

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

IN THE MATTER OF

The Resource Management Act 1991 (**RMA**
or **the Act**)

AND

IN THE MATTER OF

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

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Waimakariri District Plan by
Momentum Land Limited

**LEGAL SUBMISSIONS FOR MOMENTUM LAND LIMITED
REGARDING HEARING STREAM 12E**

DATED: 9 August 2024

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INTRODUCTION

- 1 These submissions are filed on behalf of Momentum Land Limited (**Submitter**) in respect of the Stream 12E hearing of submissions on the Proposed Waimakariri District Plan (**Proposed Plan**) and Variation 1 to the Proposed Plan.
- 2 The Submitter seeks, through its submissions on the Proposed Plan and Variation 1, to rezone its currently rurally zoned land to residential. The Submitters land is an area of approximately 35ha (310 Beach Road and 143, 145, and 151 Ferry Road – **the Site**) in Northeast Kaiapoi. 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 and Variation 1, the Submitter sought Medium Density Residential Zoning (**MRZ**), which would enable a yield in the order of approximately 1,000 dwellings, with subdivision and development guided by an ODP (**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.

KEY ISSUES

- 7 The issues to be addressed arising from the Momentum 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; and
 - (g) 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*
- (h) whether they give effect to a national policy statement,⁶*

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)

⁵ RMA, s 75(3)(c)

- (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) Canterbury Regional Policy Statement (**CRPS**); and

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) 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 2018 (**WDDS**).

11 Each of these statutory documents are discussed in the planning evidence of Mr Allan.¹⁶ The Officer Report supports the interpretation adopted by Mr Allan regarding the NPS-UD, the CRPS and the WDDS, as is indicated by the Officer Report's positive recommendation for the Proposal.

WHAT IS THE RELATIONSHIP BETWEEN THE NPS-UD AND LOWER ORDER PLANNING INSTRUMENTS?

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

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*

¹⁶ Planning Evidence in Chief of Mr Allan dated 3 May 2024 at [75]-[108]

¹⁷ [2014] NZSC 38 at [ABOAP 376]

¹⁸ At [ABOAP 381], paragraph [10]

¹⁹ At [80]

²⁰ At [90]

²¹ At [91]

*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.

[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...

²²[2019] NZEnvC 59

²³ Supra at [113]

²⁴ [2022] NZEnvC 162

²⁵ at [148] – [155]

[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 land in the short, medium and long term”, [that] development capacity [being] “sufficient” when, amongst the matters, it is plan-enabled and infrastructure-

²⁶ [2021] EnvC 164

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 strong population growth in recent years *is projected to continue well into the foreseeable future, which is causing strong and sustained growth in demand for additional housing.*²⁸

22 Mr Colegrave considers the latest available information on the supply of, and demand for, residential housing in the District is unreliable, and fails to test sufficiency for different dwelling types in new and existing locations, as required by the NPS-UD. For this reason, shortfalls in greenfield capacity for standalone homes in the district were not identified.²⁹

23 Rezoning the Submitter’s land to Medium Density Residential directly responds to the shortfall in capacity in the District by enabling the

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

²⁸ Economic Evidence of Mr Colegrave, para 10

²⁹ Economic Evidence of Mr Colegrave, para 13

development of approximately 700 dwellings. The Proposal will therefore ensure the efficient functioning of the local housing market and help close the looming gap in feasible capacity.³⁰

- 24 Overall, Mr Colegrave considers that the future development enabled by the Proposal represents a significant boost in dwelling capacity, which would unlock further development potential in the long term.³¹

More choice and improved affordability of housing

- 25 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.³²
- 26 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 up to a maximum area of approximately 350m² providing increased residential diversity³³ and affordable residential solutions into the Kaiapoi market through to the early / mid 2030's.³⁴
- 27 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.***

[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

³⁰ Economic Evidence of Mr Colegrave, para 14-15

³¹ Economic Evidence of Mr Colegrave, para 83

³² NPS-UD Policy 1(a)

³³ Economic Evidence of Mr Colegrave, para 27

³⁴ Evidence of Alexander Shane Fairmaid, para 21

³⁵ [2014] NZEnvC 55 at [98] – [101]

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.

- 28 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

- 29 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 compact and consolidated urban form and increase connectivity with wider Kaiapoi.³⁷
- 30 The houses will be located within 3km of Kaiapoi Town Centre, supporting the township services/amenities and facilities and the Site is in a location well served by multi modal transport options.³⁸
- 31 The proposed rezoning is consistent and compatible with the existing development patterns in Kaiapoi and is considered a logical extension of the established residential character of Kaiapoi.³⁹ The ODP has been designed to ensure that "*MRZ-enabled development integrates with neighbouring development, with the nature and scale of development being generally consistent and compatible with that already established in the immediate area*".⁴⁰

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

³⁷ Evidence of Mark Allan, para 11(d) and para 35

³⁸ Evidence of Mark Allan, para 40 and para 100(i)

³⁹ Evidence of Mark Allan, para 11(d) and para 33

⁴⁰ Evidence of Mark Allan, para 34

- 32 The established urban character and amenity of Kaiapoi will be maintained⁴¹. The ODP carefully considers the boundary with adjoining rural land to the east and considers mitigation measures such as the open space buffer associated with the realigned and enhanced McIntosh Drain.⁴²

Efficient use of infrastructure

- 33 The engineering evidence for the Submitter demonstrates that the Site can be appropriately served with respect to flooding⁴³ and stormwater, potable water and wastewater,⁴⁴ and transportation.⁴⁵
- 34 As mentioned by Mr Allan, the Proposal will integrate with existing and future roading and three waters infrastructure.⁴⁶
- 35 The Officer Report considers that there are no known significant constraints that would prevent the proposed land use at the Site, with respect to stormwater, potable water, and wastewater.⁴⁷
- 36 The only servicing issues raised by the Officer Report relates to transportation, which is discussed below.

Biodiversity gains

- 37 The ecological evidence for the Submitter contains recommendations for biodiversity gains. In particular, Ms Coates considers that stormwater management and the development of greenspace east of the North Block through realignment of McIntosh Drain has the potential to significantly enhance ecological values through riparian planting, increased botanical values, increased indigenous vegetation cover, provision of native fauna habitat and stormwater management.⁴⁸ Each of these recommendations are adopted by the ODP.

⁴¹ Evidence of Mark Allan, para 98(a)

⁴² Evidence of Mark Allan, para 34

⁴³ Flooding Evidence of Richard Brunton dated 5 March 2024 at [46]-[65]

⁴⁴ Infrastructure Evidence of Manu Miskell dated 5 March 2024 at [31]-[57] and [82]-[103]

⁴⁵ Transport Evidence of Andrew Carr dated 5 March 2024 at [17]-[28] and his Supplementary evidence dated 2 August 2024 at [15] – [33]

⁴⁶ Evidence of Mark Allan, para 34

⁴⁷ s42A Officer Report: PDP Residential Rezonings

⁴⁸ Evidence in Chief of Annabelle Coates dated 3 March 2024, para 13-15

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

Reverse sensitivity effects on CIAL

38 The entire South Block and part of the North Block is located under the 50dBA airport noise contour, as is the majority of the established urban area of Kaiapoi.

39 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 and Mike Greer Homes NZ Ltd (**Mike Greer Homes**).⁴⁹ It is not proposed to traverse those matters in detail here.

40 Mr Allan's planning evidence filed for the Submitter in respect of this hearing contains a brief summary of the planning evidence filed by Patricia Harte for Momentum and Mike Greer Homes at the Stream 10A hearing.⁵⁰

41 Ms Harte's key findings, noted in Mr Allan's evidence,⁵¹ are that (underlining added):

"...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."

42 The Submitter adopts the evidence and legal submissions filed by Momentum and Mike Greer Homes at hearing Stream 10A in support of its case at hearing Stream 12E(A) and Stream 12E(B) seeking rezoning of the Site to MDRZ.

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

⁵⁰ Evidence of Mark Allan at [65]-[67]

⁵¹ Supra at [66](f) and (g)

Flood hazard effects

- 43 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 of Richard Brunton and Mr Allan.⁵²
- 44 Mr Brunton based the proposed flood hazard mitigation for the Site on the results of his hydraulic modelling of surface flooding within the Site and surrounding area, pre and post development of the Site. Mr Brunton outlines that *"once ground levels are elevated within the Site as per Momentum's proposal, water depths reduce significantly, and the Site would no longer be subject to the CRPS definition of High Hazard Areas. In my opinion, Momentum's proposal appropriately mitigates flood hazards within the Site."*⁵³
- 45 Overall, Mr Brunton considers that Momentum's rezoning Proposal is appropriate, subject to the implementation of Momentum's proposed surface flooding mitigation.⁵⁴

Summary of positive and negative consequences

- 46 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.

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

- 47 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

- 48 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

⁵² Evidence of Mark Allan at [87], [93] and [95]-[96]

⁵³ Evidence of Richard Brunton, para 18

⁵⁴ Evidence of Richard Brunton, para 23

- 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 (within 3km of Kaiapoi town centre and readily accessible to the main centres of Rangiora, Kaiapoi and Christchurch City) well served by the public transport network, and in an area experiencing high demand for residential housing;⁵⁷
 - (d) will enable the established residential character of Kaiapoi to be retained while providing for its logical expansion in a location that has been consistently identified for residential growth in strategic spatial plans and statutory planning documents since at least 2007. The Proposal will deliver an extension of the urban environment that meets and adapts to the changing needs of the community, now and into the future;⁵⁸
 - (e) The principles of the Treaty of Waitangi have been taken into account in the proposed rezoning.⁵⁹ The Site and surrounding area are identified in the PWDP as being subject to silent file areas of significance to Māori. The Proposal does not seek to change the recognition and protection of these areas, the cultural values of which will be appropriately addressed through the subdivision consent process (noting the matters of discretion where resource consent is triggered by activities within the overlays) and engagement with tāngata whenua.⁶⁰
 - (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

⁵⁵ NPS-UD, Objective 1

⁵⁶ NPS-UD, Objective 2

⁵⁷ NPS-UD, Objective 3(a), (b) and (c) - refer to Planning Evidence of Mark Allan at Attachment 2, page 59

⁵⁸ NPS-UD, Objective 4 – refer to Planning Evidence of Mark Allan at Attachment 2, page 59

⁵⁹ NPS-UD, Objective 5 and Policy 9

⁶⁰ Evidence of Mark Allan at Attachment 2, page 46

residential land supply, and is in a strategically preferred location adjacent to an established settlement. MRZ-enabled development of the Site can be effectively integrated with infrastructure planning funding, and delivery;⁶¹

- (g) The Council will be using robust and recent information about its urban environments to inform its planning decisions;⁶²
- (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;^{63,64}
- (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;⁶⁵
 - (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;⁶⁶
 - (iii) Supporting and limiting as much as possible adverse impacts on, the competitive operation of land and development markets;⁶⁷
 - (iv) supporting reductions in greenhouse gas emissions⁶⁸; and
 - (v) being resilient to the likely current and future effects of climate change⁶⁹

⁶¹ UD, Objective 6(a), (b), and (c) - refer to Planning Evidence in Chief of Mark Allan at Attachment 2, page 60

⁶² NPS-UD, Objective 7

⁶³ NPS-UD, Objective 8(a) and (b), Policy 1(e) and (f) and Policy 6(e)

⁶⁴ Refer to GHG Emissions Evidence of Robert Wilson dated 27 June 2024, for a discussion of how the Momentum Proposal supports reductions in greenhouse gas emissions and is resilient to the current and future effects of climate change.

⁶⁵ NPS-UD, Policy 1(a)(i)

⁶⁶ NPS-UD, policy 1(c)

⁶⁷ NPS-UD, Policy 1(d)

⁶⁸ NPS-UD, Policy 1(e)

⁶⁹ NPS-UD, Policy 1(f)

- (j) The rezoning will bring change to the location, however the nature and character of development will be consistent and compatible with that of the established urban area in a location signaled for growth by both the PWDP and CRPS. The Proposal also gives effect to the Spatial Plan, which identifies the Site within a 'Future urban area'.⁷⁰
 - (k) The rezoning will contribute to the Council meeting the requirements of the NPS-UD to provide or realise development capacity.⁷¹
 - (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.⁷²
- 49 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; and⁷³
 - (b) will result from engagement with the development sector to identify significant opportunities for urban development.⁷⁴

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

50 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 Mr Allan's evidence.⁷⁵ The Officer Report does not take issue with Mr Allan's analysis of the Proposal against the CRPS. Therefore, subject to the discussion regarding Policy 6.3.5(4) below, the CRPS is not discussed further in these submissions.

⁷⁰ NPS-UD, Policy 6(a) and (b) – refer to Planning Evidence of Mark Allan at Attachment 2, page 48

⁷¹ NPS-UD, Policy 6(d)

⁷² NPS-UD, Policy 8

⁷³ NPS-UD, Policy 2

⁷⁴ NPS-UD, Policy 10(c)

⁷⁵ Evidence of Mark Allan at [84]-[99] and Attachment 3 to his evidence

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

51 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. *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;*

52 The principal reasons and explanation for this policy refers to the Kaiapoi exemption and states that-

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

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

53 The Kaiapoi exemption is intended to serve two inter-linked purposes, namely:

- (a) to offset displacement of Kaiapoi residents caused by the Canterbury earthquakes; and
- (b) to provide for contiguous and consolidated development to occur at Kaiapoi.

54 Part of the North Block and all of the South Block is identified as Future Development Area (**FDA**) on Map A of the CRPS. However FDA are not expressly mentioned within the exemption provided by Policy 6.3.5(4). The issue arising is whether the ambiguity about application of Policy 6.3.5(4) to the Proposal should preclude rezoning of the Site to MDRZ as requested by the Submitter.

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

- (a) the Proposal complies with Policy 6.3.5(4) as it falls within the exemption provided by Policy 6.3.5(4);
- (b) 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
- (c) 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?

- 56 There is considerable case law regarding the interpretation of resource management provisions. The recent decision of *Auckland Council v Teddy and Friends Ltd*⁷⁶ 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.⁷⁷
- 57 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 within the Kaiapoi Growth Area and the FDA at Kaiapoi whilst mitigating as far as practicable potential reverse sensitivity effects on the airport.
- 58 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

⁷⁶ *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128.

⁷⁷ *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128 at paras [12]-[13].

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.

59 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:⁷⁸

- (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).

60 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 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...”⁷⁹

61 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 not implement (or fully implement) the NPS-UD.

62 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.

63 In particular, the Greater Christchurch Spatial Plan (**GCSP**) was endorsed by the Greater Christchurch Partnership Committee on Friday 16 February 2024.

⁷⁸ Planning evidence of Mark Allan at [90]-[94]

⁷⁹ CRPS, Chapter 6, Introduction

The GCSP addresses issues related to urban development around strategic infrastructure, such as the Christchurch Airport and states the following (emphasis added):⁸⁰

*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.*

64 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 2024.⁸¹ In relation to the Airport Noise Qualifying Matter, the IHP determined that the Medium Density Residential Standard:⁸²

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

65 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

66 In my submission this 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.

⁸⁰ At page 53 of the Greater Christchurch Spatial Plan.

⁸¹ The Council is scheduled to decide on the recommendations on 4 September 2024

⁸² 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.

The Proposal falls within the exemption provided by Policy 6.3.5(4)

67 Mr Allan notes that the terminology and corresponding definitions for greenfield land raises ambiguity and unnecessarily complicates the otherwise enabling intention of the Future Development Areas. Mr Allan explains that:⁸³

For example, "residential greenfield area" (as used in Policy 6.3.5(4)) and "greenfield area" (as used in Policy 6.3.7(6)) are not defined in the CRPS, whereas "Greenfield Priority Areas" and "greenfield development" are, with reference to the areas identified on Map A.

In the absence of a definition in the CRPS of "residential greenfield area" or "greenfield area", the Oxford Dictionary defines such as "an area of land that has not yet had buildings on it, but for which building development may be planned". This is exactly what the Future Development Areas identified on Map A and the Kaiapoi Development Area in the PWDP are. In this regard, the Proposal could be said to provide for new development within a "residential greenfield area identified for Kaiapoi", or addressing housing affordability "by providing sufficient greenfield land to meet housing demand". On this basis, the Proposal would be exempt from the 'avoidance' clause in Policy 6.3.5(4).

68 It is noteworthy that the Officer Report reaches a similar conclusion regarding application of Policy 6.3.5(4) to the Momentum rezone proposal:⁸⁴

I restate my recommendation from that report [on hearing Stream 10A] that I consider that the Kaiapoi exemption applies to all of the Kaiapoi FDA underneath the operative 50dBA contour, as the terms "greenfields" is used throughout the CRPS as a collective category for greenfields priority areas and FDAs. Therefore, I consider that the FDA is exempt from the prohibition in 6.3.5(4).

69 Both planning experts have applied a purposive approach to interpretation that successfully resolves the ambiguity within Policy 6.3.5(4) and the potential for conflict between policies of the CRPS. In my view they have properly construed Policy 6.3.5(4).

The Proposal complies with Policy 6.3.5(4)

70 As mentioned in the "reverse sensitivity effects" section above, the planning evidence of Ms Harte at the Stream 10A hearing 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."

⁸³ Planning evidence of Mr Allan at [87]-[89]

⁸⁴ S42A Report: Officer's Report: PDP Residential Rezoning, para 990

- 71 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*.⁸⁵ 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.
- 72 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 directions⁸⁶ and further that 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.⁸⁷
- 73 The Court summarised its view as follows⁸⁸:
- All of the above means that the avoidance policies in the NZCPS 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.*
- 74 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.
- 75 When this approach is applied, the impediment identified by CIAL is resolved. The change requested by the Submitter is not inconsistent with Policy 6.3.5(4) because no material harm will arise from granting the Proposal even though it is located (in part) beneath the 50dBA Ldn airport noise contour.

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

- 76 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 a lower order planning document becoming outdated and acting as a closed door to development. Policy 8 provides a way around, so that-

⁸⁵ *Port Otago Limited V Environmental Defence Society Incorporated* [2023] NZSC 112

⁸⁶ *Supra* at [63]

⁸⁷ *Supra* at [65]

⁸⁸ *Supra* at [68]

“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”.*

- 77 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 but that appeal has recently been withdrawn. The decision is not binding on this Panel and it is for you to determine the amount of weight it should be given in circumstances of this case. In my submission the decision is relevant and should be had regard to in your consideration of the Proposal.
- 78 On 29 October 2020 Rolleston Industrial Developments Limited lodged a private plan change request PC69 with the Selwyn District Council. The 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.
- 79 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).
- 80 The finding of the Commissioner on this issue is recorded in the decision as follows:⁸⁹

[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

⁸⁹ PC69 Recommendation by Commissioner David Caldwell Date 13 May 2022, [410]-[411].

planning framework for Canterbury. But I do not accept the avoidance objective and policies mean that this request must be declined.

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

82 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).

83 In particular:

(a) The economic evidence of Mr Colegrave is that the proposed development of approximately 700 (and potentially as many as 1,000) dwellings enabled on the Site represents a significant increase in capacity for the Waimakariri district.⁹⁰ Mr Colegrave's supplementary evidence further discusses the likely significance of the Proposal and concludes that the Proposal is an extremely significant increase in development capacity for the purposes of the NPS-UD.⁹¹

(b) The planning evidence of Mr Allan is unequivocal that the Proposal will contribute to a well-functioning urban environment. Mr Allan states (emphasis added):⁹²

Based on the nature and form of MRZ-enabled development on the Site, and considering the technical evidence, I consider the Proposal would contribute to a well-functioning urban environment,

REPLY TO OFFICER REPORT AND EVIDENCE OF MR KYLE

Reply to Officer Report

84 As mentioned, the Officer Report recommends acceptance of Momentum's submission seeking MDRZ for the Site. Even so, the Officer Report does raise some points that warrant a response. These are discussed below together with reference to the supplementary evidence filed by the Submitter in reply to the Officer Report.

Transportation effects?

85 The Officer Report raises questions regarding cumulative transportation effects at the intersection of Smith Street / Williams Street / Beach Road in the

⁹⁰ Economic evidence of Fraser Colegrave at [81]-[82]

⁹¹ Supplementary economic evidence of Fraser Colegrave at [7]-[12]

⁹² Planning evidence of Mr Allan at [81]

circumstance where all of the land within the Kaiapoi Development Area is developed.⁹³

86 In response, Mr Carr considers that a specific Rule should not be included in the rezoning provisions for the Submitter's Site that requires the provision of traffic signals at the Smith Street / Williams Street / Beach Read intersection. Instead, Mr Carr considers that Rule TRAN-R20 'high traffic generators' can be relied on to identify the need for improvements at the appropriate time.⁹⁴

87 Mr Carr concludes that the other transportation matters raised by the Officer Report are matters for consideration when subdivision consents are sought.⁹⁵

Should a pocket park be identified on the ODP?

88 The Officer Report considers that a pocket park should be identified on the ODP for the North Block.⁹⁶ The supplementary evidence for Momentum is that this is unnecessary because there is already sufficient provision of greenspace in the Momentum ODP, as the ODP utilises the open space reserve within the McIntosh's Reserve and the paper road which has been identified as a green link⁹⁷.

89 Since the filing of supplementary evidence, dialogue has occurred between Momentum and the Reporting Officer. It has been agreed, subject to approval by the Panel, that the ODP narration should be amended to include the following text: *"At the time of subdivision final park provision needs to be determined"*, or words to like effect.⁹⁸

Which ODP should be included in the Proposed Plan?

90 The Officer Report recommends that the notified ODP for the Kaiapoi Development Area be included in the PWDP.

91 Momentum does not support this approach. Put simply, the Momentum ODP will better achieve a well-functioning urban environment than the notified

⁹³ Officer Report: PDP Residential Rezoning, para 973

⁹⁴ Supplementary Evidence of Andrew Carr, para 29

⁹⁵ Supplementary Evidence of Andrew Carr, para 43

⁹⁶ Officer Report: PDP Residential Rezoning, para 1013

⁹⁷ Supplementary Evidence of Mark Allan at [15] and Evidence of Alexander Shane Fairmaid at [23]

⁹⁸ Email exchange with Peter Wilson 7 August 2024

ODP for the reasons outlined in the supplementary evidence filed by the Submitter.⁹⁹

- 92 The supplementary evidence of Mr Weir contains the Momentum ODP which has been modified to conform with the presentation of the notified ODP so that it can be more readily incorporated into the PWDP.¹⁰⁰ Momentum seeks that this ODP be included in the PWDP if the Panel is minded to accept Momentum's rezone proposal.

Reply evidence of Mr Kyle

- 93 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

- 94 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.¹⁰¹

- 95 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.
- 96 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 Ldn. The Standard does not recommend mapping a sound exposure contour for the 50 dBA Ldn.
- 97 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

⁹⁹ Refer Supplementary Evidence of Bruce Weir at [13]-[20], Supplementary Evidence of Mark Allan dated 2 August 2024 at [12]-[14]

¹⁰⁰ Supplementary Evidence of Bruce Weir, Appendix A at page 4

¹⁰¹ Evidence of John Kyle (planning), dated 2 August 2024, paragraph 17.

special circumstances of the case.”¹⁰² This point is explained in the acoustic evidence of Mr Reeve on Stream 10A (Airport Noise).¹⁰³

- 98 Overall, the only basis on which district plan maps should show a 50 dBA contour is where it is reasonable to do so in the special circumstances of the case. There is nothing in Mr. Kyle’s evidence that points to special circumstances to justify a 50 dBA Ldn contour in relation to the Waimakariri District.

Acoustic insulation

- 99 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.¹⁰⁴ 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.*¹⁰⁵

- 100 In my submission, this comment is inaccurate. The *Auckland International Airport Ltd*¹⁰⁶ 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.

- 101 *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**).

- 102 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.

¹⁰² New Zealand Standard for Airport Noise Management and Land Use Planning (NZS6805:1992), 1.4.3.8

¹⁰³ Acoustic evidence of William Reeve on Stream 10A for the Submitter and Mike Greer Homes at [31] and [32]

¹⁰⁴ Evidence of John Kyle (planning), dated 2 August 2024, paragraph 38.

¹⁰⁵ Evidence of John Kyle (planning), dated 2 August 2024, paragraph 40.

¹⁰⁶ *Auckland International Airport Ltd v Auckland Council* [2024] NZHC 2058.

- 103 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.
- 104 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.
- 105 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

- 106 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.
- 107 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.
- 108 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 for medium density residential housing, more choice and improved affordability of housing, more efficient use of existing

infrastructure, and 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.

109 These outcomes are consistent with the outcomes that must be achieved by local authorities under the NPS-UD.

Dated: 9 August 2024

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

Chris Fowler
Counsel for Momentum Land Limited

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

- Evidence of Anna Sleight (Geotech)
- Evidence of Mark Morley (Contamination)
- Evidence of Geoffrey Dunham (Soils North Block)
- Evidence of Geoffrey Dunham (Soils South Block)
- Evidence of Manu Miskell (Infrastructure)
- Evidence of Andy Carr (Transport)
- Evidence of Bruce Weir (Urban Design)
- Evidence of Danny Kamo (Landscape)
- Evidence of Richard Brunton (Flooding)
- Evidence of Fraser Colegrave (Economics)
- Evidence of Annabelle Coates (Ecology)

Evidence filed 3 May 2024

- Evidence of Mark Allan (Planning)

Evidence filed 9 May 2024

- Evidence of Brian Putt (Planning)

Evidence filed 27 June 2024

- Evidence of Robert Wilson (GHG Emissions)

Evidence filed 2 August 2024

- Evidence of Alexander Shane Fairmaid (Developer)
- Supplementary Evidence of Mark Allan (Planning)
- Supplementary Evidence of Fraser Colegrave (Economics)
- Supplementary Evidence of Andrew Carr (Transport)
- Supplementary Evidence of Bruce Weir (Urban Design)