

SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF MOMENTUM LAND LIMITED

Introduction

1. 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**). The s42A Officer Report supports the Proposal.
2. Christchurch International Airport Limited (**CIAL**) and Carter Group Limited and Rolleston Industrial Developments Limited (collectively **RIDL**) have filed legal submissions and evidence opposing the Proposal. They argue that the Proposal does not give effect to the CRPS because it would allow development contrary to Policy 11.3.1 (development in high hazard areas) and Policy 6.3.5(4) (noise sensitive activities within the 50 dBA Ldn airport noise contour).

How should the CRPS be interpreted and applied

3. 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.¹
4. The hierarchy of planning documents established by the RMA means that subordinate planning documents must give effect to National Policy Statements.² 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.
5. There is considerable case law regarding the interpretation of resource management provisions.³ There is a strong argument to support a “purposive” approach to interpretation of CRPS policies that are inconsistent with, or do not give effect to, the NPS-UD.

¹ *Bunnings Ltd v Queenstown Lakes District Council* [2022] NZEnvC 162 at [148] – [155]

² *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [10] and [80]

³ The recent decision of *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128 provides a useful summary of the main principles which apply when determining the meaning of planning provisions created in the RMA context

6. Conflicts between policies are likely to be rare if those policies are properly construed, even where they seem to be pulling in different directions⁴ 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.⁵

Noise sensitive activities beneath the 50 dBA Ldn airport noise contour

7. 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) which otherwise seeks to avoid noise sensitive activities beneath the 50 dBA airport noise contour due to potential adverse effects on the efficient operation of the Christchurch International Airport
8. Ambiguity about application of Policy 6.3.5(4) to the Proposal does not preclude rezoning of the Site to MRZ because:
 - (a) the Proposal complies with Policy 6.3.5(4) as it falls within the “residential greenfield area” 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 expert evidence filed by the Submitter demonstrates that 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.
9. It is unfortunate that the CRPS has not been reviewed to give effect to the NPS-UD.⁶ 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 and more enabling approach to management of residential growth beneath the 50 dBA airport noise contour to that provided by the outdated CRPS.

⁴ Supra at [63]

⁵ Supra at [65]

⁶ As anticipated by Policy 6.3.11

Response to evidence and submissions for CIAL

10. Planning evidence of Mr Kyle and legal submissions on behalf of CIAL discuss 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.
11. 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.
12. In this case the relevant projected level of aircraft noise is 50 dBA Ldn. The New Zealand Standard for Airport Noise Management and Land Use Planning (NZS6805:1992) (**Standard**) referred to by Mr Kyle 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.
13. Further, the 50 dBA contour is markedly less noisy than the 60-65 dBA noise contours at issue in the *Auckland International Airport Ltd decision*⁷ referred to in Mr Kyle's evidence and the legal submissions for CIAL.
14. Put simply, avoiding residential growth beneath the 50 dBA contour at Kaiapoi cannot be justified in light of the expert evidence present for the Submitter at the Stream 10A hearing and the new requirements on local authorities to provide at least sufficient development capacity under the NPS-UD.

Response to evidence and legal submissions for Carter Group Limited and RIDL

15. Planning evidence of Mr Phillips and legal submissions on behalf of RIDL discuss flooding and the Kaiapoi Development Area.
16. RIDL has not filed a further submission in opposition to the Submitter's rezoning proposal. Instead Mr Phillips refers to his evidence filed for Hearing Stream 10A as the basis for RIDL's involvement in the present hearing. In that evidence Mr Phillips states that relates to *"the submitters' further submission number 82 supported the Canterbury Regional Council's submission (submission number 316.190) to use a regular plan change process (for the*

⁷ *Auckland International Airport Ltd decision* [2024] NZHC 2058

rezoning of the Kaiapoi Development Area), rather than enable development through certification.⁸

17. This hearing is not about the question of certification but rather relates to large scale rezone proposals. The Submitter's Proposal is akin to using a regular plan change process as requested by ECan and supported by RIDL. In my view RIDL's evidence and legal submissions on Stream 12E should be disregarded by the Panel as they are outside scope of matters raised in submissions by RIDL on the WPDP and Variation 1.
18. In any event, Policy 11.3.1 CRPS provides four separate exemptions to the requirement to "avoid" development within high hazard.⁹ Sub-policy 11.3.1(6) regarding urban growth within Greater Christchurch is most relevant and states (emphasis added):

Within greater Christchurch, is proposed to be located in an area zoned in a district plan for urban residential, industrial or commercial use, or identified as a "Greenfield Priority Area" on Map A of Chapter 6, both at the date the Land Use Recovery Plan was notified in the Gazette, in which the effect of the natural hazard must be avoided or appropriately mitigated

19. Policy 11.3.1(6) suffers from the same problem as identified above with respect to Policy 6.3.4(5) in that it has not been updated to give effect to the more recent NPS-UD. Accordingly, similar considerations discussed above regarding CRPS Policy 6.3.5(4) apply with respect to Policy 11.3.1 CRPS regarding new development in high flood hazard areas.¹⁰
20. Precluding the Proposal due to inconsistency with high hazard area Policy 11.3.1 cannot be justified in light of the expert evidence presented for the Submitter which demonstrates that flood hazard can be appropriately mitigated and the new requirements on local authorities to provide at least sufficient development capacity under the NPS-UD.

Chris Fowler
19 August 2024

⁸ Planning evidence of Mr Phillips on Hearing Stream 10A at [7]

⁹ Namely exemptions at sub-policies (1)-(4) generally for low-intensity uses, sub-policy (5) outside Greater Christchurch, sub-policy (6) within Greater Christchurch regarding urban growth, and sub-policy (7) within Greater Christchurch regarding existing infrastructure

¹⁰ Refer discussion about interpretation of the CRPS at [3]-[6] above and commentary regarding Policy 6.3.5(4) at [8](b)-(c) and [9] above