the NPS-UD

- 14 The Environment Court in the above-mentioned *Middle Hill*²⁴ decision summarised the NPS-UD as follows (emphasis added):

*[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...*

- 15 In the *Bunnings* case, the Environment Court held that the NPS-UDC required a different approach to deciding whether land may be rezoned for residential development than had been taken up until that time, when it said (our emphasis added):²⁵

*[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.*

²¹ At [91]

²²[2019] NZEnvC 59

²³ Supra at [113]

²⁴ [2022] NZEnvC 162

²⁵ at [148] – [155]

[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...**

At least sufficient development capacity to meet demand for housing land

16 Policy 2 of NPS-UD requires:

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.

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

- (a) **Short term** mean 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.

18 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.

19 In the recent case of *Re Otago Regional Council*,²⁶ the Central Otago District Council (the **CODC**) acknowledged that, as a tier 3 local authority in terms of NPS-UD, it has obligations under the NPS-UD to provide "sufficient development capacity to meet expected demand for housing and business

²⁶ [2021] EnvC 164

land in the short, medium and long term”, [that] development capacity [being] “sufficient” when, amongst the matters, it is plan-enabled and infrastructure-ready.”²⁷ The CODC and the other Tier 1, 2 and 3 local authorities involved in that case sought to change a proposed rule in a regional plan which would have prevented them being granted water takes for municipal supplies for durations of longer than 6 years.

20 The Court said (emphasis added):

[357] The NPS-UD 2020 applies to all local authorities that have all or part of an urban environment within their district or region, and to local authority planning decisions. The NPS-UD 2020, therefore, applies to the Otago Regional Council and the Territorial Authorities.

*[358] While the NPS objectives and most policies are relevant, because the Territorial Authorities are concerned that PC7 inhibits them from fulfilling their statutory obligations, our focus is on pt 3: Implementation. **The Territorial Authorities highlight that local authorities must provide sufficient development capacity to meet expected demand for housing and business land in the short, medium and long term. Development capacity is “sufficient” when, amongst the matters, it is plan-enabled and infrastructure-ready...***

WHAT ARE THE POTENTIAL POSITIVE CONSEQUENCES OF THE PROPOSED REZONING COMPARED TO THE PROPOSED PLAN

Increased development capacity for medium density housing

21 Mr Colegrave’s evidence assesses the District’s population and housing context, the current state of the residential housing market, the economic rationale for the Proposal, and the likely wider economic impacts. He notes *The Districts strong and sustained population growth requires an estimated 17,000 extra dwellings over the next 30 years according to the latest figures... New greenfield developments like those proposed by Mike Greer Homes are therefore essential to keeping pace with demand and helping to meet the district’s NPS-UD obligations to provide “at least” sufficient capacity “at all times.”*²⁸

22 Mr Colegrave disagrees with the latest available information on the supply of, and demand for, residential land in the District which suggests that there is

²⁷ Re Otago Regional Council [2021] EnvC 164, at [358]

²⁸ Economic Evidence of Mr Colegrave, para [14]-[16]

already sufficient capacity to meet demand.²⁹ Mr Colegrave considers the district instead faces a widespread significant shortage of feasible capacity to meet demand, the Proposal responds to this by providing for approximately 186 new residential dwellings.³⁰ The Proposal will therefore ensure the efficient functioning of the local housing market and help close the looming gap in feasible capacity.³¹

- 23 Overall, Rezoning the Submitter's land to MDRZ would enable a significant boost in dwelling capacity, which will help keep pace with demand in the long term.³²

More choice and improved affordability of housing

- 24 One of the minima of a well-functioning urban environment is that it enables a variety of homes that meet the needs, in terms of type, price, and location, of different households.³³
- 25 The Proposal would enable a range of allotment sizes and housing typologies that meet the diverse range of housing needs and preferences. Allotment sizes will vary from 235m² to approximately 660m² providing increased residential diversity.³⁴
- 26 In *Colonial Vineyard*,³⁵ 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.***

²⁹ Economic Evidence of Mr Colegrave, para [17]

³⁰ Economic Evidence of Mr Colegrave, para [14] and [19]

³¹ Economic Evidence of Mr Colegrave, para 73

³² Economic Evidence of Mr Colegrave, para 103

³³ NPS-UD Policy 1(a)

³⁴ Evidence of Patricia Harte, para 29

³⁵ [2014] NZEnvC 55 at [98] – [101]

[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 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.**

- 27 Against the backdrop of predicted shortfall in greenfield capacity for standalone homes within the District, it seems likely that one of the risks of not approving the proposed rezoning is house price increase due to shortage of supply. Conversely, granting the proposed rezoning is likely to have a positive influence on affordability of housing at Kaiapoi and in the wider District.

Compact residential urban form that reduces urban sprawl

- 28 Consistent with the relevant objectives and policies in the Proposed District Plan, particularly those that relate to Urban Growth³⁶, the proposed rezoning and ODP will promote a coordinated and compact urban form. The houses will be located relatively close to community facilities and schools and is already well serviced by public transport services within and between Kaiapoi, Rangiora and Christchurch.³⁷
- 29 The proposed rezoning and revised ODP recognises the character of the area, the site will be developed in a coordinated manner and will provide for an integrated residential development with extensive reserve provision and connections to adjoining areas.³⁸

³⁶ Proposed Plan Objectives and Policies, including Policy UFD-P3

³⁷ Evidence of Patricia Harte, para 74

³⁸ Refer to the table at page 33 of Patricia Harte's evidence

30 Mr Singh considers that the proposed ODP will establish a coordinated landscape approach and includes suitably designed setbacks along rural boundaries that will help maintain the existing character and amenity.³⁹

31 Overall, the Proposal will deliver consolidated and integrated residential development with the existing urban environment, and provides a logical extension to the adjoining MDRZ north of the Site.

Efficient use of infrastructure

32 The engineering evidence for the Submitter demonstrates that the Site can be appropriately served with respect to flooding⁴⁰ and stormwater, potable water and wastewater,⁴¹ and transportation.⁴²

33 As mentioned by Ms Harte, all required services are either available or can be extended to the Site.⁴³

Biodiversity gains

34 The ecological evidence for the Submitter contains recommendations for biodiversity gains. In particular, Ms Metcalfe recommends that the stormwater management areas and the esplanade reserves be enhanced by appropriate indigenous riparian planting.⁴⁴ The landscape evidence recommends that indigenous plantings occur along the northern and southern boundaries of the Site and in an eastern Stormwater Management Area within the Site.⁴⁵ Each of these recommendations are adopted by the ODP.⁴⁶

WHAT ARE THE POTENTIAL NEGATIVE CONSEQUENCES OF THE PROPOSED REZONING COMPARED TO THE PROPOSED PLAN

Loss of highly productive soils

35 Loss of highly productive soils does not preclude approval of the Proposal. The NPS-HPL does not apply to RLZ. This matter is discussed in legal submissions filed on behalf of the Mark and Melissa Prosser and Mike Greer

³⁹ Evidence of Vikramjit Singh, para 104

⁴⁰ Flooding Evidence of Mr Whyte dated 5 March 2024 at [34]-[48] and his Supplementary Evidence dated 7 August 2024 at [12]-[25].

⁴¹ Infrastructure Evidence of Mr Verstappen dated 5 March 2024 at [20]-[40] and his Supplementary Evidence dated 2 August 2024 at [11]-[20]

⁴² Transport Evidence of Mr Collins dated 5 March 2024 at [27]-[44] and his Supplementary Evidence dated 2 August 2024 at [10]-[30]

⁴³ Evidence of Patricia Harte, para 43

⁴⁴ Ecological evidence of Ms Metcalfe, para 60

⁴⁵ Landscape Evidence of Mr Langbridge, para 7(e) and illustrated at Graphic Attachment Sheet 11

⁴⁶ Appendix B to Landscape Evidence of Mr Langbridge, sheet 11

Homes NZ Ltd dated 2 October 2023.⁴⁷ In summary, the NPS-HPL does not apply to the Proposal because the Site is zoned RLZ in the PWDP. Under clause 3.5(7)(b)(i) NPS-HPL, land identified as Highly Productive Land that is proposed to be rezoned rural lifestyle zone is exempt from the NPS-HPL.

36 This approach is supported by Mr Buckley's view expressed in his memorandum to the Hearings Panel on this topic.⁴⁸ It is also consistent with the Ministry for the Environment publication entitled *Guide to Implementation of the NPS-HPL*.

Reverse sensitivity effects on CIAL

37 The Site is located under the 50dBA airport noise contour, as is the majority of the established urban area of Kaiapoi.

38 The potential for reverse sensitivity effects on the efficient operation of Christchurch Airport was discussed at length during hearing Stream 10A regarding Airport Noise. Expert evidence and detailed legal submissions were presented at that hearing by Momentum Land Limited (**Momentum**) and Mike Greer Homes.⁴⁹ The Submitter adopts that evidence in support of its case at hearing Stream 12E(A) and Stream 12E(B) seeking rezoning of the Site to MDRZ.

39 It is not proposed to traverse those matters in detail here. Ms Harte's key findings are noted as follows (underlining added):⁵⁰

"...it has not been established that it is necessary to avoid the activity of residential development or intensification within the 50 dB Ldn, CIAL airport noise contour, because that activity in that location is not likely to result in material harm."

And

"...the preferred approach in the Proposed Plan and Variation 1, of minimum lot size 200m², one house per site and LIM notice is better aligned with NPS-UD policies regarding integration of housing development with planned infrastructure, than is CIAL approach of preventing/avoiding residential development / intensification within the 50 dBA airport noise contour. In my opinion this approach is unlikely to result in reverse sensitivity issues for CIAL."

40 Ms Harte elaborated on these points in her Supplementary Evidence for Mike Greer Homes in response to the Officer Report as follows:⁵¹

⁴⁷ Refer to legal submission on the NPS-HPL filed on behalf of the Submitter and Mike Greer Homes NZ Ltd dated 2 October 2023 at [12]

⁴⁸ Memorandum on the NPS-HPL on 22 July 2023 (amended on 26 July 2023)

⁴⁹ See evidence of Patricia Harte (planning), and technical evidence of Messrs Colegrave (economics) and Reeves (acoustic) and Professor Clarke (aeronautic acoustic)

⁵⁰ Evidence of Patricia Harte (planning) at Stream 10A at [51] and [56]

I consider that management of residential activities should be based on real-world effects that have a distinct likelihood of occurring. I therefore support the approach contained in the Proposed District Plan contained in Noise rules, as does Mr. Wilson. This approach relies on the modern building standards to ensure that noise under the 50dBA contour will be attenuated to an acceptable 40dBA internally. (see Noise rule R17) There is therefore no need to limit housing under this contour as the noise effects will be acceptable and accordingly there is an extremely limited possibility of complaints being made which would result in limitation on the efficient operation of the CIAL.

Flood hazard effects

- 41 The Site is currently located within a High Hazard area, as defined in the CRPS. However, this does not preclude approval for the Proposal, as set out in the evidence in chief and supplementary evidence of Mr Whyte⁵² and Mr Verstappen.⁵³
- 42 Mr Whyte has undertaken hydraulic modelling of surface flooding within the Site and surrounding area, pre and post development of the Site, using the design surface level provided by Mr Verstappen.
- 43 Mr Whyte's evidence in chief and supplementary evidence demonstrates that:
- (a) once ground levels are elevated within the Site using the design surface level provided by Mr Verstappen water depths reduce significantly, and the Site would no longer be subject to the CRPS definition of High Hazard Areas, and
 - (b) There are no adverse displacement effects on adjacent or downstream areas arising from the proposed filling of the Site using the design surface level provided by Mr Verstappen.
- 44 Based on the supplementary statements of evidence of Greg Whyte and Jamie Verstappen, Ms Harte concludes that the proposed development can satisfy the requirements in CRPS 6.3.12 regarding avoidance or mitigation of natural hazards.⁵⁴

Summary of positive and negative consequences

- 45 In summary to this point, the Proposal will generate significant positive consequences that cannot be realised under the Proposed Plan and little, if any, negative consequences will arise.

⁵¹ Supplementary Evidence of Patricia Harte at [22]

⁵² Supplementary evidence of Gregory Whyte at [25]

⁵³ Supplementary evidence of Jamie Verstappen at [21]-[22]

⁵⁴ Supplementary Evidence of Patricia Harte at [16]-[18]

DOES THE PROPOSED REZONING BETTER GIVE EFFECT TO THE NPS-UD THAN THE PROPOSED PLAN?

46 All district plans must give effect to the NPS-UD, and in doing so, they give effect to the purpose and principles of the RMA.

Objectives 1 to 8, and policies 1,2,6,8,9 and 10 of the NPS-UD

47 These objectives and policies apply to all local authorities and must be given effect to in all district plans. The proposed rezoning sought by the Submitter achieves these objectives and implements these policies better than the Proposed Plan, in that it:

- (a) will better provide a well-functioning urban environment at Kaiapoi, enabling the people who live there, and in the wider community of Waimakariri, to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future;⁵⁵
- (b) will improve housing affordability by supporting competitive land and development markets;⁵⁶
- (c) will enable more people to live in an established urban environment that is near employment opportunities (xx) and connections with the public transport network, and in an area experiencing high demand for rural residential housing;⁵⁷
- (d) will enable the established residential character of Kaiapoi to continue to develop in response to the recognised demand for residential land, providing diversity and choice in the housing market;⁵⁸
- (e) The principles of the Treaty of Waitangi have been taken into account in the proposed rezoning;⁵⁹
- (f) Represents a significant increase in housing development capacity within the urban environment of both Kaiapoi and Greater Christchurch. It is required to address an identified shortfall in residential land supply, and is in a strategically preferred location adjacent to an established settlement. MDRZ-enabled development

⁵⁵ NPS-UD, Objective 1

⁵⁶ NPS-UD, Objective 2

⁵⁷ NPS-UD, Objective 3(a), (b) and (c)

⁵⁸ NPS-UD, Objective 4

⁵⁹ NPS-UD, Objective 5 and Policy 9

of the Site can be effectively integrated with infrastructure planning, funding, and delivery;⁶⁰

- (g) The Council will be using robust and recent information about its urban environments to inform its planning decisions;⁶¹
- (h) by enabling a more compact urban form, near to employment opportunities, the rezoned urban environment supports reductions in greenhouse gas emissions and is resilient to current and future effects of climate change;⁶²
- (i) The rezoning contributes to a well-functioning urban environment-
 - (i) Having and enabling a variety of homes that meet the needs, in terms of type, price and location of different households;⁶³
 - (ii) Having good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of access to public transport;⁶⁴
 - (iii) Supporting and limiting as much as possible adverse impacts on, the competitive operation of land and development markets;⁶⁵
 - (iv) supporting reductions in greenhouse gas emissions compared to alternative locations for LLRZ in the district⁶⁶; and
 - (v) being resilient to the likely current and future effects of climate change⁶⁷
- (j) The rezoning may involve changes to the character of the area, however the Site will be developed in a coordinated manner that provides for integration with, and connection to, the adjoining areas.⁶⁸

⁶⁰ UD, Objective 6(a), (b), and (c)

⁶¹ NPS-UD, Objective 7

⁶² NPS-UD, Objective 8(a) and (b), Policy 1(e) and (f) and Policy 6(c) – the Submitter adopts the GHG emissions evidence of Robert Wilson filed for Momentum Land Ltd and the GHG emissions assessment prepared by Becca for the Council in relation to Stream 12C both of which show that Kaiapoi performs well compared to most other large centres in the District

⁶³ NPS-UD, Policy 1(a)(i)

⁶⁴ NPS-UD, policy 1(c)

⁶⁵ NPS-UD, Policy 1(d)

⁶⁶ NPS-UD, Policy 1(e)

⁶⁷ NPS-UD, Policy 1(f)

- (k) The rezoning will contribute to the Council meeting the requirements of the NPS-UD to provide or realise development capacity.⁶⁹
- (l) The rezoning is responsive to a proposed plan submission that will add significantly to development capacity and contribute to a well-functioning urban environment, even if out of sequence with planned land release.⁷⁰

48 Policies 2 and 10 apply to tier 1, 2 and 3 local authorities. Those policies will be better implemented by the proposed rezoning, than by the Proposed Plan as notified, in that the rezoning:

- (a) will better help the Council to 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; and⁷¹
- (b) will result from engagement with the development sector to identify significant opportunities for urban development.⁷²

DOES THE PROPOSED REZONING BETTER GIVE EFFECT TO THE CANTERBURY REGIONAL POLICY STATEMENT THAN THE PROPOSED PLAN?

49 The rezoning also gives better effect to the Canterbury Regional Policy Statement (**CRPS**) than the Proposed Plan as notified. The Proposal achieves consistency with Chapter 5 and Chapter 6 of the CRPS for the reasons discussed in Ms Harte's evidence.⁷³ The Officer Report does not take issue with Ms Harte's analysis of the Proposal against the CRPS. Therefore, subject to the discussion regarding Policy 6.3.5(4) and Policy 6.3.1 below, the CRPS is not discussed further in these submissions.

DOES CRPS POLICY 6.3.5(4) REGARDING NOISE SENSITIVE ACTIVITIES BENEATH THE 50 dBA Ldn AIRPORT NOISE CONTOUR PRECLUDE THE PROPOSED REZONING?

50 CRPS Policy 6.3.5 deals with integration of land use and infrastructure. It provides that (emphasis added)-

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

1 ...

⁶⁸ NPS-UD, Policy 6(b) – Refer to the table at page 33 of Patricia Harte's evidence

⁶⁹ NPS-UD, Policy 6(d)

⁷⁰ NPS-UD, Policy 8

⁷¹ NPS-UD, Policy 2

⁷² NPS-UD, Policy 10(c)

⁷³ Evidence of Patricia Harte at [78] – [85]

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;*

51 The Site is located beneath the 50 dBA Ldn airport noise contour. It is not identified as a Greenfield Development Area (**GPA**) or a Future Development Area (**FDA**) on Map A of the CRPS; nor is it within the Kaiapoi Growth Area.

52 The issue arising is whether application of application of Policy 6.3.5(4) to the Proposal should preclude rezoning of the Site to MDRZ as requested by the Submitter.

53 It is submitted that this does not preclude rezoning of the Site because:

- (a) the Proposal complies with Policy 6.3.5(4) as the mischief that this policy seeks to avoid will not occur because the effects of the Proposal on the efficient operation of Christchurch Airport will be minimal; and
- (b) the Proposal satisfies the responsive planning decisions requirements at Policy 8 and Clause 3.8 of the NPS-UD and therefore should be approved even if the Panel determines that urban development is not anticipated by the CRPS in this location.

How should Policy 6.3.5(4) be interpreted and applied in the circumstances of this case?

54 There is considerable case law regarding the interpretation of resource management provisions. The recent decision of *Auckland Council v Teddy and Friends Ltd*⁷⁴ 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

⁷⁴ *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128.

expectations of property owners and consistent with the practical administration of the relevant provision.⁷⁵

55 Taking all relevant matters into account, there is a strong argument to support a “purposive” approach to interpretation of the Policy 6.3.5(4) rather than the “literal” approach advanced by CIAL. A purposive approach would enable Policy 6.3.5(4) to be read and applied in a manner that allows for residential development at Kaiapoi whilst mitigating as far as practicable potential reverse sensitivity effects on the airport.

56 The discussion above regarding the relationship between the NPSD-UD and the lower order planning documents (such as the CRPS) is highly relevant to interpretation of the Policy 6.3.5(4). Put simply, the hierarchy of planning documents established by the RMA means that subordinate planning documents must give effect to National Policy Statements. In this case the NPS-UD demands greater weight than the CRPS because it is the later document, is higher in the statutory hierarchy, and has better regard to section 7(b) RMA.

57 Critically, the CRPS has not been updated since the NPS-UD became operative in 2020 and it is apparent that in several important respects the CRPS does not implement (or fully implement) the NPS-UD. As highlighted by Mr Allan for Momentum in relation to the Stream 12E hearing:⁷⁶

- (a) The CRPS does not contain criteria to implement Policy 8, as required by clause 3.8 NPS-UD;
- (b) The CRPS does not provide at least sufficient housing supply over the short, medium and long term, as required by Policy 2 NPS-UD; and
- (c) The NPS-UD prioritises the importance of “housing affordability” (see Objective 2 NPS-UD) whilst housing affordability is mentioned only once in Chapter 6 CRPS somewhat as an afterthought at Policy 6.3.7(6);

58 Overall the NPS-UD expresses a clear link between housing supply and housing affordability whilst no such connection is made in Chapter 6 of the CRPS. This is not surprising because the purpose of Chapter 6 is not focused

⁷⁵ *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128 at paras [12]-[13].

⁷⁶ Planning evidence of Mr Allan for Momentum in relation to the Stream 12E hearing at [90]-[94]

on housing supply but rather to “provide the resource management framework for the recovery of Greater Christchurch, to enable and support earthquake recovery and rebuilding...”⁷⁷

59 Some of these problems might have been addressed if the CRPS had been “comprehensively reviewed by 2021” as anticipated by Policy 6.3.11. However this has not occurred and it’s now 2024. Consequently the CRPS does implement (or fully implement) the NPS-UD.

60 Against this context, it is noteworthy that the much more recent Greater Christchurch Spatial Plan and Plan Change 14 to the Christchurch District Plan adopt a markedly different approach to management of residential growth beneath the 50 dBA airport noise contour to that provided by the outdated CRPS.

61 In particular, the Greater Christchurch Spatial Plan (**GCSP**) was endorsed by the Greater Christchurch Partnership Committee on Friday 16 February 2024. The GCSP addresses issues related to urban development around strategic infrastructure, such as the Christchurch Airport and states the following (emphasis added):⁷⁸

*Urban development should be **carefully managed** around strategic infrastructure to ensure the safety and wellbeing of residents, and to safeguard the effective operation, maintenance and potential for upgrades of this infrastructure.*

62 Further, Plan Change 14 (**PC14**) makes changes to the Christchurch District Plan. In particular it relates to the spatial extent and provisions with the Medium Density Residential Zone (**MRZ**) and High Density Residential Zone (**HRZ**) and introduces an Airport Noise Qualifying Matter. Decisions from the Independent Hearings Panel (**IHP**) were released on 29 July 2024.⁷⁹ In relation to the Airport Noise Qualifying Matter, the IHP determined that the Medium Density Residential Standard:⁸⁰

...be applied to all residentially zoned land within the ODP 50 dB Ldn and the 55 dB Ldn contour shown on the Operative District Plan Planning Maps and the 2023 Remodelled OE Contours, and those areas should be changed to MRZ and HRZ, with rules to address the requirements for acoustics insulation and ventilation for one to three

⁷⁷ CRPS, Chapter 6, Introduction

⁷⁸ At page 53 of the Greater Christchurch Spatial Plan.

⁷⁹ The Council is scheduled to decide on the recommendations on 4 September 2024

⁸⁰ At paragraph 10 and 291 of the Recommendations Report: Part 4 – Independent Hearings Panel – Plan Change 14 – Housing and Business Choice, dated 29 July 2024.

residential units per site, and restricted discretionary activity rules for four or more residential units per site (airport influence rules).

63 The IHP decision records the basis for reaching this conclusion as follows:

(g)...The economic cost to the airport from the risk of 'reverse sensitivity effects is speculative, as we have found the nexus between intensification, the prospects of complaints and the direct impacts on the operation of the airport is tenuous and therefore uncertain.

(h) The Panel has considered that the risk of incorporating the MDRS and Policy 3 intensification areas, on the operation of the airport to be low. The rules also provide the opportunity to ensure appropriate design and construction of dwellings to mitigate the effects of airport noise on the amenity and health of residential property occupants, particularly in relation to sleep disturbance

64 In my submission the Panel should have regard to these more recent planning documents when considering interpretation of Policy 6.3.5(4) CRPS because they deal with the management of residential growth beneath the same airport noise contour that is being considered by the Panel in this case.

The Proposal complies with Policy 6.3.5(4)

65 As mentioned in the "reverse sensitivity effects" section above, the planning evidence of Ms Harte at the hearing Stream 10A is that:

"...it has not been established that it is necessary to avoid the activity of residential development or intensification within the 50 dB Ldn, CIAL airport noise contour, because that activity in that location is not likely to result in material harm."

66 This finding is highly relevant to consideration of the alignment between the CRPS and the Submitter's request for rezoning in light of the recent Supreme Court decision of *Port Otago Limited V Environmental Defence Society Incorporated*.⁸¹ This decision relates to the relationship between a policy in the NZCPS relating to ports and a number of other policies that require adverse effects of activities to be avoided.

67 The Court noted that conflicts between policies are likely to be rare if those policies are properly construed, even where they seem to be pulling in different directions⁸² and further that concepts of mitigation and remedy may serve to meet the "avoid" standard by bring the level of harm down so that material harm is avoided.⁸³

⁸¹ *Port Otago Limited V Environmental Defence Society Incorporated* [2023] NZSC 112

⁸² *Supra* at [63]

⁸³ *Supra* at [65]

68 The Court summarised it's view as follows⁸⁴:

All of the above means that the avoidance policies in the NZCRS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

69 The *Port of Otago* decision supports an approach to interpretation of the CRPS such that the word "avoiding" in Policy 6.3.5(4) should be interpreted as "avoiding material harm" to Christchurch International Airport from noise sensitive activities within the 50dBA Ldn airport noise contour, rather than "avoiding" all noise sensitive activities.

70 When this approach is applied, the impediment identified by CIAL is resolved. The rezoning requested by the Submitter is not inconsistent with Policy 6.3.5(4) because no material harm will arise from the granting the Proposal even though it is located beneath the 50dBA Ldn airport noise contour.

The Proposal satisfies the responsive planning provisions of the NPS-UD

71 In the event that the Panel determines that urban development is not anticipated by the CRPS in this location, the NPS-UD contemplates the situation of lower order planning document becoming outdated and acting as a closed door to development. Policy 8 provides a way around, so that-

"local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:

- (a) *Unanticipated by RMA planning documents; or*
- (b) *Out of sequence with planned land release".*

72 Application of Policy 8 to rezoning proposals that were unanticipated by the CRPS has been considered in a relatively recent decision issued by a hearing panel appointed by the Selwyn District Council. The decision was appealed to the Environment Court. The decision is not binding on this Panel and is for you to determine the amount of weight (if any) it should be given in circumstances of this case. In my submission the decision is relevant and should at least be had regard to in your consideration of the Proposal.

73 On 29 October 2020 Rolleston Industrial Developments Limited lodged a private plan change request PC69 with the Selwyn District Council. The

⁸⁴ Supra at [68]

request seeks a change to the Operative Selwyn District Plan by rezoning approximately 190 hectares of current rural land in Lincoln to residential land. This would enable approximately 2000 residential sites and a small commercial zone.

74 The key issue arising from the application was whether it was appropriate to rezone the land given that it was not identified on Map A of the CRPS and therefore was subject to CRPS avoidance objective at 6.2.1(3).

75 The finding of the Commissioner on this issue is recorded in the decision as follows:⁸⁵

[410] Overall, it is my view, as I have previously found, that in light of the position the NPS-UD holds in the hierarchy of documents; that is the latter in time; that it was promulgated in the context of a housing crisis; and after carefully considering its text, its purpose and other contextual matters, it enables appropriate plan changes to be assessed on their merits, notwithstanding the avoidance objectives and policies of the CRPS.

[411] My findings in this regard do not render the provisions of Chapter 6 of the CRPS irrelevant, nor does it lead to a finding that significant development capacity provides, in essence, a 'trump card'. Chapter 6 of the CRPS clearly remains an important part of the overall planning framework for Canterbury. But I do not accept the avoidance objective and policies mean that this request must be declined.

76 The Commissioner proceeded to rely on Policy 8 NPS-UD to approve the Plan Change request.

77 In this case the evidence filed by the Submitter demonstrates that the Proposal qualifies under the responsive planning decision regime provided by the NPS-UD (Policy 8 and Clause 3.8).

78 In particular:

- (a) The economic evidence of Mr Colegrave is that the proposed development of approximately 186 dwellings enabled on the Site represents a significant increase in capacity for the Waimakariri district.⁸⁶ Mr Colegrave's supplementary evidence further discusses the likely significance of the Proposal and concludes that the Proposal

⁸⁵ PC69 Recommendation by Commissioner David Caldwell Date 13 May 2022, [410]-[411].

⁸⁶ Economic evidence of Fraser Colegrave at [78]

is an extremely significant increase in development capacity for the purposes of the NPS-UD.⁸⁷

- (b) The planning evidence of Ms Harte's evidence is that, taking into account the technical evidence, the proposal will contribute to a well-functioning urban environment.⁸⁸

DOES CRPS POLICY 6.3.1 REGARDING 'URBAN LIMITS' PRECLUDE THE PROPOSED REZONING

79 As already mentioned, the Site is not identified as a GPA or FDA on Map A of the CRPS and therefore cannot achieve Policy 6.3.1 of the CRPS which requires that new urban development can only occur in these areas.

80 However this does not preclude the Proposal because the CRPS urban limits are outdated and because Policy 8 of the NPS-UD anticipates this situation by providing for responsive planning decisions even when urban development is not anticipated by lower order planning documents.

81 The justification for rezoning the Proposal despite Policy 6.3.1 is succinctly expressed in Ms Harte's planning evidence (emphasis added):⁸⁹

*There have been two major changes in the planning environment since the Map A approach was included in the CRPS. Firstly, there has been, and continues to be, a strong and ongoing demand for housing, particularly in Kaiapoi where lower cost housing has been available. We are now in a period of growth that is not earthquake related so the relevance of some of the Chapter 6 policies, in my opinion, is diminished. Secondly, the National Policy Statement on Urban Development came into effect to overcome many of the issues associated with lack of supply of land for residential and business use and the out of date policy environment contained in various RMA documents. To do this the NPS-UD, and in particular Policy 8, directs local authorities to be "responsive" in their "decisions affecting urban environments" that would "add significantly to development capacity and contribute to well-functioning environments" regardless of whether this capacity is anticipated by existing RMA planning documents. **In my opinion the decision to be made on the requested zoning of Mike Greer Homes falls exactly into this category and should therefore be responsive and positive***

82 For completeness, it's noted that the submissions above regarding Policy 6.3.5(4) RPS under the heading "The Proposal satisfies the responsive planning provisions of the NPS-UD" apply equally to Policy 6.3.1 of the CRPS.

⁸⁷ Supplementary economic evidence of Fraser Colegrave at [7]-[12]

⁸⁸ Planning evidence of Ms Harte at [73]-[74] and [76]

⁸⁹ Supra at [80]

REPLY TO OFFICER REPORT AND EVIDENCE OF MR KYLE

Reply to Officer Report

83 As mentioned, the Officer Report is generally supportive of the Proposal however, due to insufficient evidence in relation to stormwater and flood hazard effects the Officer adopts a precautionary approach and recommends rejection of the Mike Greer Homes submission pending provision of more and better information regarding these matters. This matter and other concerns raised by the Officer Report are discussed below together with reference to the supplementary evidence filed by the Submitter in reply to the Officer Report.

What are the cumulative stormwater and flood hazard effects?

84 Officer Report raises concern about downstream capacity to receive stormwater and displacement effects on Main North Road. These are described as critical issues by the reporting officer that require further information from the Submitter. The Officer Report recommendation is to reject the submission until and unless these issues are addressed.

85 Dialogue has occurred between the Submitter and the Reporting Officer regarding these matters and supplementary evidence has been filed by Mr Verstappen and Mr Whyte in response to these concerns.

86 Supplementary evidence of Mr Verstappen establishes that the stormwater system is appropriately sized to cater for stormwater in the design flood event without over topping or exacerbating downstream stormwater capacity. Indeed, Mr Verstappen's evidence is that the proposed stormwater system will attenuate some downstream stormwater flooding in the design event.⁹⁰

87 Supplementary Evidence of Mr Whyte establishes that there is no increase in flooding arising from the Proposal. In particular, Mr Whyte establishes that there is no increase in downstream stormwater flooding arising from the Proposal in a 1 in 200 year event or in a 1 in 500 year event. Mr Whyte also establishes that there is no increase in flood water levels along Main North Road under post-development modelling of a 1 in 200-year flood event.⁹¹

⁹⁰ Supplementary evidence of Jame Verstappen, paras [11]-[20]

⁹¹ Supplementary evidence of Gergory Whyte, paras [8](d), [24], [17]

88 On this basis it is considered that any cumulative stormwater and flood hazard effects will be minimal and do not preclude the rezoning Proposed by the Submitter.

Is the ODP appropriate?

89 The Officer Report also raises a range of concerns about the ODP (e.g. location of southern entrance to the site, use of right of ways, on-site reserves). Each of these matters is addressed in the supplementary evidence filed by the Submitter.⁹²

90 On the basis of that evidence, it is submitted that the ODP for the Site prepared by the Submitter will achieve a well-functioning urban environment and further that that the concerns raised by the Officer Report do not justify any changes to that ODP.

Reply to evidence of Mr Kyle

91 Planning evidence of Mr Kyle on behalf of CIAL discusses land use planning within an airport's aircraft noise boundaries and the role of acoustic insulation in managing noise effects within the 50 dBA Noise Contour.

Land use planning within an airport's aircraft noise boundaries

92 In relation to aircraft noise management Mr. Kyle refers to the New Zealand Standard for Airport Noise Management and Land Use Planning (NZS6805:1992) (**Standard**) and states that the Standard:

*promotes an approach whereby new noise sensitive activities within an airport's Air Noise Boundary and Outer Control Boundary be prohibited, where this can be practicably achieved. Put simply, if new development of activities sensitive to aircraft noise can be avoided within the Outer Control Boundary, then they should be.*⁹³

93 In my submission, this view does not accurately represent the contents of the Standard. Mr Kyle has omitted to state the recommended guidance begins at the 55 dBA. According to the Standard, the perimeter of the airnoise boundary relates to the 65 dBA Ldn and the perimeter of the outer control boundary relates to the 55 dBA Ldn.

94 The Standard recommends local authorities to incorporate into the district plan maps the sound exposure contours of the 65 dBA Ldn and the 55 dBA

⁹² Supplementary Evidence of Mathew Collins, Supplementary Evidence of Vikramjit Singh

⁹³ Evidence of John Kyle (planning), dated 2 August 2024, paragraph 17.

Ldn. The Standard does not recommend mapping a sound exposure contour for the 50 dBA Ldn.

- 95 There is discretion in the Standard to show the contours in a position further from or closer to the airport “if it considers it more reasonable to do so in the special circumstances of the case.”⁹⁴ This point is explained in the acoustic evidence of Mr Reeve on Stream 10A (Airport Noise).⁹⁵
- 96 There is nothing in Mr. Kyle’s evidence that points to special circumstances that justify a 50 dBA Ldn contour in relation to the Waimakariri District.

Acoustic insulation

- 97 In relation to the use of noise insulation to manage noise effects, Mr Kyle refers the evidence of Ms Smith, where she states that sound insulation by itself is not sufficient to mitigate all the effects of airport noise and introduces compromised living conditions.⁹⁶ Mr Kyle asserts that:

*Ms Smith’s evidence is supported by the High Court decision Auckland International Airport Ltd v Auckland Council decision, in which the High Court accepted that when it comes to airport noise, compliance with indoor acoustic standards is insufficient in itself and consideration must be given to the effects of aircraft noise on external spaces and in situations where residents prefer to reside with open windows.*⁹⁷

- 98 In my submission, this comment is inaccurate. The *Auckland International Airport Ltd*⁹⁸ decision does not support Ms Smith’s evidence because it deals with entirely different noise contours to those that are at issue in this case.
- 99 *Auckland International Airport Ltd* is a judicial review of the Auckland Council’s decision to approve a resource consent application to construct a new apartment block within the Moderate Aircraft Noise Area (**MANA**). The MANA is described as the Overlay corresponding to the 60 and 65 dBA noise contours in the Auckland Unitary Plan (**AUP**).
- 100 The *Auckland International Airport Ltd* discusses whether the Council notification decision was correct and considers whether the Council was correct to rely on noise insulation to mitigate potential adverse effects of aircraft noise beneath the 60-65 dBA noise contours.

⁹⁴ New Zealand Standard for Airport Noise Management and Land Use Planning (NZS6805:1992), 1.4.3.8

⁹⁵ Acoustic evidence of William Reeve on Stream 10A for the Submitter and Mike Greer Homes at [31] and [32]

⁹⁶ Evidence of John Kyle (planning), dated 2 August 2024, paragraph 38.

⁹⁷ Evidence of John Kyle (planning), dated 2 August 2024, paragraph 40.

⁹⁸ *Auckland International Airport Ltd v Auckland Council* [2024] NZHC 2058.

- 101 The *Auckland International Airport Ltd* decision can be readily distinguished on its facts because the rezoning proposal in this case relates to land beneath the 50-55 dBA. This is a substantially less noisy environment than 60-65 dBA. Indeed, my understanding is that the AUP does not contain a 50-55 dBA air noise contour.
- 102 Furthermore, being a judicial review, the decision was not an opportunity to review the merits of a decision, but is instead focused on; errors or law, failure to regard relevant considerations or procedural fairness. It makes no findings on questions concerning the merits of noise insulation standards and outdoor amenity.
- 103 Overall, the key point when considering aircraft noise and land use planning is the level of aircraft noise that is projected to occur as this critically informs the nature and suitability of land use controls within the affected area. In this case the 50-55 dBA contour is markedly less noisy than the air noise contour at issue in the *Auckland International Airport Ltd* decision.

CONCLUSION

- 104 The NPS-UD directs a “radical change” to the way in which local authorities must approach the issue of development capacity – the spirit and intent of substantive objectives is to open development doors rather than to close them.
- 105 In this case the NPS-UD demands greater weight than the CRPS because it is the later document, is higher in the statutory hierarchy, and has better regard to section 7(b) RMA. Further, the evidence for the Submitter at Stream 10A (Airport Noise) and for this Stream 12E demonstrates that a markedly different approach to management of residential growth beneath the 50 dBA airport noise contour is warranted. Put simply, avoiding residential growth beneath the 50 dBA contour cannot be justified in light of that evidence and the new requirements on local authorities to provide at least sufficient development capacity under the NPS-UD.
- 106 The proposed rezoning will provide a number of important positive consequences for Kaiapoi and the wider district that are not attainable under the zoning pattern proposed by the Proposed Plan. These include increased development capacity medium density residential housing, more choice and improved affordability of housing, more efficient use of existing infrastructure,

a coordinated pattern of development that integrates with existing residential development at Kaiapoi. Further there are little, if any negative consequences arising from the proposed rezoning.

107 Finally, as noted above, Policy 8 directs local authorities to be “responsive” in their “decisions affecting urban environments” that would “add significantly to development capacity and contribute to well-functioning environments” regardless of whether this capacity is anticipated by existing RMA planning documents. The decision to be made on the requested zoning of Mike Greer Homes falls exactly into this category and should therefore be responsive and positive.

Dated: 9 August 2024

A handwritten signature in black ink, appearing to read 'Chris Fowler', written in a cursive style.

Chris Fowler
Counsel for Mike Greer Homes NZ Limited

Evidence filed on behalf of the SubmitterEvidence filed 5 March 2024:

- Evidence of Neil Charters (Geotech)
- Evidence of David Robotham (Contamination)
- Evidence of Geoffrey Dunham (Soils)
- Evidence of Jamie Verstappen (Infrastructure)
- Evidence of Mathew Collins (Transport)
- Evidence of Vikramjit Singh (Urban Design)
- Evidence of Rory Langbridge (Landscape)
- Evidence of Gregory Whyte (Flooding)
- Evidence of William Reeve (Acoustics)
- Evidence of Fraser Colegrave (Economics)
- Evidence of Lydia Metcalfe (Ecology)

Evidence filed 3 May 2024

- Evidence of Patricia Harte (Planning)

Evidence filed 9 May

- Evidence of Brian Putt (Planning)

Evidence filed 2 August 2024

- Supplementary Evidence of Mathew Collins (Transport)
- Supplementary Evidence of Vikramjit Singh (Urban Design)
- Supplementary Evidence of Gregory Whyte (Flooding)
- Supplementary Evidence of Jamie Verstappen (Infrastructure)
- Supplementary Evidence of Patricia Harte (Planning)
- Evidence of Mike Greer (Landowner / Developer)