Independent Hearings Panel

Christchurch Replacement District Plan

Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing:	30 and 31 March, 1, 2, 8, 10, 14, 16, 17, 20–23 April 2015
Date of decision:	10 December 2015
Hearing Panel:	Hon Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Dr Philip Mitchell, Ms Sarah Dawson

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DECISION 10

RESIDENTIAL (PART)
(AND RELEVANT DEFINITIONS AND ASSOCIATED PLANNING MAPS)

Outcomes: **Proposals changed as per Schedule 1**

Directions to update Planning Maps made as per [452]

Clause 13(4) directions made as per [454]

APPEARANCES

Ms S Scott, Mr H Harwood and Ms A Sinclair	Christchurch City Council
Mr P Radich QC, Mr C Carranceja and Ms J Silcock	The Crown
Ms L Semple	Housing New Zealand Corporation
Ms J Walsh	Ngāi Tahu Property Limited Mahaanui Kurataiao Limited and Te Rūnanga o Ngāi Tahu
Ms J Appleyard and Mr B Williams	Christchurch International Airport Limited Lyttelton Port Company Orion New Zealand Limited
Mr A Beatson	Transpower New Zealand Limited
Mr G Cleary	Danne Mora Holdings Limited Independent Fisheries Limited
Ms H Marks	AMP Capital Palms Proprietary Limited Oakvale Farm Limited Maurice R Carter Limited
Ms K Wyss	Reefville Properties Limited
Mr J Hardie	Riccarton Bush-Kilmarnock Residents' Association Mebo Family Trust
Mr A Prebble	K Bush Road Limited and Brian Gillman Limited
Mr L Hinchey	The Retirement Villages Association of New Zealand Incorporated Ryman Healthcare Limited
Ms M Mehlhopt	Canterbury Regional Council

INTRODUCTION

[1] It can be observed that this decision is issued some eight months after the conclusion of the hearing. Given the direction in cl 12 of the OIC[1] that we deliver decisions as soon as practicable, that delay is regrettable. A significant contributor to that was our need to substantially restructure and rewrite much of the Notified Version such that we could be satisfied that it met a sufficient standard of drafting clarity and coherence, including in relation to other chapters.

[2] This decision concerns part of the notified Stage 1 proposal for Chapter 14 Residential (which part we refer to as the 'Notified Version').[2] It does not concern the provisions of the Notified Version set out in Schedule 2, as the hearing and determination of these has been deferred to Stages 2 and 3 of our inquiry.

[3] In its closing submissions, the Council proposed a revised set of provisions in response to issues raised in submissions and evidence ('Revised Version'). We have made a significant number of substantive and structural changes to the Revised Version, for the reasons we set out. These are set out in Schedule 1 ('Decision Version'). Our Decision Version will become operative upon release of these decisions and the expiry of the respective appeal periods.

Effect of decision and rights of appeal

[4] The procedures that will now apply for implementation of this decision as part of the replacement district plan for Christchurch City (including Banks Peninsula) ('CRDP') are as set out in our earlier decisions.[3]

[5] Under the OIC, any person who made a submission (and/or further submission) on the Notified Version, the Council, and the Ministers[4] may appeal our decision to the High Court (within the 20-day time limit specified in the OIC) on questions of law (and, in the case of a submitter, only in relation to matters raised in the submission).

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1 Canterbury Earthquake Recovery (Christchurch Replacement District Plan) Order 2014 ('OIC').

2 Further background on the review process, pursuant to the OIC, is set out in the introduction to the Panel's decision on Strategic directions and strategic outcomes (and relevant definitions) ('Strategic Directions decision'), 26 February 2015.

3 See in particular Strategic Directions decision at [5]–[9].

4 The Minister for Canterbury Earthquake Recovery and the Minister for the Environment, acting jointly.

Identification of parts of existing district plans to be replaced

[6] The OIC requires that our decision also identifies the parts of the existing district plans ('Existing Plan')[5] that are to be replaced by the Chapter. We return to this later.

Conflicts of interest

[7] We posted notice of any potential conflicts of interest on the Independent Hearings Panel website.[6] In the course of the hearing, it was identified on various occasions that submitters were known to members of the Panel. In some cases, that was through previous business associations. In other cases, it was through current or former personal associations. Those disclosures (and, on some matters, member recusals) were recorded in the transcript, which was again available daily on the Hearings Panel's website. No issue was taken by any submitter. After the hearing, and prior to our deliberations, panel member John Sax was reported in the Christchurch Press (and associated electronic print media) as criticising the Council's performance in the handling of resource management matters. While the comments were made in his personal capacity and were not directly about the matters in issue in the hearing, Mr Sax decided he should recuse himself, and took no part in our deliberation or in the making of this decision.

5 Comprising the Christchurch City District Plan and the Banks Peninsula District Plan.
6 The website address is www.chchplan.ihp.govt.nz.

REASONS

STATUTORY FRAMEWORK

[8] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.[7]

[9] It sets out what we must and may consider in making that decision.[8] It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.[9] It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').[10] The OIC also specifies additional matters for our consideration.

[10] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision as we address the various issues in this decision.[11] On the requirements of ss 32 and 32AA RMA, we endorse and adopt [48]–[54] of our Natural Hazards decision.[12]

7 OIC, cl 12(1).
8 OIC, cl 14(1) .
9 OIC, cl 5.
10 Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website.
11 At [25]–[28] and [40]–[62].
12 Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pp 20-21.

Issues raised by submissions

[11] We have considered all submissions and further submissions received on the Notified Version. The significant number of issues raised make it impractical to address all submissions individually, and the OIC does not require that we do so.[13] Instead, in many cases, we have grouped submissions according to relevant provisions.[14] As the issues raised generally pertain to the substance of the Notified Version and/or how it applies or ought to apply to particular land or other submitter interests, we deal with the issues in the context of our s 32AA evaluation later in this decision.

[12] As directed at the pre-hearing meeting, the Council filed a Statement of Issues for the Residential Proposal.[15] A number of the issues it identified were resolved between the parties prior to, and during the course of, the hearing. We also received and considered various memoranda in relation to those agreed issues. We have also had regard to the Council's recommendations in its filed 'Accept/Accept in Part/Reject Table'. Except where our decision has departed from those recommendations, we have accepted them and find them supported by the evidence. Although we were assisted by those documents, we record that our inquiry is, necessarily, broader. Our function is to hold a hearing on submissions on a proposal, and to make a decision on a proposal.[16] In making a decision on a proposal, we are directed to address those matters we have outlined at [8]–[10] above.

[13] Schedule 3 lists witnesses who gave evidence for various parties, and submitter representatives.[17]

Statutory documents and our obligations in regard to them

[14] On the matter of the relevant statutory documents ('Higher Order Documents') and our obligations in regard to them, we endorse and adopt [39]–[45] of our Strategic Directions decision.[18]

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13 OIC, Schedule 3, cl 13(3).
14 OIC, Schedule 3, cl 13(2).
15 [Updated] Statement of Issues for the Residential Proposal, 23 February 2015 and Memorandum of counsel for the Crown requesting additional matters be added to Christchurch City Council's updated Statement of Issues for the Residential Proposal, 4 March 2015.
16 OIC, cls 10(1)(a) and (b), 12(1)(a) and 13(1).
17 Counsel appearances are recorded on page 2.
18 We note that changes were made to the CRPS and Regional Coastal Environment Coastal Plan to enable the Council to either avoid or mitigate new development in urban areas located within high hazard areas and in relation to the responsibilities for managing coastal hazards which took effect from 12 June 2015. They do not affect this decision.

Land Use Recovery Plan

[15] The Land Use Recovery Plan ('LURP') specifies an overall target of 20,742 new households to be provided through infill and intensification across the Greater Christchurch area by 2028. It also specifies related targets for the proportion of intensification growth to total household growth during specified phases through to 2028.

Canterbury Regional Policy Statement 2013

[16] The Canterbury Regional Policy Statement 2013 ('CRPS'), which was modified through the LURP, gives related directions, most notably as follows.[19]

[17] Objective 6.2.1 — 'Recovery framework' sets an overall direction that recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that delivers 12 specified outcomes. These are about enabling urban development according to specified priorities and attributes.

[18] Objective 6.2.2 — 'Urban form and settlement' has particular bearing on how much provision should be made in district plans in Greater Christchurch for population growth, where intensification should be allowed for, and what choices of housing type should be provided for. Its introductory words express an intended overall outcome, namely that the "… urban form and settlement pattern in Greater Christchurch is managed to provide sufficient land for rebuilding and recovery needs and set a foundation for future growth, with an urban form that achieves consolidation and intensification of urban areas, and avoids unplanned expansion of urban areas". This is to be "by" the means identified in the following seven subparagraphs. Specific to the consideration of the Notified Version are paragraphs (1) and (2):

(a) Paragraph (1) addresses "intensification", meaning "an increase in the residential household yield within existing urban areas".[20] It sets intensification percentage targets, as proportions of overall growth, for three specified "recovery" time periods (35 per cent averaged over the period 2013–2016, 45 per cent over the period 2016–2021, 55 per cent over the period 2022–2028). These are soft targets, in that they are aims to be achieved. They do not allocate particular district

[19] Leaving aside those provisions of particular relevance to the NNZ provisions to be heard at a later stage.
[20] CRPS, definitions, page 202.

proportions, but are instead for the Greater Christchurch area as a whole. However, this is further addressed in Policy 6.3.7 below.

(b) Paragraph (2) concerns an aspect of intensification, i.e. "higher density living environments including mixed use developments and a greater range of housing types". Notably, it states that these are to be "particularly in and around the Central City, Key Activity Centres and larger neighbourhood centres and in greenfield priority areas, and brownfield sites".

[19] The explanation to Objective 6.2.2 gives some further indication of the intention. It reads (our highlighting on aspects of greater relevance to intensification):

> **Principal reasons and explanation**
>
> **The rebuilding and recovery of Greater Christchurch rely on appropriate locations, quantity, types, and mixes of residential and business development to provide for the needs of the community**.
>
> **Consolidation of existing urban settlements is the form of development most likely to minimise the adverse effects of travel for work, education, business and recreation, minimise the costs of new infrastructure and avoid adverse effects of development on sensitive landscapes, natural features and areas of high amenity**. This will enable Greater Christchurch to build back better, and support the recovery of central Christchurch**. Greater intensification within Christchurch's urban area through infill (particularly in the Central City, and around Key Activity Centres, and neighbourhood centres)** and brownfield redevelopment will reduce the need for further expansion of peripheral areas, and some intensification of the centres of smaller towns is also expected to meet changing needs. **A significant proportion of intensification will take place in the city rather than Selwyn and Waimakariri**; however, the contribution of these areas to the overall growth pattern is important. **The objective sets targets for the contribution of infill and intensification as a proportion of overall growth, and aligns with the growth management approach in the Greater Christchurch Urban Development Strategy**. Where monitoring indicates that these levels are not being achieved, further policy responses may be required to increase intensification within existing urban areas
>
> **Changing demographic patterns, including an ageing population and smaller households, are expected to increase the desirability of higher density housing**. The demolition and ageing of housing stock provides **an opportunity for redevelopment at higher densities and an increased range of housing types that provides not only choice for those needing to relocate, but also for future generations**. **Increased intensification is anticipated to occur over time as rebuild opportunities are realised, requiring appropriately located and designed greenfield development that also provides for medium density housing during the time of transition**.
>
> Following the earthquakes and the subsequent damage and red zoning of properties, a number of Māori have sought to return to and live on the Māori Reserves set aside by the Crown in the 19th century for the then present and future needs of local Ngāi Tahu.

> Providing for development opportunities on those reserves will enable the descendants of the original grantees to return and realise the original intent of those reserves...

[20] Policy 6.3.7 — 'Residential location, yield and intensification' gives more specific direction on intensification, particularly the following in paragraphs (2), (4) and (6):

(a) Paragraph (2) states that "Intensification in urban areas of Greater Christchurch is to be focussed around the Central City, Key Activity Centres and neighbourhood centres commensurate with their scale and function, core public transport routes, mixed-use areas, and on suitable brownfield land"; and

(b) Paragraph (4) specifies that "Intensification development within Christchurch City [is] to achieve an average of: … 50 household units per hectare … within the Central City; … 30 household units per hectare … elsewhere";

(c) Paragraph (6) specifies how "[h]ousing affordability" is to be addressed, including "by providing sufficient intensification and greenfield priority area land to meet housing demand during the recovery period" and "providing for a range of lot sizes, densities and appropriate development controls that support more intensive developments such as mixed use developments, apartments, townhouses and terraced housing".

[21] Policy 6.3.5 — 'Integration of land use and infrastructure' directs that "Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure" and specifies how this is to be achieved. It gives direction relevant to the consideration of 'new development' (which we read to encompass both residential greenfield and intensification development). Those directions are given in relation to both the choice of locations for, and the controls that should be applied to, new development so as to assist land use and infrastructure integration. Amongst the directions given are directions as to "avoiding noise sensitive activities within the 50dBA L_{dn} airport noise contour for Christchurch International Airport", subject to stated exceptions. We return to the consideration of this policy later in this decision.

[22] Policy 6.3.2 — 'Development form and urban design' applies, amongst other things, to residential development. It directs that effect be given to its specified principles of "good urban design" and to the principles of the NZ Urban Design Protocol.

Strategic Directions objectives and OIC Statement of Expectations

[23] The Strategic Directions objectives are now part of the CRDP. We must be satisfied that the relevant policies and rules of the Notified Version will implement them: ss 75(1) and 76(1) RMA. Several have some bearing on our consideration of the Notified Version.

[24] Paragraphs (a), (b) and (i) of the Statement of Expectations pertain to the clarity, focus and efficiency of regulation. These matters are also explicitly addressed in Strategic Directions Objective 3.3.2, which has the intended pre-eminence specified in the Interpretation provision of that chapter. As we later discuss in our s 32AA evaluation, the Notified Version was deficient in several respects, in terms of these matters. Also, as we later explain, our Decision Version makes several structural and substantive changes to the Revised Version so as to better implement Objective 3.3.2, and better respond to the Statement of Expectations.

[25] Specifically, on the substance of this decision, we note Objective 3.3.4 concerning housing capacity and choice. It specifies:

> (a) For the period 2012 to 2028, an additional 23,700 dwellings are enabled through a combination of residential intensification, brownfield and greenfield development; and
>
> (b) There is a range of housing opportunities available to meet the diverse and changing population and housing needs of Christchurch residents, including:
>
> (i) a choice of housing types, densities and locations; and
>
> (ii) affordable, community and social housing and papakāinga.

[26] The Statement of Expectations in Schedule 4 to the OIC includes paragraphs (c)–(e), on the effective functioning of the urban environment in light of the earthquakes, facilitating an increase in the supply of housing, and ensuring sufficient and suitable development capacity.

We have considered these expectations and are satisfied that they are essentially subsumed by the specific directions in the CRPS and in Objective 3.3.4 of the CRDP as noted above.

THE COUNCIL'S S 32 REPORT

[27] The Council's s 32 RMA report[21] ('s 32 Report'/'Report') provides an evaluation of the Notified Version, including a summary of the strategic context, a discussion of identified issues, and a description of the "scale and significance" evaluation undertaken and its conclusions. It also includes a summary of consultation undertaken, and an extensive set of appendices including staff and consultant reports relied on for the evaluation. We find it is sufficient to cover the requirements of s 32 RMA.

[28] However, the quality of its evaluation is revealing, especially on two matters where the Council's ultimate position before us was significantly different from what it proposed in the Notified Version. One matter concerns the absence of any controlled activity class under the Notified Version. The other concerns the inclusion in the Notified Version of rules on "life-stage inclusive and adaptive design for new residential units" ('Life Stage and Adaption Rules').

[29] Relevant to these matters, we note that the Report includes a qualification that the "s 32 [evaluation] has not focussed on those provisions that reduce the level of regulatory control unless reducing the level of regulatory control is likely to give rise to adverse effects on the community." We do not read that qualification as saying that the Council gave no attention to the importance of avoiding unnecessary or undue regulation. Indeed, the OIC Statement of Expectations emphasises the importance of due attention to this. However, the qualification does betray some lack of rigour in this regard, and we consider that this is evident in the way the Report fails to properly examine activity classification options and rules on the Life Stage and Adaption Rules.

[30] There is very little commentary on controlled activity classification in the Report. Instead, it reads as if a philosophical design choice against the use of controlled activity classification within the CRDP had already been made and did not require evaluation.

[21] "Section 32 Residential Chapter 14", notified 27 August 2014.

Consistent with that, in questioning by the Panel, one Council witness referred to a "reticence" by the Council towards use of the controlled activity classification.[22]

[31] In particular, nowhere in the Report do we identify any evaluation of the relative costs, benefits and risks of the Council's election to use restricted discretionary activity, over controlled activity, as the entry classification for resource consents. Rather, the minimal commentary focusses on the relatively greater certainty and focus that restricted discretionary activity classification has over more stringent activity classes (such as discretionary activity).

[32] The unfortunate consequence of this positional stance against the use of the controlled activity class in the design of the Notified Version was that obvious opportunities to minimise cost and uncertainty were missed, leading to a divergence between the Notified Version and the OIC Statement of Expectations. That was noted by a planning peer review witness called by the Council, Mr Andrew Macleod.[23] It was also to be acknowledged by the Council's planning witness, Mr Blair, who recommended a number of potentially suitable controlled activity re-classifications in his answer to the Panel's questions early in the hearing.[24] Ultimately, it led to a number of changes from restricted discretionary to controlled activity classifications being recommended in the Revised Version.

[33] The commentary in the Report on the Life Stage and Adaption Rules of the Notified Version also betrays a philosophical mindset that resulted in a failure to robustly scrutinise the costs, benefits and risks of the regulation proposed.

[34] The Report was informed by background analysis, notably a report by consultants Jasmax ('Jasmax Report').[25] It also includes an associated quantitative analysis of potential additional building costs, but we did not find any quantitative analysis of the additional transaction costs that the Life Stage and Adaption Rules would impose. The Jasmax Report noted that it did not directly address the impacts of associated construction costs on different market price points, that the additional costs would represent a higher proportion of construction costs for the lower value market segments, and that it would be "worthwhile" to evaluate the implications of the

22 Transcript, page 268, lines, 8–16 (Mr Blair).
23 Evidence in chief of Andrew MacLeod on behalf of the Council at para 3.4.
24 Transcript, page 294, lines 1–45, page 295, lines 1–36 (Mr Blair).
25 Jasmax, "Homestar Cost-Scoring Appraisal for Christchurch City Council", December 2013 Revision 0.1.

proposed policy on the affordability of houses. It also included the qualification that there would be a "crossover" with building consent controls and potential impacts on building design, consenting and development processes.[26]

[35] The Jasmax Report expresses the view that the approach of providing good information and incentivising good design in other centres has not been effective in achieving significant change in the approach to building design in those centres. From that starting point, the s 32 Report effectively adopts the position that regulation is the better approach to achieving change and hence that its Life Stage and Adaption Rules are the most appropriate. Several steps of evaluation are noticeably absent, bearing in mind the cautions expressed in the Jasmax Report. This is despite the very significant extent to which the Notified Version would have regulated the fabric of dwelling design across the city. In effect, it proposed to require at least a restricted discretionary activity consent for every new dwelling that failed to comply with a plethora of restrictions on things such as the location and design of door handles, the location of electrical switches, television and computer outputs, the design of window controls, the required space around beds and in laundries, the design of shower spaces and the distance between toilet pans and walls.

[36] As we later discuss, the evidence of Dr Humphrey for the Canterbury District Health Board ('CDHB') in particular identifies several benefits for people and communities to be gained from better life stage and energy efficient housing design and construction. However, those benefits do not make any less important the robust testing of the benefits, costs and risks of alternative regulatory and non-regulatory methods according to s 32. The responsibility for that regulatory analysis falls to the Council. In the case of the proposed Life Stage and Adaption Rules, the Council's inadequacy of effort was shown by the fact that it did not call evidence in support of them.

[37] By contrast to the s 32 Report for the Commercial and Industrial chapters, there is no underpinning economic assessment (other than for the confined purposes just noted). We suspect the lack of Council investment in that discipline was a significant cause of the many disproportionately costly and uncertain provisions of the Notified Version that we have rejected.

[26] Jasmax Report, page 17.

[38] We make the general observation that robust economic assessment usually will be of assistance to decision makers tasked with s 32 responsibilities.

SECTION 32AA EVALUATION

Introduction

[39] The Decision Version differs significantly from both the Notified Version and the Revised Version as finally recommended to us by the Council. Those differences are extensive in both structure and substance. However, we are satisfied that these can be made within the scope of the Notified Version, with two exceptions that we address below. Those relate to additional areas of RMD zoning and the Orion 11kV Heathcote to Lyttelton electricity distribution line ('11kV Lyttelton line'). Those are the only cases that we find to call for notification of a new proposal under cl 13(4), OIC.

[40] As we will elaborate on, the extent of change we have found necessary goes significantly beyond the themes that were the focus of submissions. That is essentially because the interests of submitters are confined, whereas we must also be satisfied that the CRDP will be both coherent and effective, including in giving effect to the CRPS and properly responding to the other Higher Order Documents and our Strategic Directions decision.

[41] In the circumstances, we have determined that the Decision Version meets the applicable RMA requirements. Specifically, in terms of ss 32AA and 32 RMA, we are satisfied that the Decision Version is the "most appropriate". However, that is only in a relative sense. In regard to Objective 3.3.4 — 'Housing capacity and choice', our Strategic Directions decision urges care and attention in the development of the plan "to ensure the right incentives, stimulation and regulation is delivered to best meet this sustainable management priority".[27] As we shortly explain, those observations are pertinent to what the Notified Version did not offer on the matter of intensification tools and incentives. Its lack of creativity and innovation has ultimately been a limiter on what the Decision Version has been able to provide for. Therefore, we specifically reserve our capacity to revisit the Decision Version under our OIC powers.

[27] Strategic Directions at [171].

[42] Given the complexities we have just discussed, our following evaluation is undertaken according to particular themes and issues, rather than by order of the provisions in the Decision Version.

[43] Our evaluation of the Decision Version primarily focusses on changes we have determined to make from the Council's Revised Version. That is because we find that the Revised Version effectively supplants the Notified Version in view of the extensive changes it recommended in light of the evidence and submissions that we heard.

The choice of zones and their purposes

[44] The Notified Version provided for the following classes of residential zoning:[28]

(a) Residential Suburban Zone ('RS');

(b) Residential Suburban Density Transition Zone ('RSDT');

(c) Residential Medium Density Zone ('RMD');

(d) Residential Banks Peninsula Zone ('RBP');

(e) Residential Conservation Zone ('RC').

[45] For the reasons we give later in this decision, we have determined that we should make a direction under cl 13(4) of the OIC for the notification of a new proposal for additional RMD zoning. As we also later discuss, we have made some site-specific zoning changes.

[46] In addition to zoning, the Decision Version has confirmed certain mechanisms for intensification. These are the Enhanced Development Mechanism ('EDM'), which applies in some zones, and the Community Housing Redevelopment Mechanism ('CHRM'), which applies in specified locations shown on the Planning Maps.

[28] In addition, it provides for New Neighbourhood zones ('NNZ'), our hearing and determination of which have been deferred as we have noted.

[47] Subject to our noted qualifications, we are satisfied on the evidence that the zoning classes,[29] and their geographic locations (as depicted on the planning maps), together with the EDM and CHRM, are materially in accordance with the CRPS and other Higher Order Documents. In particular, having zoning classes and mechanisms that explicitly provide for different densities assists to achieve Strategic Objective 3.3.4(b) in that it allows for "… a range of housing opportunities … including a choice of housing types, densities and locations". By reflecting the established patterns of residential development across the city, the zoning classes also assist in maintaining and enhancing amenity values (to which we must have particular regard: s 7(c) RMA).

[48] We consider this differential density approach warrants reinforcement in relevant policies, as we next discuss. Subject to that, and our earlier-noted qualifications, we are satisfied that the choice of zoning classes (and their geographic extent and locations), together with the EDM and CHRM, are the most appropriate for achieving the RMA's purpose (and relevant objectives).

The objectives

[49] Closing submissions demonstrated that there was no material contention amongst parties as to the objectives included in the Revised Version. On the evidence, we are satisfied that they are sufficiently comprehensive and appropriate for achieving the sustainable management purpose of the RMA (leaving aside the question of appropriate objective(s) for the New Neighbourhood zones, as deferred). Our targeted changes are to ensure better clarity. With those changes from the Notified Version, we are satisfied that the following objectives in our Decision Version are the most appropriate for achieving the RMA's purpose:

14.1.1 — Housing supply;

14.1.2 — Short term residential recovery needs;

14.1.3 — Strategic infrastructure;

14.1.4 — High quality residential environments;

[29] Excluding the Residential Conservation Zone, for the purposes of this decision, it being a matter which we have deferred to be addressed in our Stage 2 Residential Decision.

14.1.6 — Non-residential activities;

14.1.7 — Redevelopment of brownfield sites.

[50] Those objectives (together with relevant Strategic Directions objectives) are our point of reference for our evaluation of related policies, rules and other provisions under ss 32 and 32AA RMA.

The policies

Policy 14.1.1.1 – Housing distribution and density

[51] We have amended this policy to more precisely reflect the CRPS (particularly its Policy 6.3.7) as to density in regard to intensification. We have also made more explicit the purposes intended to be served by the different residential zones.

[52] We consider these changes will give better effect to related Objective 14.1.1 on housing supply, and Strategic Directions Objective 3.3.4 on housing capacity and choice. Our decision to make these changes is informed by related evidential findings on these matters, discussed later in this decision. For those reasons, we are satisfied that Policy 14.1.1.1, as included in our Decision Version, is the most appropriate for achieving the related Objectives.

Policies 14.1.1.2–14.1.1.6

[53] These policies respectively concern:

(a) Establishment of new medium density residential areas;

(b) Needs of Ngāi Tahu whānui;

(c) Provision of social housing;

(d) Non-household residential accommodation;

(e) Provision of housing for an ageing population.

[54] We have made the following substantive changes to equivalent policies in the Revised Version (our other changes being simply for drafting clarity):

(a) We have added to Policy 14.1.1.2, on the establishment of new medium density residential areas, the following paragraph (c):

> Encourage comprehensively designed, high quality and innovative, medium density residential development within these areas, in accordance with Objective 14.1.4 and its policies.

(b) We have added to Policy 14.1.1.6 new paragraphs (a) and (c) as follows:

> Provide for a diverse range of independent housing options that are suitable for the particular needs and characteristics of older people throughout the residential area.
>
> Recognise that housing for older people can require higher densities than typical residential development, in order to be affordable and, where required, to enable efficient provision of assisted living and care services.

[55] Our related evidential findings that inform our decision to make these changes are discussed under the headings "Intensification and the extent of RMD and RSDT zoning", "Incentivising amalgamation for high quality comprehensive development", and "Older persons' social and affordable housing and student accommodation". On the basis of those findings, we are satisfied that these changes will mean the specified policies will give better effect to related Objective 14.1.1 on housing supply, Objective 14.1.2 on short-term residential recovery needs, and Strategic Directions Objective 3.3.4 on housing capacity and choice. For those reasons, we are satisfied that the policies are the most appropriate for achieving the related objectives.

New Policy 14.1.1.7 — Monitoring

[56] New Policy 14.1.1.7 is for the monitoring of the effectiveness of the residential provisions. This monitoring will measure the effectiveness of the provisions for achieving supply, by way of intensification, greenfield and brownfield development (and by housing types, sizes and densities). In this way, Council will be directed to check how effective the residential provisions are over time for meeting relevant LURP and CRPS targets, related Strategic Objectives 3.3.4(a) and 3.3.7(d), and related housing needs, including as to affordability. The Council will be directed to undertake this monitoring according to a

timetable, to publish the results and use the results to inform how the Council determines provision for future residential development and infrastructure priorities.

[57] We have added this monitoring policy to give better effect to Objective 14.1.1 on housing supply, and give effect to Strategic Directions Objectives 3.3.4 on housing capacity and choice and 3.3.7 on urban growth, form and design.

[58] Section 35(2)(b) RMA requires territorial authorities to monitor the efficiency and effectiveness of policies, rules, or other methods in their district plans (and regional councils to monitor their regional policy statement and plans). However, given the priority that the CRPS confers on these matters, for the recovery and rebuilding of Greater Christchurch, we consider that monitoring should be an explicit policy. We note that it parallels CRPS Policy 6.3.11 on monitoring and review. We intend the new policy to assist the Council to work with the Canterbury Regional Council, as intended by that CRPS policy.

[59] For those reasons, we are satisfied that the new policy is most appropriate for giving effect to the relevant objectives.

Policies 14.1.2.1–14.1.2.4, and Policy 14.1.3.1: short-term recovery and strategic infrastructure

[60] Policies 14.1.2.1 to 14.1.2.4 are to achieve Objective 14.1.2 on short term residential recovery needs. These policies respectively concern:

(a) Short term recovery housing;

(b) Recovery housing – higher density comprehensive redevelopment;

(c) Redevelopment and recovery of community housing environments; and

(d) Temporary infringement for earthquake repairs.

[61] Policy 14.1.3.1 concerns avoidance of adverse effects on strategic infrastructure. It is to achieve Objective 14.1.3 on strategic infrastructure.

[62] Closing submissions demonstrated that there was no material contention amongst parties as to the equivalent policies in the Revised Version. We have made only minor drafting clarity changes to them. Subject to those changes, we are satisfied that the policies are the most appropriate for giving effect to the related objectives.

Policy 14.1.4.1, new Policy 14.1.4.2 and Policies 14.1.4.3–14.1.4.5[30]

[63] These policies are to achieve Objective 14.1.4 on high quality residential environments. They respectively concern:

(a) Neighbourhood character, amenity and safety;

(b) High quality, medium density residential development;

(c) Scale of home occupations;

(d) Character of low and medium density areas; and

(e) Best practice for health, building sustainability, energy and water efficiency.

[64] In most respects, the changes we have made are for greater drafting clarity or are consequential. The exception concerns new Policy 14.1.4.2 as to high quality, medium density residential development (and related changes to Policy 14.1.4.4.a.ii).

[65] Our related evidential findings are discussed under the heading "Incentivising amalgamation for high quality comprehensive development". On the basis of those findings, we are satisfied that the inclusion of this policy (and related changes) will assist to give better effect to related Objective 14.1.1 on housing supply, Objective 14.1.2 on short term residential recovery needs, and Strategic Directions Objectives 3.3.4 on housing capacity and choice and 3.3.7 on urban growth, form and design.

[66] None of the other policies included in the Revised Version was contentious. We also refer to our related evidential findings on them in this decision. In particular, we refer to discussions under the headings "The choice of zones and their purposes", "Older persons',

[30] Our determination concerning the proposed policies 14.1.4.6 and 14.1.4.7 has been deferred, as noted.

social and affordable housing and student accommodation" and "Residential design assessment and control".

[67] For those reasons, we are satisfied that the policies as included in our Decision Version (including with the drafting refinements we have made) are the most appropriate for achieving the related Objectives.

Policies 14.1.6.1–14.1.6.6 and Policy 14.1.7.1

[68] Policies 14.1.6.1 to 14.1.6.6 are to give effect to Objective 14.1.6 on non-residential activities. They respectively concern:

(a) Residential coherence, character and amenity;

(b) Community activities and facilities;

(c) Existing non-residential activities;

(d) Other non-residential activities;

(e) Retailing in residential zones; and

(f) Memorial Avenue and Fendalton Road.

[69] Policy 14.1.7.1 is to give effect to Objective 14.1.7 on redevelopment of brownfield sites.

[70] We have amended Policy 14.1.6.3 of the Revised Version, relating to non-residential activities. Our amendment is to acknowledge that, when determining applications for non-residential activities, the concerns may go further than their impact on the character and amenity of residential zones. At a more fundamental level, such non-residential development has the potential to undermine the strategic purpose of the zones.

[71] We consider this amendment better implements the Strategic Directions objectives as to urban form (Objective 3.3.7) and incompatible activities (Objective 3.3.14). We are satisfied that the form of amendment we have made also reflects the balance of promoting business and

economic prosperity (Objective 3.3.5) by providing for business activities in certain locations. We are also satisfied that our amendment means the policy better implements its parent, Objective 14.1.6, in relation to non-residential activities in residential areas. That is in the sense that it assists to ensure that residential activities remain the dominant activities in residential zones.

[72] The remaining points of contention in regard to equivalent policies included in the Revised Version were relatively confined. On those matters, we refer to our related evidential findings in this decision. In particular, we refer to discussions under the headings "Education and health and veterinary care and emergency services and temporary training", "Community correction and community welfare facilities", "Places of worship and spiritual facilities", "Other non-residential activities in the residential zones" and "Residential design assessment and control".

[73] For those reasons, we are satisfied that the policies as included in our Decision Version (including with the drafting refinements we have made) are the most appropriate for achieving the related Objectives.

The range of activity classes including the addition of controlled activities

[74] We provide for a broadly hierarchical activity classification, for resource consent purposes, in the Residential Chapter.

[75] This is generally as follows:

(a) Listed permitted activities, determined as suitable for the applicable zones, subject to specified activity-specific and built form standards;

(b) A controlled activity class for some built form standards and specified land uses;

(c) Restricted discretionary activities where specified permitted activity or built form standards are not met (and also for some classes of activity not considered as appropriate permitted activities within various zones);

(d) Discretionary activity classification for certain activities adjudged to require broader scrutiny due to localised environmental sensitivities in specified zones;

(e) Non-complying activities for specified categories of "sensitive activity" within specified proximity to the centre line of the National Grid and electricity distribution lines;

(f) Non-complying activity for residential units in the RS and RSDT zones which have a small net site area or high site coverage; and in the RMD zone for buildings over 14m height;

(g) A residual discretionary activity class for any activity not provided for as a permitted, restricted discretionary, or non-complying activity (there being no prohibited activity class).

[76] As we have noted, while the Notified Version did not include any controlled activities, the Council proposed a list of suitable controlled activities in its closing submissions. The Council clarified that it sought to retain discretion to decline consent for developments only where the effects are greatest and cannot necessarily be managed through conditions. It recorded that use of controlled activity status would not be appropriate for dealing with built form standards as to site density, coverage, building height, daylight recession planes, boundary setbacks, and water supply for firefighting. The Council's modified position in support of usage of the controlled activity class was also subject to appropriate urban design assessment and on the basis that restricted discretionary activity status would apply if the controlled activity standards were not satisfied.[31]

[77] We agree with the Crown that making appropriate provision for controlled activities better reflects the intentions of the OIC Statement of Expectations. We also agree with the Crown that the Council's earlier concerns as to the risk of "stalemate" between applicant and the Council were misplaced. The critical ingredient is properly-expressed controls within the rules, for the purposes of enabling the setting of appropriate resource consent conditions. In any event, that is a position the Council has come to acknowledge and accept.

[31] Closing submissions for the Crown at paras 19–22.

[78] Drawing from those submissions (and the related evidence for the Council and the Crown),[32] we have made provision for controlled activities to the following extent (with associated specification of controls for the setting of conditions):

(a) Fences that do not comply with applicable street scene amenity and safety standards;

(b) Residential units with more than six bedrooms;

(c) Multi-unit residential complexes and social housing complexes not complying with applicable standards on tree and garden planting or service, storage and waste management spaces;

(d) Social housing complexes in the RS or RSDT zones that do not comply with specified activity standards (as to Rule 14.2.2.1 P5 c. or d. as they relate to habitable space at ground level); and

(e) Multi-unit residential complexes in the RSDT zone that do not comply with specified activity standards (as to Rule 14.2.2.1 P4 c. or d. as they relate to habitable space at ground level).

[79] To an extent, this differs from what the Council recommended in its closing submissions. In part, that reflects significant related changes we have made to the Revised Version. Otherwise, it reflects our overall judgment on the evidence as to what achieves the appropriate balance of enablement and control, having regard to the OIC Statement of Expectations.

[80] We are satisfied that the inclusion of the controlled activity class within the Decision Version makes it more appropriate than the Notified Version and Revised Version, and is most appropriate for achieving the related objectives.

[32] Christchurch City Council (310); Crown (495).

Approach to public and limited notification and non-notification of consent applications

[81] The RMA provides that rules may be made for the carrying out of a territorial authority's RMA functions and achieving the objectives and policies of the applicable plan (s 76). Those include functions as to the processing of consent applications according to the RMA. The RMA also recognises that rules can be made for the purposes of decisions on the assignment of consent applications to the RMA's public notification, limited notification or non-notification tracks. For those purposes, it allows for rules that require or preclude public notification (s 95A) or preclude limited notification (ss 95A(2), (3), 95B(2)).

[82] Of course, that does not in any sense give licence to arbitrarily dispense with notification. As s 76 makes clear, the rules must ultimately serve the relevant functions and achieve the applicable objectives and policies. As is also directed by s 32 RMA, we must be satisfied that the design of rules that require or preclude public notification, or preclude limited notification, will serve the Council's functions and achieve applicable objectives and policies.

[83] In addition, we must have particular regard to the OIC Statement of Expectations. As noted, it includes that the CRDP:

> (a) clearly articulates how decisions about resource use and values will be made, which must be in a manner consistent with an intention to reduce significantly (compared with the existing district plans)—
>
> (i) reliance on resource consent processes; and
>
> (ii) the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and
>
> (iii) the requirements for notification and written approval.

[84] In its design of notification rules, we are satisfied that the Notified Version properly accords with the RMA requirements we have described, and generally reflects a coherent philosophy that properly accords with the above-noted expectation.

[85] As such, we have included in the Decision Version rules as to notification treatment according to the following design:

(a) There is a presumption that applications for controlled activities will be processed on a non-notified basis, and that adverse effects can be appropriately managed by way of conditions.

(b) Where the effects of the activity relate to streetscape or effects on the public realm, applications are identified as being not subject to public notification or limited notification. This is on the basis that adverse effects can be considered wholly at the discretion of the Council in its role as the consent authority.

(c) Where effects are likely to impact on immediate neighbours, and are of a limited scale, public notification is dispensed with, but limited notification (or a requirement for written approval from affected parties) is provided for.

(d) Where effects from an activity are of a wider or strategic significance, the determination with regard to notification is according to what is specified in ss 95A–95E of the RMA.

[86] As s 95A(4) of the RMA prescribes, the Council retains a residual discretion to notify an application where special circumstances exist.

Intensification and the extent of RMD and RSDT zoning

[87] For the reasons that follow:

(a) We have decided to make only one increase to the geographic extent of RMD and RSDT zoning of the Notified Version. This is to include 30 and 34 Trent Street within an adjacent RMD zoning;[33] however,

(b) We have made directions for the purposes of cl 13(4) OIC for the Council to notify a new proposal for additional RMD zoning in proximity to the Key Activity Centres ('KACs') at Hornby, Linwood and Papanui.

[33] Belgravia Investments Limited (678).

Related CRPS directions

[88] On the topic of residential intensification, we observe that, in summary:

(a) The CRPS specifies intensification development targets for Greater Christchurch as percentages of overall growth, and also Christchurch City (50 households per hectare within the Central City and 30 households per hectare elsewhere) but not for either Selwyn or Waimakariri districts (other than for greenfield areas); however,

(b) The CRPS is silent as to the proportion of the greater Christchurch intensification target that is to occur within Christchurch City, other than to the extent it indicates an expectation that a "significant proportion of intensification will take place in the city rather than Selwyn and Waimakariri";[34] and,

(c) It gives strong direction that intensification in Christchurch is to be focussed in the Central City, near KACs and Larger Neighbourhood Centres ('LNCs') and on key transport routes; and,

(d) It gives related direction on the integration of land use and infrastructure (particularly in Policy 6.3.5 and Methods), which extends beyond RMA land use planning to also encompass related infrastructure asset "planning" and "programming" in the wider statutory sense. In particular, the method to Policy 6.3.5 states that local authorities should:

> Give consideration to any infrastructure projects that may be needed to give effect to Policy 6.3.5 and include them in their Annual Plans, the Three Year Plan, Long Term Plans, the Regional Land Transport Programme or other infrastructure plans, as appropriate to enable the orderly and efficient development of priority areas.

The Council's process for determining the extent of intensification in the Notified Version

[89] The Council's planning witness, Mr Blair, explained the approach taken in the Notified Version to give effect to the CRPS and other Higher Order Documents on the matter of residential intensification. In addition to carrying forward as RMD areas zoned "Living 3" in

[34] CRPS Objective 6.22, Principal reasons and explanation.

the Existing Plan (i.e. higher density), the Council undertook analysis and consultation before determining what other land in the Existing Plan's lower density "Living 1" and "Living 2" zones should be "upzoned" to increase the amount of intensification. An initial analysis was done as to whether KACs and LNCs could provide supporting commercial and social infrastructure for intensification, and what areas would be within a 10-minute walking distance of KACs and LNCs. That initial exercise identified areas at Merivale, Hornby, Papanui, Shirley, Bishopdale, Riccarton, Church Corner, Barrington and Linwood as potential candidates for upzoning to RMD.[35]

[90] Infrastructure capacity issues were tested, consultation with residents in the candidate areas was undertaken and, ultimately, matters were put to the Mayor and Councillors. Those processes resulted in areas being culled, including at Hornby, Eastgate (Linwood) and Papanui KACs and to the north of Riccarton Road.

[91] The Crown challenged both the soundness of the Council's methodology and the sufficiency of RMD zoning in the Notified Version for meeting intensification targets.

Competing opinions on how much intensification should be allowed

[92] How much intensification should be provided for is to be measured by reference to the intensification targets of the Higher Order Documents and Strategic Directions Objective 3.3.4.

[93] On this, the divergent positions of the Council and the Crown reflected the views of their respective experts, Dr Fairgray[36] and Mr Schellekens.[37]

[94] The two experts did not fundamentally disagree on the approach to modelling intensification. However, they disagreed in relation to key inputs to that modelling. One difference concerned the proportion of the Greater Christchurch intensification target that

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35 Evidence in chief of Adam Scott Blair, for the Council, at paras 3.3 and 6.1–6.20; Residential hearing maps, Exhibit 4.

36 Dr Fairgray has a PhD in geography from the University of Auckland. He is a principal of Market Economics Limited and has 35 years' consulting and project experience. He specialises in policy and strategy analysis, the geography of urban and rural economies, assessment of demand and markets, and the evaluation of outcomes and effects, in relation to statutory objectives and purposes.

37 Mr Schellekens is the National Director of Professional Services at CBRE Limited ('CBRE'). He holds a Bachelor of Commerce (Valuation and Property Management) and a Master of Property Studies (with Distinction) from Lincoln University. He is a Registered Valuer, Fellow of the New Zealand Property Institute, Member of the Royal Institute of Chartered Surveyors, past Chairman of the Valuation Standards Board of New Zealand, and current board member of the New Zealand Green Building Council.

should be assigned to the city. Dr Fairgray assumed 79 per cent or 16,600 additional dwellings; Mr Schellekens assumed 90 per cent or 20,742 additional dwellings.[38] Another difference concerned whether Housing New Zealand Corporation ('Housing NZ') and retirement village developments should be excluded from the calculation of the available capacity for intensification within the city. Mr Schellekens excluded them, on the understanding that they were already accounted for in the modelling.[39] Dr Fairgray included them, on the understanding that the modelling had not fully accounted for them.[40] Another difference concerned the extent of "filtering out" that was appropriate to predict how much of the zoned RMD area would realistically result in intensification development. "Filtering out" refers to a process for accounting for land values in calculating intensification capacity. Dr Fairgray filtered out a lower percentage than Mr Schellekens. Their differences essentially concerned how much account should be taken of faster increases in land value compared to built assets.[41]

[95] However, in the following significant respects, the experts were in essential agreement:

(a) The base model used is a relatively rough tool for the purposes of making decisions on the extent of RMD zoning, being described by Mr Schellekens as "very high level" and "not perfect",[42] and Dr Fairgray as "a generally appropriate approach for wide scale assessment, to indicate potential capacity according to the assumptions and information applied".[43] Those concessions bring an associated reliability risk to the accuracy of their respective predictions as to how much RMD zoning would suffice.

(b) Even when redevelopment is both plan-enabled and economically feasible, there is no guarantee it will occur, and only a small percentage of total zoned land could be expected to be developed.[44]

[96] Those points of agreement make it unnecessary for us to reach any determination of which of their ultimate recommendations we prefer. In essence, we find that the most appropriate plan approach is somewhat in between their respective positions.

38 Rebuttal evidence of Dr Fairgray on behalf of the Council at 3.6–3.12.
39 Transcript, page 365, lines 15–45; page 366, lines 1–44; page 367, lines 1–44; page 368, lines 1–16.
40 Rebuttal evidence of Dr Fairgray at 3.16–3.26; Transcript, page 365, lines 24–39.
41 Rebuttal evidence of Dr Fairgray at 3.33.
42 Transcript, page 364, lines 4–8.
43 Rebuttal evidence of Dr Fairgray at 3.30.
44 Rebuttal evidence of Dr Fairgray at 3.29.

[97] We observe that Mr Schellekens' recommendation would appear to have lost sight of an important dimension of the directions in the CRPS. That is in the sense that his recommendation would mean a large part of Christchurch would have to be zoned RMD. When this was pointed out by Panel questioning, Mr Radich QC responsibly accepted that, to give effect to the Higher Order Documents, intensification still needed to occur around KACs, LNCs and in proximity to public transport routes. We also observe that Mr Schellekens' input assumption that 90 per cent of the total Greater Christchurch intensification target be assigned to Christchurch City appears unrealistically high, for the reasons noted by Dr Fairgray. In particular, we note the evidence that some 80 per cent of new dwelling building consents between 2004–2013 were for stand-alone dwellings.[45]

[98] However, we find that the choices the Council made as to the extent of RMD zoning that should be provided for in the Notified Version (and in its brief to Dr Fairgray) were on an unduly narrow footing. Dr Fairgray himself described his task as one of advising on what was "likely to be adequate",[46] and whether there is "a sufficient evidence base to support a material change in the areas of RMD zoned land on the basis that it is needed to enable intensification targets."[47]

[99] We mean no criticism of Dr Fairgray in observing that the questions we are invited to test under the CRPS and Higher Order Documents go further than simply deciding whether more RMD zoned land is "needed". In its closing, the Crown submitted that "providing just enough is not good enough".[48] We do not consider it fair to characterise the extent of RMD zoning in the Notified Version as "just enough". Nor was that the theory of Dr Fairgray's evidence. Rather, he was careful to record that his focus was on "material" change, and to note the risk was more as to providing RMD zoning in locations that were too remote from centres able to provide the range and scale of goods and services needed by local residents.[49] However, it would not appear that Dr Fairgray was asked to evaluate whether the risk he described would preclude further RMD zoning, beyond what the Council had decided upon. Instead, his brief

45 Evidence in chief of Mr Schellekens on behalf of the Crown at para 6.6, and Closing submissions for the Crown at para 12.
46 Evidence in chief of Dr Fairgray on behalf of the Council at para 3.1.
47 Evidence in chief of Dr Fairgray at para 3.7.
48 Closing submissions for the Crown at 13.
49 Evidence in chief of Dr Fairgray at para 8.8.

was limited to defending what the Council had elected to provide. Yet, as noted, the CRPS invites us to consider this issue on a broader footing.

[100] Importantly, however, Dr Fairgray and Mr Schellekens effectively agreed that RMD zoning is a low-yielding and somewhat unpredictable means for delivering on intensification targets.[50] In addition, as we have noted, the Higher Order Documents intend that most intensification should occur within Christchurch City. Given those factors, we find on the evidence that it is better to take a prudently generous, rather than barely sufficient, approach to the provision of RMD zoning.

The relevance or otherwise of infrastructure constraints

[101] On the question of the relevance or otherwise of infrastructure constraints, we start by observing that the CRPS does not intend that infrastructure constraints operate to veto upzoning. Rather, it contemplates integration across both RMA and wider statutory infrastructure planning and programming. That can include, for instance, adapting infrastructure programming as needs may require.

[102] We are satisfied from Ms O'Brien's explanation to us (in the Stage 1 Commercial and Industrial chapters hearing) that the Council's approach to infrastructure planning and upgrade programming is consistent with the intentions of the CRPS. She explained that, even if an infrastructure upgrade for a certain area is not in the Council's upgrade programme, the Council would still look to programme it "if the district plan identified further intensification there" and to "programme the upgrade accordingly to meet those growth pressures".[51] Related to that, the Council's Asset and Networks Unit Manager, Mr Gregory, informed us (in the same hearing) that the Council's infrastructure strategy is agile and flexible, and capable of being revisited in response to where actual growth or development may occur.[52] For instance, that could be in response to larger social housing or other such development initiatives from time to time.[53]

[103] One example of where that flexibility and agility could be important is in relation to potential social housing projects under the CHRM provisions. In endorsing those provisions

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50 We return to this theme shortly, in regard to the matter of providing greater incentivisation for amalgamation.
51 Transcript of Stage 1 Commercial and Industrial hearing, page 200, lines 12–45; page 201, lines 1–11.
52 Transcript of Stage 1 Commercial and Industrial hearing, page 122, lines 10–39; page 123, lines 7–46; page 124, lines 1–41.
53 Transcript of Stage 1 Commercial and Industrial hearing, page 128, lines 11–23.

as most appropriate, we have accepted the unchallenged evidence of Mr Commons, of Housing NZ, on those matters. He explained the importance of enabling provision for the necessary renewal of that corporation's housing assets in order to address changing demographics and provide high-quality, modern social housing. He also explained the importance of supporting Council infrastructure.[54]

[104] Later in this decision, we return to the matter of Council infrastructure constraints in our discussion of social housing, under the heading "Older persons', social and affordable housing and student accommodation".

Whether Council decisions to reduce originally identified areas of RMD zoning appropriate

[105] We deal first with the three areas where the Council's decision to reduce originally identified areas of RMD was not made for infrastructure constraint reasons — Linwood (Eastgate), Hornby and Papanui (Northlands).

[106] As we have noted, the existence of infrastructure constraints does not necessarily preclude consideration of intensification. In particular, as noted, CRPS Policy 6.3.5 on land use and infrastructure integration anticipates that infrastructure planning and programming can adapt and respond to changing land use demands in the manner described by Mr Gregory and Ms O'Brien. However, in terms of Policy 6.3.5, lack of infrastructure constraints and/or a Council programme to address such constraints are factors favouring intensification.

Linwood (Eastgate)

[107] In the case of Linwood, the Council's initial investigations identified an extensive area of land zoned Living 3 under the Existing Plan that would potentially be suitable for RMD zoning. An additional area was also investigated, primarily around Eastgate Mall, including two small areas between the Linwood Park's western edge and Aldwins Road.[55] However, we understand that, except for the two small areas on Aldwins Road, this additional area was eventually excluded by decision of Council members. We were informed that this was partly

54 Evidence in chief of Paul John Commons on behalf of Housing New Zealand Corporation at paras 14–21.
55 Exhibit 4.

because it was not considered to be needed to meet intensification targets, and partly because of community opposition expressed in consultation.[56]

[108] NPT Limited (707), the owners of Eastgate Mall, requested that residential areas surrounding the Mall be rezoned to RMD. It did not present evidence in support of this request.

[109] Belgravia Investments Limited (678) sought that its properties at 30 and 34 Trent Street be rezoned from RSDT to RMD.[57] Belgravia's planning witness, Mr Jonathan Clease, expressed the opinion that rezoning the subject sites to RMD would enable a logical squaring up of the notified RMD boundary and a more consistent streetscape should the sites be redeveloped. He concluded that a change in zone boundary would also better reflect the existing density and character of the sites, and assist to enable more efficient use of these sites and the provision of additional housing opportunities in appropriate locations in accordance with the OIC Statement of Expectations and the Strategic Directions Objectives. For the Council, Mr Blair accepted that Belgravia's sites could be rezoned.

[110] On the evidence, we are satisfied that rezoning 30 and 34 Trent Street to RMD is the most appropriate. We make provision for that accordingly.

[111] In addition, we consider the evidence to support the making of a cl 13(4) direction for re-notification, for the reasons and in the terms we set out later in this decision.

Papanui (Northlands)

[112] The Notified Version provided some RMD zoning around Northlands Mall and Papanui High School, and in the areas adjoining the Papanui Road commercial areas between Blighs Road and Harewood/Papanui Road intersection.

[113] This area is significantly smaller than the area of potential RMD upzoning originally identified by the Council by reference to the criteria earlier noted. That area extended north of Shearer Avenue almost as far as the Cranford Street/Main North Road junction, westwards

56 Transcript, page 222, lines 16-31 (Mr Blair).

57 In addition, Ms Giles (1093) opposed the notified RSDT zone for her property at Marcroft Street, and requested a 'lower density zone'. However, Ms O'Brien identified that Ms Giles's property is not in the RSDT zone and, therefore there is no need to address her request to change the zoning to a lower density zone and her relief to this effect is, therefore, declined.

along Vagues Road just beyond the boundary of St Joseph's School, south of Harewood Road in a swathe in the general vicinity of St James Park, and to the east and west of Papanui Road as far south as the Paparoa Street/Papanui Road intersection and Hawthorne Street.[58]

[114] We were informed that this larger area was scaled back primarily as a result of adverse community feedback. A significant concern was as to impacts that RMD upzoning would have on the amenity values of established residential areas. In particular, that was the case for land in the general vicinity of St James Park.[59] We were informed that further intensification beyond the area of the Notified Version would be able to be accommodated without a need to upgrade wastewater infrastructure.[60]

[115] Some submitters sought an upzoning of land in the general vicinity of Northlands Mall, from RS to RMD. Malcolm Leigh (435) sought this for land to the north and east of the Main Trunk railway. George Murray (47) sought it in relation to Meadow Street, and Gregory Scott (1109) sought it for the north side of Shearer Avenue. None of these submitters attended the hearing.

[116] Other submitters sought downzoning of land south of Northlands Mall at Papanui from the notified RMD zoning to RSDT or RS zoning. Christian Jordan told us that sites fronting Grants and Blighs Road would be better zoned RSDT as this would allow them to operate as a buffer between the RS and RMD zones in that location.[61] Mr Leigh sought downzoning of an area bounded by Blair Avenue and Blighs Road, but, as stated above, did not attend the hearing.

[117] In the absence of any supporting evidence at this time, we do not consider that we should grant the relief sought by submitters seeking upzoning in this area. As to submitter requests for downzoning, we consider the extent of RMD zoning of the Notified Version more appropriate on the weight of evidence. However, as we have found in relation to the Linwood KAC, we consider the evidence to support the making of a cl 13(4) direction for re-notification of more RMD zoning in the vicinity of the Papanui KAC, for the reasons and in the terms we later set out.

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58 Exhibit 4.
59 Transcript, page 222, line 44 to page 223, line 5 (Mr Blair).
60 Evidence-in-chief of Bridget O'Brien on behalf of the Council, 12 March 2015 at para 8.15.
61 Christian Jordan (1122 and 1098).

Hornby and Wigram

[118] The extent of RMD zoning originally identified by the Council, by reference to the criteria earlier noted, encompassed several areas north of Kyle Park, Denton Park, Hornby Mall and in Wigram and Sockburn. These areas were significantly scaled back in the Notified Version. To give a sense of the extent of the reduction, areas north of Kyle Park, Denton Park and Hornby Mall were cut to about one third of the originally-identified area. A large area near Branston Intermediate School between Amyes Road and Neill Street was originally identified but not included in the Notified Version. Cutbacks in Wigram and Sockburn were such as to approximately halve the originally-identified extent of potential RMD.

[119] The Notified Version includes some relatively small pockets of RMD zoning in these various areas. Areas of RSDT zoning are provided around South Hornby School and in the vicinity of Tower Street, near Branston Intermediate School.

[120] As for Papanui, we were informed that further intensification within the area consulted on would not require a wastewater infrastructure upgrade.[62] We were also informed that the area of RMD was reduced on the basis of discussions between Council officers and Council members.[63]

[121] Alan Lee (22) and Meng Yan (23) supported the zoning of the Notified Version. FromNZ Property Limited (6) and Caleb Lau (515) requested that properties at 278 Waterloo Road, 34 Amuri Street, 34 Taurima Street and 66 Brynley Street be 'upzoned' to RMD. None attended the hearing.

[122] In the absence of any supporting evidence at this time, we do not consider that we should grant the relief sought by submitters seeking a change to the Notified Version. However, as we have found in relation to the Linwood and Papanui KACs, we consider the evidence to support the making of a cl 13(4) direction for re-notification, for the reasons and in the terms we later set out.

62 Evidence in chief of Bridget O'Brien at 8.11.
63 Transcript, page 222, lines 1–8 (Mr Blair).

[123] Next we consider those areas where infrastructure constraints were a factor that influenced the Council to reduce the extent of RMD zoning – Riccarton (near Westfield Mall), Upper Riccarton (near Church Corner), Bishopdale and Barrington.

Riccarton (near Westfield Mall)

[124] The Notified Version proposes RMD zoning for the area south of the Westfield Mall. Largely, that aligns with the Living 3 zoning in this area under the Existing Plan (although the Notified Version extends the RMD zoning at the western end of the mall through to Dallas Street). Initially, a significantly larger area of RMD zoning was identified for consultation. It continued past Rattray Street and then north of Riccarton Road took in Kauri Street, Rata Street, Bradshaw Terrace and Jane Deans Close. Consultation identified significant resident concerns as to impacts of this extensive RMD upzoning on the character of the area, and in terms of spill over parking effects from the Mall.

[125] Mr Blair explained that the Council decided against upzoning the area north of Riccarton Road primarily because of the need for an upgrade to the Riccarton wastewater interceptor.[64] Ms O'Brien confirmed her view that the interceptor upgrade would be a necessary prerequisite to ensure sufficient capacity for intensification in the area north of Riccarton Road (the upgrade being planned for completion by 2020). The Crown submitted that the incremental take-up of intensification would likely mean sufficient short-term capacity pending an upgrade. In any case, it argued that this temporary constraint could be addressed through deferred zoning.[65] Ms O'Brien accepted that could well be the case.[66]

[126] We heard from a number of residents of the area north of Riccarton Road who were opposed to any upzoning to RMD in their neighbourhood. A number of these submitters lived in the vicinity of Riccarton Bush.[67] Other submitters in this area were represented by Ms Helen Broughton, a resident of that area and a member of the Riccarton Wigram Community Board.

64 Transcript, page 221, lines 14–27 (Mr Blair).
65 Closing submissions for the Crown at para 40.
66 Transcript, page 49, line 45 to page 50, line 37 (Ms O'Brien).
67 Blakely (110), Ogle (137), Chick (150), Rayne (151), Spackman (152), Kuiper (166), Webber (171), Spear (252), McKinney (256), Campbell (273), Dale (291), Scott (297), Riccarton Wigram Community Board (254), Wells (300), Simons (308), Telfer (362), Thomson (423), Heffernan-Dale (437), Riccarton Bush-Kilmarnock Residents' Association (462), Cook (773), Hooper (849), Broughton (820), Taylor (475), Souter (540), Broughton (592), Harris (614), Deans (643), Thomas (724), Harris (759).

Generally these residents supported the Notified Version and opposed a submission by the Crown seeking to have this area rezoned RMD.

[127] In principle, we agree with the Crown's position that the present lack of sufficient wastewater infrastructure capacity is not a valid basis for scaling back on intensification in this area. In particular, given the planned upgrade to the Riccarton interceptor (planned for completion by 2020) and the likely incremental take up of intensification, we consider further RMD zoning would align appropriately with CRPS Policy 6.3.5.

[128] However, on balance, we consider we should not make a cl 13(4) direction for notification of more RMD zoning in this locality. Part of what influences us to that view is the need for particular care in ensuring appropriate urban design outcomes, especially given the established amenity values in the vicinity of Riccarton Bush. We couple that with the concerns expressed by residents as to how significant additional RMD zoning would impact on the amenity values of their neighbourhood (although we observe that photographs we were shown indicated that significant in-fill intensification had already occurred in the Riccarton Bush area). An additional factor, although not itself a sufficient one, is the reasonably long delay before the Riccarton interceptor upgrade would be undertaken. Given all these factors, we do not consider it appropriate to revisit the election the Council has made against further intensification in this locality at this time. If, and when, this should occur ought to be left to the Council to determine and initiate. We record, however, that the decision we have reached was a finely balanced one.

Upper Riccarton (Church Corner)

[129] The Notified Version provides an area of RSDT zoning around Church Corner and in the area of land bounded by Peer Street, Waimairi Road, Riccarton Road and Yaldhurst Road. Mr Blair advised that this was part of a wider area that was initially identified and consulted on for RMD zoning in the Draft Plan.[68] He advised that there was already a Living 2 zone in the Existing Plan. The area was discounted as RMD and part only included as the notified RSDT zone to the north west of the Church Corner Mall, primarily by reason of the inadequacies of the Riccarton wastewater interceptor.[69]

[68] As identified in Exhibit 4.
[69] Transcript, page 221, line 41 to page 222, line 1 (Mr Blair).

[130] The Peerswick Neighbourhood Support Group (555), Fay Jackson (1155) and Helen Warwick (716) (supported by the IURRA (FS1427)) generally supported the zoning of the Notified Version. However, these submitters raised concerns about the impacts of higher density development on the amenity values in the area. Mr Watson (822) (a member of the Peerswick group) and Audrey Smith (854) opposed the RSDT zoning and sought a return to RS zoning.

[131] On this occasion, we accept the Council's evidence about the servicing constraints and are satisfied that the RSDT zone is the most appropriate.

Bishopdale

[132] The Notified Version proposes RMD zoning around Bishopdale Mall. Most of the area is south of Harewood Road and extends as far as Lockmore Street and Veronica Place, Isleworth Road (adjacent to Grant Armstrong Park and Isleworth School) and Maple Street. A smaller area of RMD zoning is north of Harewood Road, in the vicinity of Colesbury Street, Cardome Street and Bishopdale Court.

[133] Initially, significantly more land to the south and north of Harewood Road was also identified as potentially suitable for RMD zoning. We were informed that the decision to significantly reduce this area was made because of infrastructure constraints and community feedback during consultation.[70]

[134] Ms O'Brien considered that the extent of intensification proposed at Bishopdale was appropriate, but no more should be provided, given the wastewater infrastructure constraints.[71] Her evidence was not contested.

[135] A number of submitters sought RS zoning (i.e. the equivalent of the Living 1 zoning of this area under the Existing Plan).[72] Christian Jordan attended the hearing and explained why he considered that RMD zoning of the Notified Version should be downzoned to RSDT. His primary concern was that it was unlikely that there would be a significant uptake of the intensification opportunity RMD zoning provided, with the consequence that established

70 Exhibit 4.
71 Transcript, page 48, lines 38–44 (Ms O'Brien), and page 221, lines 8-14 (Mr Blair).
72 Michael Coe (113), Alison Hardie (1036), A Fletcher (1091) and Joline Oldman (851)

residential areas would become pepper-potted with intensification development to the detriment of residential amenity values. He gave evidence about the relatively high predominance of standalone housing stock built in the 1980s and 1990s on reasonably generous sections. He considered this context, together with relatively few houses with major earthquake damage, would likely make any intensification uptake very slow. For one locality, he noted proximity of the high voltage overhead power lines as a further likely limitation on redevelopment. As matters stood, however, he noted that the area had a cohesive streetscape and expressed concern that this would be impacted by individual site intensification redevelopment.

[136] On the evidence we have heard, we expect that Mr Jordan is correct in his observations as to the likely slow uptake of intensification development by reason of the quality of established housing in this area (and it is likely to also be so for other areas). Mr Jordan's observations generally align with the consensus that Mr Schellekens and Dr Fairgray had on that point. His observations as to slow uptake help reinforce our view as to the importance of both being generous in the provision of RMD zoning, where it is appropriate and also in providing for suitable other planning and non-planning mechanisms for intensification. In addition, as noted, we make policy provision for the monitoring and review of zoning against the relevant Higher Order Documents' directives and intentions.

[137] We acknowledge Mr Jordan's concern that sporadic intensification in this area could detract from the existing streetscape. However, we consider that these matters will be appropriately addressed through the provision we have made for urban design assessment for multi-unit and similar complexes above a certain scale. Even so, we recognise that a trade-off is inevitably involved with enabling and providing for intensification within established residential environments. Those environments can be expected to change, and this will mean some loss of the amenity values existing residents may value. As we have recognised in the wording of Policy 14.1.4.2, increasing densities impacts on residential character, but intensification should be given greater priority. That is in view of the directions set by the CRPS and other Higher Order Documents and the evidence that demonstrates its importance in terms of sustainable management under s 5 RMA.

[138] In addition, on the uncontested evidence of Ms O'Brien that wastewater infrastructure capacity would be sufficient, we accept that the extent of intensification of the Notified Version gives effect to the CRPS, including Policy 6.3.5.

[139] For those reasons, we confirm the zoning as proposed in the Notified Version. Therefore, we decline this aspect of the relief sought by the various submitters we have recorded as seeking a different zoning outcome.[73]

Barrington

[140] Around Barrington Mall, the Notified Version proposes a large area of RSDT zoning to the east and west of Barrington Street. On its eastern flank, it extends as far as Addington Park and Addington School, and along Sydney Street and Bolton Avenue towards Strickland Street. It extends as far as the southern boundary of Somerfield School. On its western flank, it extends north of Lincoln Road, and runs along Lyttelton Street towards and beyond Frankleigh Street.

[141] The Council initially identified much of this area as being suitable for upzoning to RMD. However, the Notified Version did not proceed with this because of concerns about infrastructure constraints and community feedback.

[142] Robert Churcher (850) requested higher density zoning with no minimum lot sizes around Barrington Mall and Centennial Park. Several submitters opposed the amount of RSDT zoning because of issues regarding flooding, traffic congestion and amenity impacts. Those included the Barrington Issues Group (964), Janet Begg (280) and the Spreydon Heathcote Community Board (899). On behalf of the Barrington Issues Group, Mr Curry spoke about stormwater overflows and parking issues. Fredrik Rohs (1051), also a member of the Barrington Issues Group, spoke more generally about the rules that allowed for higher density around Barrington Mall.

[143] Ms O'Brien explained why the significant wastewater infrastructure deficiencies meant any upzoning to RMD zoning would be inappropriate, but she did not go on to explain why the proposed RSDT zoning could be maintained in view of those deficiencies. However, in closing, Ms Scott informed us from the bar that this was because the existing capacity issues

[73] Respectively, submitters Michael Coe (113), Alison Hardie (1036), Alida Fletcher (1091) and Jolene Oldman (851) and Christian Jordan (1122).

in the proposed RSDT zone at Barrington are scheduled to be addressed through the Heathcote River Wet Weather Overflow Reduction Project. She told us that this is a $27M project due for completion in 2023. Ms Scott also pointed out that Barrington was already extensively zoned as Living 2 in the Existing Plan (a zoning that, in terms of density, provides for very similar development outcomes to the RSDT zone).

[144] We acknowledge the concerns expressed by residents as to the present inadequacies of infrastructure. However, we do not consider that these should result in a downzoning of the amount of RSDT zoning. Firstly, we have taken account of the fact that the extent of RSDT zoning proposed largely reflects existing zoning patterns. We have also taken into account Ms Scott's assurance, on behalf of the Council, that the Council has a programme for addressing present infrastructure inadequacies.

[145] There is, of course, a risk that infrastructure inadequacies will diminish the intensification return that could otherwise result from RSDT zoning. However, we make allowance for that in policy provision we make for the monitoring and review of zoning against the relevant Higher Order Document directives and intentions.

[146] For those reasons, we find the zoning as proposed in the Notified Version the most appropriate. Therefore, we decline this aspect of the relief sought by the various submitters we have recorded as seeking a different zoning outcome.[74]

Shirley

[147] The Shirley KAC is located in the area of The Palms Mall. The Notified Version significantly reduced the amount of RMD that the Council had initially identified for consultation. That initially identified area extended further to the west along Shirley Road and to the north to the northern boundary of Hammersley School. Housing NZ has an interest in redeveloping land in this general vicinity (including land extending significantly beyond the initially identified RMD boundaries). We were informed that wastewater infrastructure constraints significantly limited the potential for further intensification. Mr Blair explained the limitations arising from SCIRT's replacement of the sewer system in the area with the vacuum

[74] Respectively, submitter numbers Churcher (850), Barrington Issues Group (964), Begg (280), Spreydon Heathcote Community Board (899), Rohs (1051).

sewer system.[75] Ms O'Brien explained that this resulted in capacity constraints to the north and west of The Palms Mall. She said those parts of Shirley served by the vacuum sewer system have been excluded from wastewater capacity modelling because there is insufficient information available as to the system's future capacity.[76]

[148] Shane Blair (1025) and P and J McAfee (746) opposed the extent of the RMD zoning in Shirley. Neither submitter attended the hearing. The McAfee submission raised concern about the lack of capacity of wastewater systems in the area.

[149] We are satisfied that the Council's evidence supports the limited provision of RMD zoning of the Notified Version. In particular, we are satisfied that this is the most appropriate response, at this time, to the intensification and land use and infrastructure integration directions given by the CRPS.

Clause 13(4) direction — Linwood (Eastgate), Hornby and Papanui (Northlands)

[150] Clause 13(4) of the OIC provides as follows:

> If the hearings panel considers that changes are needed to deal with matters that are, in a material way, outside the scope of the proposal as notified and to deal with submissions on it, the panel must direct the council to—
>
> (a) prepare and notify a new proposal; and
>
> (b) invite submissions on the new proposal in accordance with Schedule 1.

[151] Our review of the evidence leads us to conclude that, in the case of Linwood (Eastgate), Hornby and Papanui (Northlands), the Council's approach to significantly reducing the amount of potential RMD zoning originally identified was inappropriate.

[152] The Council was unduly focussed on what is sufficient intensification to meet forecast need, rather than on how much intensification should be appropriately allowed for. In that regard, it failed to properly account for the risk associated with the fact that intensification yield from RMD rezoning is low (a matter on which there was essential consensus between Dr Fairgray and Mr Schellekens). It also failed to take proper account of the inherent uncertainty associated within demographic changes and changing market preferences towards smaller

[75] Transcript, page 223, lines 29–45 (Mr Blair). SCIRT is the 'Stronger Christchurch Infrastructure Rebuild Team'.
[76] O'Brien Evidence in Chief at para 6.2.

dwellings. Its unduly narrow focus also appears to have overlooked the relationship between intensification and the commercial recovery and ongoing success of relevant centres, particularly in regard to the Linwood KAC. The relationship is symbiotic. Intensification assists to drive commercial recovery, and a commercially healthy centre enlivens the residential community around it.

[153] Further, the Council would appear to have under-valued the advantage that existing or programmed infrastructure capacity can bring for enabling intensification. We acknowledge the evidence that consultation revealed community concerns about loss of amenity. We have noted various submitters who have raised that before us, at least in relation to Papanui. However, the evidence we have received on this is thin and by no means sufficient for us to be satisfied that the extent of RMD zoning in the Notified Version at Linwood (Eastgate), Hornby and Papanui (Northlands) is appropriate.

[154] Those findings lead us to the view that the extent of RMD zoning at Linwood (Eastgate), Hornby and Papanui (Northlands) may not give adequate effect to the CRPS or properly respond to other Higher Order Documents. Quite apart from that, the evidence satisfies us that intensification is important for ensuring that the CRDP gives effect to the RMA's sustainable management purpose. We make that finding because the evidence demonstrates to us that there is a growing demand for smaller, more affordable, housing in Christchurch, as we set out later in this decision. In that sense, enabling more intensification goes to enabling people and communities to provide for their wellbeing as s 5 specifies.

[155] Our findings on these matters are confined to the extent of the culling of RMD zoning that occurred in relation to Linwood (Eastgate), Hornby and Papanui (Northlands). As we have explained, we are satisfied that the extent of RMD zoning in the Notified Version is appropriate for other areas of the city.

[156] That leads us to conclude that these matters should be properly tested in a process allowing for submissions and further submissions, as cl 13(4) provides.

[157] On the basis of the findings we are satisfied that the prerequisites for a direction under cl 13(4) are made out. We are satisfied that a cl 13(4) direction is more appropriate than leaving these matters to any subsequent plan change process the Council may pursue (or which may be

otherwise instigated by future plan change). That is because it better assists us, through our decisions on proposals, to ensure that the CRDP gives effect to the CRPS and properly responds to the Higher Order Documents.

[158] In due process terms, we consider that areas for potential RMD zoning should be confined to those that were consulted on by the Council. On the evidence we have heard, we understand that those areas would also satisfy the requirements of Policy 14.1.1.2 as provided for in this decision. That is, they would be within an 800 metre walkable distance of each of the facilities identified in Policy 14.1.1.2(a), be able to be efficiently serviced by Council infrastructure, and not be high hazard areas or areas where the adverse effects of land remediation outweigh the benefits of upzoning them. However, those are each matters that we expect the Council would address in its associated s 32 report (and related evidence) for the purposes of the notified new proposals.

[159] Given those findings, we also find that a cl 13(4) direction is necessary to ensure that the CRDP properly gives effect to the CRPS and otherwise appropriately responds to the Higher Order Documents. As a result, we find that the Council did not properly test whether the addition of RMD areas around the Linwood (Eastgate), Hornby and Papanui (Northlands) KACs would be the most appropriate.

[160] However, in reaching the view that a cl 13(4) direction should be made, we accept that the CRDP will only be a tool to encourage intensification and assist to meet targets. While we should ensure that it is the most appropriate tool for these purposes, we acknowledge it is not capable of being the complete answer. For intensification targets to be realised, significant out of plan intensification initiatives are also likely to be needed. Those are matters for which local and central government have wider responsibilities.

Incentivising amalgamation for high quality comprehensive development

[161] Witnesses, including Dr Fairgray and Mr Schellekens, acknowledged that site agglomeration has the strong potential to promote intensification and to achieve much better urban design outcomes. For instance, in challenging Mr Schellekens' modelling, Dr Fairgray

observed that it did not properly account for amalgamation "which could increase the amount of feasible redevelopments and he acknowledges this".[77]

[162] Plan Change 53 ('PC53') became operative as part of the Existing Plan in 2012.[78] It was primarily focussed on facilitating higher standards of urban design in the Living 3 and 4 zones of the Existing Plan (the rough equivalents of the RMD and Central City Residential zones). However, it offers the following explanatory statement (under its Policy 11.1.4 as to densities) on the value of amalgamation as a tool of intensification:

> The amalgamation of smaller sites or the comprehensive redevelopment of sites that are significantly larger than those found in the surrounding area offers the potential for development to occur at a higher density than that otherwise achievable through the underlying zoning. This is especially the case in Living 3 and 4 Zones where more intensive use of land is already anticipated. Large sites can enable the opportunity to mitigate any potential effects associated with that higher density through the ability, for example, to concentrate higher density towards the centre or away from boundaries with adjoining residential areas. The extent of the density increase and the manner in which the development is designed to mitigate potential adverse effects will vary according to site specific circumstances and the nature of the surrounding area (including wider areas such as hillside development), and is therefore appropriately assessed through the resource consent process.

[163] Many of the provisions of PC53 were carried forward into the Notified Version (as the Council's s 32 Report discusses). However, the Notified Version does not include provisions reflecting the intentions of the above-quoted statement.

[164] While we acknowledge the challenges, we were surprised that more had not been done in the Notified Version to encourage agglomeration of land to incentivise intensification. There was clear evidence before us, which we accept, that the agglomeration of sites significantly enhances the ability to intensify, and also results in better urban design outcomes.[79] Given that evidence, the closing submissions for the Council and the Crown were deficient in not assisting us on how these matters could be addressed. In view of that, by Minute following the adjournment of the hearing, we required their assistance on how we could better incentivise agglomeration and thereby intensification.

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77 Transcript, page 158, lines 35–37 (Dr Fairgray).

78 It was notified in February 2010, and subject to an Environment Court appeal which was settled by consent order in February 2012 (ENV-2011-CHC-0086).

79 Transcript, page 283, line 40 to page 285, line 2 (Mr Blair); page 352, lines 35–42 (Mr Mitchell); pages 1433–1435 (Mr Evans (1181)).

[165] We provide a website link to the responses we received from the Council and the Crown.[80] These responses, while helping inform the limited provisions we have included (as described below), also highlight a significant problem. That is that the CRDP, on its own, is capable of making only a relatively small contribution towards achieving the greater intensification sought by the Higher Order Documents. A much larger part of the solution lies beyond the parameters of the CRDP. Provision of the right incentives (e.g. rates relief, joint venture or other arrangements for land purchase and so on) is also important to encourage and give confidence for such significant investment.

[166] Policy 14.1.4.2 of the Decision Version is on "High quality, medium density residential development". It commences:

> Encourage innovative approaches to comprehensively designed, high quality, medium density residential development, which is attractive to residents, responsive to housing demands, and provides a positive contribution to its environment (while acknowledging the need for increased densities and changes in residential character), through:

[167] We have added to the list of means that it then describes at paragraph (ii), which reads:

> encouraging and incentivising amalgamation and redevelopment across large-scale residential intensification areas

[168] The evidence demonstrated to us that successful amalgamation relies on suitably located, and large-scale sites. A significant commercial challenge is in how to make a collective redevelopment proposition work in the better financial interests of all concerned, such as to make the risk of such redevelopment worth taking.

[169] We have determined that we are constrained from going further by the jurisdictional scope set by what the Notified Version has proposed and what submissions have sought. We considered whether we should make directions under cl 13(4), OIC, but elected not to do so. Primarily, that is because the initiation of anything further is properly a Council responsibility and function. In terms of the OIC, a Council-initiated notification of a new proposal for this matter under cl 6 of the OIC is the proper course. Further, as we have noted, to truly incentivise effective amalgamation will rely on initiatives beyond the scope of what a plan can enable. Again, it is ultimately Council's responsibility and function to consider those wider initiatives to meet the intensification targets in the Higher Order Documents.

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[80] Memorandum of Counsel for the Christchurch City Council on incentivising agglomeration, 3 June 2015; Memorandum of Counsel for the Crown on incentivising agglomeration, 2 June 2015.

[170] While we encourage such a wide-ranging, multi-faceted approach, it is beyond the scope of our brief to advise the Council on steps it could consider taking beyond the scope of the CRDP.

[171] The Panel, in an attempt to gain further assistance, commissioned an independent report from a planning expert, Mr Mark Chrisp. Mr Chrisp's report is available by the website link in the footnote.[81] In his report, Mr Chrisp gave consideration to what has occurred in other areas of New Zealand and Australia. However, the overall effect of his report is to confirm the limitations of the planning process in achieving intensification on its own. It further confirmed the contents of the supplementary legal submissions received from the Council and the Crown. For the reasons we have explained, while we were grateful for Mr Chrisp's work, we put his report to one side and did not rely on it in any way whatsoever in reaching our conclusions.

Other changes have been made also mindful of assisting intensification

[172] Later in this evaluation, we explain other changes we have made to various provisions of the Revised Version, particularly in regard to the built form standards for various zones. The purposes in doing so, in terms of reducing unnecessary regulation, are wider but are also intended to further assist in enabling intensification.

Constraints of the airport noise contours for sensitive housing and other development

[173] As recorded on the transcript, Dr Mitchell recused himself from deliberations and decision-making on matters concerning Ryman Healthcare Limited, including the matters we now address.[82]

[174] The issue under this heading concerns those parts of residential zones within the 50 dBA L_{dn} airport noise contour ('50 contour'). As noted, the CRPS gives directions concerning the inclusion of the 50 contour in the CRDP. The 50 contour is the outermost of a system of airport

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81 Factors that Facilitate High Quality Medium Density Residential Development, a report commissioned by the Independent Hearings Panel for the Christchurch Replacement District Plan, prepared by Environmental Management Services Limited, 28 August 2015: http://www.chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Report-Medium-Density-Residential-Development-28-8-15.pdf.

82 Transcript, page 625, lines 9–14. In addition, in the interests of transparency, the Panel Chair, Hon Sir John Hansen, records that he is satisfied that, in this instance, the matters that led to his decision to recuse from determining matters concerning the CIAL Airport designation, as set out in his Minute dated 12 March 2015, and memorandum of 2 April 2015, are sufficiently unrelated to the matters arising here and, therefore, do not call for his recusal on this matter.

noise management contours, shown as overlays on the CRDP planning maps, sitting outside a 55 dBA L_{dn} noise contour and much more confined inner 65 dB L_{dn} air noise boundary.[83] As the 50 contour relates to aircraft noise, its shape and geographic extent broadly corresponds to aircraft flight paths to and from the main and cross-wind Airport runways.[84]

[175] The primary issue concerns what additional restrictions, if any, ought to be imposed on intensification within those contours by what are termed "noise sensitive activities". Those are defined by the CRPS to mean:

- Residential activities other than those in conjunction with rural activities that comply with the rules in the relevant district plan as at 23 August 2008;
- Education activities including pre-school places or premises, but not including flight training, trade training or other industry related training facilities located within the Special Purpose (Airport) Zone in the Christchurch District Plan;
- Travellers' accommodation except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants;
- Hospitals, healthcare facilities and any elderly persons' housing or complex.

[176] On this issue, submitters presented a spectrum of positions as to the nature and extent of restrictions that ought to be imposed:

(a) Christchurch International Airport Limited ('CIAL') argued for the most restrictive position.[85] In effect, it sought that further intensification (i.e. beyond that allowed for as at that date under the Existing Plan as at December 2013, being the date the LURP effected change to the Existing Plan) be avoided or discouraged. It emphasised that it did not seek to restrict people from exercising the unrealised potential for intensification available to them under the Existing Plan (as modified by the LURP in December 2013). Rather, it sought to maintain that status quo.

(b) That position was opposed by the Council and the Crown. In a relative sense, the Crown sought proportionately greater intensification enablement on residentially-

83 CIAL also sought relief in relation to the 55 dBA Ldn noise contour. As noted, we have deferred our consideration of this relief so as to address it as part of Chapter 6, General Rules and Procedures.

84 To describe that in words, the shape of the 50 contour has some resemblance to an overflying pterodactyl or bird. Its midsection overflies the airport. Its long beak extends northwest across the Waimakariri River and its thin tail extends south-east across parts of Avonhead, Ilam and Riccarton, finishing short of Hagley Park. That corresponds to the airport's cross-wind runway. The bird's broad, outstretched gliding wings extend at their tips to Rolleston and Kaiapoi, and they are centred along the line of the airport's main runway.

85 Submissions 863 and 1359. We address other CIAL issues, including as to bird strike, later in this decision.

zoned land within the 50 contour than did the Council. However, that was in effect for reasons unrelated to the 50 contour. Both disputed CIAL's interpretation of the CRPS.

(c) Ryman Healthcare Limited ('Ryman') and the Retirement Villages Association of New Zealand Inc ('RVA') disputed CIAL's position as to reverse sensitivity, seeking not to be subject to any additional restriction on their capacity to develop retirement villages within the 50 contour.[86]

[177] For the following reasons, in relation to noise sensitive activities within the 50 contour, in the RS and RSDT zones, we have modified the approach of the Notified Version in the following material respects:

(a) For residential activities that are otherwise classed as restricted discretionary activities, we have added assessment matters as to:

(i) The extent to which effects as a result of the sensitivity of activities to current and future noise generation from aircraft are proposed to be managed, including avoidance of any effect that may limit the operation, maintenance or upgrade of Christchurch International Airport; and

(ii) The extent to which appropriate indoor noise insulation is provided with regard to Appendix 14.14.4;

(b) Education activities, pre-school facilities and healthcare facilities that are classified as permitted or controlled activities outside of the 50 contour are instead classified as restricted discretionary activities (with the above assessment criteria applying to them);

(c) These restricted discretionary activities will be limited notified, with CIAL being the only party to be notified (should it not give written approval).

86 Ryman (745); RVA (573).

[178] Our evaluation of the range of alternative approaches starts with CRPS Policy 6.3.5 — 'Integration of land use and infrastructure', which relevantly reads as follows (emphasis added):

> Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by:
>
> …
>
> (3) Providing that the efficient and effective functioning of infrastructure, including transport corridors, is maintained, and the ability to maintain and upgrade that infrastructure is retained;
>
> (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 …; and
>
> (5) Managing the effects of land use activities on infrastructure, including avoiding activities that have the potential to limit the efficient and effective, provision, operation, maintenance or upgrade of strategic infrastructure and freight hubs.

[179] The 'Principal reasons and explanation' text following Policy 6.3.5 includes a statement that is relevantly as follows:

> Strategic infrastructure represents an important regional and sometimes national asset that should not be compromised by urban growth and intensification… The operation of strategic infrastructure can affect the liveability of residential developments in their vicinity, despite the application of practicable mitigation measures to address effects… It is better to instead select development options where such reverse sensitivity constraints do not exist.
>
> The only exception to the restriction against residential development within the [50 contour] is provided for at Kaiapoi.
>
> … This exception is unique to Kaiapoi…

[180] Relying on the High Court and Court of Appeal decisions in *Powell v Dunedin City Council*,[87] CIAL submitted that it would be contrary to statutory interpretation principles for

[87] *Powell v Dunedin City Council* [2004] NZRMA 49 (HC) at [17]–[35]; *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA) at [12] and [29]–[49]. CIAL also referred to the Environment Court decision *in Bates v Selwyn District Council* [2014] NZEnvC 32 at [22] and [56], particularly for the point that 'explanation' or 'reasons for rules' sections provide a direct explanation of the purpose of a rule and should be regarded as providing context and informing interpretation of the rule and *J Rattray & Son Ltd v Christchurch City Council* (1984) 10 NZPTA 59 (CA), page 5, as to underlying principles.

Policy 6.3.5(4) to be read "in a vacuum" without regard to its immediate context of other objectives and policies.

[181] In terms of that context, it referred to the definition of "noise sensitive activities", related paragraphs of Policy 6.3.5 (including their emphasis on management of the effects of land use and infrastructure) and Objectives 6.2.1 and 6.2.2. It noted the emphasis in those objectives on directing urban development according to its specified pattern and priorities. Those include "[achieving] development that does not adversely affect the efficient operation, use and development, appropriate upgrade, and future planning of strategic infrastructure and freight hubs" and "[optimising] use of existing infrastructure". It also referred to the above-quoted explanatory statement, submitting that it "makes it clear that the correct interpretation of policy 6.3.5 as a whole is that residential intensification is important to the recovery of Christchurch but … should occur in locations where reverse sensitivity constraints do not exist and *new* residential development resulting in intensification levels consistent with those introduced at the very same time".[88]

[182] It submitted that the phrase "avoiding noise sensitive activities… except within an existing residentially zoned urban area" means that:

> … new noise sensitive activities must be avoided within the noise contour but actual or current sensitive activities located within residentially zoned urban areas or allowed to locate there as of right as at 6 December 2013 (those provisions being introduced at the same time) should be authorised.[89]

[183] CIAL's planning witness, Mr Bonis, offered a similar interpretation. He commented that "[w]hat constitutes the 'existing residentially zoned area' as an exemption to the avoidance of noise sensitive activities within the 50dBA noise contour for Christchurch International Airport is critical."[90] On that matter, he observed that "the only proper interpretation is that the 'existing residentially zoned area' is as of 6 December 2013".[91] However, he appeared to treat the concepts of "existing residentially zoned urban area" and existing noise sensitive activities as one and the same. In particular, having made the observations noted above, he concluded that Policy 6.3.5, within the wider CRPS, intends that further intensification within residential areas in the 50 contour be avoided or discouraged.[92]

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88 Opening submissions for CIAL at para 43.
89 Opening submissions for CIAL at para 44.1.
90 Evidence in chief of Matthew Bonis on behalf of CIAL at para 31.
91 Evidence in chief of Matthew Bonis on behalf of CIAL at paras 32.
92 Evidence in chief of Matthew Bonis at paras 32–33.

[184] CIAL also argued that the context and timing of the making of these changes to the CRPS through the LURP was relevant to how Policy 6.3.5(4) should be interpreted. It emphasised as significant that the LURP changed the CRPS to include Chapter 6 at the same time as it changed the Existing Plan, in December 2013. It referred to the LURP as having dual functions of both replacing housing stock lost through the earthquakes and recognising that well-functioning infrastructure is essential to recovery and to require the effective functioning of that infrastructure to be supported.[93]

[185] The Council and the Crown submitted that Policy 6.3.5(4) should be given its plain ordinary meaning. They interpreted that as not requiring that noise sensitive activities be avoided within the 50 contour.

[186] We agree with CIAL that we should be guided and directed by the Court of Appeal (and High Court) decisions in *Powell* in approaching the interpretation of Policy 6.3.5(4).

[187] We also agree that, in the relevant phrase in Policy 6.3.5(4), "existing" means "existing as at 6 December 2013". As is directed by s 24 of the CER Act, the LURP specifies that its amendments to the CRPS and to the Existing Plan are to be made "as soon as practicable". Nothing in the CRPS indicates that Policy 6.3.5 has delayed application. In that context, "existing residentially zoned urban area" means what the Existing Plan has so zoned at the time the change to the CRPS that incorporated Policy 6.3.5 was made operative, i.e. as at 6 December 2013.[94] That is in addition to its enduring directive to only provide for new development that does not have its specified effects on existing strategic infrastructure.

[188] However, unlike Mr Bonis, we read "existing residentially zoned urban area" to mean what it says. It is not shorthand for "existing noise sensitive activities within an existing residentially zoned urban area". That is plain from the fact that it sits alongside the words "unless the activity is", which is not qualified by the word "existing". The true intention of the full phrase "unless the activity is within an existing residentially zoned urban area" is to define an exception from a policy of "avoiding noise sensitive activities within the [50 contour]". The beneficiary of the exception is "noise sensitive activities", including new ones. To qualify,

93 Opening submissions for CIAL at para 37.
94 As recorded on the inside cover page of the CRPS.

those activities must be within "an existing residentially zoned urban area", namely an area zoned for those purposes as at 6 December 2013.

[189] We acknowledge that the 'Principal reasons and explanation' text for Policy 6.3.5 includes a statement that "The only exception to the restriction against residential development within the [50 contour] is provided for at Kaiapoi. … This exception is unique to Kaiapoi…". However, following *Powell*, we do not read this statement in a vacuum. We understand the 'Principal reasons and explanation' section serves as an aid to the interpretation and application of the associated Policy 6.3.5. The above-quoted statement is just part of that. We consider it would be to misread and distort the proper meaning of the statement to treat it as changing the plain ordinary meaning of Policy 6.3.5(4). In particular, Policy 6.3.5(4) clearly allows for exceptions other than at Kaiapoi — for example the exception specified for residential greenfield priority areas. One area north of Belfast, which was residentially zoned before Policy 6.3.5 of the CRPS came into effect, is shown as bisected by the 50 contour, and another is shown as having a boundary with it.

[190] To the extent that CIAL has sought to draw from the context in which Policy 6.3.5(4) was included in the CRPS through the LURP, we do not find this to accord with the contextual interpretation approach in *Powell* or in other authorities cited by CIAL. Rather, *Powell* espoused an approach of looking for the meaning of a policy within the context of the statutory instrument in question — in this case, the CRPS — if that meaning was not immediately apparent on a plain reading of the policy itself. We can envisage that, in the case of a subordinate statutory instrument, sometimes there may be a case for ascertaining the meaning of a policy within it in the context of the purpose of the empowering legislation. For instance, that may be called for when the meaning remained opaque even when considered in the wider context of the instrument as a whole. However, we do not consider it valid, in terms of statutory interpretation principles, for CIAL to seek to interpret Policy 6.3.5(4) in light of its understanding of the circumstances that motivated the LURP intervention. In the absence of evidence of those circumstances, it is also speculative.

[191] Therefore, we read this part of Policy 6.3.5(4) as providing that noise sensitive activities (as defined) are to be avoided within the 50 contour, unless one of three exceptions is satisfied, as to the location of the (noise sensitive) activity, i.e., that it is located within:

(a) An existing residentially zoned urban area, meaning an area so zoned as at 6 December 2013; or

(b) A residential greenfield area identified for Kaiapoi, or

(c) A residential greenfield priority area identified in Map A (page 64 of the CRPS).

[192] We find the first of those exceptions to apply in that the noise sensitive activities in issue would be on land zoned for residential purposes under the Existing Plan (as at 6 December 2013).

[193] To that extent, we disagree with CIAL's interpretation. However, this deals with only one aspect of Policy 6.3.5(4). It sits within a clause that also gives direction to only provide for new development that "does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure". Related to that direction is the direction in cl (5) of Policy 6.3.5, as to managing the effects of land use activities on infrastructure "including avoiding activities that have the potential to limit the efficient and effective provision, operation, maintenance or upgrade of strategic infrastructure and freight hubs". The Council did not address cl (5) in its closing submissions. However, the Crown argued that we should regard cl (4) of Policy 6.3.5 as the more specific policy and, hence, overriding the more general cl (5) to the extent the two are inconsistent.[95]

[194] We do not agree with the Crown that there is any material inconsistency between the two clauses of Policy 6.3.5. While the clauses are slightly differently expressed, the relevant aspects of both concern effects on the efficient operation, use, development and upgrade of strategic infrastructure. It is not disputed that the Airport is a form of strategic infrastructure. Clauses (4) and (5) of Policy 6.3.5 are compatible, not in competition. There is no need to read back Policy 6.3.5(5)'s direction on "managing the effects of land use activities on infrastructure" (including the Airport) in order to give proper effect to cl (4)'s direction as to "only providing for development" that does not have the clause's specified effects on strategic infrastructure.

[95] At paragraph 17, referring to the Planning Tribunal decision in *New Zealand Rail Limited v Marlborough District Council* (1993) 2 NZRMA 449.

[195] In essence, the position we reach is that:

(a) There is no absolute direction to avoid any further noise sensitive activities in existing residentially zoned land within the 50 contour, but

(b) There is a need to evaluate whether we should avoid or restrict such activities so as to give proper effect to Policy 6.3.5 and related CRPS objectives and policies.

[196] The expert and other evidence is central to our evaluation of these matters. Ultimately, that is to inform our judgment on the most appropriate planning approach, under ss 32 and 32AA, so as to give proper effect to the CRPS and promote the sustainable management purpose of the RMA.

[197] As we have earlier noted, the evaluation under ss 32 and 32AA centres on the consideration of relative benefits, costs and risks.

[198] On the matter of residential intensification and noise, CIAL called three other witnesses — Mr Rhys Boswell, General Manager, Strategy and Sustainability; Mr Philip Osborne, economist; and Mr Christopher Day, an acoustic engineer with significant experience in airport noise matters.[96] Essentially, their evidence was uncontested.

[199] The evidence of Mr Boswell and Mr Osborne confirmed the basis of our findings, in the Strategic Directions decision, as to the regional and national strategic importance of the Airport. In that decision, we recorded that the uncontested evidence from those witnesses satisfied us that "reverse sensitivity protection for the Airport is warranted".[97] That underpinned the inclusion in the CRDP of Strategic Directions Objective 3.3.12, which relevantly says:

> (b) Strategic infrastructure, including its role and function, is protected by avoiding adverse effects from incompatible activities, including reverse sensitivity effects, by, amongst other things:
>
> …
>
> (iii) avoiding noise sensitive activities within the [50 contour]… except:

[96] CIAL also called Mr Ken McAnergney and Dr Peter Harper on the topic of bird strike, which is addressed later in this decision.

[97] Strategic Directions at [246].

- within an existing residentially zoned urban area.

[200] Mr Day gave evidence as to the effects on people from exposure to noise from airport operations. His evidence was informed by community noise response studies undertaken both internationally (Bradley (1996);[98] Miedema (1998);[99] Miedema and Oudshoorn (2001)[100] and in the Christchurch-specific context ('Taylor Baines (2002)'[101]). He explained that New Zealand Standard NZS 6805:1992 'Airport Noise Management and Land Use Planning' ('NZS 6805') was promulgated with a view to getting greater consistency in noise planning around New Zealand airports, and has been in use by almost all territorial authorities since 1992. He explained that it is one of the few New Zealand Standards that has not been put up for revision or amendment. It uses a "noise boundary" concept to both establish compatible land use planning around an airport and set noise limits for the management of aircraft noise at airports. This involves fixing an "Outer Control Boundary" ('OCB'), generally based on the projected 55 dB L_{dn} contour and a smaller, much closer, Airnoise Boundary ('ANB') based on the projected 65 dB L_{dn} contour.[102]

[201] He pointed out that NZS 6805 allows for discretion to be exercised by local authorities in positioning boundaries further from, or closer to, the airport if this is considered more reasonable in the circumstances of the case. In that regard, he explained how, many years ago, the decision was made to use the 50 contour for the location of the OCB for the Christchurch district plan.[103] He also explained the various studies that were undertaken to inform the development, and review, of the district plan regime. In addition to Taylor Baines (2002), that included a further joint experts' study in 2004 (involving his firm, Marshall Day Acoustics Limited) and an update study, involving an experts' panel, in 2007.

[202] On the matter of community response to aircraft noise, Mr Day explained that Taylor Baines (2002) and associated work involving his firm showed that the proportion of "highly annoyed" people in the 50–55 dB L_{dn} area can be expected to be higher in Christchurch (10–15 per cent) than a synthesis of the international studies shows as typical (3–12 per cent).

98 "Determining Acceptable Limits for Aviation Noise", Bradley, Internoise 96.
99 "Revised DNL — annoyance curves for transportation noise", Miedema, in NL Carter & RFS Job (Eds) Noise as Public Health Problem (Noise Effects '98) Vol 1, pages 491–496.
100 "Annoyance from Transportation Noise: Relationships with Exposure Metrics DNL and DENL and Their Confidence Intervals", Miedema and Oudshoorn, Environmental Health Perspectives, Vol 109, No. 4, pages 409–416.
101 Reported by Mr Day as being a study of community response to different types of noise in Christchurch, undertaken by Taylor Baines and Associates, in 2002, on behalf of Christchurch City Council.
102 Evidence in chief of Christopher William Day on behalf of CIAL at para 4.1–4.2.
103 Evidence in chief of Christopher William Day at para 4.1–4.2.

[203] The underpinning basis for that opinion is relatively thin. However, it is the only expert evidence we received on this matter. Also, the choice of the 50 contour is already made by the CRPS. Given those matters, we accept Mr Day's evidence that the proportion of people likely to be highly annoyed by airport noise inside the 50 contour is in the order of 10–15 per cent, and that 12 per cent is a sensible basis for our evaluation.[104]

[204] Mr Day explained why he considers sound insulation, on its own, insufficient mitigation of the risk that sensitive activities posed for the Airport's operation and development. In essence, he explained that the mitigation measures themselves would be likely to be a source of complaint (as informed by studies and his experience in Auckland) and would not deal with the outdoor noise environment.[105]

[205] Subject to our following comments, we accept Mr Day's opinion on those matters.

[206] Mr Day concluded that it is not sensible to locate new residential development (or intensification) within the 50 contour "if it can be easily avoided".[106] He concluded that the "land use planning provisions in the [CRDP] should be maintained to ensure intensification inside the noise contours is not allowed to occur".[107]

[207] We do not consider we can rely on that ultimate conclusion, as it lacks a sufficiently reliable foundation and is, in any case, beyond the scope of Mr Day's true expertise.

[208] As to foundation, it is important to bear in mind the policy and environmental purpose of any restriction to be imposed on intensification. Central to that is CRPS Policy 6.3.5. For our purposes, it is relevant to any noise sensitive intensification that would have the potential to limit the efficient and effective provision, operation, maintenance or upgrade of the Airport. Mr Day's evidence (and related studies) only assists on a limited aspect of that.

[209] A higher relative proportion of people in the Christchurch community likely to be highly annoyed by airport noise is not itself conclusive as to the extent of any associated reverse sensitivity risk for the Airport. In a broad sense, we accept as logical that there will be some

104 Evidence in chief of Christopher William Day at para 3.7.
105 Evidence in chief of Christopher William Day at para 8.1–8.8.
106 Evidence in chief of Christopher William Day at para 6.8.
107 Evidence in chief of Christopher William Day at para 9.2.

correlation between the proportion in a community "highly annoyed" and the proportion who could take associated action, including opposing the Airport's further development. We also accept, in broad terms and subject to the limitations as to reliability of the evidence that we have noted, that larger scale developments could increase the proportion of highly annoyed people and, therefore the number who could become Airport opponents. However, that is a very limited basis for determining what, if any, related restrictions should be imposed on residential and non-residential activities in relevant zones.

[210] Mr Day's evidence also leaves for assumption what, if any, material consequence a modestly higher proportion of active complainants (for instance, opponents of the Airport in future RMA or other processes) would have for the Airport's efficient and effective provision, operation, maintenance or upgrade. On this, the evidence of Mr Day (and the other evidence for the Airport) leaves us in the realm of speculation.

[211] In any case, it is not a foundation that necessarily supports his ultimate conclusion as to what is "sensible". For us to determine the "sensible" planning outcome (as Mr Day termed it), we must test the benefits, costs and risks of the different options available to us, in order to determine what is the most appropriate approach to the management of noise sensitive activities. Ultimately, that involves some trade-offs on a range of matters beyond Mr Day's true expertise.

[212] In that regard, we observe that Mr Day's ultimate conclusion on the most appropriate planning approach differed subtly, but materially, from the relief advanced by CIAL (and CIAL's planning witness, Mr Bonis). As CIAL reiterated in closing submissions, it does not "seek to restrict people from exercising the unrealised potential for intensification available to them under the [Existing Plan] that has not been taken up" and it seeks "maintenance of the planning status quo" including the opportunities for intensification introduced by the LURP, on 6 December 2013.[108] In those respects, CIAL advocated for a more benign approach than Mr Day. However, once we put aside what we have determined is CIAL's invalid interpretation of CRPS Policy 6.3.5(4), we find no substantive evidential support for CIAL's recommended approach. While we acknowledge it as supported by Mr Bonis, his opinion was strongly premised on his invalid interpretation of Policy 6.3.5(4). When that is left aside, what

[108] Closing submissions on behalf of CIAL at para 13.

is left is essentially his value judgment as CIAL's planning witness, as to how we should balance competing considerations as between protection of the Airport and the enablement of other community priorities.

[213] For the reasons we next explain, when we consider these competing considerations on the evidence and in light of Part 2, RMA and our findings on the CRPS and other Higher Order Documents, we reach a materially different conclusion on what is the most appropriate planning approach.

[214] To determine the most appropriate regime for both residential and non-residential activities within the 50 contour, we must consider relative costs, benefits and risks for the Airport, other resource users, and the community as a whole.

[215] One helpful design aspect of the Notified Version concerns where its primary intensification tools, the RMD and RSDT zones, are located in relation to the 50 contour. Only a very small area is proposed to be zoned RMD within the 50 contour. This area is part of a comprehensive development, on the north side of Buchanans Road, near Gilberthorpe School. It is zoned "Living G" under the Existing Plan, a zoning allowing for a mix of densities. Similarly, only a small portion of the proposed RSDT zone is within the 50 contour. This is towards the top of the 50 contour along the line of the crosswind runway.[109] It is within the Living 2 zone of the Existing Plan.

[216] On the evidence, we are satisfied that these areas are so small as to be insignificant for our purposes on this matter.

[217] The greatest extent of overlap occurs in the RS zone.[110] This is mostly along the contours for the crosswind runway, but also in a number of other localities along the line of the main runway.

[218] A central focus of our evaluation is on striking an appropriate balance such that enablement of intensification and other residential development would not jeopardise the

109 Evidence in chief of Matthew Bonis, Figure 2.
110 Evidence in chief of Matthew Bonis, Figure 3.

Airport's efficient and effective provision, operation, maintenance or upgrade. To test that, we have evaluated the nature of residential intensification in issue, in both type and scale.

[219] Within the residential zones, the different types of residential intensification include:

(a) Residential units (including additional minor residential units, older person's housing units) and boarding houses:

(b) Multi-unit and social housing complexes;

(c) Retirement villages; and

(d) Student hostels and boarding houses.

[220] Our design of residential zone provisions recognises differences in activity scale through its specification of different activity classes (i.e. permitted, controlled, restricted discretionary, discretionary and non-complying).

[221] Mr Bonis presented a tabular comparison of the Notified Version with the Existing Plan (inclusive of the changes made by the LURP on 6 December 2013), on the matter of residential intensification potential.[111] He focussed, in particular, on how the RS and RSDT zones compared with their equivalents under the Existing Plan, the "Living 1" and "Living 2" zones.[112] He also focussed primarily on that type of intensification we have described above as "residential units".

[222] He explained that the LURP effected changes to the Existing Plan (in conjunction with changes to the CRPS) which expanded on the scope of permissible intensification under the Living 1 and Living 2 zones. This included additional exceptions to residential density standards and in relation to the use of Family Flats, Elderly Persons' Housing Units, and the replacement of dwellings damaged by the earthquakes or vacant prior to the earthquakes. It also included greater ability to convert an existing residential unit into two. In that sense, the

111 Evidence in chief of Matthew Bonis, Attachment E.

112 Mr Bonis did not make comparison with the RMD zone. However, as noted, the extent of RMD zoning within the 50 contour is very small, and the area is within the Living G zone of the Existing Plan, allowing a mix of densities.

Existing Plan's position on intensification was more generous following the 6 December 2013 change.

[223] Trying to compare this enhanced Existing Plan regime and the RS and RSDT zones of the Notified Version, on the matter of the extent of permissible intensification, is problematic because the two planning documents are designed according to different philosophies. The Existing Plan is known as an "effects" based plan. That refers to the fact that it largely avoids listing activities for regulation, but instead regulates according to the nature and scale of environmental effects. By contrast, the pCRDP is a form of "activity" based plan. Its rules are dominated by lists of activities, categorised as permitted activities or various classes of activity requiring resource consent. Those categorisations are made according to the consideration of effects and compatibility or otherwise with the intentions of particular zones. As such, the fact that the Notified Version specifies permitted activities, but the Existing Plan does not, is not of itself revealing of any significant substantive difference. One must look behind this to consider applicable standards for qualifying permitted activities.

[224] In its closing submissions, CIAL responded to concerns expressed by Mr Hardie and Ms Mullins as to the implications of CIAL's requested relief for how the Mebo Family Trust could develop its residential property.[113] Again, this example was of the "residential unit" type of intensification. CIAL submitted that its requested relief would still keep available to the Trust its ability to undertake a range of developments including conversion of an existing dwelling, replacement of a residential unit with two new residential units, and subdivision of the land into four titles on which individual units could be built.[114]

[225] Whether or not that is the case, our concerns about CIAL's relief go much wider than whether or not an individual submitter such as the Trust would be unduly prejudiced. Our wider concern includes how carving out an Existing Plan's "status quo" position, within the 50 contour, would impact in terms of the coherence and clarity of the CRDP.

[226] Respectfully, we observe that this complexity was well captured by the following statement in CIAL's closing submissions concerning Mr Bonis' evidence (with CIAL's emphasis):[115]

113 Mebo Family Trust (604).
114 Closing submissions for CIAL at para 15.
115 Closing submissions for CIAL at para 25.

> The "*cumbersome*" bit of his evidence (Mr Bonis' own words) stems from the difficulty in articulating the differences between the intensification provisions … in the [Existing Plan] pre 6 December 2013, the further intensification opportunities introduced on 6 December 2013 which are largely unrealised if Dr Fairgray's evidence of uptake is adopted, and the change in the level of intensification that would be enabled through the position taken by CCC and the Crown.

[227] We find that a consequence of granting CIAL's relief would be that the CRDP would be rendered significantly less coherent and clear for plan users. In terms of s 32, that is a cost that goes beyond the individual landowners within the 50 contour and is at odds with the intentions of the OIC Statement of Expectations.

[228] Within the RS and RSDT zones, multi-unit and social housing complexes are another form of residential intensification. In terms of the design of activity classes:

(a) Multi-units in the RSDT zone are a permitted activity where they do not exceed four units in number. Beyond that limit, they are a restricted discretionary activity. Regardless of the number of units, multi-units are full discretionary activities in the RS zone.

(b) Social housing in both the RS and RSDT zones are a permitted activity where they do not exceed four units in number. Beyond that limit, they are a restricted discretionary activity.

[229] Retirement villages are another type of residential intensification that can vary significantly in scale. Permitted activities are limited by activity-specific and built form standards. If these are not met, the most benign activity classification is restricted discretionary.

[230] Student hostels in the RS and RSDT zones (where operated by specified educational institutions, such as Canterbury University or CPIT) are:

(a) A permitted activity if they do not exceed six bedrooms;

(b) A restricted discretionary activity, where in the 7–9 bedroom range; and

(c) A full discretionary activity above that bedroom range.

[231] For reasons not only related to scale, boarding houses are also a restricted discretionary activity in these zones.

[232] For each of these types of residential intensification, we refer to our findings under the heading "Older persons', social and affordable housing and student accommodation". On the basis of those findings, we are satisfied that appropriately enabling these types of residential intensification properly responds to priorities of the Higher Order Documents (including the CRPS) and will assist to promote the sustainable management purpose of the RMA. In the case of student hostels, the University is seeking opportunities for development in convenient proximity to the University campus. We recognise, by contrast, that we do not have any evidence that any significant social housing, retirement village or other projects are proposed at this time within the 50 contour. Rather, the position we take (especially from the evidence of the Crown, CDHB, Ryman and the RVA) is that it is generally more desirable to enable such projects to occur across residential zones to best meet anticipated demands and needs. For our ageing population, for instance, that is to better enable older persons to age in place, or otherwise maintain their connections to their local neighbourhoods. Therefore, despite the absence of any specific development projects at this time, we consider it important to avoid unduly constraining the opportunity for such projects. That is particularly bearing in mind the importance of these types of intensification for community wellbeing, and the priority accorded to their development in the Higher Order Documents.

[233] Various classes of non-residential activity provided for in the residential zones are within the CRPS definition of "noise sensitive activities". In terms of the activity descriptions used in the residential zones, these include "education activity" (including schools and tertiary institutions), "pre-school facility" and "health care facility". These activities generally fall into restricted discretionary or discretionary activity classes under the Existing Plan.[116] These activities are included in residential zones because of their compatibility with the zone intentions. They serve to support residential intensification in providing supporting services for people and communities. We find that enabling them has an associated importance in terms of the s 5 RMA purpose.

[116] As summarised from Attachment D to the evidence in chief of Mr Bonis.

[234] In arriving at an appropriate outcome, we have recognised the strategic importance of the Airport. As we have noted, we find that protection of the Airport's operation and upgrade, including from reverse sensitivity risks, is of regional and even national significance, for the purposes of s 5. However, the evidence overwhelmingly satisfies us that this can be adequately assured by much less restrictive means than CIAL has pursued. We make that finding in light of both the importance of enablement of the various activities we have described, and in view of our findings as to the tenuous and weak nature of the evidence we have received as to CIAL's concerns about reverse sensitivity risk.

[235] In light of our interpretation of relevant CRPS directions (and the related Strategic Directions objectives of the CRDP), we find that we should allow for an ongoing capacity to assess relevant reverse sensitivity and noise mitigation matters for residential intensification above a certain scale. This is not on the basis that the present evidence of risk justifies this. Rather, it is to allow for the possibility that new evidence and information concerning risk may come to light that is relevant, having regard to the CRPS policy directions.

[236] In view of our evidential findings, we adjudge that, for residential activities, the cut-off trigger point for these additional restrictions should be at the restricted discretionary activity scale.

[237] We have taken into account the fact that "education activity" (including schools and tertiary institutions), "pre-school facility" and "health care facility", generally fall into restricted discretionary or discretionary activity classes under the Existing Plan.[117] In light of that, we consider it would be inappropriate to treat these non-residential activities on a basis that denied ability to consider reverse sensitivity and noise mitigation. However, we do not consider the evidence to warrant rigid replication of the activity classifications of the Existing Plan. Outside of the 50 contour, we have provided a mix of permitted and restricted discretionary activity classifications for these activities, in both the RS and RSDT zones. For the various reasons we have traversed, we have determined that the permitted activity class for these various activities should be replaced with a restricted discretionary classification within the 50 contour.

[238] All of those matters lead us to the following conclusions on activity classification:

117 As summarised from Attachment D to the evidence in chief of Mr Bonis.

(a) For all classes of residential activity, the activity classifications provided within relevant zones outside of the 50 contour are also the most appropriate within the 50 contour.

(b) The only adjustment that is warranted, and appropriate, concerns assessment criteria for those residential activities classed as restricted discretionary activities. Those are:

(i) The extent to which effects as a result of the sensitivity of activities to current and future noise generation from aircraft are proposed to be managed, including avoidance of any effect that may limit the operation, maintenance or upgrade of Christchurch International Airport; and

(ii) The extent to which appropriate indoor noise insulation is provided with regard to Appendix 14.14.4;

(c) For education activities, pre-school facilities and health care facilities, where these would be permitted or controlled activities outside of the 50 contour, the most appropriate activity classification is restricted discretionary (and the above assessment criteria would also be applied).

[239] Consistent with how we have addressed other sensitive activities in relation to strategic infrastructure, we consider it most appropriate that applications for these restricted discretionary activities should be processed on a limited notified basis, with notification confined to CIAL (if CIAL does not give written approval). That is in recognition of the fact that CIAL is the Airport owner and may have relevant information for the purposes of assessment.

[240] We are satisfied that the objectives and policies of the Decision Version are the most appropriate for the consideration of consent applications. In particular, we refer to Policy 14.1.3.1 as to the avoidance of adverse effects on strategic infrastructure (including its reference to reverse sensitivity effects),

[241] We are satisfied that the regime we have provided for is superior to the Notified Version and other alternatives proposed by submitters, in terms of its response to the Higher Order Documents. It properly gives effect to the CRPS (particularly on the matters of intensification and the management of reverse sensitivity risks). It better responds to the OIC Statement of Expectations, particularly in its reduction of unwarranted regulation. On our evaluation of comparative benefits, costs and risks, we are satisfied that our regime is the most appropriate for achieving the relevant objectives. In particular, we refer to Objectives 14.1.1 (Housing supply) and 14.1.4 (High quality residential environments) of the Decision Version, and Strategic Directions Objective 3.3.4. It would not offend Objective 14.1.3 (Strategic infrastructure).

National Grid and electricity distribution lines and proximate activities and structures

[242] As recorded on the transcript, Judge Hassan elected to recuse himself from deliberations and decision-making on this topic.[118]

[243] On the matter of strategic and other infrastructure, we were significantly assisted by the mediation and engagement that occurred between the Council and various infrastructure and other submitters. Most of the provisions we have included in the Decision Version are the product of the consensus reached. We are satisfied that those provisions properly give effect to the CRPS and accord with other Higher Order Documents. Given that, and in light of the consensus reached, we are also satisfied that the provisions are the most appropriate.

[244] The only matter of contention was as between National Grid provider Transpower New Zealand Limited ('Transpower')[119] and local lines company Orion New Zealand Limited ('Orion').[120] That difference concerned what provision should be made to restrict sensitive activities and buildings from locating within specified proximity to certain electricity distribution lines ('distribution lines') of Orion's network.

[245] In their submissions on the Notified Version, Transpower and Orion each requested rules for corridor protection setback distances for sensitive activities ('corridor protection setbacks'/'setbacks') and the associated activity status for activities and buildings within those

118 Transcript, page 1012, lines 32–34.
119 Submitter 832, FS1331.
120 Submitter 922, FS1339.

setbacks. In the case of Transpower, this was for the National Grid. In the case of Orion, it was for distribution lines. Transpower also requested changes to the Objectives and Policies in Chapter 14 to better protect the National Grid. As we discuss below, Transpower also opposed Orion's request that corridor protection setbacks also apply to distribution lines. Transpower sought to distinguish between the rationale for corridor protection setbacks required to satisfy the obligations under the National Policy Statement for Electricity Transmission ('NPSET') and issues as to whether it was appropriate to provide for corridor protection for other electricity infrastructure.

[246] The Notified Version classified sensitive activities and buildings within 12m and between 12m and 32m of the electricity transmission network corridor as restricted discretionary activities in the zones where the National Grid is located.[121] The Council did not support the inclusion of additional rules for distribution lines, on the basis that distribution lines were not afforded priority in the NPSET.

[247] Initially, Transpower requested a 32m corridor protection setback for the National Grid, and non-complying activity status if this was not complied with. Orion requested similar relief for its distribution lines. An issue of scope arose as to whether Orion's submission sought relief in relation to its 66kV, 33kV and the '11kV Lyttelton line' or just the 66kV and 33kV distribution lines. We return to this later.

[248] In the Decision Version, we have incorporated:

(a) The changes included in the Revised Version for corridor protection for the National Grid (12m for the 220kV and 110kV and 10m for the 66kV National Grid);

(b) The amendments in the Revised Version to the objectives and policies to expressly refer to the National Grid;

[121] "Electricity Transmission Network" as defined in Notified Version Chapter 2 means the national grid as defined in the NPSET.

(c) A 10m corridor protection area for the 66kV distribution line which is consistent with that provided for the National Grid and a 5m corridor protection setback for the 33kV distribution line;

(d) Non-complying activity status for sensitive activities and buildings within the specified corridor protection setbacks.

[249] We have also made directions pursuant to cl 13(4) of the OIC requiring the Council to prepare and notify a new proposal to include corridor protection setback for the 11kV Lyttelton line. We set out our reasons below.

National Grid

[250] Transpower is the state-owned enterprise that plans, builds, maintains, owns and operates New Zealand's high voltage electricity transmission network (the 'National Grid') that carries electricity across the country. It connects power stations, owned by electricity generating companies, to substations feeding the local networks that distribute electricity to homes and businesses. Within the Christchurch City boundaries, the National Grid includes towers, poles, lines, cables, substations and ancillary infrastructure. The National Grid is critically important infrastructure that is necessary for a reliable, secure supply of electricity.

[251] Transpower recently transferred some of its high voltage 66kV and 33kV electricity distribution lines to Orion. Transpower considered this transfer to be in keeping with its main focus on the interconnected National Grid and national security of supply. We observe that, had this transfer not occurred, at least some of the 66kV and 33kV distribution lines that Orion is requesting corridor protection for (and which Transpower opposes), would have been part of the National Grid, and as such would have required appropriate protection as directed by the NPSET.

[252] In its evidence, Transpower moderated the relief it initially sought for the National Grid, accepting a reduced corridor protection setback. Transpower accepted that most of the benefits from a setback are the same regardless of the width of the protection corridor. That is because the benefits of having a protection corridor accrue so long as there is a minimum level of protection (10m for 66kV and 12m for 110kV). However, the costs are different between a 32m and a 10m or 12m protection corridor. Mr Campbell, Environmental Policy and Planning

Group Manager for Transpower, informed us that 32m is unduly restrictive for existing development and no longer aligns with Transpower's approach to implementing NPSET.[122]

[253] Transpower sought that sensitive activities within the protection corridor be classed as non-complying, rather than restricted discretionary, activities, as the latter classification may raise expectations unrealistically. In addition, Transpower argued that restricted discretionary activity status would not give effect to NPSET.[123] This is because NPSET Policy 11, in particular seeks "to identify an appropriate buffer corridor within which it can be expected that sensitive activities **will generally not** be provided for in plans and/or given resource consent". (our emphasis)

[254] Consistent with our findings in Decision 2 Temporary Activities related to Earthquake Recovery ('Decision 2 Temporary Activities'), we find that the amendments requested by Transpower to the Notified Version, and accepted by the Council in the Revised Version, are the most appropriate to give effect to the requirements of Policies 10 and 11 of NPSET, and CRPS Objective 16.3.4, Objective 5.2.1, Objective 6.2.1 and Policy 6.3.5. The modified approach will also give effect to Objective 3.3.12 of Chapter 3 of the now operative Strategic Directions Chapter as it recognises the potential impact of reverse sensitivity. The amendments provide for permitted activities and buildings in residential zones where the National Grid is located at a greater distance than:

> 12 metres from the centre line of a 110kV or 220kV National Grid transmission line and 12 metres from a foundation of an associated support structure;
>
> 10 metres from the centre line of a 66kV National Grid transmission line and 10 metres from a foundation of an associated support structure;

[255] We find that non-complying activity status for activities and buildings within those setbacks is the most appropriate in the case of residential zones. That is because it signals that, within the corridor protection setbacks, sensitive activities and buildings are generally inappropriate due to the particular safety concerns and potential to interfere with the maintenance of this nationally important strategic infrastructure. We have included these changes in the Decision Version.

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122 Evidence in chief of Dougall Campbell on behalf of Transpower, 20 March 2015.

123 Closing submissions for Transpower at para 14; Evidence in chief of Ainsley McLeod on behalf of Transpower, 20 March 2015, at paras 65 and 70.

[256] Transpower requested amendments to the Objectives and Policies to expressly refer to the National Grid. The Council and Transpower attended mediation and reached agreement as to those changes, which were then included in the Revised Version. We find those changes are most appropriate and have included them in the Decision Version.

Electricity distribution network

[257] The remaining issue is whether there is a sufficient policy and evidential basis to support the inclusion of rules for corridor protection of Orion's distribution lines in the CRDP.

[258] Orion operates the electricity distribution network serving Christchurch City and Lyttelton. This network traverses multiple zones throughout the City, including several residentially zoned areas. Orion sought protection rules for its strategic electricity distribution assets. Orion owns a number of distribution assets, but sought corridor protection for its 33kV and 66kV electricity distribution lines in Christchurch as being the most important to Christchurch as part of its network. During the hearing, Orion clarified that it also sought protection for a small portion of its 11kV Lyttelton line (the 3km of 11kV lines that runs from Heathcote to Lyttelton). This portion of the 11kV lines provides the only electricity connection to Lyttelton and is therefore considered by Orion to be of strategic importance.

[259] Initially, Orion sought rules in the pCRDP which provide a 12m corridor protection setback. In her evidence for Orion, planning witness Ms Buttimore proposed an amended position of a 10m setback from Orion's 66kV identified electricity distribution lines, and 5m from its 33kV lines and 11kV Lyttelton line (assuming there was scope to do so).

[260] Transpower opposed Orion's relief out of concern that extending this protection to Orion's distribution network could generally increase the risk of corridor protections being opposed, and so lead to those protections becoming diluted or more restrictive, to the detriment of the protection of the National Grid. Transpower did not oppose Orion having appropriate corridor protection rules that are tailored to its network. Transpower argued that corridor protection for distribution lines needed to be supported by robust analysis, and benefits to Orion should be tempered in view of the impacts that protection would have for the landowner's ability to use and enjoy their own land.[124]

[124] Transcript, page 1058, lines 8–11 and page 1006, lines 22–30.

[261] In relation to the request for corridor protection for its 11kV Lyttelton line, there is a jurisdictional issue as to whether Orion's submission on the Stage 1 Notified Version requested relief in relation to the 11kV distribution line. Orion submitted that it does, notwithstanding that it is not referenced in the introduction to its submission. It argued that the inclusion of planning maps that showed its distribution lines as marked on them makes it sufficiently clear. Ms Buttimore advised that the exclusion of the 11kV Lyttelton line from the text of the submission was an oversight.[125]

[262] Transpower and the Council took a contrary view, and pointed to the fact that landowners potentially impacted by the provision of a corridor protection setback under the 11kV line would not have been on notice of the request.

[263] We have considered whether the inclusion of the 11kV Lyttelton line protection corridor goes beyond what was reasonably and fairly raised in Orion's submission.[126] Applying *Royal Forest and Bird*, we have approached the question in a realistic and workable fashion rather than from the perspective of legal nicety. We accept that it is a question of degree, having regard to the provisions notified in Stage 1 and in Orion's submission. We accept that Orion's submission did raise the theme of introducing corridor protection for its distribution lines. However, the front page of the submission was explicit in that it referred only to the 66kV and 33kV distribution lines. We find the omission of the 11kV Lyttelton line material, and that it may have influenced a potentially affected landowner in their decision as to whether or not to lodge a further submission. Ultimately, we are guided by issues of fairness and the importance of public participation in the preparation of the CRDP. We have concluded that the inclusion of corridor protection for the 11kV Lyttelton line was not fairly and reasonably raised by Orion's submission on the Stage 1 Notified Version.

[264] Clause 13(2) of the OIC does not limit our consideration to matters within the scope of submissions on the Notified Version. We may make changes that are outside of the scope of submissions. However, if we consider changes are needed to deal with matters that are materially outside the scope of the proposal as notified, and deal with submissions on it, we

125 Transcript, page 1021, lines 14-16.
126 *Royal Forest and Bird Protection Society v Southland Regional Council* [1997] NZRMA 408 (HC).

must direct the Council to prepare and notify a new proposal in accordance Schedule 1 of the OIC.[127]

[265] In our ninth decision on proposals 6A, 6B and 6C for Temporary Activities related to Earthquake Recovery, issued on 3 September 2015 ('Decision 9 Temporary Activities') we included provisions for corridor protection for both the National Grid and for distribution lines. In that case, Orion's submission had requested the inclusion of provisions for its 66kV, 33kV and 11kV Lyttelton line. Those provisions were accepted by the Council, Orion and Transpower and formed part of a Joint Memorandum dated 12 June 2015. In its closing submissions, Transpower recommended a refined and simpler non-complying activity classification for sensitive activities and buildings within the corridor.[128]

[266] For Orion, Ms Buttimore was of the opinion that inclusion of corridor protection rules in the CRDP will ensure the plan gives effect to the relevant provisions of the CRPS: in particular, Objective 5.2.1, Objective 6.21 and Policy 6.3.5. She considered that it would also give effect to Strategic Direction Objective 3.3.12.[129] However, she acknowledged that that NPSET provides protection to the National Grid and sets out a requirement for local authorities to give effect to that document. She accepted that NPSET does not apply to the distribution networks like Orion. However, she did not believe NPSET precluded corridor protection at a local level in distribution networks.[130]

[267] We record that Ms Buttimore's concession is consistent with our findings in Decision 2 Temporary Activities that Orion's 66kV and 33kV electricity distribution lines do not form part of the National Grid, and do not justify the higher level of protection directed by Policies 10 and 11 of the NPSET.[131]

[268] Transpower remained opposed to the inclusion of a corridor protection regime for distribution lines. This was based on the lack of analysis or evaluation from Orion to support the inclusion of specific rules for the 66kV and 33kV distribution lines and a lack of scope for the inclusion of rules for the protection of the 11kV Lyttelton line. However, Ms McLeod (Transpower's planning witness) acknowledged in her rebuttal evidence that there was a policy

127 OIC, Cl 13 (4).
128 Closing submissions on behalf of Transpower at para 9.
129 Transcript, page 1016, lines 1–5.
130 Transcript, page 1016, lines 15–20.
131 Decision 2, Temporary Earthquake Recovery Activities, 26 February 2015 at [41].

foundation for consideration of rules for corridor protection of the distribution line network in the CRPS and in Objective 3.3.12 Strategic Directions.

[269] We also note that, although distribution lines are not afforded the same priority as the National Grid, the CRPS does recognise the strategic importance of distribution lines on a regional basis (as regionally significant infrastructure). Therefore, we find that they are accordingly deserving of appropriate protection as set out in Objective 3.3.12 of Strategic Directions. We accept that Orion's 66kV, 33kV and the 11kV Lyttelton distribution lines are strategic infrastructure, and that their role and function should be protected by avoiding adverse effects from incompatible activities, including reverse sensitivity effects.

[270] The key issue is what form that protection should take, and whether it is the most appropriate in the context of the requirements of the RMA.

[271] In cross-examination, Ms Buttimore conceded that there had been little in the way of s 32 evaluation to support the inclusion of corridor protection rules for the 66kV, 33kV and 11kV Lyttelton distribution lines.[132] Rather, it appears that Orion relied on a general argument that there is little practical difference between the 66kV distribution line managed by Orion and the 66kV transmission lines forming part of the National Grid.

[272] Mr Shane Watson, the Network Assets Manager for Orion, argued that, because the corridor protection sought by Transpower constitutes industry best practice, the Panel can rely on this to impose similar rules to protect Orion's distribution lines.

[273] Transpower disputed Orion's claim that the proposed 12m setback was 'best practice'. It argued that it was instead a pragmatic compromise for existing assets to give effect to NPSET requirements. Mr Roy Noble, Transpower's Asset Engineering (Lines) Manager explained that, if structures and activities are located within the 12m National Grid protection corridor, they will be effectively directly under the conductors under low winds. He said that the protection corridors are based on the existing assets and have not been sized to provide for major rebuilds or new lines. He explained the corridors Transpower has requested are not the ideal, but they are a pragmatic position based on the minimum area necessary to enable Transpower to carry out work on the lines, but also taking account of the reasonable needs of

132 Transcript, pages 1018–1021 (cross-examination of Ms Buttimore by Ms Scott for the Council).

landowners and occupiers. Mr Noble contrasted this with new build assets, where Transpower would seek to designate a clear corridor that generally coincided with the maximum wind conductor position of the line or a greater area, particularly where there is a risk of trees falling and damaging a line. Recent new build corridors have ranged from 50 to 130 metres.[133]

[274] Although Transpower maintained its position that the NPSET and CRPS draw a distinction between the importance of the National Grid and the regionally focussed distribution lines, Mr Noble conceded that there is a similarity between Orion's 66kV network and Transpower's high voltage network. However, he observed that there is very little similarity between the scale of Orion's 33kV and 11kV network and Transpower's high voltage network.[134]

[275] We accept that there may well be a difference in terms of the physical extent of the effects arising from the smaller distribution lines. However, there is still a relevant issue to address in terms of Strategic Direction Objective 3.3.12. We also note that Transpower only recently transferred some of the 66kV and 33kV distribution lines to Orion. Had they not done so, these would still have been part of the National Grid. Ms McLeod accepted in her evidence in chief that they remain both critical and strategic infrastructure.[135] Further Mr Blair, the Council's planning witness, conceded in cross-examination that Orion's 11kV Lyttelton line is strategic infrastructure.[136]

[276] Federated Farmers of New Zealand ('FFNZ') and Horticulture New Zealand ('HNZ') opposed Orion's requested relief.[137] They are concerned with precedent effects and believe that the New Zealand Electrical Code of Practice for Electrical Safe Distances (2001) ('COP') provides a corridor protection measure through the required setback distances from overhead lines. In his evidence for Orion, Mr Watson said that the COP is difficult to enforce and a number of instances have previously occurred where the safe distances set out in the COP were not adhered to. Orion favoured provisions in the CRDP. The concerns of FFNZ and HNZ relate to impacts on the Rural zone, and will be considered in that context. Neither called evidence in support of their submission in this Residential hearing.

133 Transcript, page 1061, lines 29–42.
134 Rebuttal evidence of Roy Noble, 25 March 2015, at para 13.
135 Evidence in Chief of Ainsley McLeod, 20 March 2015, at para 56.
136 Transcript, pages 256–257.
137 Federated Farmers of New Zealand (FS1291); Horticulture New Zealand (FS1323).

[277] Towards the end of the hearing, counsel informed us that Transpower and Orion had agreed that a 10m corridor protection setback was appropriate for the 66kV distribution line. Mr Noble provided further evidence by way of an affidavit to explain the justification for the 10m setback.[138] Orion sought to rely on that evidence also.[139] On the basis of the submissions and evidence that we received, and in light of the agreement reached between Transpower and Orion, we accept that a 10m setback either side of the centre line of the 66kV distribution line is the most appropriate, having regard to the matters in s 32 of the RMA and the Higher Order Documents.

[278] However, we found Orion's request in relation to the 33kV distribution line and the 11kV Lyttelton line (even if there was scope to include it) to be more problematic. Initially there was a lack of evidence to support an evaluation under s 32AA to include the corridor protection setbacks requested by Orion for the 33kV and 11kV Lyttelton distribution line in the Residential zones notified in Stage 1. Although agreement had been reached between the parties in Decision 9 Temporary Activities, no agreement has been forthcoming in this hearing.

[279] Towards the end of the hearing, Ms Appleyard advised that Orion wished to amend its relief to seek only a 5m setback from the 33kV and 11kV distribution line.[140] Transpower remained neutral in respect of that amendment.[141] Acknowledging the lack of evidence to support the amendment before the Panel, Ms Appleyard sought leave to file further evidence from Mr Watson. We granted leave for Mr Watson to provide an affidavit explaining the rationale for the 5m setback. We reserved leave for the Council to file an affidavit in reply, on the basis that Ms Scott advised the Council was not philosophically opposed to providing a setback, but was concerned about the lack of supporting evidence.[142]

[280] Mr Watson filed an affidavit on 28 April 2015 explaining the rationale for the setback of 5 metres in relation to both the 33kV and 11kV distribution lines. Mr Watson followed the same methodology as Mr Noble to determine the appropriate setback, taking into account the typical structure, estimated line spans and an analysis of conductor locations for typical electrical loadings and weather conditions. The Council did not oppose that evidence. On that

138 Affidavit of Roy Noble, sworn 22 April 2015.
139 Transcript, page 1539, lines 42–43.
140 Transcript, page 1538, lines 33–43.
141 Closing submissions for Transpower at para 21.
142 Transcript, page 1539, lines 13–29.

basis, we accept Mr Watson's evidence as supporting the 5m corridor protection setback for the 33kV distribution line. Although his evidence applies to the 11kV Lyttelton line, we have already found that we do not have jurisdiction to include the equivalent setback for the 11kV line, but have directed that this aspect be re-notified.

[281] In light of our findings on the evidence, and for the above reasons:

(a) We find that the inclusion of a corridor protection setback for the 33kV distribution line is the most appropriate way to achieve Strategic Directions Objective 3.3.12 and to give effect to the CRPS; and

(b) We have decided to exercise our discretion to direct the Council to prepare and notify a proposal to provide for corridor protection for the 11kV Lyttelton line.

[282] In our Decision Version we have accepted the changes proposed by Transpower insofar as they relate to corridor protection of the National Grid, and accepted in part Orion's submission to include rules for corridor protection in Residential Zones where the distribution lines are currently located, only insofar as it relates to the 66kV and 33kV distribution lines. We also direct that the planning maps be updated to show the location of the 66kV and 33kV distribution lines as set out in Exhibit B of Mr Watson's affidavit.[143]

Older persons', social and affordable housing and student accommodation

[283] We now return to the theme reflected in Strategic Directions Objective 3.3.4(b):

> There is a range of housing opportunities available to meet the diverse and changing population and housing needs of Christchurch residents, including:
>
> (i) a choice in housing types, densities and locations; and
>
> (ii) affordable, community and social housing and papakāinga.[144]

[284] We have already discussed why we are satisfied that the different residential zones, designed to achieve different density outcomes, assist to achieve this objective (and, in a related sense, assists to give effect to the CRPS). There are a set of other relevant provisions,

143 Affidavit of Shane Watson, sworn 28 April 2015, Exhibit B.
144 The topic of papakāinga is to be addressed later in our inquiry.

concerning retirement villages, older persons' housing, student accommodation, and social and affordable housing.

[285] As recorded on the transcript, Dr Mitchell elected to recuse himself from deliberations and decision-making on matters concerning Ryman.[145]

[286] In summary, the main determinations we make on these other provisions are as follows:

(a) Retirement villages are restricted discretionary activities in the RMD zone (equally with multi-units), rather than permitted activities.[146] In other residential zones, retirement villages are a permitted activity if they meet the specified activity standard (as to building façades) and specified built form standards (and subject to the high traffic generator rule). We have decided against requiring retirement villages to meet an on-site amenity standard.[147]

(b) "Older Person's Housing Units" ('OPHU') ('Elderly Person's Housing Units', i.e. 'EPHU', in the Notified Version) are permitted activities in most residential zones,[148] subject to specified standards. This is a change from the regime, proposed under both the Notified Version and Revised Version, of permitting the conversion of such units into residential units (i.e. not simply for older persons). We have also given greater development flexibility by an increase in the maximum floor area from 80m² to 120m².[149]

(c) Multi-unit residential complexes are permitted activities in the RSDT zone, but not in the RS zone, subject to specified standards. Greater development flexibility is given to such complexes, by:

    (i) An increase in the maximum number of permitted units in them, from three to four;

145 Transcript, page 626, lines 9–14.
146 On this matter, preferring the position of the Council, as stated in its closing submissions, over that of Ryman Healthcare Limited and the Retirement Villages Association of New Zealand Incorporated (through its evidence and in closing submissions).
147 To this extent, accepting the submissions on this on behalf of Ryman Healthcare Limited and the Retirement Villages Association of New Zealand Incorporated.
148 We have not accepted the Council's proposal.
149 To this extent, granting the relief sought by Residential Construction Limited and Paul de Roo Family Trust (684).

(ii) A reduction in the minimum floor area of two bedroom units for multi-unit residential complexes and social housing complexes from $70m^2$ to $60m^2$.

(d) Social housing complexes are permitted activities in the RS and RSDT zones subject to specified standards (including those specified for multi-units, above).

(e) Comprehensive residential developments as provided for under the EDM are a restricted discretionary activity in the RSDT, RMD and RBP zones on contiguous sites of between $1500m^2$ and $10{,}000m^2$. Locational qualifying standards (for example as to distance to business areas, parks, schools and transport routes) and built form standards apply, and there are specified minimum and maximum residential yields.

(f) Comprehensive residential development containing specified proportions of social housing are also provided for under the CHRM, within areas identified on the Planning Maps, as a restricted discretionary activity. Resulting development must comprise one-third community housing; or be least equal to the number of community housing units (occupied or unoccupied) as at 6 December 2013, in redevelopment areas. A range of built form standards apply, including minimum and maximum residential yields.

(g) Student hostels owned or operated by a relevant education body are permitted (up to six bedrooms), restricted discretionary (7–9 bedrooms), and discretionary activities (10 or more bedrooms) in RS, RSDT and RMD zones.

(h) Boarding houses are a restricted discretionary activity in the RS, RSDT and RMD zones, with discretion limited to the scale of activity, its impact on residential character and amenity, and traffic generation and access safety (as provided for under Rule 14.13.5).

(i) The standards included in the Notified Version on "life-stage inclusive and adaptive design for new residential units", but deleted in the Revised Version, are deleted.

[287] We note that, in addition, the design of the RMD provisions (as approved by this decision) allows for many forms of multi-unit intensification as above-described.

[288] We now set out our reasons for the determinations we have made on those matters.

[289] We start with the general evidence on demographic trends and the implications of those trends for what the CRDP should provide for, in housing choice.

[290] On this matter, the Crown called property consultant Ian Mitchell,[150] who also gave evidence in our hearing on Strategic Directions. He explained some of the implications of the ageing population of Christchurch. In essence, he noted that household numbers are projected to increase in Christchurch by 23,700 households between 2012 and 2028, and 84 per cent of all growth is anticipated to be in households aged 65 years and older. Other trends he noted were a decline in home ownership and a consequent increase in rental households, with a projection that these will come to account for 53 per cent of total household growth. He expected those demographic trends, if reflected in housing choice, to see a trend towards smaller dwellings with fewer bedrooms and an increased proportion of multi-unit dwellings.[151]

[291] He noted that retirement villages are likely to continue to be an important source of supply of housing for a segment of the ageing population (owner-occupiers 65 years and older), bearing in mind the large percentage of household growth predicted in this age group. However, he noted that the retirement village sector typically targeted owner-occupiers, whereas there is a growing and significant proportion of projected growth in renter households.

[292] Medical Officer of Health for Canterbury, Dr Alistair Humphrey,[152] gave evidence on behalf of CDHB[153] on a range of matters as to the health and wellbeing of people within the communities of Christchurch. Specifically on the matter of making appropriate planning provision for the increasing numbers of older people, he made a number of observations as to

150 Mr Mitchell has a Master of Business Studies, Diploma in Business Administration, Diploma of Agricultural Science, and a Bachelor of Agricultural Science. He is a director of Livingston and Associates, and a past National Director of Consulting and Research at DTZ Limited.

151 Evidence in chief of Ian Mitchell on behalf of the Crown at 4.1.

152 Dr Humphrey did not specifically detail his medical qualifications in his brief. He noted that he holds a Master of Public Health and is a Fellow of the Faculty of Public Health Medicine of the Royal Australasian College of Physicians, a Fellow of the New Zealand College of Public Health Medicine and Fellow of the Royal Australian College of General Practitioners.

153 Submitter 648, FS1443.

the importance of ensuring proper provision for allowing people to age in place. In particular, to ensure the built environment reflects the future needs of a larger elderly population, dwellings built now "need to be able to function effectively for older residents now and into the future".[154]

[293] He made a number of observations, supported by World Health Organisation analysis, as to the importance of warmer, drier and healthier homes. The direct health impacts (including for older people) of unhealthy homes also resulted in significant additional costs to the community in terms of visits to doctors and hospitals, and loss of productivity in the workforce. Similarly, more energy efficient homes assisted in reducing energy costs, which was important for low income households on fixed incomes.

[294] Specifically, he noted the following:[155]

> 36. As Christchurch's population ages, the economic and social wellbeing of individuals, families and communities will be influenced by the social and economic contributions of older people. The ability to continue in paid employment is impacted by the functionality of people's homes. Retaining older people in the workforce for longer could, at least until 2031, offset the future cost of New Zealand Superannuation through the PAYE flowback.[156] The value of older people's unpaid and voluntary work is in the region of $6 billion for 2011 and could be over $22 billion in 2051 based on current projections across New Zealand.[157]
>
> …
>
> 39. Older people have more sensory and physical limitations than younger people. Tenure uncertainty, unaffordable housing related costs, dilapidation and cold damp conditions have all been found to prompt movement into residential care. Poor housing exacerbates existing health conditions and heighten [sic] the impacts of impairment. This triggers dislocation from their communities, admission to an unnecessarily high level of care and support, and shift [sic] the cost of what is primarily a housing problem onto the health and social services sectors.

[295] In answers to the Panel, Dr Humphrey commented that an ageing population:[158]

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154 Evidence in chief of Dr Alistair Humphrey on behalf of CDHB at paras 35.
155 Evidence in chief of Dr Alistair Humphrey at paras 36 and 37.
156 For which his reference was "Ibid, pg 11", which we took to mean a reference to the article noted in the following footnote.
157 For which he referenced Savill-Smith, K. & Saville, J., (2012) *Getting Accessible Housing: Practical Approaches to Encourage Industry Take-up and Meeting Need*, Centre for Research, Evaluation and Social Assessment for the Office for Disability Issues and the Ministry of Business, Innovation and Employment, page 2.
158 Transcript, page 501, lines 35–43 (Dr Humphrey).

> … can be a resource to our community, or … a burden… We want to live in a province where our elderly folk are a resource.
>
> In order to help them to be a resource, they need to have the kind of residential property which accommodates their changing life stages…

[296] He agreed that a very important issue in terms of the health and wellbeing of older people is whether they would have to be alienated from their existing established communities. He commented:[159]

> … many elderly people with a larger home want to downsize if they can, and we need to have a plan which accommodates those people in their changing life stage without pushing them away from their communities.

[297] Mediation significantly narrowed differences as between the Council and the retirement village sector submitters. In effect, the parties reached agreement that permitted activity status is appropriate for retirement villages (subject to meeting built form standards), in all residential zones other than the RMD zone.[160]

[298] On behalf of the retirement village sector, we heard from various witnesses employed in or representing this sector. Those included John Collyns, Executive Director for the RVA and Andrew Mitchell, Development Manager for Ryman.[161] John Kyle, a planning witness, gave evidence as to the relief being pursued by the RVA and Ryman.

[299] Mr Collyns explained to us how the retirement village industry is regulated under the Retirement Villages Act 2003 and associated regulations and codes of practice. Those include the Retirement Villages Code of Practice 2008 as to day-to-day management ('Villages Code'), and the Code of Residents' Rights (to ensure residents are respected and consulted). The RVA represents 315 registered retirement villages, or 96 per cent of the total number, throughout New Zealand. It is the sole auditing agency for its members' compliance with the Villages Code and other regulations. Audits by accredited agencies occur triennially. Complaints can be referred to a Disciplinary Tribunal, chaired by a retired High Court Judge. None has been brought to date.[162]

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159 Transcript, page 505, lines 35–38 (Dr Humphrey).
160 First statement of rebuttal evidence by Adam Scott Blair on behalf of the Council at paras 25.3 and 28.1; Evidence in chief of John Kyle on behalf of Ryman, at paras 40–48.
161 On behalf of Ryman and the RVA.
162 Evidence in chief of John Collyns on behalf of RVA at paras 13–18.

[300] Mr Collyns and Mr Mitchell assisted us in understanding the supply and demand dimensions and how this should inform our decision on provision for retirement villages in the CRDP. Mr Collyns explained that the "penetration rate" (i.e. percentage of those aged 75 and over, who choose a retirement village) is lower in Christchurch (9.9 per cent) than the national average (12 per cent). On the basis of national demographic trends and assuming the national average penetration rate of 12 per cent, the RVA predicts that there will be a need for 10 new villages to be built per year over the next 20 years throughout New Zealand. While Mr Collyns did not have specific predictions for Christchurch, he noted that four additional villages were built in Canterbury between December 2013 and December 2014, and significantly more are at the consenting or construction stage. He also explained that the Canterbury earthquakes sequence destroyed four retirement villages and damaged about 80 per cent of them. However, villages were now coming back to where they were before the earthquakes and, by and large, are operational and working.[163]

[301] Andrew Mitchell explained that Ryman has six existing villages (totalling 2000–2500 units) and was actively looking for sites. It has to provide for a planned pipeline of a further 1000–2000 units, 500 of which were imminent.[164] He told us about the demand and supply side pressures on providing accommodation and care for the ageing population in Christchurch, exacerbated by the earthquakes. Part of that is from the fact that modern retirement villages have special functional, operational and locational requirements, including large format and medium to high density. Further, residents seek to live in their local areas, meaning that there is a need for appropriate distributional spread (although we observe that the practicalities of securing sites of sufficient size for retirement villages would likely still mean a degree of dislocation from local areas for a number of residents). This need for distributional spread means there is a scarcity of choice for the development of new retirement villages. Supply side pressures are also increasing through the closures of small and poor quality aged care homes.[165]

[302] In addition to the question of what activity status retirement villages should have in the RMD zone (which we return to shortly), the Panel tested retirement village witnesses on whether or not controls are appropriate for ensuring an appropriate level of internal amenity within villages, for their residents.

163 Transcript, page 1176, lines 12–34.
164 Transcript, page 1176, lines 17–34.
165 Evidence in chief of Andrew Mitchell on behalf of Ryman at paras 12–15, 21–23 and 37–43.

[303] This issue primarily arose from the evidence of John Kyle, planning witness for Ryman and the RVA. In his written evidence, Mr Kyle expressed the view that the CRDP should focus on external effects beyond the site, rather than internal amenity matters. He explained that internal amenity matters "require specialist knowledge" and are best left to village operators. He suggested that it was in the best interests of the operators to have "well-designed buildings and villages that meet the needs of their residents". He commented that he was "not aware of any internal amenity issues at existing villages" and internal amenity is "typically very high in my experience". As such, he considered the imposition of internal amenity controls would be "unnecessary regulation".[166] However, when questioned by the Panel, he commented that, if the Panel were to determine that regulation was necessary, an appropriate method for doing so would be to specify an assessment matter on internal amenities.[167]

[304] We received a somewhat different perspective from Mr Collyns on the matter of the standard of internal amenity of retirement villages. He explained that the RVA did not set any rules, standards or protocols as to the amenity provided to residents, beyond those of the Building Code and such regulations. He noted the broad range of villages, from those of a small not-for-profit group (which may not offer much in the way of amenities) through to those operated by Ryman, Summerset or other such providers offering a full suite of activities and care. In essence he acknowledged that, beyond the requirements of the Building Code and the Retirement Villages Act, what was offered by way of amenity was dependent on what the resident could afford.

[305] However, he expressed caution as to the imposition of minimum standards of internal amenity in terms of the impact this could have on the affordable housing end of the retirement village market. In particular, he referred to those whose homes do not realise sufficient capital to purchase into more than a modest retirement village. He gave as an example the Kate Sheppard Retirement Village, which was destroyed by the earthquakes and which was priced as an "affordable housing development", with units offered in the range of $100,000–$150,000. He emphasised the importance of "building to the market's requirements" in order to meet the needs of residents.[168]

166 Evidence in chief of John Kyle on behalf of Ryman and the RVA at para 33.
167 Transcript, page 1218, lines 4–44.
168 Transcript, page 1168, lines 34–45; page 1169, lines 3–46; page 1170, lines 1–19.

[306] In answer to questions from the Panel, Mr Andrew Mitchell commented that he would not have a problem with an approach whereby compliance with a good practice protocol could be specified as a prerequisite for permitted activity status. He noted that this would need to be developed as a "minimum standard of what residents should expect in a village".[169]

[307] However, in their closing submissions, Ryman and the RVA opposed the imposition of internal amenity controls. They submitted that there was no s 32 evidence of an existing problem, and a "very low risk" of a future problem. They submitted that village operators are already highly regulated (under both the Retirement Villages Act and the Building Code), and reputation was also an effective governor of responsible behaviour. They noted that any codification of onsite requirements would need substantial sector input, and industry guidelines could be developed quickly, whether inside or outside the RMA, if the need arose. However, their overarching submission was that there was no current or reasonably anticipated need for anything at this time.[170]

[308] This matter was not pursued by the Council in its closing submissions. Rather, the Council's closing focussed primarily on the question of the appropriate activity classification for retirement villages in the RMD zone. On the matter of activity classification, the Council acknowledged the appeal of consistency across zones. However, relying on Mr Blair's evidence, it submitted that there was no basis for differentiating retirement villages from other types of development that already trigger urban design assessment within the RMD zone.

[309] The essence of Mr Blair's position on this matter was that the higher density RMD environment made it more important to undertake urban design assessment on a consistent basis. He could not identify any valid basis for treating retirement villages differently, in that respect, from multi-unit developments within the RMD zone.[171] Ryman took a different view. Relying on Mr Mitchell and Mr Kyle, it submitted that retirement villages should be treated differently from multi-unit developments, and, in any case, typical urban design principles are not well suited to the specialist nature of retirement villages.[172] Mr Kyle considered that nothing justified any more restrictive treatment of retirement villages within the RMD zone.

169 Transcript, page 1183, lines 7–41.
170 Closing submissions on behalf of Ryman and the RVA at paras 8–10.
171 Rebuttal evidence of Scott Blair at para 25.3.
172 Closing submissions on behalf of Ryman and the RVA at paras 11–14.

He observed that the RMD zone provides for a range of housing typologies and he considered it as suitable for retirement villages as any other residential zone.[173] In answer to questions from the Panel, he observed that retirement villages are much more comprehensively designed than a conventional medium density residential housing development.[174]

[310] We also heard from submitters involved in the development of housing for the elderly. One was Residential Construction Limited, for whom a director, Paul de Roo, gave evidence (together with planning witness, Ms Aston). Mr de Roo explained that his company has a long history as a specialist provider of affordable single storey elderly persons' housing units in Christchurch. He was not cross-examined.

[311] The company would look for development opportunities to redevelop larger existing sites (typically in the 600–1500m^2 range). We understood from him that a site between 750–800m^2 could yield 3–4 EPHU, depending on unit sizes. He noted that, nowadays very few vendors would accept property purchase offers that were conditional on obtaining resource consents. Typically, he needed to act quickly ("literally overnight").[175] As such, he argued that development certainty, and no significant delay, were critical for the feasibility of EPHU development.[176]

[312] He explained that, while the Existing Plan specified a maximum gross floor area of 80m^2 for EPHU, his company was routinely being granted consent for non-complying activity EPHUs of around 120-130m^2 in area. He said single bedroom units, typically 80–100m^2, suited singles, whereas two bedroom units, typically 100–120m^2, better suited couples. He talked about variability in how resource consent applications to exceed the specified floor areas were dealt with. That has included some frustrating debates with Council consent processing officers concerning internal room configuration and external landscaping requirements. However, in his experience, most EPHU applications that met all relevant Existing Plan standards, apart from the maximum floor area, were processed without a need for affected party approvals.[177]

173 Transcript, page 1189, lines 5–30.
174 Transcript, page 1215, lines 19–45; page 1216, lines 1–8.
175 Evidence in chief of Paul de Roo for Residential Construction Limited at 31.
176 Evidence in chief of Paul de Roo at 10–20.
177 Evidence in chief of Paul de Roo at 27–29.

[313] Mr de Roo noted that many elderly are not ready to go into retirement villages but seek to "downsize" from their family homes into smaller low maintenance units. The smaller size of EPHUs, as compared to townhouses, meant they were significantly more affordable for those seeking to move from their family homes. As such, he considered EPHUs meet a critical need for affordable housing for the elderly, enabling them to remain in their existing residential environments with existing family and social networks.[178] He said EPHUs were in very high demand, with owners appreciating their close living in communities with other elderly neighbours. In emphasising that point in answer to questions from the Panel, he observed:[179]

> … it is critical to … have them as over 60s, not a mixed model, as best we can. … because they have peer groups or they have support groups so if someone is sick they could lean on their neighbour for support and they have that better when there is a group of people of like-minded [sic] age.

[314] He commented that his company was working through Papanui, Harewood and Halswell, and that there was very high demand.

[315] He explained that his company incorporates a range of external and internal design features to make them safe and suitable for older persons. This includes external security lighting, wider wheelchair suitable doorways, wider kitchen galley spaces, and wider wheelchair-suitable shower cubicles, handrails and other safety features.[180]

[316] On the matter of social housing, the Crown called Paul Commons, General Manager, Canterbury Recovery and Redevelopment at Housing NZ (together with planning witness, Maurice Dale, who addressed the Corporation's requested relief). The Corporation is the largest owner of residential property in Christchurch, and houses approximately 20,000 tenants in approximately 6120 dwellings across the city. These social housing assets are spread across Christchurch, except for the hill suburbs. During the 2010/2011 earthquakes, some 95 per cent of these were damaged.

[317] However, in questioning by the Panel, Mr Commons accepted that the Corporation was now essentially back to its pre-earthquakes position, and current waiting list numbers in Christchurch were not out of line with those elsewhere in New Zealand. As such, he argued

178 Evidence in chief of Paul de Roo at 16.
179 Transcript, page 1458, lines 1–27.
180 Transcript, page 1465, lines 21–45; page 1466, lines 1–23.

that what sets Christchurch apart is in essence the opportunity presented by this plan review to address the present mismatch between the nature of existing housing stock and demographic trends towards smaller households and, therefore, smaller units.[181]

[318] He explained that the Corporation is seeking to respond to a significant mismatch between the present Corporation housing stock (predominantly three bedroom dwellings on large lots) and the Corporation's client needs (increasingly for single bedroom units). The Corporation's asset management strategy includes redevelopment of existing sites to achieve better efficiency of use, and improvements to both the quantity and quality of the housing stock. Apart from repairing and upgrading 5000 earthquake damaged properties, the Corporation is building 700 new units by the end of 2015. This programme extends across many Christchurch suburbs and communities.[182]

[319] On the matter of student accommodation needs, we heard from witnesses for the University of Canterbury ('University'), Christchurch Polytechnic Institute of Technology ('CPIT') and representatives of the Ilam and Upper Riccarton Residents Association ('IURRA').

[320] The University's Director of Learning Resources, Alexandra Hanlon, told us about the significance of the University to the Christchurch economy, and how the University was progressing in its recovery from the significant impacts of the earthquakes. Those events had forced the University to adjust its business operation, but it now considers it is on the road to recovery, and is focussed on the meaningful retention of students. The University was now three years into a 10-year rebuilding programme (having delivered some $340M of a total programme of $1.1B by 2015). In terms of student numbers, initial very significant losses (some 22 per cent) have shown healthy recovery. The University has identified that student accommodation has become a critical component of the student experience and a key factor in a student's decision to attend the University. The provision of satisfactory accommodation (qualitative and quantitative) goes hand in hand with the University's drive to recruit students from outside Christchurch.

181 Transcript, page 465, lines 27–38; page 469, lines 5–24.
182 Evidence in chief of Paul Commons on behalf of Housing New Zealand Corporation at paras 10–21.

[321] Currently, some 2000 of a community of nearly 14,000 students live on campus in six halls of residence. We understood many of the remaining students live in private homes, boarding and rental properties across the city. A demographic shift of residents to the west of Christchurch has meant a loss of formerly available rental properties. This has contributed to an increasingly tight rental market for students. To encourage and maintain increased student numbers, the University considers it essential to be able to provide suitable, affordable student accommodation, preferably close to the campus. Hence, it aims to increase the amount of managed student accommodation. It envisages, as part of this, to purchase existing dwellings (of up to six bedrooms in size), and convert them into student accommodation. It sought associated permitted activity provision.[183]

[322] On behalf of the University and CPIT, planning witness Laura Buttimore recommended that this relief be coupled with a change to what the Notified Version proposed in relation to student hostels in the RS and RSDT zones. In effect, she sought that student hostels owned and operated by a "secondary or tertiary education and research activity" be given different activity classification depending on bedroom numbers. Where they contained fewer than six bedrooms, she recommended that they be classed as a permitted activity. Above that, she recommended that they be classed as a restricted discretionary activity.

[323] IURRA representative, Richard English, gave evidence that the IURRA supported the University and CPIT position on including a permitted activity rule, subject to certain provisos. The IURRA opposed Ms Buttimore's proposal for an open-ended restricted discretionary activity status above six bedrooms. If between 7 and 9 bedrooms were specified to be a restricted discretionary activity, the IURRA sought that a broader range of discretionary matters be specified.[184] The IURRA also sought that we specify that bedrooms are "for single occupancy only". Mr English explained that this last request was on the basis that it was the number of people, rather than bedrooms per se, that ought to be controlled. The IURRA also sought that we distinguish tertiary education student accommodation from that provided for secondary students. This was on the footing that tertiary student accommodation is more "permissive", involves "the consumption of alcohol", a different "span of hours" and significantly greater vehicle movements and parking requirements.

183 Evidence in chief of Alexandra Hanlon on behalf of the University of Canterbury.

184 Statement of evidence of Richard English on behalf of the IURRA; Transcript, page 1444, lines 36–46; page 1445, lines 1–16 (Mr English).

[324] In its closing submissions, the Council continued to recommend a single restricted discretionary activity rule for student hostels owned by such education institutions, and specified that there must be fewer than 10 bedrooms.

[325] A further concern of IURRA was what it described as an unmanaged increase in the number of boarding houses where loose "rent a room" arrangements were seeing significant numbers of people coming to reside in premises. Mr English observed that, on occasions, this led to living rooms within houses being converted to bedrooms, and "sleep outs" and caravans being brought on to properties for "rent a room" arrangements. He commented that this was putting pressures on neighbourhoods, in terms of increases in traffic, and demand for parking, increases in rubbish removal and a reduction in residential amenity. He emphasised that the IURRA was not seeking controls for "anti-social" behaviour by some tertiary students. Mr English argued that the CRDP should control boarding houses on the basis of their similarity with commercial accommodation such as hotels and motels. The IURRA sought to address this though the inclusion in the CRDP of definitions of "Boarding house" and "Boarding room", in essence to more clearly distinguish them from ordinary larger family homes and, hence, curtail the trend that the IURRA has observed. The definitions it proposed were:

> "Boarding House
>
> means accommodation on a site whose aggregated total:
>
> (a) contains more than 2 boarding rooms and is
>
> (b) occupied, or intended by the landlord to be occupied, by at least 6 people at any one time."
>
> "Boarding Room
>
> means accommodation in a boarding house that is used as sleeping quarters by 1 or more people, and that is for use only by a person or persons whose agreement relates to that room."

[326] The Notified Version included controls on boarding houses. The issue raised by the IURRA were as to the degree of control that is appropriate. The Council did not express a position on the IURRA's requested relief in its closing submissions.

Findings

[327] On the matters we have traversed concerning housing for older persons, social housing and affordable housing, and education-related accommodation, we also heard from a range of

other submitters and witnesses. However, the evidence we have summarised has significantly informed the decisions we have made where these significantly differ from the Revised Version.

[328] As to the needs of our increasingly ageing population, the evidence satisfies us that it is important to allow for a range of different housing choices.

[329] That includes making sensible enabling provision for retirement villages, throughout all residential zones. Consistent with the outcome of mediation, except for the RMD zone, we have determined that retirement villages are permitted activities if they meet the specified activity standard (as to building façades) and built form standards (and subject to the high traffic generator rule).

[330] On balance, we agree with Mr Blair and the Council that retirement villages should be a restricted discretionary activity in the RMD zone. In essence, that is because we find that there are heightened receiving environment sensitivities in these zones given their existing intensity and the generally higher intensity of development allowed there. We have noted the evidence of Mr Kyle as to the generally higher quality of comprehensive design of retirement villages, as compared to multi-unit developments. However, we also bear in mind that we need to provide for a range of retirement village developments, from the higher end of quality to the lower end of affordability. That heightens the importance of having in place controls to manage receiving environment effects.

[331] Considering costs, benefits and risks, we have decided against imposing internal amenity controls on retirement villages. On this matter, we accept the position of Ryman and the RVA that there is no evidence at this time that there is a problem requiring intervention. We have also borne in mind the caution expressed by Mr Collyns as to the untested impacts of such regulation on the cost of delivering the affordable housing end of the retirement village market. Having said that, we are also mindful that it is at this "affordable" end of the market where residents have the least market power and hence, greatest vulnerability. However, on the basis of Mr Collyns' evidence, we have assumed that the RVA's members would act responsibly. Also, we have noted that the Council did not seek to address this topic in its closing submissions and took from that some concurrence with the retirement village sector position as to the lack

of any need for regulatory intervention at this time. However, we record that this is a matter where the Council, as plan administrator, has an ongoing plan monitoring responsibility.

[332] Dr Humphrey's evidence stressed the clear health and social evidence of people ageing in their own communities. We have also taken particular note of Dr Humphrey's evidence as to the importance of providing choice for ageing in place. That evidence was supported by the evidence of Mr de Roo. We find that ageing in place, whereby older persons have choices to downsize from their family homes yet remain within their familiar neighbourhoods, is important not only for the wellbeing of our older citizens but also for the communities of which they should continue to contribute to and be part of. In addition to providing choice, assisting affordability is also important. Those priorities are also generally reflected in the Statement of Expectations.

[333] We do not accept the Council's evidence that the needs of older people are met when they are essentially left to compete in the market for this relatively special dwelling type (bearing in mind it was originally conceived with the specific needs of the elderly in mind).

[334] Therefore, we have decided to restore what was known as EPHUs (renaming these Older Person's Housing Units), in RS and RSDT zones. In addition, we have increased the maximum floor area for permitted activity OPHUs from 80m^2 to 120m^2, in line with Mr de Roo's evidence.[185]

[335] Demographic trends towards smaller households with a higher proportion of renters inform our view that greater flexibility than provided under the Revised Version should be allowed, in regard to permissible multi-unit and social housing development. As such, we have provided for social housing and multi-unit complexes as permitted activities in the RSDT and RMD zones, subject to specified standards.

[336] In addition, as noted, we have carried forward from the Notified Version the comprehensive residential development mechanisms known as the EDM and the CHRM. A planning witness for the Crown, Mr Gimblett, explained the genesis of these mechanisms as

[185] In each case, including garages.

specific LURP interventions.[186] Mr Gimblett assisted with their development as part of a small team of planning and legal advisers to the Minister for Canterbury Earthquake Recovery.

[337] Mr Gimblett explained that, while the immediate housing needs crisis following the earthquakes was a factor leading to the development of the EDM and CHRM mechanisms, it was not the only one. Rather, as part of a package of measures, these mechanisms were also adopted as a means of supporting intensification, allowing for housing choice, and providing for community and social housing, with regard to the city's immediate and longer term accommodation needs.[187]

[338] The EDM mechanism was conceived as a form of "floating zone", to acknowledge the importance of flexibility insofar as new or changing support services and facilities could open up new areas for intensification opportunity over time.[188]

[339] By contrast, the CHRM mechanism, as provided for in the LURP, was directed to areas where significant building stock was already owned by social and community housing providers. These providers were seen to be vital in meeting the needs of some of the most vulnerable communities following the earthquakes. Importantly, much of the pre-earthquake stock was acknowledged to be increasingly unsuited to the needs of relevant communities.[189]

[340] In Mr Gimblett's opinion, the mechanisms should both be included in the CRDP to achieve consistency with the LURP. While he acknowledged that they could be adapted, he urged that they continue to reflect their originally anticipated purposes which, as we have noted, extend beyond addressing the immediate exigencies of earthquake recovery.[190]

[341] Ms Marney Ainsworth, a resident of Brookside Terrace on the edge of a Housing NZ proposed development, spoke as a representative of the Bryndwr Community Group about the Group's concerns about aspects of the CHRM.[191] She explained that the Group was not incorporated but operates a mailing list of some 83 individuals and a Facebook page and website accessed by some 128 households.

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186 Statement of evidence of Kenneth George Gimblett on behalf of the Crown.
187 Statement of evidence of Kenneth George Gimblett at para 4.2.
188 Statement of evidence of Kenneth George Gimblett at para 7.3.
189 Statement of evidence of Kenneth George Gimblett at para 6.7.
190 Statement of evidence of Kenneth George Gimblett at paras 9.1–9.3.
191 In addition, Mr Bligh (865) sought the removal of the CHRM from Planning Maps 23 and 24 of the Notified Version.

[342] Ms Ainsworth told us that the Group was concerned as to the fact that the LURP precluded notification of applications. That concern was driven, in part, by the scale of Housing NZ development proposed in Bryndwr and the present lack of adequate community facilities in that locality.[192]

[343] Consistent with the LURP, the Notified Version provided that restricted discretionary applications under the CHRM would be dealt with on a non-notified basis. However, despite similar directions in the LURP for the EDM, the Notified Version did not carry forward a similar non-notification regime for that mechanism.

[344] We accept the uncontested evidence of Mr Gimblett as to the value of carrying forward both mechanisms.

[345] We agree with Mr Gimblett that the EDM mechanism is an important tool for enabling flexibility over time. As recommended, we have provided for the EDM to the effect of enabling this type of comprehensive development as a restricted discretionary activity, in the RSDT, RMD and RBP zones. As this is a tool for intensification, we have specified minimum and maximum residential yields. We have also specified dimensional standards (i.e. contiguous sites of between 1500m^2 and 10,000m^2), locational qualifying standards (for example as to distance to business areas, parks, schools and transport routes), and built form standards.

[346] Similarly, we have provided for the CHRM as a tool for its intended purposes in relation to comprehensive residential development containing specified proportions of social housing. As recommended, this mechanism is available for those areas identified on the Planning Maps. In the identified areas, the CHRM classifies qualifying development as a restricted discretionary activity. Resulting development must comprise one-third community housing; or be least equal to the number of community housing units (occupied or unoccupied) as at 6 December 2013, in redevelopment areas. A range of built form standards apply, including minimum and maximum residential yields.

[347] We have provided for both mechanisms beyond the time period specified in the LURP.

192 Transcript, page 1403, line 3 to page 1406, line 44.

[348] We acknowledge the concerns Ms Ainsworth has expressed on the matter of notification. Part of our obligation is to ensure that the CRDP is not inconsistent with the LURP. The LURP specifies that, until December 2018, applications under the EDM and CHRM are not to be limited or publicly notified. In view of that, and the related evidence of Mr Gimblett and Mr Commons concerning the importance of social housing renewal and development for social wellbeing, we have carried forward a similar regime for both mechanisms. That is, we have specified that, for all restricted discretionary activity applications under the EDM and CHRM until 31 December 2018, applications must not be publicly notified, and that limited notification be confined to New Zealand Fire Service and KiwiRail (in each case, where there is non-compliance with specific built form standards). Beyond that date, that regime will cease to apply, and notification will be addressed through the applicable RMA notification provisions on that basis.

[349] We have also provided for social housing, as a permitted activity, in the RS zone. We have accepted the Council's recommendation in its Revised Version to increase the maximum number of permitted units from three to four. We have also reduced the minimum floor area of two bedroom units for multi-unit residential complexes and social housing complexes from $70m^2$ to $60m^2$.[193]

[350] At this point, we reiterate our earlier observations (under the heading "The relevance or otherwise of infrastructure constraints") that Policy 6.3.5 of the CRPS does not intend that Council infrastructure constraints operate as a barrier to land use development. The Council's evidence that its infrastructure upgrade programme is agile and able to be responsive to where development may occur, properly reflects the intention of integrated management reflected in the CRPS. We understood that evidence to refer, for example, to any new comprehensive social housing development using the CHRM. In that regard, we also emphasise the priority that enablement of social housing projects has, in terms of the RMA's sustainable management purpose in s 5. It directly serves the enablement of social wellbeing.

[351] We have decided to delete the rules of the Notified Version on "life-stage inclusive and adaptive design for new residential units".

193 In each case, excluding garages.

[352] These proposed standards included (amongst a very long list) specific controls on the location and design of door handles, the location of electrical switches, television and computer outputs, the design of window controls, the required space around beds and in laundries, the design of shower spaces and the distance between toilet pans and walls.

[353] Self-evidently, these would have added significant cost and uncertainty to a range of residential development across the city. On the evidence we have heard, we do not consider there is any sound benefits case for doing so.

[354] We acknowledge the evidence of Dr Humphrey as to the value of healthy, energy efficient and safe dwelling design. We also acknowledge the submissions of Generation Zero in support of such design standards.[194] We expect this will be an increasingly important issue, given demographic trends.

[355] However, despite those acknowledged benefits, we are overwhelmingly satisfied on the evidence that they do not justify the costs and uncertainties that would have been imposed through the rules proposed by the Notified Version. It is notable that the Council elected against calling any evidence in support of these provisions, and the Crown (as well as a number of other submitters) opposed them.

[356] We noted with interest Mr de Roo's evidence as to the age-in-place design specifications his company typically builds older persons' housing to. We consider that demonstrates the value that the market, together with education, can play in this area. In any event, the value of healthy, energy efficient and safe dwelling design is a national one, rather than being Christchurch-specific. While the evidence does not demonstrate to us any value in regulatory intervention, were it called for, we consider the better statutory vehicle would be the Building Act 2004 and its associated codes. While we are overwhelmingly satisfied, on the evidence, that these proposed restrictions of the Notified Version are inappropriate, we also note that the restrictions could well be contrary to s 18 of the Building Act, as Ngāi Tahu Property Limited submitted.[195] However, we do not need to determine that in view of our findings that the proposed restrictions should be rejected on their merits.

194 Generation Zero (1149).
195 Opening Legal Submissions on behalf of Te Rūnanga o Ngāi Tahu Property Limited (840, FS 1375), at paras 36 - 52

[357] However, we consider that it would be valuable to include in the CRDP a policy specifically to promote best practice in this area through non-regulatory methods including incentives. Therefore, we have included Policy 14.1.4.5 which is intended to encourage the Council to be active in incentivising this. That could include provision of information prepared in conjunction with the CDHB and agencies such as the Energy Efficiency and Conservation Authority Te Tari Tiaki Pūngao (or 'EECA').

[358] The evidence from the University as to its economic importance to Christchurch was unchallenged, and we accept it. Indeed, the priority that the CRPS and other Higher Order Documents give to recovery further enhances that importance at this time. We have also noted the evidence that the general demographic shift westwards has reduced the supply of student flats in the market and, in addition, students have an increasing expectation of a healthy good standard of accommodation handily located to the University. On these matters, we have taken note of the University's strategic need to be able to offer healthy and suitable accommodation to students, including increasing numbers from overseas and from other New Zealand centres. We found a need to tighten and clarify both what the Council and the University and CPIT proposed in regard to student hostels. Therefore, we have provided for student hostels owned or operated by a relevant education body as permitted (up to six bedrooms), restricted discretionary (7–9 bedrooms), and discretionary activities (10 or more bedrooms) in RS, RSDT and RMD zones.

[359] On the matter of boarding houses, we agree in principle with the IURRA that there is a need to further tighten and clarify controls, including definitions. We have made boarding houses a restricted discretionary activity in the RS, RSDT and RMD zones with discretion limited to the scale of activity and its impact on residential character and amenity (as provided for under Rule 14.13.5). We have tightened and clarified the related definitions.

[360] We have also included a range of other provisions concerning housing diversity and choice that were included in the Revised Version, but which were not contentious. Those include provisions as to the conversion of various types of existing elderly persons' housing units and family flats into residential units, replacement of single residential units with two, and construction of residential units on formerly vacant land. In relation to the conversion of elderly persons' housing, we have introduced a sunset time limit of 30 April 2018, which is consistent with our Temporary Activities rules, and coincides with the conclusion of the

immediate recovery. Related requirements for housing are no longer necessary. Some of these are addressed in the LURP, and we are satisfied that the Decision Version is not inconsistent with the LURP on these matters. Similarly, subject to specified standards, we have made provision for care of non-resident children. We are satisfied on the evidence that all of these provisions are most appropriate for achieving the objectives and policies.

[361] For the reasons we have traversed, having had regard to the Statement of Expectations, we are satisfied that the set of provisions we have included in the Decision Version on these matters better gives effect to the CRPS (and is not inconsistent with the LURP). On the evidence, we find that the several changes we have made to the Revised Version will achieve a better outcome in terms of benefits, costs and risks. For the reasons we have given, we are satisfied that the provisions we have decided upon are the most appropriate for achieving the Strategic Directions objectives, and other objectives and policies.

Education and health and veterinary care and emergency services and temporary training

[362] These are part of a group of non-residential activities whose place within residential zones relates to their contribution to enabling people and communities to provide for their wellbeing and health and safety. The provisions on the following matters ultimately proved non-contentious:[196]

(a) Education activities and pre-school facilities;

(b) Health care and veterinary care facilities;

(c) Emergency services facilities and temporary military or emergency service training activities; and

(d) Places of assembly.

[363] Some of these are specifically recognised in Strategic Directions objectives:

[196] Except to the extent CIAL contested intensification of noise sensitive activities within the 50 contour, which we address earlier in this decision.

3.3.11 Objective — Community facilities and education activities

(a) The expedited recovery and establishment of community facilities and education activities in existing and planned urban areas to meet the needs of the community; and

(b) The co-location and shared use of facilities between different groups is encouraged.

3.3.13 Objective — Emergency services and public safety

Recovery of, and provision for, comprehensive emergency services throughout the city, including for their necessary access to properties and the water required for firefighting.

[364] On the evidence, we are satisfied that the provisions of the Revised Version on these matters are appropriate.

[365] With the drafting refinements we have made, we are also satisfied that the provisions included in the Decision Version on these matters give proper effect to the CRPS (and are not inconsistent with the LURP), and are the most appropriate for achieving the relevant objectives (including the Strategic Objectives noted).

Community correction and community welfare facilities

[366] These are also activities whose place within residential zones relates to their contribution to enabling people and communities to provide for their wellbeing and health and safety. However, they are more prone to being a source of contention within those environments.

[367] The only parties to call evidence on community corrections facilities were the Crown (as provider of such facilities) and the Council.

[368] For the Crown, we heard from Ms Lisa Taitua, District Manager, Community Probation, Canterbury with the Department of Corrections. In reliance on Ms Taitua, Ms Yvonne Legarth presented planning evidence for that Department.

[369] Ms Taitua explained the role of the Department in enforcing sentences and orders of the Courts and Parole Board. This requires both custodial and non-custodial facilities, and her evidence focussed on the latter (the former intended to be addressed through designations). She explained the important role of such facilities for the community's health, safety and wellbeing why that it is often necessary to locate them in residential areas. She explained that

non-custodial facilities are used by the Department's Community Corrections staff. On average, these staff manage approximately 3700 sentences and orders in the community at any one time. Currently, there are six Community Corrections facilities in the Greater Christchurch area. As a result of the earthquakes, the Department lost a facility in the east of the city (Pages Road), and has a present gap in this significant catchment.[197]

[370] Ms Taitua explained that the Department is in a "difficult position in that it has to supply an essential public service for the health, safety and wellbeing of our communities when there is often local opposition to the installation of such facilities". She commented that sites are designed to be unobtrusive and "blend into their surroundings". She went on to observe that, in her 11 years working for the Department, "there has been initial opposition about the establishment of a Community Corrections site within Christchurch", but, following establishment, there have been "no further known issues".[198]

[371] Hagley/Ferrymead Community Board (803) submitted that applications for Periodic Detention Centres and similar facilities must be required to be notified so as to enable potential neighbours and the wider community to have awareness and input. The Board's submission noted that it was concerned that the location of Periodic Detention Centres can impact on local communities. It commented that "there have been two significant cases in the Hagley/Ferrymead ward, Richmond and Charleston, that have caused enormous community angst."[199] The Board did not call evidence about these matters. Ms Taitua responded that she was familiar with some of the circumstances of one of the cases the Board mentioned, namely the Corrections' Ensor Road Service Centre which was established in the Phillipstown area. She was aware that some members of the local community opposed it and appealed the resource consent decision, but the appeal was not upheld. She noted that the Department has been "able to support and assist the local community with community work projects".[200]

[372] Neither the Board nor any other party sought to cross-examine Ms Taitua or Ms Legarth. Ultimately, there was no disagreement between the Crown and the Council on the most appropriate provision for such facilities.

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197 Evidence in chief of Ms Lisa Taitua on behalf of the Crown at paras 5–9.3.
198 Evidence in chief of Ms Lisa Taitua at paras 10.1–10.3.
199 Submission of Hagley/Ferrymead Community Board on the proposed Christchurch Replacement District Plan, page 4.
200 Evidence in chief of Ms Lisa Taitua at paras 11.1.

[373] Accepting the evidence of Ms Taitua, we find that it is important for the health, safety and wellbeing of people and communities that there is confidence that such non-custodial facilities can be provided in residential zones. As to the Board's submission, we do not consider "community angst", as the Board puts it, is a necessarily valid reason for imposing a notified consent process. Such "angst" can simply be a form of localised initial prejudice against such facilities (or NIMBYism) by reason of the service they perform for the community as a whole.[201] We accept Ms Taitua's evidence to the effect that these facilities do not typically give rise to issues, once they are established. The greater community purposes served by these facilities overwhelmingly favours making positive provision for them.

[374] On the basis of the evidence of Ms Taitua and other witnesses for the Crown and the Council, we are satisfied that what the Crown and the Council resolved is the most appropriate for such facilities. This will provide for such facilities as permitted activities, subject only to the application of the usual built form standards, hours of operation and signage for the applicable zones.

[375] On a related matter, we heard from two witnesses for The Salvation Army concerning its addiction treatment, mental health and residential accommodation facilities in Addington.[202]

[376] Ms Wendy Barney, the Director of Addiction Services at "the Bridge", in Collins Street, told us about addiction treatment services it offers. Treatment programmes operate continuously for a range of clients, including those from the courts. Typically, a programme involves six weeks of residential care followed by two weeks of day clinics. She also told us about The Salvation Army's men's hostel in Poulsen Street. This was first opened in 1898 to serve prisoners on release from Addington Gaol. It now serves primarily as a night shelter and provides support for men suffering mental health problems, as well as some who have been released from prison.[203]

[377] The Salvation Army's planning witness, Mr Graham Parfitt, told us about a master planning exercise that his client was undertaking for its Addington sites (which he became involved with in August 2014). It was undertaken in view of the poor state of repair and

201 'NIMBY' stands for "not in my back yard".
202 Submission 422.
203 Evidence of Wendy Barney on behalf of The Salvation Army; Transcript, page 615, lines 27–46; page 616, lines 1–16.

unsuitability of some buildings at the sites and a shift by The Salvation Army nationally towards greater involvement in addiction treatment services (particularly for drugs and alcohol) and supportive housing. He considered that a comprehensive planning approach for the sites was appropriate, given their relatively large size (more than 1.8 hectare) and the particular nature and mix of services that The Salvation Army sought to provide there.[204] His client, therefore, sought a form of spot zoning whereby an overlay of provisions would be applied to the sites.

[378] Mr Parfitt confirmed what Mr Blair for the Council informed us as to the significant progress made in mediation. In terms of the modified provisions Mr Blair recommended in his rebuttal evidence, Mr Parfitt identified only a few points of difference. The most significant was that, in the updated provisions recommended in Mr Blair's rebuttal evidence, "offices and meeting rooms for administration, counselling, family meetings, budgeting, education or training" remained restricted to existing buildings. Mr Parfitt explained that this would defeat his client's master plan purposes, given the unsuitable state and condition of a number of these buildings. In answer to the Panel, Mr Parfitt confirmed that he was not seeking any exemption from the usual controls on the construction of new buildings. Rather, his concern was as to what permissible activities could occur within new buildings once constructed. On this matter, counsel for the Council, Ms Scott, conferred with Mr Blair and confirmed that the Council did not have any issue with accommodating Mr Parfitt's request on this matter.[205]

[379] Mr Parfitt also sought an exemption for the distance between buildings and windows for internal boundaries. This was because the sites were in several certificates of title and he was concerned to avoid the prospect of unnecessary consents having to be obtained for new buildings simply by reason of their intrusion into these internal boundaries. He also sought definitions of "addiction services", "supportive housing" and "Family Store" (the latter being a brand name used by The Salvation Army for its opportunity shop).

[380] The constructive approach taken by the Council and The Salvation Army has significantly assisted us in determining the most appropriate planning approach for these sites. We have allowed for addiction services and supportive housing for the range of requested services in either existing, upgraded or replacement buildings (other than the Family Store,

204 Evidence of Graham Parfitt on behalf of the Salvation Army; Transcript, page 606, lines 23–45.
205 Transcript, page 608, lines 7–45; page 609, lines 1–25; page 611, lines 1–30.

which is allowed within its existing building). We will deal with definitions in our decision on those matters. Finally, we have not provided the exemption requested by Mr Parfitt for internal site boundaries. That is because we consider the more appropriate method for dealing with that matter, should The Salvation Army find it problematic, would be for it to regularise its titles.

Places of worship and spiritual facilities

[381] This was another matter where we were significantly assisted by constructive mediation and engagement between the Council (led by Mr Blair) and various submitters. The net result was that matters in contention were narrowed to only two issues, for two submitters:

(a) The extent of what is encompassed in permitted activities for spiritual facilities, in addition to worship; and

(b) Permitted activity hours of operation.

[382] Some submitters noted that the activities they conducted in their facilities extended beyond simply community worship.[206] We expect that is the case across a range of faiths and denominations. However, we consider this is adequately recognised in the definitions of spiritual facilities and spiritual activities, which together refer to "worship, meditation, spiritual deliberation", "ancillary social and community support services" and "ancillary hire/use of church building for community groups and activities". As such, we are satisfied that the definition proposed in the Revised Version is sufficiently fit for purpose and most appropriate.

[383] As to hours of operation, John Frizzell and Ken Suckling (jointly giving evidence for the Plymouth Brethren Church[207]) explained that a requirement of the Church's faith includes starting its regular Sunday meeting with a Holy Communion service commencing at 6.00 a.m. That start time does not accord with the Notified Version's permitted activity standard hours of operation of 7.00 a.m. to 10.00 p.m. They described their meetings as involving relatively small numbers, their church buildings as also being small and of standard design that complies with "local government requirements", and local community considerations and concerns, including in ensuring sufficient off street parking and care for the environment. Messrs Frizzell

206 For example, see Transcript, page 611, lines 42–46, and page 612, lines 1–16.
207 Submitter 321.

and Suckling commented that applying for resource consent "is an expensive and time consuming exercise".[208] They gave examples where having to secure written approvals from owners and occupiers of dwellings in the vicinity resulted in additional consultant costs and delays. They observed that they had never failed to secure consent and that their operations had not given rise to subsequent complaints.

[384] The Plymouth Brethren's sensitive and responsible approach to the planning and provision of its facilities is to be commended. However, on the evidence before us, we do not consider that it justifies any exemption from the usual hours of operation for permitted activities. In essence, we did not receive sufficient evidence to be satisfied that any associated impacts on the amenities of neighbours could be adequately addressed through plan standards and other rules (as opposed to resource consent conditions).

[385] The evidence from the Plymouth Brethren that it has so far been entirely successful in securing resource consents may well point to a potential for suitable permitted activity standards to be developed. However, we cannot draw any safe conclusions on that, on the limited evidence before us. For instance, we cannot adjudge matters such as the numbers attending services, the amount of any off-site parking demand, the levels of noise and whether or not any light spill nuisance issues could arise. Related to that, we were not assisted with any evidence on related suitable standards on these and any other relevant impacts for residential neighbours. That leads us to determine that there is not a sound reason to dispense with resource consent processes as would be required by seeking to operate outside of the standard hours of 7.00 a.m. to 10 p.m. The assessment criteria we have specified ought to align well with the Brethren's responsible approach to the design and operation of its facilities. However, as the evidence presently stands, we adjudge it to remain appropriate that they continue to engage with potentially affected neighbours, on a limited notified basis. That is so as to ensure fairness of process and compatibility between their facilities and neighbouring residential activities.

Other non-residential activities in the residential zones

[386] The residential zones also host activities that can be commercial in nature. Usually, that is because they are activities that serve the needs of related residential communities.

[208] Evidence in chief of John Frizzell and Ken Suckling on behalf of Plymouth Brethren Church at para 7.1.

Sometimes, it is because they are types of "home occupation". In any event, they are typically subject to controls to ensure their compatibility with the amenities of immediate neighbours and their predominantly residential neighbourhoods.[209]

[387] This approach was reflected in the Notified Version. What it proposed was not contentious and was also reflected in the Revised Version. The activities provided for, subject to specified controls, include home occupations, the care of non-resident children for monetary payment, and bed and breakfast facilities.[210] On the evidence we have heard, we are satisfied that this provision is the most appropriate. Apart from addressing drafting clarity matters, we have made provision for these activities in the Decision Version.

Residential design assessment and control

[388] On this topic, the Decision Version has made relatively confined changes to the Revised Version. Leaving drafting changes aside, the two versions are essentially consistent in:

(a) Requiring residential design assessment for multiple units of various classes above specified thresholds; and

(b) Specifying restricted discretionary activity status for those activities for those purposes.

[389] The most significant changes the Decision Version makes are to tighten and clarify the assessment criteria (14.13.1 Residential Design Principles).

[390] Our starting point for the consideration of this matter is the direction given by the Higher Order Documents, in particular the CRPS. Its Policy 6.3.2 — 'Development form and urban design' directs that the CRDP is to give effect to specified principles of "good urban design" and the principles of the NZ Urban Design Protocol 2005. That direction informed our

209 In the Christchurch context, the disruptions of the earthquakes saw the displacement of a number of commercial activities into a number of residential zones, under the auspice of special temporary exemptions under the CER Act: The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011. This has resulted in a somewhat atypical further intrusion of commercial activities into predominantly residential environments, but on the assumption that this is time-limited. Our Temporary Activities decision deals with this matter: Decision 2 Temporary Activities.

210 The Council's proposals for motels and other such activities are to be considered later in our inquiry.

Strategic Directions decision. That decision records our finding that "good urban design is an essential ingredient not only in the recovery but also in providing for the long-term future of Christchurch".[211] However, in that decision we went on to caution as to the importance of proper targeting, both in terms of relevant zones and contexts. This was in light of "a high risk that significant costs will be imposed that are not justified by the environmental benefits that could be realised".[212]

[391] Although the Notified Version's approach to urban design assessment attracted significant attention in submissions and evidence, the need for effective design assessment was not itself a matter of significant contention. Rather, the primary concerns were as to a lack of proper targeting in the controls and uncertainties about how discretionary judgement would be exercised in consenting processes. As was revealed through testing of the expert witnesses, urban design is a discipline prone to differing subjective perceptions and fashions. Hence, poorly targeted assessment criteria and other plan controls are a recipe for significant uncertainty and unjustified cost. While the extent of rebuilding and urban renewal underway and anticipated in residential areas of Christchurch makes good urban design essential, so also is it imperative that the CRDP gives the lead and direction for how expert judgment is to be applied.

[392] On the matter of managing uncertainty, a matter we tested was the choice of activity class — in particular whether "controlled activity" (where consent is assured) is more appropriate than "restricted discretionary" classification. The Council urban design expert, Mr McIndoe, spoke of his experiences of problems in the application of controlled activity status in the Wellington district plan, leading to a review of the approach it first adopted. While that was of some interest, we do not see it as determinative of the matter. The effectiveness, or otherwise, of controlled activity classification depends very much on the quality and nature of controls imposed by the plan. What is more significant is that Christchurch is dealing with its particular challenges in post-earthquakes recovery. That is the context in which the CRPS gives direction on urban design matters.

211 Strategic Directions at [204].
212 Strategic Directions at [205].

[393] The Council's choice of restricted discretionary classification was not a matter of significant challenge by parties who contested this topic in expert evidence.[213] We have determined that restricted discretionary activity classification is the most appropriate for the particular circumstances in Christchurch at this time. In particular, we consider that context to warrant the capacity to decline consent where a development's design is so deficient that it would significantly derogate from the quality of its residential environment.

[394] In terms of ensuring sufficient certainty and clarity, it is important that restricted discretionary activities are properly targeted, in type and scale, to those requiring residential design assessment. It is also important that the criteria specified to direct discretionary judgment in such assessment are clear and precise.

[395] In terms of what activities must undergo residential design assessment, the focus needs to be on triggers of type and scale. A balance must be struck in deciding on those triggers. That is as to whether the benefits that the community would stand to gain (by way of good urban design outcomes) would outweigh the costs. Those costs are firstly imposed on individual owners and developers of land. However, they can also extend to the community as a whole, in terms of impediments to recovery, loss of certainty and confidence and, ultimately, loss of economic wellbeing.

[396] We did not receive economic or other evidence to enable us to undertake a quantified cost benefit analysis so as to inform our judgment on triggers. Instead, we have had to make a qualitative judgment. Closing submissions indicate that the Council's proposed triggers were not strongly opposed (rather, the primary focus of contention was in regard to assessment criteria).

[397] We have given careful consideration to whether the trigger points as to residential unit numbers are set appropriately. The Notified Version specified the trigger as three residential units for both social housing (in the RS and RSDT zones) and multi-unit residential complexes (in the RSDT zones). The Council later adjusted its recommended trigger to four units (in updated versions attached to the evidence in chief and rebuttal evidence of Mr Blair). The ensuing evidence of Messrs McIntyre (for the Crown) and Dale (for Housing NZ) both work

213 Evidence of Sandra McIntyre (for the Crown) and Jeremy Phillips (for Oakvale Farm and Maurice Carter) who addressed urban design criteria do not appear to comment on activity status.

from the same adjusted trigger point. None of the associated evidence of these witnesses included any explicit discussion of the rationale for this upwards adjustment, beyond a brief reference by Mr Blair to the Crown's submission. We presume that refers to the Crown's general concerns about costs and uncertainties, as the submission does not appear to seek a change to the threshold itself.

[398] In any case, we find the recommended adjustment to the threshold appropriate. In part, that is because we are satisfied that, for smaller scale developments, the CRDP's usual built form standards, activity classifications, and other rules are sufficient for addressing matters of design. In essence, the relative difference between those smaller scale multi-unit developments and permitted residential activities is relatively marginal, in terms of urban design outcomes. In reaching that view, we have considered the various opinions of the urban design and planning experts on these matters. Further, we consider this adjustment strikes a better balance in terms of costs and benefits, as the Crown's submission and others seek.

[399] That brings us to the approach to residential design assessment for those activities that trigger this. These were matters given considerable attention by experts during the hearing. A range of opinions was expressed on the relative merits of different approaches. For example, as compared with the Notified Version, some experts favoured a more simplified, reductionist approach focussing on outcomes. Ms McIntyre (for the Crown) and Mr Phillips (for Oakvale Farm Limited and Maurice R Carter Limited) supported such an approach.[214] They perceived this as offering greater certainty, clarity and ease of use. On the other hand, we heard from Mr McIndoe (for the Council) about the relative merits of the more "comprehensive" approach of the Notified Version. He recommended that, if we favour the "outcomes" approach recommended by the other experts, we should ensure that the headlines we select for matters to be addressed are "suitably comprehensive".[215]

[400] The choice of outcomes for assessment, and what is meant by "suitably comprehensive" assessment are very much in the realm of what the CRDP should direct, rather than what individual experts might prefer. The CRPS allows for the exercise of such discretion, as our Strategic Directions decision indicates. It is a matter for CRDP leadership in that the trade-offs made concern the competing interests of people and communities.

214 Oakvale Farm Limited (381); Maurice R Carter Limited (377).
215 Rebuttal evidence of Graeme McIndoe on behalf of the Council at para 3.8.

[401] In its closing submissions, the Council proposed various changes to reduce the scope for subjectivity, and better target the matters for assessment. It cautioned that Ms McIntyre's recommended approach would open up significant room for discretion and uncertainty. However, with those riders, it adopted some of Ms McIntyre's recommended wording.

[402] We found this endeavour to remove unnecessary differences helpful and we have found the Revised Version more appropriate than other recommended approaches on this point. In particular, we agree that the assessment criteria should:

(a) Be exclusive, rather than inclusive of other potential considerations;

(b) Address a city-wide context as well as the more localised matters of relationship to the street and public open spaces, built form and appearance, residential amenity, access, parking and servicing, and safety.

[403] Therefore, for the reasons we have set out, we differ from the Council's approach in the Revised Version on the following matters:

(a) We disagree that the city-wide context should encompass built features. Rather, at this scale, the focus should just be on natural, heritage and cultural features. We go further, in that we add the qualifier "significant" to natural, heritage and cultural features. We define "significant" as identified as significant in the CRDP. That is again on the basis of striking an appropriate balance in terms of costs and benefits. Natural, heritage and cultural features can be arguably present in most receiving environments. Not all warrant response in terms of residential design. Prioritisation is appropriate and can be achieved by identification in the CRDP.

(b) We consider that the relationship to streets should be qualified by the addition of the word "adjacent". On the evidence, we find that is the only relevant focus for residential design assessment in regard to streets.

(c) We do not agree that there should be any requirement for assessment of what the Revised Version terms "environmental design". The substance of what the Council has proposed here is on "passive solar design principles", "efficient water use and

> management" and "climate appropriate/low input planting". The Council has not justified those matters being included in the evidence it called. Further, including such matters would be at odds with the Council's election against pursuing similar "environmental design" matters of house design that were part of the Notified Version. These dimensions impose considerable uncertainty and unquantified costs which we find disproportionate and unjustified.

[404] We have provided that restricted discretionary activity applications would be processed on a non-notified basis. That is because we are satisfied, on the evidence, that the topic of residential design assessment is properly able to be addressed as a matter of technical design assessment, without input from submissions.

[405] We have made a range of other drafting changes, each with a view to ensuring greater clarity and less uncertainty.

[406] For those reasons, we find the Decision Version better gives effect to the CRPS, and better achieves relevant Strategic Directions objectives. Therefore, we also find it better responds to the Statement of Expectations and is the most appropriate.

Controls as to the visual transparency of fences

[407] For the RMD, RSDT and RS zones[216] the Notified Version proposed controls as to the visual transparency of fences that faced the street. Fences between 1 metre and 1.8 metres in height would be required to have at least 50 per cent of the fence structure "visually transparent". Where less than 50 per cent of the fence structure was visually transparent, it would be limited to a height of 1 metre.

[408] For the reasons that follow, we have decided to delete these controls, except for the RMD zone.

[409] Council architect, Ms Ekin Sakin, explained the Council's rationale for these proposed controls. She explained how the Existing Plan included similar standards, but only for its Living 3 and Living G zones (the broad equivalent to the RMD and NNZ zones). She explained

[216] We leave aside the NNZ zone, as this is deferred for later hearing.

that these controls were introduced into the Existing Plan through PC53, which we understand became operative in 2012.[217] She referred to Appendix 5 to the s 32 Report[218] by way of background evaluation ('Appendix 5 Report').

[410] She noted that there was a relatively low number of submissions on the controls, eight of these being in relation to the RS zone (five of which were from residents) and four in relation to the RMD zone (on the topic of fences generally, one of which is related to this aspect). She contrasted that with the significant number of submissions that were made on PC53. She observed that this drop off in submissions from residents "demonstrates community acceptance, better understanding of the standards over time, as well as little or no community concern in balancing privacy with interaction with the street".[219] However, she rightly also noted that reduced privacy was the predominant concern expressed in submissions, which we note are primarily related to the proposed imposition of this control in the RS and RSDT zones where it was not previously included in the Existing Plan. She pointed out that the controls would only apply to new fences, and what was proposed was the predominant configuration in low density suburban Christchurch.[220]

[411] In response to Panel questions concerning the rationale for the rule, given its implications for loss of privacy, Ms Sakin explained that this was "one of street safety, both perceived and actual".[221] Similarly, the Appendix 5 Report briefly records as a rationale for "street scene controls", that the "location of garages and driveways to the street with houses less connected to the public realm is a threat for street amenity and safety".

[412] We understand that rationale to be informed, to an extent, by what are known as principles for "crime prevention through environmental design" (or 'CPTED'), which are enunciated in a set of guidelines that were issued by the Ministry of Justice, in 2005.[222] One of those principles concerns sight lines and casual surveillance. However, examination of those guidelines reveals that they are primarily concerned with those types of public space in our

217 Evidence in chief of Ekin Sakin on behalf of the Council at para 7.1.
218 "District Plan Review — Residential Chapter 14, Section 32 — Appendix 5, Design Controls Review of Built Form, Character and Amenity Provisions for the Existing Flat Land Residential Zones", Sakin, October 2013 – May 2014.
219 Evidence in chief of Ekin Sakin at para 7.5.
220 Evidence in chief of Ekin Sakin at paras 7.2–7.5.
221 Transcript, page 131, lines 12–40 (Ms Sakin).
222 http://www.justice.govt.nz/publications/publications-archived/2005/national-guidelines-for-crime-prevention-through-environmental-design-in-nz/part-1-seven-qualities-of-safer-places/the-seven-qualities-for-well-designed-safer-places.

cities that, without such measures, can be particular attractors of crime. Much of what the Ministry recommends concerns sensible design of public spaces such that they can receive the benefit of low cost, but effective, passive oversight (for instance, through proximity to overlooking commercial buildings, and well-lit and thought-through public accesses and spaces).

[413] We see little, if any, support in those documents for the extent of regulation imposed in the Notified Version.

[414] A further concern is that these proposed controls could work against a long-established amenity value associated with residential environments: privacy. In that sense, particularly in environments where these controls are not established, they do not maintain or enhance amenity values, a matter to which we must have particular regard (s 7(f)). On that, we do not find in the Council's evidence or s 32 Report (including Appendix 5) any robust assessment of the proposed controls against the state of the existing environments in which they would be imposed. The environments of the RSDT and RS zones are well-established, including in how residents have preferred to configure fences to protect the privacy of their indoor and outdoor living areas. Related to that, nor did the Council's evidence (or s 32 Report) provide any robust benefit and cost assessment.

[415] Amongst submissions from residents is one from Ms Sue Wells, in relation to the RS and RSDT zones.[223] Ms Wells, during her time on the Council, chaired the relevant committee dealing with resource management matters. In opposing these proposed controls, she observed that they would come as a surprise to landowners, particularly given that fences would not require building consent. As controls specific to fences, she questioned their practical enforceability. Another, Grant Miles,[224] opposed the proposed controls as being too restrictive for outdoor living space. He made the observation that houses on the southern side of a street would have living areas designed to face north, and thus the street. For these, he noted a concern that the controls would work against establishing private outdoor living spaces with a northern aspect.

223 Submission 1185.
224 Submission 160.

[416] We find that, in substance, those submissions at least raise issues that called for substantive consideration, given the matters we have noted. However, we found that wanting in the Council's evidence and in the s 32 Report (including its Appendix 5).

[417] We acknowledge that the position for an RMD zone is different in view of the greater extent of intensification that exists there and which is encouraged to continue. In those environments, the fence design controls of PC53 are already demonstrated in the configuration of more recent developments.

[418] In the final analysis, we conclude that the proposed controls cannot be justified in terms of RMA principles, other than for the RMD zone. In particular, imposing them more widely would fail to maintain or enhance amenity values, and impose unjustified costs. Related to the last matter, a further factor that we weigh in confining the controls to the RMD zone is the OIC Statement of Expectations. In an overall sense, having considered the evidence before us on costs, benefits and risks in terms of s 32AA, we consider that the most appropriate course is to maintain them in the RMD zone and reject them in the RSDT and RS zones.

Built form standards for the various zones

[419] We have made a range of technical and other changes to the built form standards for the various zones included in the Revised Version (i.e. by way of deletion or amendment). In each case, we have determined on the evidence that the changes reduce unnecessary regulation and cost, and improve clarity and consistency. The changes we have made are therefore the most appropriate for achieving the relevant objectives, including the Strategic Direction objectives.

Policy 14.1.5.5 deferred

[420] By memorandum of counsel, on 11 August 2015, the Council requested that we not make a decision on Policy 14.1.5.5 at this time, but consider whether it ought to be deleted in the context of our Stage 2 Residential hearing. The memorandum explains that the Crown was the only submitter on this policy, and both the Council and the Crown now consider it superfluous in view of the notified Stage 2 provisions. We stop short of determining whether or not that is so, but agree to the Council's request given that Stage 2 is the proper stage to test whether or not it remains an appropriate policy.

Carlton Mill Road height limits – Richard Batt

[421] Submitter Richard Batt is a property developer and the owner of sites at 21-23 Carlton Mill Road between Rhodes Street and Hewitts Road, Merivale.[225] In his submission, he sought reinstatement of the 30m height limit of the Existing Plan (as opposed to 20m and a five-storey limit of the Notified Version). He also sought a 3m setback (as opposed to 4m) and what he understood to be a restoration of a maximum building coverage of 50 per cent (as opposed to 45 per cent). No submission or further submission opposed the relief he pursued.

[422] Our decisions to provide for a general 2m setback and 50 per cent site coverage in the RMD zone address those aspects of Mr Batt's requested relief. On the remaining matter of height limits, we have decided to reinstate the 30m height limit, for the following reasons.

[423] Mr Batt did not call evidence, but attended the hearing and spoke to his submission. He explained to us that, prior to the earthquakes, there was an eight-storey 1960s building on the sites. This was demolished by the former owners, shortly after the earthquakes.

[424] Despite a number of other demolitions, several other high rise apartments and other tall buildings remain in this area. Given the site's location, it enjoys relatively unobstructed views over the Avon River and Hagley Park. This higher than typical built form in the locality was reflected in a more generous 30m height limit under the "Living 4B" zoning of the Existing Plan. The Notified Version continued to recognise the higher built form within this area, with an overlay to its RMD zoning. However, the overlay reduced the height limit to 20m and also set a limit of five storeys.

[425] The rationale for this height reduction was not clearly explained to us by the Council's witnesses. Mr Batt, in speaking to his submission, told us that he could not "fathom" why the decision to reduce height limits had been made. From his reading of the "reports" on it, he understood the rationale may have been more generically related to the height limits being considered for the Central City.[226] He was concerned that he did not have a secure "existing use rights" basis for building back to the height of the demolished building.[227]

225 Richard Batt (937).
226 Transcript, page 1389, lines 20–45.
227 Transcript, page 1392, lines 29–46.

[426] Given the lack of clear rationale for this aspect of the Notified Version, we issued a Minute following the hearing.[228] We noted that the lack of evidence from both the Council and Mr Batt, together with the scant s 32 report information, left us concerned that we were not in a position to evaluate the options in a proper manner. We set a timetable for the Council to file supplementary evidence and for Mr Batt to file rebuttal if he so wished.

[427] We received a supplementary statement from Mr Blair, for the Council, changing his position to one of supporting Mr Batt's request for a 30m height limit for the sites. In view of that, it is not surprising that Mr Batt did not file rebuttal evidence.

[428] Mr Blair reported that he visited the sites on 21 October 2015 and noted that the sites were being advertised for a proposed residential building of eight storeys (with plant room), which he equated to being "over 20m but less than 30m". He recorded this as a material factor influencing his change of view.[229] We struggle to see it as having any relevance, on its own. That is, while such an opportunity may be something Mr Batt seeks for the site, this does not bear in any significant way on the appropriate development controls for the site.

[429] More pertinently, however, Mr Blair pointed to the Council's closing submissions seeking restricted discretionary activity status for urban design assessment purposes, and to the surrounding large residential apartment buildings and proximity to Hagley Park. He considered these factors to support greater height limits (and, in his view, greater intensity).[230]

[430] We add to that the lack of any submissions opposing the relief pursued by Mr Batt. In circumstances where a site such as this is close to many neighbouring dwellings (at least to the north, west and east), it can be anticipated that impacts on amenity values (e.g. in terms of shading, privacy and outlook) would be materially greater with a 30m height limit than they would be for a 20m limit. However, in considering these matters, we place significant weight on the historical context of an eight-storey building amongst others in this area, and on the lack of any submissions before us indicating any neighbourhood opposition to what Mr Batt has requested by way of restoration of the status quo. Coupled with that point, on the matter of urban design (or what we term "residential design"), we have provided a restricted

228 Minute Proposal 14 (Stage 1 Residential) Residential Medium Density Higher Height Limit at Carlton Mill Road, 5 October 2015.
229 Second Supplementary evidence of Mr Blair on behalf of the Council at 3.6.
230 Second Supplementary evidence of Mr Blair at 3.7.

discretionary activity regime (in Rules 14.3.2.3 and 14.13.1). This will require specified new developments to be assessed against specified principles, including on built form and appearance and residential amenity. As we have noted, we provide for this to be on a non-notified basis, in that the height is as anticipated for this locality.

[431] Mr Blair also explained that the height and storey limits for the sites were set on the basis of work undertaken on appropriate height limits for Hagley Avenue adjacent to Hagley Park. That work recommended a 14m height limit for the Hagley Avenue locality, out of concern that the higher Living 4B height limits would be illogical given the intention to reduce height limits in the Central City.[231] He explained that the decision was made to provide an uplift from this recommendation of 14m, to a 20m height limit for Mr Batt's properties, in recognition of the existing taller surviving buildings and the sites' relationship to Hagley Park.[232] He conceded that it would have been helpful for this to have been made clear in the s 32 Report. While that might be a fair concession, we observe that this explanation of the genesis of the height limits of the Notified Version would tend to confirm the impression Mr Batt had from his reading of the "reports", namely that they arose from a more generic concern as to the logic of height limits in relation to what is proposed for the Central City. In light of Mr Blair's final recommendation and our other findings, we are satisfied that this concern can be discounted in this case.

[432] In view of all of these matters, on the matter of height limits, we conclude that the most appropriate outcome is to accept Mr Blair's final recommendation and so reinstate the 30m height limit.

Other rezoning requests and miscellaneous mapping errors corrected

Merivale

[433] The extent of RMD zoning included in the Notified Version at Merivale was slightly less than what had been identified by the Council for consultation. The slight reduction was made in the vicinity of Leinster Road. As Mr Blair explained, this was in part because of community

231 Second Supplementary evidence of Mr Blair at 3.5.
232 Second Supplementary evidence of Mr Blair at 3.5.

concerns about how RMD upzoning would impact on the residential amenity values of that part of Merivale.[233]

[434] Jan Cook (808) and Nurse Maude (525) supported the zoning pattern of the Notified Version for this area. Other submitters opposed the extent of RMD zoning, in particular, Brigit Andrews (265) and Michael Hughes (1121) objecting to the RMD zone around Mansfield Avenue.

[435] Mr Hughes lives in Murray Place and his property is next door to the Working Style business on Papanui Road. He was concerned about the zoning of the area of land bounded by Innes Road to the south, Papanui Road to the east, Mansfield Avenue to the north and Browns Road to the west. In speaking to his submission, he did not specifically address his concerns about the extent of proposed RMD zoning. However, he explained his concerns about the impacts that increased commercialisation in the vicinity of his dwelling was having on his enjoyment of residential amenity values.

[436] We accept the Council's evidence as demonstrating that the extent of RMD zoning provided under the Notified Version at Merivale is the most appropriate. We note that the Panel's Stage 1 Commercial and Industrial decision also addresses Mr Hughes' submission, to the extent that he was also opposed to commercial rezoning of land in the vicinity of his Mansfield Avenue property.

St Albans

[437] Frank Hill (148) and G & R Taylor (609) opposed the notified RSDT and RMD zones respectively. Mr Hill requested an RS zone and the Taylors requested RSDT. Neither submitter attended the hearing to elaborate on their reasons. In the absence of any further information we accept the zoning of the Notified Version is the most appropriate and properly accords with the Higher Order Documents.

Other submissions

[438] Submissions were also received that generally supported the residential zoning in the Notified Version. Unless otherwise stated we have accepted those submissions. A submission

233 Transcript, page 223, lines 33–40 (Mr Blair).

was received from Donna Hatcher (543) requesting a change of zoning for Bournemouth Crescent, Wainoni, from RMD to RS. Ms Hatcher did not attend the hearing. We have insufficient evidence to consider her request further, and decline the submission accordingly.

[439] The Council also accepted a number of mapping errors as identified in submissions from Ngāi Tahu Property Limited in relation to areas at Wigram that were zoned Living 3 in the Existing Plan. We accept Mr Blair's evidence that those areas should have been zoned RMD.[234] In relation to Paul Douglas (815), Mr Blair accepted that part of 17 Royds Street should be zoned RS, rather than left grey. We accept those corrections.

[440] We have considered requests from Mr Stokes (1182) for the removal of the Riccarton Wastewater Catchment. Mr Stokes attended the hearing and addressed other aspects of his submission but did not address this specific request in evidence or submissions. We have no evidential basis to support his request, and reject it accordingly.

Requests to rezone Residential land to Commercial or Industrial

[441] Submissions on these matters will be the subject of our Stage 1 Commercial and Industrial decision.

Amendments to Decision 3 on the Repair and Rebuild of Multi-unit Residential Complexes

[442] The Panel's decision on provisions regarding the repair and rebuild of multi-unit residential complexes ('Decision 3') made it clear that the provisions approved by that decision only apply in relation to the repair and rebuild of multi-unit residential complexes.[235]

[443] Decision 3 included rules for the Residential Chapter (Chapter 14), in the form recommended by the Council. The Council has now brought to our attention that aspects of their recommended drafting carried into those provisions are unclear. In particular, it is not clear from the provisions that they are to apply to the repair and rebuild of multi-unit residential complexes only, compared to "buildings" more generally. The Council noted that this could

234 Joint memorandum of Council and NPT, 22 April 2015, in relation to the former Wigram Aircraft Number 4 and 5 Hangars and the Control Tower.

235 Decision 3 — Repair and Rebuild of Multi-Unit Residential Complexes (and Relevant Definitions), 26 February 2015, at [5].

be reasonably inferred from the rules included in the multi-unit decision. It invited the Panel to revisit Decision 3 to clarify the circumstances where the provisions apply (i.e. the repair and rebuild of multi-unit complexes only).

[444] The Council submitted that the Panel has jurisdiction to do this under cl 13(5) of the OIC, in that it is necessary to do so to ensure that the CRDP is coherent and consistent. The Council suggested remedial amendments to the Chapter 14 provisions that were approved by Decision 3.[236]

[445] The Council also noted that Decision 3 cross-referenced the version of the then applicable Chapter 14 provisions.

[446] During this hearing, amendments to those provisions were proposed (including changes affecting cross-referencing) which render incorrect cross-references to the relevant built form standards. The Council proposed consequential amendments, including to the Decision 3 provisions.[237]

[447] We have considered the requests and made amendments accordingly. We are satisfied, for the purposes of cl 13(6)(a) OIC, that these are of minor effect.

Definitions

[448] Except to the extent that this decision addresses specific definitions, we defer our determination on definitions to our separate decision on Stage 1 Chapter 1 Introduction and Chapter 2 Definitions.

Replacement of provisions

[449] Our decision is required to identify those parts of the Existing Plan that are to be replaced. The Council provided us with its recommendations on this in tables that accompanied the Notified Version. For this decision, we have considered those parts of the Council's recommendations relevant to the Stage 1 Residential proposal. As Schedule 2 records, we have deferred a number of provisions of the Notified Version to later stages of our

236 Closing legal submissions of the Council at paras 8.1–8.4, and Annexure E
237 Ibid.

inquiry. Until those remaining provisions are heard and determined, the Existing Plan will continue to apply to the relevant areas of land. Given this staged approach to our inquiry, it is not practical to carve out only those parts of the Existing Plan that are to be replaced by this decision on a provision by provision basis. Therefore, we have determined that the only parts of the Existing Plan that are to be replaced by this decision are the zonings of those areas of land in the Existing Plan (excluding all overlays, designations or other features) that are to be zoned by this decision. This decision does not replace any other parts of the Existing Plan.

Directions for consequential changes to Planning Maps and specified Figures and Appendices

[450] Mr Blair[238] explained a technical error on the Planning Maps which the Council's submission asked be corrected in relation to the Central Riccarton area. In the Notified Version, the residential rules specified a lower 8 metre height limit for this locality, but this was not shown on the applicable Planning Maps. The lower limit ought to have been shown as an overlay. We are satisfied that this is a minor remedial correction and the error is not such as to have prejudiced any party's ability to participate in the planning process. In particular, a reasonable reader of the Notified Version would not have simply scrutinised what the Planning Maps show. Rather, such a reader would have also considered the associated rules, where the restriction was duly specified.

[451] Therefore, we accept the Council's submission and direct that this correction be made to the Planning Maps on the timeframe we have noted below.

[452] We direct the Council to provide to the Panel, by **3 p.m. on Monday 11 January 2016**, an updated set of Planning Maps, Figures and Appendices to give effect to the various zoning and other changes to the Notified Version that we have made by this decision (and to address the above-noted technical error). Leave is reserved to the Council to make application for further or replacement directions.

[453] A second decision will then issue to the effect of further amending the Notified Version by inclusion of updated Planning Maps, Figures and Appendices.

238 Evidence in chief of Adam Scott Blair, at paras 6.17 – 6.19

Timetabling and other cl 13(4) directions

[454] For the reasons given, under cl 13(4), we direct the Council as follows:

(a) **By 3 p.m. on Monday 11 January 2016**, the Council must lodge for the Panel's approval as being in a form suitable for notification a draft proposal for RMD zoning of areas around each of the Linwood (Eastgate), Hornby and Papanui (Northlands) KACs, each such area being:

(i) Within the areas shown in Exhibit 4; and

(ii) Within 800 metres walkable distance of each of the facilities identified in Policy 14.1.1.2(a) of the Decision Version; and

(iii) In other respects in accordance with Policy 14.1.1.2 of the Decision Version;

(b) Lodge, by that same time and date, the Council's s 32 evaluation of that draft proposal.

(c) **By 3 p.m. on Monday 11 January 2016**, the Council must lodge for the Panel's approval as being in a form suitable for notification a proposal to include rules in the Residential Zones for corridor protection setbacks for the 11kV Lyttelton distribution line.

(d) Lodge, by that same time and date, the Council's s 32 evaluation of that draft proposal.

[455] Leave is reserved to the Council to apply for further or replacement directions.

[456] Further timetabling and other directions will follow on receipt of the documents above-described.

Overall evaluation and conclusions

[457] Based on our evidential findings, we are satisfied that Decision Version, as amended from the Revised Version, best gives effect to the RMA and the Higher Order Documents. It is also best suited to enable recovery and meet the long-term requirements of greater Christchurch.

For the Hearings Panel:

Hon Sir John Hansen
Chair

Environment Judge John Hassan
Deputy Chair

Ms Sarah Dawson
Panel Member

Dr Philip Mitchell
Panel Member

SCHEDULE 1

Changes that the decision makes to the proposals.

Chapter 14 Residential

14.1 Objectives and policies

14.1.1 Objective - Housing supply

a. An increased supply of housing that will:

   i. enable a wide range of housing types, sizes, and densities, in a manner consistent with Objectives 3.3.4(a) and 3.3.7;

   ii. meet the diverse needs of the community in the immediate recovery period and longer term, including social housing options; and

   iii. assist in improving housing affordability.

14.1.1.1 Policy - Housing distribution and density

[Further amendment to this Policy will be considered by the Panel as part of considering the Stage 2 Chapter 14 Residential (part) Proposal]

a. Provide for the following distribution of different areas for residential development, in accordance with the residential zones identified and characterised in Table 14.1.1.1a, in a manner that ensures:

   i. high density residential development in the Central City, that achieves an average net density of at least 50 households per hectare for intensification development;

   ii. medium density residential development in and near identified commercial centres in existing urban areas where there is ready access to a wide range of facilities, services, public transport, parks and open spaces, that achieves an average net density of at least 30 households per hectare for intensification development;

   iii. a mix of low and medium residential density development in greenfield neighbourhoods, that achieves a net density (averaged over the Outline Development Plan) of at least 15 households per hectare;

   iv. greenfield land that is available for further residential development up to 2028; and

   v. low density residential environments in other existing suburban residential areas and in the residential areas of Banks Peninsula are maintained, but limited opportunities are provided for smaller residential units that are compatible with the low density suburban environment.

Table 14.1.1.1a

Residential Suburban Zone	Provides for the traditional type of housing in Christchurch in the form of predominantly single or two storeyed detached or semi-detached houses, with garage, ancillary buildings and provision for gardens and landscaping. The changing demographic needs and increasing demand for housing in Christchurch are provided for through a range of housing opportunities, including better utilisation of the existing housing stock. A wider range of housing options will enable a typical family home to be retained, but also provide greater housing stock for dependent relatives, rental accommodation, and homes more suitable for smaller households (including older persons).

Residential Suburban Density Transition Zone	Covers some inner suburban residential areas between the Residential Suburban Zone and the Residential Medium Density Zone, and areas adjoining some commercial centres. The zone provides principally for low to medium density residential development. In most areas there is potential for infill and redevelopment at higher densities than for the Residential Suburban Zone.
Residential Medium Density Zone	Located close to the central city and around other larger commercial centres across the city. The zone provides a range of housing options for people seeking convenient access to services, facilities, employment, retailing, entertainment, parks and public transport. The zone provides for medium scale and density of predominantly two or three storey buildings, including semi-detached and terraced housing and low-rise apartments, with innovative approaches to comprehensively designed, high quality, medium density residential development also encouraged. Residential intensification is anticipated through well-designed redevelopments of existing sites, and more particularly through comprehensive development of multiple adjacent sites. Zone standards and urban design assessments provide for new residential development that is attractive, and delivers safe, secure, private, useable and well landscaped buildings and settings.
New Neighbourhood Zone	*[deferred to NNZ Hearing]*
Residential Banks Peninsula Zone	Includes urban and suburban living, commuter accommodation and the small harbour settlements. The zone includes the settlements of Lyttelton and Akaroa which each have a distinctive urban character. Lyttelton has a more urban atmosphere and a distinct urban-rural boundary. The residential areas are characterised by small lot sizes and narrow streets. Akaroa is a smaller settlement characterised by its historic colonial form and architecture, relatively narrow streets, distinctive residential buildings and well-treed properties. Akaroa is a focal point for visitors to the region and the district. The character of these two settlements is highly valued and the District Plan provisions seek to retain that character. Opportunities for residential expansion around Lyttelton and Akaroa are constrained by the availability of reticulated services and land suitability. The smaller settlements around Lyttelton harbour provide a variety of residential opportunities. Residential areas at Cass Bay, Corsair Bay, Church Bay and Diamond Harbour offer a lower density residential environment with relatively large lots. Each settlement differs as a reflection of its history, the local topography, the relationship with the coast and the type of residential living offered. Non-residential activities that are not compatible with the character of the Residential Banks Peninsula Zone are controlled in order to mitigate adverse effects on the character and amenity of the area.

14.1.1.2 Policy – Establishment of new medium density residential areas

a. Support establishment of new residential medium density zones to meet demand for housing in locations where the following amenities are available within 800 metres walkable distance of the area:

   i. a bus route;

   ii. a Key Activity Centre or larger suburban commercial centre;

   iii. a park or public open space with an area of at least 4000m^2; and

   iv. a public full primary school, or a public primary or intermediate school.

b. Avoid establishment of new residential medium density development in:

i. high hazard areas;

ii. areas where the adverse environmental effects of land remediation outweigh the benefits; or

iii. areas that are not able to be efficiently serviced by Council-owned stormwater, wastewater and water supply networks.

c. Encourage comprehensively designed, high quality and innovative, medium density residential development within these areas, in accordance with Objective 14.1.4 and its policies.

Note: This policy also implements Objective 14.1.2.

14.1.1.3 Policy - Needs of Ngāi Tahu whānui

a. Enable the housing needs of Ngāi Tahu whānui to be met throughout residential areas and in other locations where there is an ongoing relationship with ancestral lands.

Note: This policy also implements Objective 14.1.2.

14.1.1.4 Policy – Provision of social housing

a. Enable small scale, medium density social housing developments throughout residential areas as a permitted activity and social housing developments generally throughout residential areas.

Note: This policy also implements Objective 14.1.2

14.1.1.5 Policy – Non-household residential accommodation

a. Enable sheltered housing, refuges, and student hostels to locate throughout residential areas, provided that the building scale, massing, and layout is compatible with the anticipated character of any surrounding residential environment.

Note: This policy also implements Objective 14.1.2.

14.1.1.6 Policy – Provision of housing for an aging population

a. Provide for a diverse range of independent housing options that are suitable for the particular needs and characteristics of older people throughout residential areas.

b. Provide for comprehensively designed and managed, well-located, higher density accommodation options and accessory services for older people and those requiring care or assisted living, throughout all residential zones.

c. Recognise that housing for older people can require higher densities than typical residential development, in order to be affordable and, where required, to enable efficient provision of assisted living and care services.

Note: This policy also implements Objective 14.1.2

14.1.1.7 Policy – Monitoring

a. Evaluate the effectiveness of the District Plan's residential provisions by monitoring the supply of additional housing through residential intensification, greenfield and brownfield development (including housing types, sizes and densities), and its contribution to:
   i. meeting regional growth targets for greater Christchurch in the Land Use Recovery Plan and the Canterbury Regional Policy Statement;
   ii. achieving an additional 23,700 dwellings by 2028 (Objective 3.3.4(a));
   iii. meeting the diverse and changing population and housing needs for Christchurch residents, in the immediate recovery period and longer term;
   iv. improving housing affordability; and
   v. meeting the housing intensification targets specified in Objective 3.3.7(d).

b. Undertake the monitoring and evaluation at such intervals as to inform any other monitoring requirements of other statutory instruments, and make the results publicly available.

c. Have regard to the information from this monitoring when determining priority areas for residential intensification and provision for new and upgraded infrastructure.

14.1.2 Objective – Short term residential recovery needs

a. Short-term residential recovery needs are met by providing opportunities for:
   i. an increased housing supply throughout the lower and medium density residential areas;
   ii. higher density comprehensive redevelopment of sites within suitable lower and medium density residential areas;
   iii. medium density comprehensive redevelopment of community housing environments;
   iv. new neighbourhood areas in greenfields priority areas; and
   v. temporary infringement of built form standards as earthquake repairs are undertaken.

Note: Policies 14.1.1.1, 14.1.1.2, 14.1.1.3, 14.1.1.4, 14.1.1.5, 14.1.1.6, and 14.1.1.7 also implement Objective 14.1.2

14.1.2.1 Policy – Short term recovery housing

a. Provide for and incentivise a range of additional housing opportunities to meet short term residential recovery needs through redevelopment and additions to the existing housing stock and/or vacant land, that:
   i. are appropriately laid out and designed to meet the needs of current and future residents; and
   ii. avoid significant adverse effects on the character or amenity of existing residential areas.

14.1.2.2 Policy – Recovery housing - higher density comprehensive redevelopment

a. Enable and incentivise higher density comprehensive development of suitably sized and located sites within existing residential areas, through an Enhanced Development Mechanism which provides:

   i. high quality urban design and onsite amenity;

   ii. appropriate access to local services and facilities;

   iii. development that is integrated with, and sympathetic to, the amenity of existing neighbourhoods and adjoining sites; and

   iv. a range of housing types;

   v. and which does not promote land banking, by being completed in accordance with a plan for the staging of the development.

b. To avoid comprehensive development under the Enhanced Development Mechanism in areas that are not suitable for intensification for reasons of:

   i. vulnerability to natural hazards;

   ii. inadequate infrastructure capacity;

   iii. adverse effects on Character Areas ; or

   iv. reverse sensitivity on existing heavy industrial areas, Christchurch International Airport, arterial traffic routes, and railway lines.

14.1.2.3 Policy – Redevelopment and recovery of community housing environments

a. Enable and incentivise comprehensive redevelopment of the existing community housing environments, through a Community Housing Redevelopment Mechanism which:

   i. provides high quality urban design and on-site amenity;

   ii. provides development that is integrated with, and sympathetic to, the amenity of adjacent neighbourhoods;

   iii. maintains or increases the stock of community housing units;

   iv. provides for an increased residential density; and

   v. provides for a range of housing types including housing for lower income groups and those with specific needs.

14.1.2.4 Policy – Temporary infringement for earthquake repairs

a. Enable temporary infringement of built form standards relating to building height and recession planes to facilitate the timely completion of repairs to earthquake damaged houses and ancillary buildings.

14.1.3 Objective – Strategic infrastructure

a. Development of sensitive activities does not adversely affect the efficient operation, use, and development of Christchurch International Airport and Port of Lyttelton, the rail network, the National Grid and other strategic transmission lines, the state highway network, and other strategic infrastructure.

14.1.3.1 Policy – Avoidance of adverse effects on strategic infrastructure

a. Avoid reverse sensitivity effects on strategic infrastructure including:
   i. Christchurch International Airport;
   ii. the rail network;
   iii. the major and minor arterial road network;
   iv. the Port of Lyttelton;
   v. the National Grid and strategic distribution lines identified on the planning maps.

14.1.4 Objective – High quality residential environments

a. High quality, sustainable, residential neighbourhoods which are well designed, have a high level of amenity, enhance local character and reflect the Ngāi Tahu heritage of Ōtautahi.

Note: Policies 14.1.6.1, 14.1.6.2, 14.1.6.3, and 14.1.6.6 also implement Objective 14.1.4.

14.1.4.1 Policy – Neighbourhood character, amenity and safety

a. Facilitate the contribution of individual developments to high quality residential environments in all residential areas (as characterised in Table 14.1.1.1a), through design:
   i. reflecting the context, character, and scale of building anticipated in the neighbourhood;
   ii. contributing to a high quality street scene;
   iii. providing a high level of on-site amenity;
   iv. minimising noise effects from traffic, railway activity, and other sources where necessary to protect residential amenity;
   v. providing safe, efficient, and easily accessible movement for pedestrians, cyclists, and vehicles; and
   vi. incorporating principles of crime prevention through environmental design.

14.1.4.2 Policy – High quality, medium density residential development

a. Encourage innovative approaches to comprehensively designed, high quality, medium density residential development, which is attractive to residents, responsive to housing demands, and provides a positive contribution to its environment (while acknowledging the need for increased densities and changes in residential character), through:

i. consultative planning approaches to identifying particular areas for residential intensification and to defining high quality, built and urban design outcomes for those areas;

ii. encouraging and incentivising amalgamation and redevelopment across large-scale residential intensification areas;

iii. providing design guidelines to assist developers to achieve high quality, medium density development;

iv. considering input from urban design experts into resource consent applications;

v. promoting incorporation of low impact urban design elements, energy and water efficiency, and life-stage inclusive and adaptive design; and

vi. recognising that built form standards may not always support the best design and efficient use of a site for medium density development, particularly for larger sites.

14.1.4.3 Policy – Scale of home occupations

a. Ensure home occupation activity is secondary in scale to the residential use of the property.

14.1.4.4 Policy – Character of low and medium density areas

a. Ensure, consistent with the zone descriptions in Table 14.1.1.1a, that:

i. low density residential areas are characterised by a low scale open residential environment with predominantly one or two storey detached or semi-detached housing, and significant opportunities for landscaping and good access to sunlight and privacy are maintained; and

ii. medium density areas are characterised by medium scale and density of buildings with predominantly two or three storeys, including semi-detached and terraced housing and low rise apartments, and landscaping in publicly visible areas, while accepting that access to sunlight and privacy may be limited by the anticipated density of development and that innovative approaches to comprehensively designed, high quality, medium density residential development are also encouraged in accordance with Policy 14.1.4.2.

14.1.4.5 Policy – Best practice for health, building sustainability, energy and water efficiency

a. Promote new residential buildings that:

i. provide for occupants' health, changing physical needs, and life stages; and

ii. are energy and water efficient;

iii. through non-regulatory methods including incentives.

14.1.4.6 Policy – Landscape and Ngāi Tahu cultural values in residential areas of Banks Peninsula

[deferred to Stage 2 Residential]

14.1.4.7 Policy – Heritage values in residential areas of Lyttelton and Akaroa

[deferred to Stage 2 Residential]

14.1.5 Objective – Comprehensive planning for new neighbourhoods

[deferred to NNZ Hearing]

14.1.5.1 Policy – Comprehensive development

[deferred to NNZ Hearing]

14.1.5.2 Policy – Higher density housing location

[deferred to NNZ Hearing]

14.1.5.3 Policy – Higher density housing to support Papakāinga development

[deferred to NNZ Hearing]

14.1.5.4 Policy – Neighbourhood Centres scale and location

[deferred to NNZ Hearing]

14.1.5.5 Ngā kaupapa / Policy Protection and enhancement of sites, values and other taonga of significance to tangata whenua

[deferred to NNZ Hearing]

14.1.5.6 Policy – Separation of incompatible activities

[deferred to NNZ Hearing]

14.1.5.7 Policy – Protection and enhancement of natural features and amenity

[deferred to NNZ Hearing]

14.1.6 Objective – Non-residential activities

Residential activities remain the dominant activity in residential zones, whilst also recognising the need to:

i. provide for community facilities and home occupations which by their nature and character typically need to be located in residential zones; and

ii. restrict other non-residential activities, unless the activity has a strategic or operational need to locate within a residential zone.

Note: this objective and its subsequent policies do not apply to brownfield sites.

14.1.6.1 Policy – Residential coherence character and amenity

a. Ensure that non-residential activities do not have significant adverse effects on residential coherence, character, and amenity.

Note: This policy also implements Objective 14.1.4

14.1.6.2 Policy - Community activities and facilities

a. Enable community activities and facilities within residential areas to meet community needs and encourage co-location and shared use of community facilities where practicable.

Note: This policy also implements Objective 14.1.4

14.1.6.3 Policy – Existing non-residential activities

a. Enable existing non-residential activities to continue and support their redevelopment and expansion provided they do not:

i. have a significant adverse effect on the character and amenity of residential zones; or

ii. undermine the potential for residential development consistent with the zone descriptions in Table 14.1.1.1a.

Note: This policy also implements Objective 14.1.4

14.1.6.4 Policy – Other non-residential activities

a. Restrict the establishment of other non-residential activities, especially those of a commercial or industrial nature, unless the activity has a strategic or operational need to locate within a residential zone, and the effects of such activities on the character and amenity of residential zones is insignificant.

14.1.6.5 Policy – Retailing in residential zones

a. Ensure that small scale retailing, except for retailing permitted as part of a home occupation, is limited in type and location to appropriate corner sites on higher order streets in the road hierarchy.

14.1.6.6 Policy – Memorial Avenue and Fendalton Road

a. Maintain the war memorial and visitor gateway roles of Memorial Avenue and Fendalton Road and their very high amenity values, by limiting the establishment of non-residential activities and associated outdoor advertising and vehicle parking on sites in residential zones with frontage to these roads.

Note: This policy also implements Objective 14.1.4

14.1.7 Objective – Redevelopment of brownfield sites

a. On suitable brownfield sites, provide for new mixed use commercial and residential developments that are comprehensively planned so that they are environmentally and socially sustainable over the long term.

14.1.7.1 Policy – Redevelopment of brownfield sites

a. To support and incentivise the comprehensive redevelopment of brownfield sites for mixed use residential and commercial activities where:
   i. natural hazards can be mitigated;
   ii. adequate infrastructure services and capacity are available;
   iii. reverse sensitivity effects on existing industrial areas are managed;
   iv. the safety and efficiency of the current and future transport system is not significantly adversely affected;
   v. there is good walking and cycling access to public transport routes, commercial and community services, and open space;
   vi. if necessary, contaminated land is remediated in accordance with national and regional standards; and
   vii. the redevelopment does not impact on the vitality and strategic role of commercial centres.
b. Ensure the redevelopment is planned and designed to achieve:
   i. high quality urban design and on-site amenity; and
   ii. development that is integrated and sympathetic with the amenity of the adjacent neighbourhoods and adjoining sites.

14.2 Rules – Residential Suburban Zone and Residential Suburban Density Transition Zone

14.2.1 How to use the rules

a. The rules that apply to activities in the Residential Suburban Zone and Residential Suburban Density Transition Zone are contained in:

   i. the activity status tables (including activity specific standards) in Rule 14.2.2; and

   ii. built form standards in Rule 14.2.3.

b. Area specific rules also apply to activities within the following specific areas zoned Residential Suburban Zone in Rule 14.2.4:

   i. Wigram, within the area of the diagram shown on Figure 6 (generally bounded by RNZAF Bequest Land, Awatea Road, and the Wigram aerodrome and runway);

   ii. Peat Ground Condition Constraint Overlay

   iii. Prestons Road Retirement Village Overlay;

   iv. adjacent to State Highway 73 (Southern Motorway) between Annex and Curletts Roads;

   v. adjacent to State Highway 75 (Curletts Road) between the intersection with State Highway 73 and Lincoln Road;

   vi. Existing Rural Hamlet Overlay;

   vii. Stormwater Capacity Constraint Overlay;

   viii. Residential land abutting the western boundary of the Industrial Park Zone at Russley Road / Memorial Avenue; and

   ix. Mairehau final development area shown on Figure 5.

c. The activity status tables and standards in the following chapters also apply to activities in all areas of the Residential Suburban Zone and Residential Suburban Density Transition Zone.

   5 Natural Hazards;

   6 General Rules and Procedures;

   7 Transport;

   8 Subdivision, Development and Earthworks;

   9 Heritage and Natural Environment;

   11 Utilities, Energy and Infrastructure; and

   12 Hazardous Substances and Contaminated Land.

d. Where the word "facility" is used in the rules (e.g. spiritual facility), it shall also include the use of a site/building for the activity that the facility provides for, unless expressly stated otherwise.

   Similarly, where the word/phrase defined include the word "activity" or "activities", the definition includes the land and/or buildings for that activity unless stated otherwise in the activity status tables.

14.2.2 Activity status tables

14.2.2.1 Permitted activities

In the Residential Suburban Zone and the Residential Suburban Density Transition Zone, the activities listed below are permitted activities if they comply with the activity specific standards set out in this table, the applicable built form standards in Rule 14.2.3 and the area specific rules in Rule 14.2.4.

Activities may also be controlled, restricted discretionary, discretionary, non-complying or prohibited as specified in Rules 14.2.2.2, 14.2.2.3, 14.2.2.4, 14.2.2.5, and 14.2.2.6.

Activity		Activity specific standards
P1	Residential activity, except for boarding houses	a. No more than one heavy vehicle shall be stored on the site of the residential activity. b. Any motor vehicles and/or boats dismantled, repaired or stored on the site of the residential activity shall be owned by people who live on the same site.
P2	Minor residential unit where the minor unit is a detached building and the existing site it is to be built on contains only one residential unit	a. The existing site containing both units shall have a minimum net site area of 450m^2. b. The minor residential unit shall have a minimum gross floor area of 35m^2 and a maximum gross floor area of 80m^2. c. The parking areas of both units shall be accessed from the same access. d. There shall be a total outdoor living space on the existing site (containing both units) with a minimum area of 90m^2 and a minimum dimension of 6 metres. This total space can be provided as: i. a single continuous area; or ii. be divided into two separate spaces, provided that each unit is provided with an outdoor living space that is directly accessible from that unit and is a minimum of 30m^2 in area. Note: This requirement replaces the general outdoor living space requirements set out in Rule 14.2.3.5.
P3	Student hostels owned or operated by a secondary education activity or tertiary education and research activity containing up to 6 bedrooms	a. Nil

<table>
<tr><th colspan="2">Activity</th><th>Activity specific standards</th></tr>
<tr><td>P4</td><td>Multi-unit residential complexes within the Residential Suburban Density Transition Zone</td><td rowspan="2">a. The complex shall only contain up to and including four residential units.
b. The minimum net floor area (including toilets and bathrooms, but excluding carparking, garaging or balconies) for any residential unit in the complex shall be:

<table><tr><th></th><th>Number of bedrooms</th><th>Minimum net floor area</th></tr><tr><td>1.</td><td>Studio.</td><td>35m^2</td></tr><tr><td>2.</td><td>1 Bedroom.</td><td>45m^2</td></tr><tr><td>3.</td><td>2 Bedrooms.</td><td>60m^2</td></tr><tr><td>4.</td><td>3 or more Bedrooms.</td><td>90m^2</td></tr></table>
c. Any residential unit fronting a road or public space shall have a habitable space located at the ground level, and at least 50% of all residential units within a complex shall have a habitable space located at the ground level.
d. Each of these habitable spaces located at the ground level shall have a minimum floor area of 9m^2 and a minimum internal dimension of three metres and be internally accessible to the rest of the unit.</td></tr>
<tr><td>P5</td><td>Social housing complexes</td></tr>
<tr><td>P6</td><td>Older person’s housing unit</td><td>a. Any older person’s housing unit shall have a maximum gross floor area of 120m^2.</td></tr>
<tr><td>P7</td><td>Retirement villages</td><td>a. Building façade length – there must be a recess in the façade of a building where it faces a side or rear boundary from the point at which a building exceeds a length of 16 metres. The recess must:
i. be at least 1 metre in depth, for a length of at least 2 metres;
ii. be for the full height of the wall; and
iii. include a break in the eave line and roof line of the façade.</td></tr>
</table>

Activity		Activity specific standards
P8	Conversion of an elderly person's housing unit existing at 6 December 2013, into a residential unit that may be occupied by any person(s) and without the need to be encumbered by a bond or other appropriate legal instrument (P8 only applies until 30 April 2018)	a. There shall be no reduction in the areas and dimensions of the lawfully established outdoor living space associated with each unit.
P9	Conversion of a family flat existing at 6 December 2013 into a residential unit that may be occupied by any person(s) and without the need to be encumbered by a legal instrument	a. Each converted flat shall have a minimum gross floor area, excluding terraces, garages, sundecks, and verandahs, of $35m^2$. b. There shall be a total outdoor living space on the existing site (containing the residential unit and the family flat) with a minimum area of $90m^2$ and a minimum dimension of 6m. This total space can be provided as a single contiguous area, or be divided into two separate spaces, provided that each unit is provided with an outdoor living space that is directly accessible from that unit and is a minimum of $30m^2$ in area. Note: This requirement replaces the general outdoor living space requirements set out in Rule 14.2.3.5.
P10	Conversion of a residential unit (within, or as an extension to, a residential unit) into two residential units	a. Each residential unit shall have a minimum gross floor area, excluding terraces, garages, sundecks and verandahs, of $35m^2$. b. There shall be a total outdoor living space on the existing site with a minimum area of $90m^2$ and a minimum dimension of 6m. This total space can be provided as a single contiguous area, or be divided into two separate spaces, provided that each unit is provided with an outdoor living space that is directly accessible from that unit and is a minimum of $30m^2$ in area. Note: This requirement replaces the general outdoor living space requirements set out in Rule 14.2.3.5. c. The residential unit to be converted shall be outside: i. the tsunami inundation area as set out in Environment Canterbury report number R12/38 "Modelling coastal inundation in Christchurch and Kaiapoi from a South American Tsunami using topography from after the 2011 February Earthquake (2012), NIWA"; as shown in Appendix 14.14.5; ii. the Riccarton Wastewater Interceptor Overlay identified on the Planning Maps 38, 37, 31, 30, 23; except after the completion of infrastructure work to enable capacity in the identified lower catchment; and

Activity		Activity specific standards
		iii. any Flood Management Area.
P11	Replacement of a residential unit with two residential units	a. The existing site shall be occupied by one residential unit and that residential unit has been, or will be, demolished because the insurer(s) of that unit have determined that the residential unit was uneconomic to repair because of earthquake damage. b. The existing site shall be outside: i. the tsunami inundation area as set out in Environment Canterbury report number R12/38 "Modelling coastal inundation in Christchurch an Kaiapoi from a South American Tsunami using topography from after the 2011 February Earthquake (2012), NIWA"; as shown in Appendix 14.14.5; ii. the Riccarton Wastewater Interceptor Overlay identified on the Planning Maps 38, 37, 31, 30, 23; except after the completion of infrastructure work to enable capacity in the identified lower catchment; and iii. any Flood Management Area. c. There shall be a total outdoor living space on the existing site with a minimum area of $90m^2$ and minimum dimension of 6m. This total space can be provided as a single contiguous area, or be divided into two separate spaces, provided that each unit is provided with an outdoor living space that is directly accessible from that unit and is a minimum of $30m^2$ in area. Note: This requirement replaces the general outdoor living space requirements set out in Rule 14.2.3.5.
P12	Construction of two residential units on a site that was vacant prior to the Canterbury earthquakes of 2010 and 2011	a. The existing site shall be outside: i. the tsunami inundation area as set out in Environment Canterbury report number R12/38 "Modelling coastal inundation in Christchurch an Kaiapoi from a South American Tsunami using topography from after the 2011 February Earthquake (2012), NIWA"; as shown in Appendix 14.14.5; ii. the Riccarton Wastewater Interceptor Overlay identified on the Planning Maps 38, 37, 31, 30, 23; except after the completion of infrastructure work to enable capacity in the identified lower catchment; and iii. any Flood Management Area. b. There shall be a total outdoor living space on the existing site with a minimum area of $90m^2$ and minimum dimension of 6m. This total space can be provided as a single contiguous area, or be divided into two separate spaces, provided that each unit is provided with an outdoor living space that is directly accessible from that unit and is a minimum of $30m^2$ in area.

Activity		Activity specific standards
		Note: This requirement replaces the general outdoor living space requirements set out in Rule 14.2.3.5.
P13	Home occupation	a. The gross floor area of the building, plus the area used for outdoor storage area, occupied by the home occupation shall be less than 40m^2. b. The maximum number of FTE persons employed in the home occupation, who reside permanently elsewhere than on the site, shall be two. c. Any retailing shall be limited to the sale of goods grown or produced on the site, or internet-based sales where no customer visits occur. d. The hours of operation, when the site is open to visitors, clients, and deliveries, shall be limited to between the hours of: i. 0700 – 2100 Monday to Friday; and ii. 0800 – 1900 Saturday, Sunday and public holidays. e. Visitor or staff parking areas shall be outside the road boundary setback. f. Outdoor advertising shall be limited to a maximum area of 2m^2, except that where the activity is located on sites with frontage to Memorial Avenue or Fendalton Road there shall be no signage.
P14	Care of non-resident children within a residential unit in return for monetary payment to the carer	There shall be: a. a maximum of four non-resident children being cared for in return for monetary payment to the carer at any one time; and b. at least one carer residing permanently within the residential unit.
P15	Bed and breakfast	There shall be: a. a maximum of six guests accommodated at any one time; b. at least one owner of the residential unit residing permanently on site; and c. no guest given accommodation for more than 90 consecutive days.
P16	Education activity	The activity shall: a. only locate on sites with frontage and the primary entrance to a minor arterial or collector road where right turn offset, either informal or formal, is available; b. only occupy a gross floor area of building of less than 200m^2, or in the case of a health care facility, less than 300m^2; c. limit outdoor advertising to a maximum area of 2m^2; d. limit the hours of operation when the site is open to visitors, students, patients, clients, and deliveries to between the hours of: Education activity: i. 0700 – 2100 Monday to Saturday; and
P17	Pre-schools	
P18	Health care facility	
P19	Veterinary care facility	
P20	Places of assembly	

<table>
<tr><th colspan="2">Activity</th><th>Activity specific standards</th></tr>
<tr><td></td><td></td><td>
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<tr><td></td><td>ii. Closed Sunday and public holidays.</td></tr>
<tr><td>Pre-schools</td><td>i. 0700 – 2100 Monday to Friday, and
ii. 0700 – 1300 Saturday, Sunday and public holidays.</td></tr>
<tr><td>Health care facility</td><td rowspan="3">i. 0700 – 2100.</td></tr>
<tr><td>Veterinary care facility</td></tr>
<tr><td>Places of assembly</td></tr>
</table>
e. in relation to pre-schools, limit outdoor play areas and facilities to those that comply with the Group 1 acoustic standard for residential zones;
f. in relation to pre-schools, veterinary care facilities and places of assembly:
i. only locate on sites where any residential activity on an adjoining front site, or front site separated by an access, with frontage to the same road is left with at least one residential neighbour. That neighbour shall be on an adjoining front site, or front site separated by an access, and have frontage to the same road; and
ii. only locate on residential blocks where there are no more than two non-residential activities already within that block;
Note: See Figure 1.
g. in relation to veterinary care facilities, limit the boarding of animals on the site to a maximum of four;
h. in relation to places of assembly, entertainment facilities shall be closed Sunday and public holidays;
i. in relation to noise sensitive activities, not be located within the 50 dBA L_{dn} Air Noise Contour as shown on the Planning Maps; and
j. not include the storage of more than one heavy vehicle on the site of the activity.
</td></tr>
<tr><td>P21</td><td>Spiritual facilities</td><td>The facility shall:
a. limit the hours of operation to 0700-2200; and
b. not include the storage of more than one heavy vehicle on the site of the activity.</td></tr>
<tr><td>P22</td><td>Community corrections facilities</td><td rowspan="2">The facility shall:
a. limit the hours of operation when the site is open to clients and deliveries to between the hours of 0700 – 1900; and
b. limit signage to a maximum area of $2m^2$.</td></tr>
<tr><td>P23</td><td>Community welfare facilities</td></tr>
</table>

Activity		Activity specific standards
P24	Emergency services facilities	a. Nil
P25	Repair or rebuild of multi-unit residential complexes damaged by the Canterbury earthquakes of 2010 and 2011 on properties with cross leases, company leases or unit titles as at the date of the earthquakes *[This was the subject of Decision 3, numbering and text referring to multi-unit residential complexes is amended by this decision under Cl 13(5) and (6)(a)]*	a. Where the repair or rebuild of a building will not alter the building footprint, location, or height, the building need not comply with any of the built form standards. b. Where the building footprint, location, or height is to be altered no more than necessary in order to comply with legal or regulatory requirements or the advice of a suitably qualified and experienced chartered engineer: i. the only built form standards that shall apply are those specified in Rules 14.2.2.3 – Building height and 14.2.3.6 – Daylight recession planes; ii. in relation to the road boundary setback, the repaired or rebuilt building shall have a setback of at least 3 metres; iii. the standards at (i) and (ii) shall only apply to the extent that the repaired or rebuilt building increases the level of non-compliance with the standard(s) compared to the building that existed at the time of the earthquakes. Clarification: examples of regulatory or legal requirement that may apply include the New Zealand Building Code, Council bylaws, easements, and other rules within this Plan such as the requirements for minimum floor levels in Chapter 5. c. If paragraphs a. and b. do not apply, the relevant built form standards apply. Any application arising from non-compliance with standards a. and b.i. will not require written approval except from the affected adjoining landowner(s) and shall not be publicly notified. Any application arising from non-compliance with standard b.ii. (road boundary setbacks), will not require written approval and shall not be publicly or limited notified.
P26	Temporary lifting or moving of earthquake damaged buildings where the activity does not comply with one or more of Rules: a. 14.2.3.3 – Building height; b. 14.2.3.4 – Site coverage; c. 14.2.3.5 – Outdoor living space; d. 14.2.3.6 – Daylight recession planes; or e. 14.2.3.7 – Minimum building	a. Buildings shall not be: i. moved to within 1 metre of an internal boundary and/or within 3 metres of any waterbody, scheduled tree, listed heritage item, natural resources and Council owned structure, archaeological site, or the coastal marine area; or ii. lifted to a height exceeding 3 metres above the applicable recession plane or height control. b. The building must be lowered back or moved back to its original position, or a position compliant with the District Plan or consistent with a resource consent, within 12 weeks of the lifting or moving works having first commenced. c. In all cases of a building being moved or lifted, the owners/occupiers of land adjoining the sites shall be informed of the work at least seven days prior to the lift or move of the building occurring. The information provided shall include details

Activity		Activity specific standards
	setbacks from internal boundaries and railway lines. *[This was the subject of Decision 2, numbering and text is amended by this decision under Cl 13(5) and (6)(a)]*	of a contact person, details of the lift or move, and the duration of the lift or move. d. The Council's Resource Consents Manager shall be notified of the lifting or moving the building at least seven days prior to the lift or move of the building occurring. The notification must include details of the lift or move, property address, contact details and intended start date.
P27	Relocation of a building	a. Nil
P28	Temporary military or emergency service training activities	
P29	Market gardens, community gardens, and garden allotments	

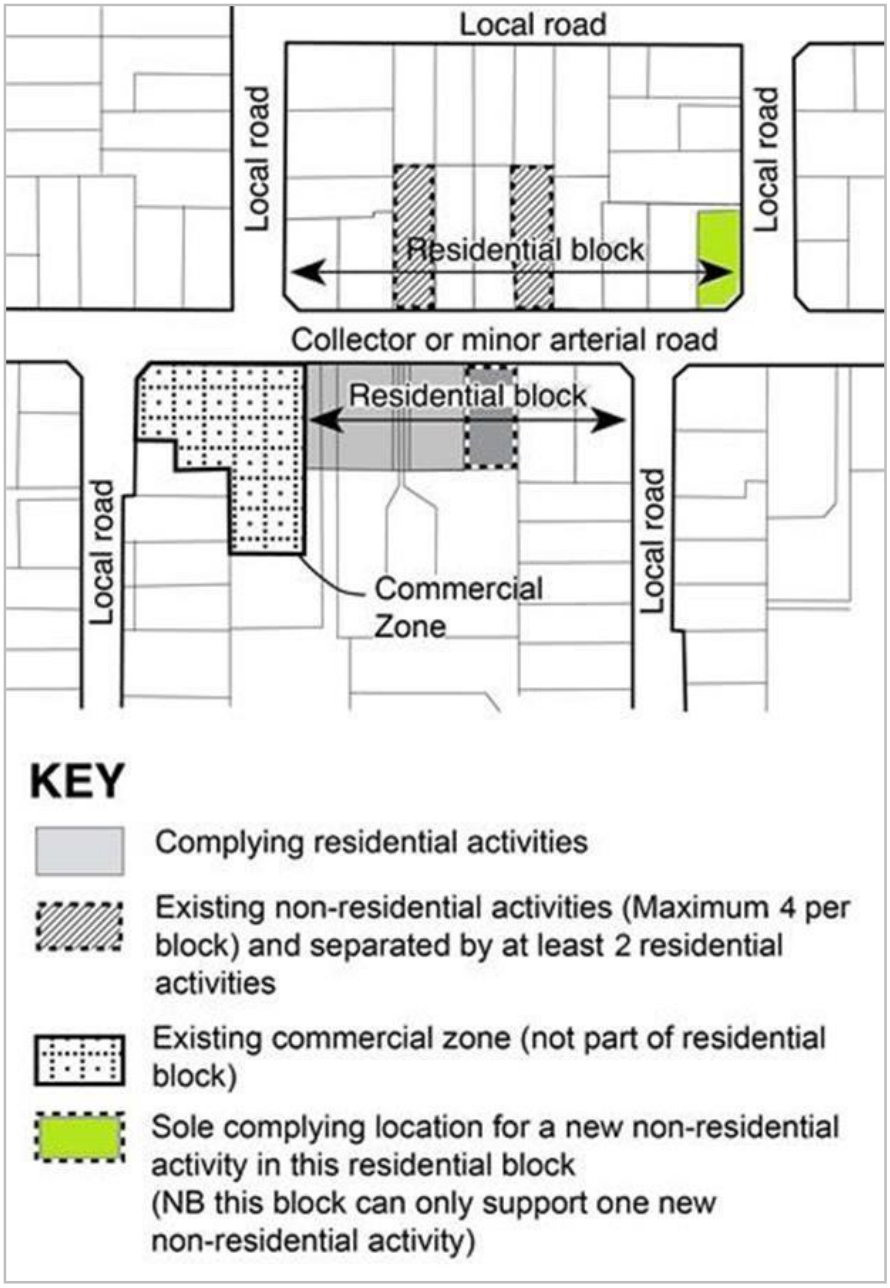


Figure 1: Residential coherence

[Note – this figure needs to be updated to reflect correct terminology and rule references]

14.2.2.2 Controlled activities

The activities listed below are controlled activities.

Unless otherwise specified, controlled activities will not require written approval and shall not be publicly or limited notified.

Discretion to impose conditions is restricted to the matters over which control is reserved in Rule 14.13, as set out in the following table.

		The matters over which Council reserves its control:
C1	Fences that do not comply with Rule 14.2.3.10 – Street scene amenity and safety - fences	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
C2	Residential units (including any sleep-outs) containing more than six bedrooms in total	a. Scale of activity – 14.13.5 b. Traffic generation and access safety – 14.13.6
C3	Multi-unit residential complexes and social housing complexes not complying with Rule 14.2.3.2 – Tree and garden planting	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
C4	Multi-unit residential complexes and social housing complexes not complying with Rule 14.2.3.12 – Service, storage and waste management spaces	a. Service, storage and waste management spaces – 14.13.20
C5	Social housing complexes, where the complex does not comply with any one or more of the activity specific standards in Rule 14.2.2.1 P5 c. or d.	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
C6	Multi-unit residential complexes in the Residential Suburban Density Transition Zone, where the complex does not comply with any one or more of the activity specific standards in Rule 14.2.2.1 P4 c. or d.	

14.2.2.3 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table.

Activity		**The Council's discretion shall be limited to the following matters:**
RD1	Residential unit in the Residential Suburban Zone contained within its own separate site with a net site area between 400 and 450m^2	a. Site density and site coverage – 14.13.2
RD2	Residential unit in the Residential Suburban Density Transition Zone contained within its own separate site with a net site area between 300m^2 and 330m^2	
RD3	Minor residential unit where the minor unit is a detached building and does not	a. Minor residential units 14.13.23

Activity		The Council's discretion shall be limited to the following matters:
	comply with any one or more of the activity specific standards in Rule 14.2.2.1 P2 a., b., c., and d.	
RD4	Conversion of a residential unit (within or as an extension to a residential unit) into two residential units that does not comply with any one or more of the activity specific standards in Rule 14.2.2.1 P10 a. and b.	
RD5	Social housing complexes, where any residential unit in the complex does not comply with the activity specific standard Rule 14.2.2.1 P5 b.	a. Minimum unit size and unit mix – 14.13.4
RD6	Multi-unit residential complexes in the Residential Suburban Density Transition Zone, where any residential unit in the complex does not comply with the activity specific standard Rule 14.2.2.1 P4 b.	
RD7	Social housing complexes – over four residential units	a. Residential design principles – 14.13.1
RD8	Multi-unit residential complexes in Residential Suburban Density Transition Zone – over four residential units	
RD9	Older person's housing units that do not comply with the activity specific standard in Rule 14.2.2.1 P6 a.	a. Scale of activity - 14.13.5
RD10	Retirement villages that do not comply with any one or more of the activity specific standards in Rule 14.2.2.1 P7	a. Retirement villages - 14.13.10
RD11	Boarding house	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6
RD12	Student hostels owned or operated by a secondary education activity or tertiary education and research activity containing 7 to 9 bedrooms	a. Scale of activity – 14.13.5

Activity		The Council's discretion shall be limited to the following matters:
RD13	Convenience activities where: a. the site is located on the corner of a minor arterial road that intersects with either a minor arterial road or collector road; b. the total area occupied by retailing on the site is no more than 50m^2 public floor area; c. the activity does not include the sale of alcohol; d. outdoor advertising is limited to no more than 2m^2 and shall be within the road boundary setback; e. the hours of operation when the site is open to business visitors or clients are limited to between the hours of 0700 – 2200 Monday to Sunday and public holidays; and f. there is no provision of on-site parking area for visitors or service purposes.	a. Residential design principles - 14.13.1 b. Scale of activity – 14.13.5 c. Non-residential hours of operation – 14.13.22 d. Traffic generation and access safety – 14.13.6
RD14	Integrated family health centres where: a. the centre is located on sites with frontage and the primary entrance to a minor arterial or collector road where right turn offset, either informal or formal is available; b. the centre is located on sites adjoining a Neighbourhood, District or Key Activity Centre; c. the centre occupies a gross floor area of building of between 301m^2 and 700m^2; d. outdoor advertising signage is limited to a maximum area of 2m^2; and e. the hours of operation when the site is open to patients, or clients, and deliveries is limited to between the hours of 0700 – 2100.	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6 c. Non-residential hours of operation - 14.13.22
RD15	Animal shelter at 14 and 18 Charlesworth Street. Any application arising from this rule shall only require the written approvals of directly abutting landowners and occupiers and shall at most be limited	a. Scale of activity – 14.13.5 b. Traffic generation and access safety - 14.13.6 c. Non-residential hours of operation - 14.13.22

Activity		The Council's discretion shall be limited to the following matters:
	notified to those directly abutting landowners.	
RD16	Spiritual facilities that do not comply with the hours of operation in Rule 14.2.2.1 P21. Any application arising from this rule shall not be publicly notified and shall only be limited notified to directly abutting land owners and occupiers that have not given their written approval.	a. Non-residential hours of operation – 14.13.22
RD17	Community corrections and community welfare facilities that do not comply with any one or more of the activity specific standards in Rule 14.2.2.1 P22 or P23. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	As relevant to the breached rule: a. Scale of activity – 14.13.5 b. Traffic generation and access safety – 14.13.6 c. Non-residential hours of operation – 14.13.22
RD18	Temporary lifting or moving of earthquake damaged buildings that does not comply with any one or more of the activity specific standards in Rule 14.2.2.1 P26. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Relocation of buildings and temporary lifting or moving of earthquake damaged buildings – 14.13.17 *[This was the subject of Decision 2, numbering and text is amended by this decision under Cl 13(5) and (6)(a)]*
RD19	Buildings that do not comply with Rule 14.2.3.3 – Building height	a. Impacts on neighbouring property – 14.13.3
RD20	Buildings that do not comply with Rule 14.2.3.6 – Daylight recession planes	
RD21	Activities and buildings that do not comply with Rule 14.2.3.4 – Site coverage where the site coverage is between 35% and 40%. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	a. Site density and site coverage – 14.13.2

Activity		The Council's discretion shall be limited to the following matters:
RD22	Multi-unit residential complexes, social housing complexes, and older person's housing units that do not comply with Rule 14.2.3.4 – Site coverage, where the site coverage is between 40-45% (calculated over the net site area of the site of the entire complex or group of units). Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	
RD23	Market gardens where the site coverage exceeds 55%. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	
RD24	Residential units that do not comply with Rule 14.2.3.5 – Outdoor living space. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	a. Outdoor living space – 14.13.21
RD25	Buildings that do not comply with Rule 14.2.3.9 – Road boundary building setback. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
RD26	Buildings that do not comply with Rule 14.2.3.7 – Minimum building setbacks from internal boundaries and railway lines, other than Rule 14.2.3.7(6) (refer to RD28)	a. Impacts on neighbouring properties – 14.13.3 b. Minimum building, window and balcony setbacks – 14.13.19
RD27	Buildings that do not comply with Rule 14.2.3.8 – Minimum setback and distance to living area windows and balconies and living space windows facing internal boundaries	

Activity		The Council's discretion shall be limited to the following matters:
RD28	Buildings that do not comply with Rule 14.2.3.7(6) relating to rail corridor boundary setbacks	a. Whether the reduced setback from the rail corridor will enable buildings to be maintained without requiring access above, over, or on the rail corridor.
RD29	Residential units that do not comply with Rule 14.2.3.11 – Water supply for firefighting. Any application arising from this rule will not require the written approval of any entity except the New Zealand Fire Service and shall not be fully publicly notified. Limited notification if required shall only be to the New Zealand Fire Service.	a. Water supply for fire fighting – 14.13.8
RD30	Activities and buildings that do not comply with any one or more of the activity specific standards in Rule 14.2.2.1 (except for P16 - P18 activity standard i. relating to noise sensitive activities in the 50 dBA L_{dn} Air Noise Contour, refer to RD33; or P16-P19 activity standard j. relating to storage of heavy vehicles, refer to D2) for: a. P13 Home occupation; b. P16 Education activity c. P17 Pre-schools; d. P18 Health care facility; e. P19 Veterinary care facility. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	As relevant to the breached rule: a. Scale of activity -14.13.5 b. Traffic generation and access safety - 14.13.6 c. Non-residential hours of operation – 14.13.22
RD31	Activities and buildings that do not comply with any one or more of Rule 14.2.2.1 P10 Standard c.iii, or Rule 14.2.2.1 P11 Standard b.iii, or Rule 14.2.2.1 P12 Standard a.iii. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	a. The setting of the minimum floor level. b. The frequency at which any proposal is predicted to be flooded and the extent of damage likely to occur in such an event. c. Any proposed mitigation measures, and their effectiveness and environmental impact, including any benefits associated with flood management. d. Any adverse effects on the scale and nature of the building and its location in relation to neighbouring buildings, including effects the privacy of neighbouring properties as a result of the difference between minimum and

Activity		The Council's discretion shall be limited to the following matters:
		proposed floor levels, and effects on streetscape.
RD32	Activities and buildings that do not comply with any one or more of Rule 14.2.2.1 P10 standard c.ii, or P11 standard b.ii., or P12 Standard a.ii. Any application arising from this rule will not require written approval and shall not be publicly notified.	a. Whether there is adequate capacity in the wastewater system to provide for the additional residential activity.
RD33	a. Residential activities which are not provided for as a permitted or controlled activity; b. Education activities (P16); c. Pre-schools (P17); or d. Health care facilities (P18); located within the Air Noise Contour (50 dBA L_{dn}) as shown on the Planning Maps. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Christchurch International Airport Limited.	a. The extent to which effects, as a result of the sensitivity of activities to current and future noise generation from aircraft, are proposed to be managed, including avoidance of any effect that may limit the operation, maintenance or upgrade of Christchurch International Airport. b. The extent to which appropriate indoor noise insulation is provided with regard to Appendix 14.14.4.

14.2.2.4 Discretionary activities

The activities listed below are discretionary activities.

Activity	
D1	Any activity not provided for as a permitted, controlled, restricted discretionary, non-complying or prohibited activity
D2	Activities that do not comply with any one or more of the activity specific standards in Rule 14.2.2.1 for: a. P1 Residential activity; b. P8 Conversion of an elderly person's housing unit into a residential unit; c. P14 Care of non-resident children in a residential unit; d. P15 Bed and breakfast; e. P20 Places of assembly; or f. Storage of more than one heavy vehicle for P16-P19 and P21.
D3	Student hostels owned or operated by a secondary education activity or tertiary education and research activity containing 10 or more bedrooms

Activity	
D4	Show homes
D5	Integrated family health centres which do not comply with any one of more of the requirements specified in Rule 14.2.2.3 RD14
D6	Multi-unit residential complexes in Residential Suburban Zones

14.2.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC1	Any non-residential activity located on a site with frontage to Memorial Avenue or Fendalton Road
NC2	Residential units in the Residential Suburban Zone that do not comply with Rule 14.2.3.1, where the residential unit is contained within a site with a net site area of less than 400m^2 net site area.
NC3	Residential units in the Residential Suburban Density Transition Zone that do not comply with Rule 14.2.3.1, where the residential unit is contained within a site with a net site area of less than 300m^2 net site area
NC4	Activities and buildings that do not comply with Rule 14.2.3.4 where the site coverage exceeds 40% (except as provided for in NC5)
NC5	Multi-unit residential complexes, social housing complexes and older person's housing units that do not comply with Rule 14.2.3.4, where the site coverage exceeds 45% (calculated over the net site area of the site of the entire complex or group of units)
NC6	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity): i. within 12 metres of the centre line of a 110kV or 220kV National Grid transmission line or within 12 metres of the foundation of an associated support structure; or ii. within 10 metres of the centre line of a 66kV National Grid transmission line or within 10 metres of a foundation of an associated support structure; or b. Fences within 5 metres of a National Grid transmission line support structure foundation. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Transpower New Zealand Limited. Notes: 1. The National Grid transmission lines are shown on the planning maps. 2. Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the

	Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.
NC7	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity): i. within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or ii. within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator. Notes: 1. The electricity distribution lines are shown on the planning maps. 2. Vegetation to be planted around electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.

14.2.2.6 Prohibited activities

The activities listed below are prohibited activities.

There are no prohibited activities.

14.2.3 Built form standards

14.2.3.1 Site density

Each residential unit shall be contained within its own separate site. The site shall have a minimum net site area as follows:

	Activity	**Standard**
1.	Residential Suburban Zone	450m^2

	(excluding residential units established under Rule 14.2.2.1 P8, P9, P10, P11 and P12)	
2.	Residential Suburban Density Transition Zone (excluding residential units established under Rule 14.2.2.1 P8, P9, P10, P11 and P12)	330m^2
3.	Social housing complexes	There shall be no minimum net site area for any site for any residential unit or older person's housing unit
4.	Multi-unit residential complexes	
5.	Older person's housing units	
6.	Retirement village	

14.2.3.2 Tree and garden planting

For multi-unit residential complexes and social housing complexes only, sites shall include the following minimum tree and garden planting:

a. a minimum of 20% of the site shall be provided for landscape treatment (which may include private or communal open space), including a minimum of one tree for every 250m^2 of gross site area (prior to subdivision), or part thereof. At least 1 tree shall be planted adjacent to the street boundary;

b. all trees required by this rule shall be not less than 1.5 metres high at the time of planting;

c. all trees and landscaping required by this rule shall be maintained and if dead, diseased or damaged, shall be replaced; and

d. the minimum tree and garden planting requirements shall be determined over the site of the entire complex.

14.2.3.3 Building height

The maximum height of any building shall be:

	Activity	**Standard**
1.	All buildings unless specified below	8 metres
2.	Minor dwelling units in the Residential Suburban Zone	5.5 metres and of a single storey only

Note: See the permitted height exceptions contained within the definition of height.

14.2.3.4 Site coverage

The maximum percentage of the net site area covered by buildings excluding:

a. fences, walls and retaining walls;

b. eaves and roof overhangs up to 600mm in width from the wall of a building;

c. uncovered swimming pools up to 800mm in height above ground level; and

d. decks, terraces, balconies, porches, verandahs, bay or box windows (supported or cantilevered) which:

   i. are no more than 800mm above ground level and are uncovered or unroofed; or

   ii. where greater than 800mm above ground level and/or covered or roofed, are in total no more than $6m^2$ in area for any one site;

shall be as follows:

	Zone/activity	**Standard**
1.	All zones / activities unless specified below	35%
2.	Multi-unit residential complexes, social housing complexes, and groups of older person's housing units where all the buildings are single storey. The percentage coverage by buildings shall be calculated over the net area of the site of the entire complex or group, rather than over the net area of any part of the complex or group.	40%
3.	Market gardens	55%
4.	Retirement villages	45%

14.2.3.5 Outdoor living space

a. Each residential unit shall be provided with an outdoor living space in a continuous area, contained within the net site area with a minimum area and dimension as follows:

	Activity/area	**Standard**	
		Minimum area	**Minimum dimension**
1.	Residential Suburban Zone	$90m^2$	6 metres

2.	Residential Suburban Density Transition Zone	50m^2	4 metres
3.	Multi-unit residential complexes, social housing complexes and older person's housing units	30m^2	4 metres

b. The required minimum area shall be readily accessible from a living area of each residential unit.

c. The required minimum area shall not be occupied by any building, access, or parking space, other than:

i. an outdoor swimming pool; or

ii. accessory building of less than 8m^2; or

iii. any buildings or parts of a building without walls (other than a balustrade) on at least a quarter of its perimeter, and occupies no more than 30% of the area of the outdoor living space.

Note: This rule only applies to structures on the same site.

This rule does not apply to residential units in a retirement village.

14.2.3.6 Daylight recession planes

a. Buildings shall not project beyond a building envelope constructed by recession planes, as shown in Appendix 14.14.2 Diagram A and Diagram B as relevant, from points 2.3 metres above:

i. ground level at the internal boundaries; or

ii. where an internal boundary of a site abuts an access lot or access strip the recession plane may be constructed from points 2.3 metres above ground level at the furthest boundary of the access lot or access strip or any combination of these areas; or

iii. where buildings on adjoining sites have a common wall along an internal boundary the recession planes shall not apply along that part of the boundary covered by such a wall.

b. Where the building is located in an overlay that has a permitted height of more than 11 metres, the recession plane measurement shall commence from points 2.3 metres above ground level at the internal boundaries and continue on the appropriate angle to points 11 metres above ground level, at which point the recession plane becomes vertical.

Refer to Appendix 14.14.2 for permitted intrusions.

c. Where a site is located within a Flood Management Area, and a breach of the recession planes determined in accordance with standards a. or b. above is created solely by the need to raise the floor level to meet minimum floor levels, the applicable daylight recession plane shall be determined as follows:

i. within the Fixed Minimum Floor Level Overlay, the daylight recession plane shall be determined as if the ground level at the relevant boundary was the minimum floor level set in the activity specific standards for P1 and P2 in Rule 5.3.1.1, or natural ground level, whichever is higher; or

ii. outside the Fixed Minimum Floor Level Overlay, the daylight recession plane shall be determined as if the ground level at the relevant boundary was the minimum floor level

specified in a Minimum Floor Level Certificate calculated in accordance with Rule 5.3.1.2, or natural ground level, whichever is higher.

14.2.3.7 Minimum building setbacks from internal boundaries and railway lines

The minimum building setback from internal boundaries shall be as follows:

1.	All buildings not listed in table below	1 metre
2.	Accessory buildings where the total length of walls or parts of the accessory building within 1 metre of each internal boundary does not exceed 10.1 metres in length	Nil
3.	Decks and terraces at or below ground floor level	Nil
4.	Buildings that share a common wall along an internal boundary	Nil
5.	All other buildings where the internal boundary of the site adjoins an access or part of an access	1 metre
6.	On sites adjacent or abutting railway lines, buildings, balconies and decks	4 metres from the rail corridor boundary

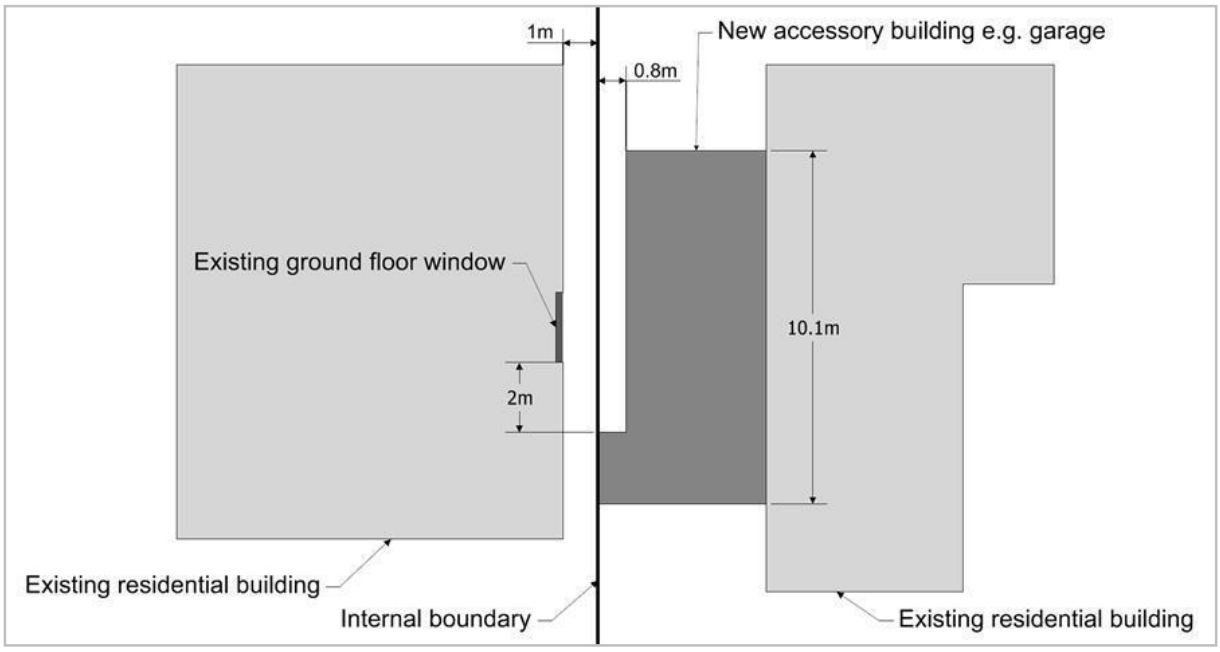


Figure 2: Separation from neighbours

[Note – this figure needs to be updated to reflect amended rules]

14.2.3.8 Minimum setback and distance to living area windows and balconies and living space windows facing internal boundaries

a. The minimum setback for living area windows and balconies at first floor or above from an internal boundary shall be 4 metres.

b. At first floor level or above, where a wall of a residential unit is located between 1 metre and 4 metres from an internal boundary, any living space window located on this wall shall only contain glazing that is permanently obscured.

c. For a retirement village, this rule only applies to the internal boundaries of the site of the entire retirement village.

Note:

A. This rule shall not apply to a window at an angle of 90 degrees or greater to the boundary.

B. See sill height in the definition of window.

C. For the purposes of this rule, permanently obscured glazing does not include glazing obscured by applied means such as film or paint.

14.2.3.9 Road boundary building setback

The minimum road boundary building setback shall be:

1.	All buildings and situations not listed below	4.5 metres
2.	Where a garage has a vehicle door that generally faces a road or shared access	5.5 metres from the shared access or road kerb

Except for:

a. A garage where:

i. the side walls are parallel to the road boundary and no more than 6.5 metres in length;

ii. the side walls facing the road contain a window with a minimum dimension of at least 0.6 metres (including the window frame);

iii. the space between the side wall and the road boundary contains a landscaping strip of at least 2 metres in width that includes a minimum of two trees capable of reaching four metres height at maturity; and

iv. where the access to the garage is located adjacent to a side boundary:

A. a landscaping strip of at least 0.6 metres width, planted with species capable of reaching 1.5 metres height at maturity, is located along the side boundary up to the line of the existing residential unit.

Where the planting conflicts with required visibility splays the visibility splay rules will prevail and the planting not be required.

See Figure 3.

b. A garage where:

i. the garage is a single garage, with the door facing the road boundary, accessed from a local road;

ii. the garage is a maximum 3.6 metres wide;

iii. the garage is fitted with a sectional door that does not intrude into the driveway when open and can be operated with an automatic opener. Where the garage is more than 3.5 metres from the road boundary an automatic opener is not required; and

iv. no part of the garage door when opening or shutting extends beyond the site boundary.

See Figure 4.

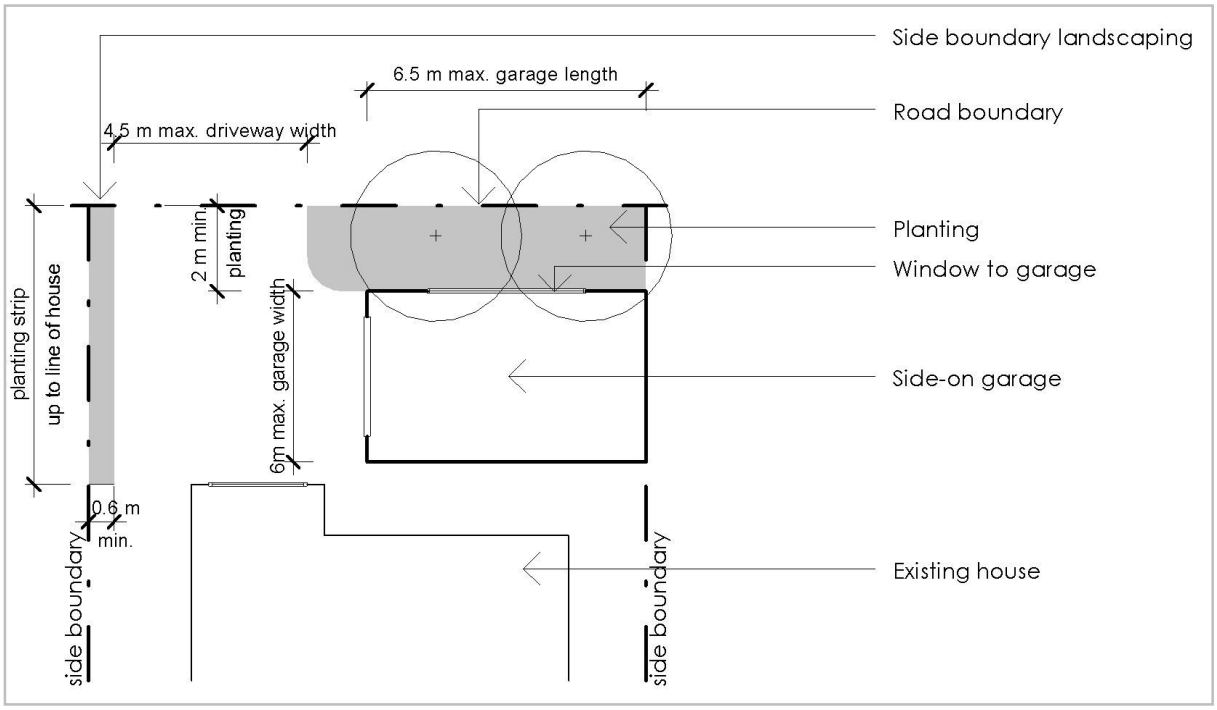


Figure 3: Side extension

[Note – this figure needs to be updated to reflect amended rules]

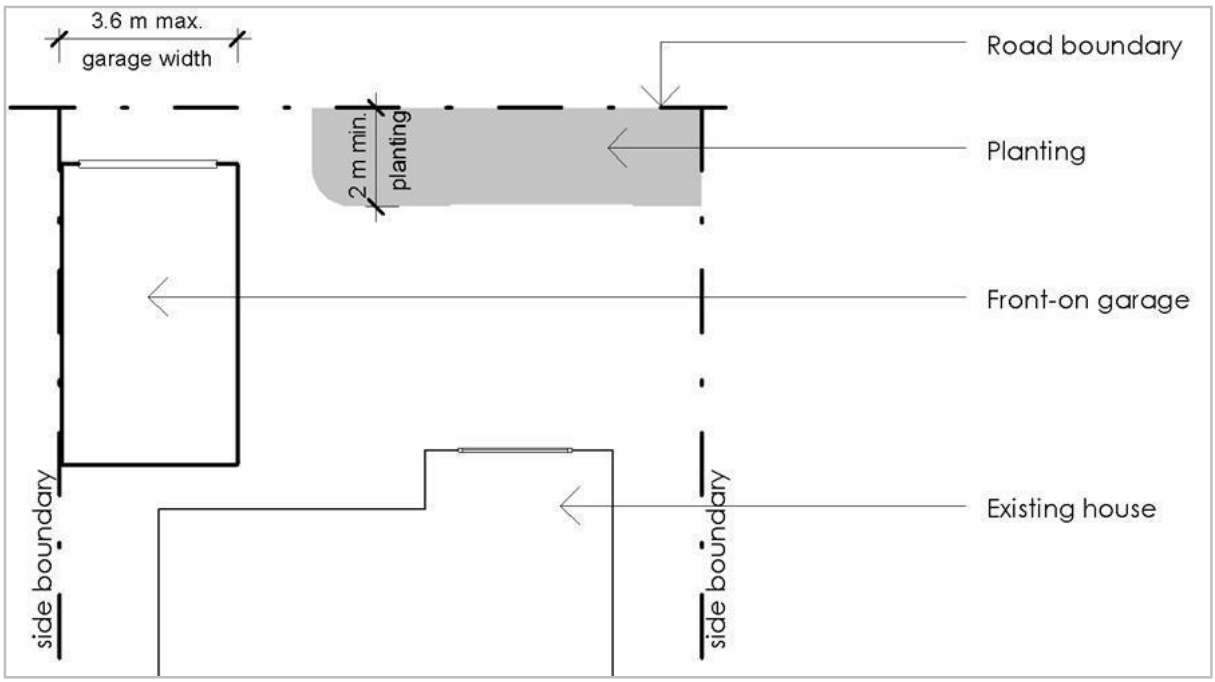


Figure 4: Front extension

[Note – this figure needs to be updated to reflect amended rules]

14.2.3.10 Street scene amenity and safety – fences

a. The maximum height of any fence in the required building setback from a road boundary shall be 1.8 metres.

b. This rule shall not apply to fences or other screening structures located on an internal boundary between two properties zoned residential, or residential and commercial or industrial.

Note: For the purposes of this rule, a fence or other screening structure is not the exterior wall of a building or accessory building.

14.2.3.11 Water supply for fire fighting

a. Sufficient water supply and access to water supplies for fire fighting shall be made available to all residential units via Council's urban fully reticulated system and in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice (SNZ PAS:4509:2008).

14.2.3.12 Service, storage and waste management spaces

a. For multi-unit residential complexes and social housing complexes only:

   i. each residential unit shall be provided with at least 2.25m^2 with a minimum dimension of 1.5 metres of outdoor or indoor space at ground floor level for the dedicated storage of waste and recycling bins;

   ii. each residential unit shall be provided with at least 3m^2 with a minimum dimension of 1.5 metres of outdoor space at ground floor level for washing lines; and

iii. the required spaces in a. and/or b. for each residential unit shall be provided either individually, or within a dedicated shared communal space.

14.2.4 Area specific rules – Residential Suburban Zone

The following rules apply to the areas specified. All activities are also subject to the rules in 14.2.2 and 14.2.3 unless specified otherwise.

14.2.4.1 Area specific restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table:

	Location	Restricted discretionary	Matters of discretion
RD1	Residential area in Wigram as shown on Figure 6	Activities that do not comply with Rule 14.2.4.4.9 – Outdoor living space at West Wigram. Any application arising from this rule will not require the written approval of any entity except the New Zealand Defence Force and shall not be fully publicly notified. Limited notification if required shall only be to the New Zealand Defence Force.	a. Development plans - 14.13.16 b. Special setback provision - Residential Suburban Zone Wigram - 14.13.14
RD2	Mairehau Final Development Area	Any development of land that is not in accordance with the layout shown in the development plan in Figure 5. Any application arising from this rule will not require written approval and shall not be publicly or limited notified.	a. Development plans - 14.13.16
RD3	Prestons Road Retirement Village Overlay	Residential units that do not comply with Rule 14.2.4.4.4 - Outdoor living space. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified. This clause shall cease to have effect on 31st December 2018.	a. Outdoor living space - 14.13.21
RD4	a. Peat Ground Condition Constraint Overlay;	Activities and buildings that do not comply with Rule 14.2.4.4.5 - Minimum building setbacks from internal boundaries.	a. Minimum building, window and balcony setbacks - 14.13.19

	Location	Restricted discretionary	Matters of discretion
	b. Stormwater Capacity Constraint Overlay; or c. Prestons Road Retirement Village Overlay.	Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	
RD5	a. Peat Ground Condition Constraint Overlay: b. Stormwater Capacity Constraint Overlay; c. Existing Rural Hamlet Overlay in the area to the east of the 50 dBA L_{dn} noise contour line shown on Planning Map 18; or d. Existing Rural Hamlet Overlay in the area to the west of the 50 dBA L_{dn} noise contour line shown on Planning Map 18.	Residential units that do not comply with Rule 14.2.4.4.1 - Site density	a. Site density and site coverage – 14.13.2 b. Whether the development design adequately mitigates any adverse effects of the additional building coverage on the environmental condition giving rise to the constraint.
RD6	Preston Road Retirement Village Overlay	Activities and buildings that do not comply with Rule 14.2.4.4.2 - Building height Prestons Road Retirement Village Overlay. This clause shall cease to have effect on 31st December 2018.	a. Impacts on neighbouring property – 14.13.3
RD7	a. Peat Ground Condition Constraint Overlay; b. Stormwater Capacity Constraint Overlay; c. Existing Rural Hamlet Overlay; or d. Prestons Road Retirement Village Overlay.	Activities and buildings that do not comply with Rule 14.2.4.4.3 - Site coverage	a. Site density and site coverage – 14.13.2 b. Whether the development design adequately mitigates any adverse effects of the additional building coverage on the environmental condition giving rise to the constraint.

Development Plan - Mairehau Final Development Area

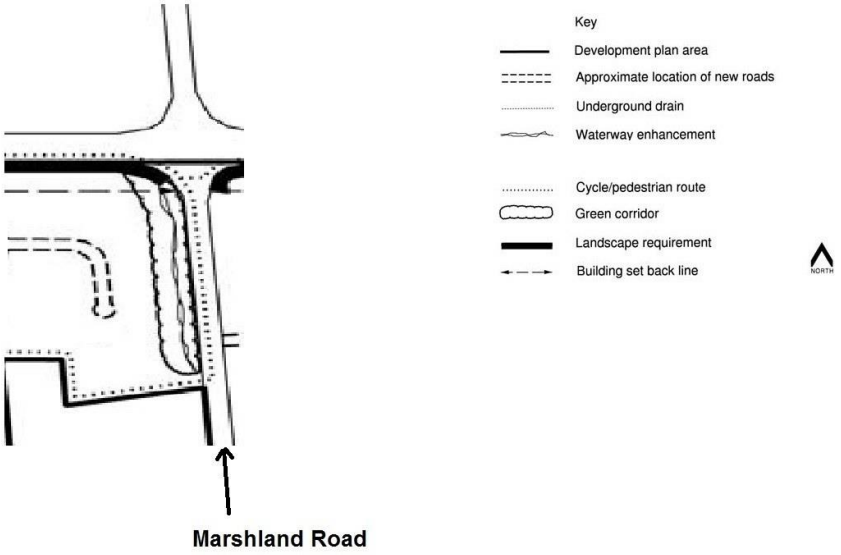


Figure 5: Mairehau final development area

14.2.4.2 Area specific discretionary activities

The activities listed below are discretionary activities.

Activity	
D1	Activities and buildings that do not comply with Rule 14.2.4.4.10 - Use of site and buildings Prestons Road Retirement Village Overlay. This clause shall cease to have effect on 31st December 2018.
D2	Activities and buildings that do not comply with Rule 14.2.4.4.6 – Minimum building setback from zone boundary Russley Road/Memorial Avenue
D3	Activities and buildings that do not comply with 14.2.4.4.8 - Building types and limits Prestons Road Retirement Village Overlay
D4	Activities and buildings that do not comply with 14.2.4.4.11 – Daylight recession planes Prestons Road Retirement Village Overlay

14.2.4.3 Area specific non-complying activities

The activities listed below are a non-complying activity.

Activity	
NC1	Activities and buildings that do not comply with Rule 14.2.4.4.7 - Noise insulation
NC2	Activities and buildings that do not comply with Rule 14.2.4.4.9 - Outdoor living space West Wigram

14.2.4.4 Area specific built form standards

14.2.4.4.1 Site density

a. This applies to:
   i. Peat Ground Condition Constraint Overlay;
   ii. Stormwater Capacity Constraint Overlay; and
   iii. Existing Rural Hamlet Overlay.

b. Each residential unit shall be contained within its own separate site. The site shall have a minimum net site area as follows:

	Activity	Permitted
1.	Peat Ground Condition Constraint Overlay	2000m^2
2.	Stormwater Capacity Constraint Overlay	1 residential unit for each allotment existing at June 1995
3.	Existing Rural Hamlet Overlay	2000m^2

Note: Refer also to the subdivision rules in Chapter 8.

14.2.4.4.2 Building height Prestons Road Retirement Village Overlay

Maximum height of any building shall be:

	Area	Permitted
1.	Prestons Road Retirement Village Overlay. This clause shall cease to have effect on 31st December 2018.	6.5 metres and of a single storey only

2.	Prestons Road Retirement Village Overlay in the area identified as "health facility". This clause shall cease to have effect on 31st December 2018.	13 metres

Note:

A. See the permitted height exceptions contained within the definition of height.

B. For the purposes of determining building height in the Prestons Road Retirement Village Overlay, ground level shall be taken as the level of ground existing when filling or excavation for new buildings on the land has been completed.

C. Rule 14.2.3.3 - Building height shall not apply in the Prestons Road Retirement Village Overlay until Rule 14.2.4.4.2 ceases to have effect.

14.2.4.4.3 Site coverage

a. This applies to:

i. Peat Ground Condition Constraint Overlay;

ii. Stormwater Capacity Constraint Overlay;

iii. Existing Rural Hamlet Overlay; and

iv. Prestons Road Retirement Village Overlay.

Note: Rule 14.2.3.4 - Site coverage shall not apply in the Prestons Road Retirement Village Overlay area until Rule 14.2.4.4.3 ceases to have effect.

b. The maximum percentage of the net site area covered by buildings excluding:

i. fences, walls and retaining walls;

ii. eaves and roof overhangs up to 600mm in width from the wall of a building;

iii. uncovered swimming pools up to 800mm in height above ground level; and

iv. decks, terraces, balconies, porches, verandahs, bay or box windows (supported or cantilevered) which:

A. are no more than 800mm above ground level and are uncovered or unroofed; or

B. where greater than 800mm above ground level and/or covered or roofed, are in total no more than 6m^2 in area for any one site;

shall be as follows:

	Zone/Activity/Area	**Permitted**
1.	Peat Ground Condition Constraint, Stormwater Capacity Constraint, Existing Rural Hamlet and Prestons Road Retirement Village Overlays: residential activities with garages	40% or 300m^2 whichever is the lesser
2.	Prestons Road Retirement Village Overlay. This clause shall cease to have effect on 31st December 2018.	40% (calculated over the net site area of the entire complex)

14.2.4.4.4 Outdoor living space Prestons Road Retirement Village Overlay

a. Each residential unit shall be provided with an outdoor living space in a continuous area, contained within the net site area with a minimum area and dimension as follows:

	Area	**Permitted**	
		Minimum Area	**Minimum Dimension**
1.	Prestons Road Retirement Village Overlay: for any older person's housing unit This clause shall cease to have effect on 31st December 2018.	30m^2	3 metres

b. The required minimum area shall be readily accessible from a living area of each residential unit.

Note: this rule only applies to structures on the same site.

c. The required minimum area shall not be occupied by any building, access or parking space, other than:

   i. an outdoor swimming pool; or

   ii. accessory building of less than 8m² in area; or

   iii. any buildings or parts of a building without walls (other than a balustrade) on at least a quarter of its perimeter, which occupies no more than 30% of the area of the outdoor living space.

Note: Rule 14.2.3.5 Outdoor living space shall not apply to any older person's housing unit in the Prestons Road Retirement Village Overlay until Rule 14.2.4.4.4 ceases to have effect.

14.2.4.4.5 Minimum building setbacks from internal boundaries

a. This applies to:

   i. Peat Ground Condition Constraint Overlay;

   ii. Stormwater Capacity Constraint Overlay;

   iii. Prestons Road Retirement Village Overlay.

Note: Rule 14.2.3.7 (other than Rule 14.2.3.7(6)) - Minimum building setbacks to internal boundaries shall not apply in the Prestons Road Retirement Village Overlay areas until Rule 14.2.4.4.5 ceases to have effect.

b. Minimum building setback from boundaries shall be as follows:

	Area	Standard
1.	Peat Ground Condition Constraint and Stormwater Capacity Constraint Overlays	3 metres
2.	Prestons Road Retirement Village Overlay. This clause shall cease to have effect on 31st December 2018.	From Prestons Road – 15 metres From internal boundaries – 1.8 metres

14.2.4.4.6 Minimum building setback from zone boundary Russley Road/Memorial Avenue

At Russley Road/Memorial Avenue, where the eastern boundary of the Residential Suburban Zone abuts the western boundary of the Industrial Park Zone, the minimum building setback from the eastern boundary of the zone where it abuts the Industrial Park Zone shall be 5 metres.

14.2.4.4.7 Noise insulation

a. This applies to:

i. the area adjacent to State Highway 73 (Southern Motorway) between Annex and Curletts Roads;

ii. the area adjacent to State Highway 75 (Curletts Road) between the intersection with State Highway 73 and Lincoln Road;

iii. Peat Ground Condition Constraint Overlay; and

iv. Existing Rural Hamlet Overlay.

	Location	Standards
1.	On that land which is: a. adjacent to State Highway 73 (Southern Motorway) between Annex and Curletts Roads; and b. adjacent to State Highway 75 (Curletts Road) between the intersection with State Highway 73 and Lincoln Road.	Building setbacks, or building location, or acoustic barriers, or other means, either singly or in combination shall be used such that the following noise insulation standards are met: Sound levels attributable to traffic from these roads shall not exceed a level of 57 dBA L10 (18 hour) 54 dBA Leq (24 hour) in any outdoor area of the site and a design level of 60 dBA L10 (18 hour) 57 dBA Leq (24 hour) measured 1 metre from the façade of any residential unit. All measured in accordance with NZS 6801:1991 Assessment of Sound.
2.	Mairehau Final Development Area identified in Figure 5 – on land which is on the western side of Marshlands Road between Queen Elizabeth Drive and Briggs Road	a. There shall be no minimum building setback where: i. mounding or other physical barrier to noise transmission capable of reducing traffic noise intrusion to all parts of any site by at least 10dBA is provided within 20 metres of the road boundary across the entire width of the site; ii. the mounding in i. is screened from the adjoining road by landscaping with a minimum depth of 1.5 metres and a minimum height of 1.8 metres at time

	Location	Standards
		of planting; iii. the minimum building setback from a limited access road shall be 40 metres. b. where a.i. and a.ii. are complied with and all external windows and doors of a residential units including those installed in the roof are acoustically treated to achieve a sound transmission loss of at least 25dBA with windows and doors closed the minimum setback shall be 20 metres. c. Where a. and b. do not apply the minimum building setback shall be 80 metres. Note: For the purpose of this rule the minimum building setback shall be measured from the road carriageway to the residential unit.
3.	Peat Ground Condition Constraint Overlay	The minimum building setback from the boundary with the Residential Suburban Zones or the boundary with Lot 1, Lot 2 or Lot 3 DP 49320 shall be 6 metres.
4.	Existing Rural Hamlet Overlay	In the Existing Rural Hamlet Overlay west of the 50 dBA L_{dn} Air Noise Contour: a. Any new residential units, or additions to existing residential units shall be insulated from aircraft noise so as to comply with the provisions of Appendix 14.14.4; and b. Buildings, other than residential units, shall also be insulated, where applicable, to comply with the provisions of Appendix 14.14.4.

14.2.4.4.8 Building types and limits Prestons Road Retirement Village Overlay

a. There shall be a maximum of 165 independent older person's housing units.

b. Where a unit shares a common wall with another unit, there shall be no more than 4 units in any such arrangement.

c. There shall be a maximum of 45 serviced older person's housing units contained within that part of the overlay identified as a health facility.

d. There shall be a maximum of one health facility with ground floor area of 2500m^2.

e. The maximum floor area for any one residential unit shall be 165m^2.

14.2.4.4.9 Outdoor living space West Wigram

On the frontage shown in Figure 6, residential units shall have their primary outdoor living space facing away from the aerodrome site. Windows to living areas which directly face the RNZAF Bequest Land shall be double glazed. In addition, a 2 metre wide landscape strip and a close solid and continuous 1.8 metre high fence shall be placed along the boundary of the RNZAF Bequest Land and be completed before any residential units are built.

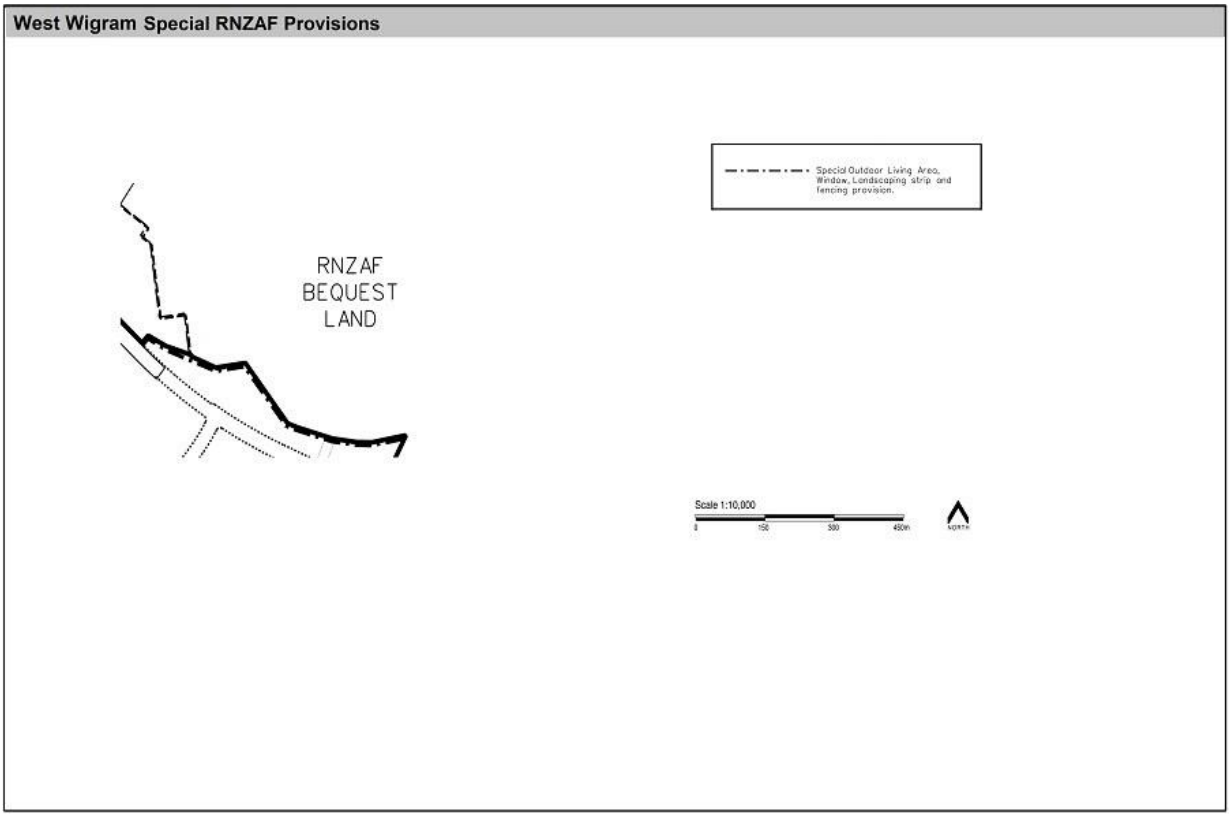


Figure 6: West Wigram Special RNZAF Provisions

14.2.4.4.10 Use of the site and buildings Prestons Road Retirement Village Overlay

Any site or buildings shall only be used for housing for persons over the age of 55 and ancillary health, managerial, administrative, social and professional and retail activities associated with the provision of services to those over the age of 55 residing on site.

14.2.4.4.11 Daylight recession planes Prestons Road Retirement Village Overlay

a. Buildings shall not project beyond a building envelope constructed by recession planes, as shown in Appendix 14.14.2 Diagram A, from points 2.3 metres above:

   i. ground level at the internal boundaries; or

   ii. where an internal boundary of a site abuts an access lot or access strip the recession plane may be constructed from points 2.3 metres above ground level at the furthest boundary of the access lot or access strip or any combination of these areas; or

   iii. where buildings on adjoining sites have a common wall along an internal boundary the recession planes shall not apply along that part of the boundary covered by such a wall.

Note: Rule 14.2.3.6 - Daylight recession planes shall not apply in the Prestons Road Retirement Village Overlay.

14.3 Rules – Residential Medium Density Zone

14.3.1 How to use the rules

a. The rules that apply to activities in the Residential Medium Density Zone are contained in:

   i. the activity status tables (including activity specific standards) in Rule 14.3.2; and

   ii. built form standards in Rules 14.3.3.

b. Area specific rules also apply to activities within the following specific areas zoned Residential Medium Density Zone in Rule 14.3.4:

   i. Residential Medium Density Zone Higher Height Limit and Site Density Overlay at Deans Avenue Rules;

   ii. Residential Medium Density Zone Wigram (Figure 6);

   iii. Sumner Master Plan Overlay (Appendix 14.14.6);

   iv. Sites with frontage to Bealey Avenue, Fitzgerald Avenue or Deans Avenue (south of Blenheim Road); and

   v. Residential Medium Density Zone in the Commercial Local Zone (St Albans) Outline Development Plan shown as Area A in Chapter 15 Appendix 15.10.4.

   Note: Area specific rules are also provided for under the built form standards under 14.3.3.

c. The activity status tables and standards in the following chapters also apply to activities in all areas of the Residential Medium Density Zone:

   5 Natural Hazards;

   6 General Rules and Procedures;

   7 Transport;

   8 Subdivision, Development and Earthworks;

   9 Heritage and Natural Environment;

   11 Utilities, Energy and Infrastructure; and

   12 Hazardous Substances and Contaminated Land

d. Where the word “facility” is used in the rules (e.g. spiritual facility), it shall also include the use of a site /building for the activity that the facility provides for, unless expressly stated otherwise.

   Similarly, where the word/phrase defined include the word “activity” or “activities”, the definition includes the land and/or buildings for that activity unless stated otherwise in the activity status tables.

14.3.2 Activity status tables

14.3.2.1 Permitted activities

In the Residential Medium Density Zone, the activities listed below are permitted activities if they comply with the activity specific standards set out in this table, the applicable built form standards in Rule 14.3.3 and the area specific rules in Rule 14.3.4.

Activities may also be controlled, restricted discretionary, discretionary, non-complying or prohibited as specified in Rules 14.3.2.2, 14.3.2.3, 14.3.2.4, 14.3.2.5, and 14.3.2.6.

Activity		Activity specific standards
P1	Residential activity, except for boarding houses	a. No more than one heavy vehicle shall be stored on the site of the residential activity. b. Any motor vehicles and/or boats dismantled, repaired or stored on the site of the residential activity shall be owned by people who live on the same site. c. On sites located within the Riccarton Wastewater Interceptor Overlay, until (date of completion of infrastructure work): i. the minimum site area for any residential unit shall be 330m^2.
P2	Student hostels owned or operated by a secondary education activity or tertiary education and research activity containing up to 6 bedrooms	a. Nil
P3	Conversion of an elderly person's housing unit existing at 6 December 2013, into a residential unit that may be occupied by any person(s) and without the need to be encumbered by a bond or other appropriate legal instrument	Each converted unit shall have: a. a minimum gross floor area, excluding terraces, garages, sundecks and verandahs, of 35m^2; and b. a separate outdoor living space readily accessible from its living area that is at least 30m^2 with a minimum dimension of 3 metres.
P4	Home occupation	a. The gross floor area of the building, plus the area used for outdoor storage area, occupied by the home occupation shall be less than 40m^2. b. The maximum number of FTE persons employed in the home occupation, who reside permanently elsewhere than on the site, shall be two.

Activity		Activity specific standards
		c. Any retailing shall be limited to the sale of goods grown or produced on the site, or internet-based sales where no customer visits occur. d. The hours of operation, when the site is open to visitors, clients, and deliveries, shall be limited to between the hours of: i. 0700 – 2100 Monday to Friday; and ii. 0800 – 1900 Saturday, Sunday and public holidays. e. Visitor or staff parking areas shall be outside the road boundary setback. f. Outdoor advertising shall be limited to a maximum area of $2m^2$.
P5	Care of non-resident children within a residential unit in return for monetary payment to the carer	There shall be: a. a maximum of four non-resident children being cared for in return for monetary payment to the carer at any one time; and b. at least one carer residing permanently within the residential unit.
P6	Bed and breakfast	There shall be: a. a maximum of six guests accommodated at any one time; b. at least one owner of the residential unit residing permanently on site; and c. no guest given accommodation for more than 90 consecutive days.

<table>
<tr><th colspan="2">Activity</th><th>Activity specific standards</th></tr>
<tr><td>P7</td><td>Education activity</td><td rowspan="5">The activity shall:
a. only locate on sites with frontage and the primary entrance to a minor arterial or collector road where right turn offset, either informal or formal, is available;
b. only occupy a gross floor area of building of less than 200m^2; or in the case of a health care facility, less than 300m^2;
c. limit outdoor advertising to a maximum area of 2m^2;
d. limit the hours of operation when the site is open to visitors, students, patients, clients, and deliveries to between the hours of:
<table><tr><td>Education activity</td><td>i. 0700 – 2100 Monday to Saturday; and
ii. Closed Sunday and public holidays.</td></tr><tr><td>Pre-schools</td><td>i. 0700 – 2100 Monday to Friday, and
ii. 0700 – 1300 Saturday, Sunday and public holidays.</td></tr><tr><td>Health care facility</td><td rowspan="3">i. 0700 – 2100.</td></tr><tr><td>Veterinary care facility</td></tr><tr><td>Places of assembly</td></tr></table>e. in relation to pre-schools, limit outdoor play areas and facilities to those that comply with the Group 1 acoustic standard for residential zones;
f. in relation to education activities, pre-schools, veterinary care facilities and places of assembly:
i. only locate on sites where any residential activity on an adjoining front site, or front site separated by an access, with frontage to the same road is left with at least one residential neighbour. That neighbour shall be on an adjoining front site, or front site separated by an access, and have frontage to the same road; and
ii. only locate on residential blocks where there are no more than two non-residential activities already within that block;
Note: See Figure 1.
g. in relation to veterinary care facilities, limit the boarding of animals on the site to a maximum of four;
h. in relation to places of assembly, entertainment facilities shall be closed Sunday and public holidays; and</td></tr>
<tr><td>P8</td><td>Pre-schools</td></tr>
<tr><td>P9</td><td>Health care facility</td></tr>
<tr><td>P10</td><td>Veterinary care facility</td></tr>
<tr><td>P11</td><td>Place of assembly</td></tr>
</table>

Activity		Activity specific standards
		i. not include the storage of more than one heavy vehicle on the site of the activity.
P12	Community corrections facilities	The facilities shall: a. limit the hours of operation when the site is open to clients and deliveries to between the hours of 0700 – 1900; and b. limit signage to a maximum area of 2m².
P13	Community welfare facilities	
P14	Spiritual facilities	The facility shall: a. limit the hours of operation to 0700-2200; and b. not include the storage of more than one heavy vehicle on the site of the activity.
P15	Emergency services facilities	a. Nil
P16	Repair or rebuild of multi-unit residential complexes damaged by the Canterbury earthquakes of 2010 and 2011 on properties with cross leases, company leases or unit titles as at the date of the earthquakes *[This was the subject of Decision 3, numbering and text referring to multi-unit residential complexes is amended by this decision under Cl 13(5) and (6)(a)]*	a. Where the repair or rebuild of a building will not alter the building footprint, location, or height, the building need not comply with any of the built form standards. b. Where the building footprint, location, or height is to be altered no more than necessary in order to comply with legal or regulatory requirements or the advice of a suitably qualified and experienced chartered engineer: i. the only built form standards that shall apply are those specified in Rules 14.3.3.3 – Building height and 14.3.3.6 – Daylight recession planes; ii. in relation to the road boundary setback, the repaired or rebuilt building shall have a setback of at least 3 metres; iii. the standards at (i) and (ii) shall only apply to the extent that the repaired or rebuilt building increases the level of non-compliance with the standard(s) compared to the building that existed at the time of the earthquakes. Clarification: examples of regulatory or legal requirement that may apply include the New Zealand Building Code, Council bylaws, easements, and other rules within this Plan such as the requirements for minimum floor levels in Chapter 5. c. If paragraphs a. and b. do not apply, the relevant built form standards apply. Any application arising from non-compliance with standards a. and b.i. will not require written approval except from the affected adjoining landowner(s) and shall not be publicly notified. Any application arising from non-compliance with standard b.ii. (road boundary setbacks), will not require written approval and shall not be publicly or limited notified.

Activity		Activity specific standards
P17	Temporary lifting or moving of earthquake damaged buildings where the activity does not comply with one or more of Rules: a. 14.3.3.3 – Building height and maximum number of storeys; b. 14.3.3.4 – Site coverage; c. 14.3.3.5 – Outdoor living space; d. 14.3.3.6 – Daylight recession planes; or e. 14.3.3.7 – Minimum building setback from internal boundaries and railway lines. *[This was the subject of Decision 2, numbering and text is amended by this decision under Cl 13(5) and (6)(a)]*	a. Buildings shall not be: i. moved to within 1 metre of an internal boundary and/or within 3 metres of any waterbody, scheduled tree, listed heritage item, natural resources and Council owned structure, archaeological site, or the coastal marine area; or ii. lifted to a height exceeding 3 metres above the applicable recession plane or height control. b. The building must be lowered back or moved back to its original position, or a position compliant with the District Plan or consistent with a resource consent, within 12 weeks of the lifting or moving works having first commenced. c. In all cases of a building being moved or lifted, the owners/occupiers of land adjoining the sites shall be informed of the work at least seven days prior to the lift or move of the building occurring. The information provided shall include details of a contact person, details of the lift or move, and the duration of the lift or move. d. The Council's Resource Consents Manager shall be notified of the lifting or moving the building at least seven days prior to the lift or move of the building occurring. The notification must include details of the lift or move, property address, contact details and intended start date.
P18	Salvation Army Addington Overlay	
	P18.1 Family Store	a. The activity shall take place in the existing (20 August 2014) Family Store within the Salvation Army Addington Overlay.
	P18.2 Addiction services	a. The activity shall: i. only locate within the Salvation Army Addington Overlay; ii. provide for a maximum of 19 overnight beds; and iii. take place in the existing (20 August 2014) addiction services buildings, or in upgraded or replacement buildings complying with the built form standards (Rule 14.3.3).
	P18.3 Supportive housing	a. The activity shall: i. only locate within the Salvation Army Addington Overlay; ii. provide for a maximum of 85 residents including those on reintegration programmes, which may be in a mixture of

Activity		Activity specific standards
		individual and shared housing; and iii. take place in the existing (20 August 2014) supportive housing buildings, or in upgraded or replacement buildings complying with the built form standards (Rule 14.3.3).
	P18.4 Offices and meeting rooms for administration, counselling, family meetings, budgeting, education or training and worship services on Salvation Army land in Addington (legally described as Rural Section 39449, Lot 23-24 and Part Lot 25 DP 1024, Lot 22 and Part Lot 25 DP 1024, Part Lot 21 DP 1024, and Part Lot 21 and Part Lot 25 DP 1024).	a. The activity shall take place in the existing (20 August 2014) buildings, or in upgraded or replacement buildings complying with the built form standards (Rule 14.3.3).
P19	The use of the existing control tower buildings (Lot 357 DP 447629) and hangars 4 and 5 (Lot 315 DP 434068) for the following activities: a. Residential activities; b. Pre-schools; c. Health care facility; d. Education activity; e. Place of assembly; f. Retail activity; g. Office activity; or h. Warehouse activity.	a. The maximum gross floor area (GFA) of retail activity shall be 1500m^2. b. Heavy vehicle movements associated with any warehouse activity shall be limited to the hours of 0700 to 1900.
P20	Relocation of a building	a. Nil
P21	Temporary military or emergency service training activities	
P22	Market gardens, community gardens, and garden allotments	

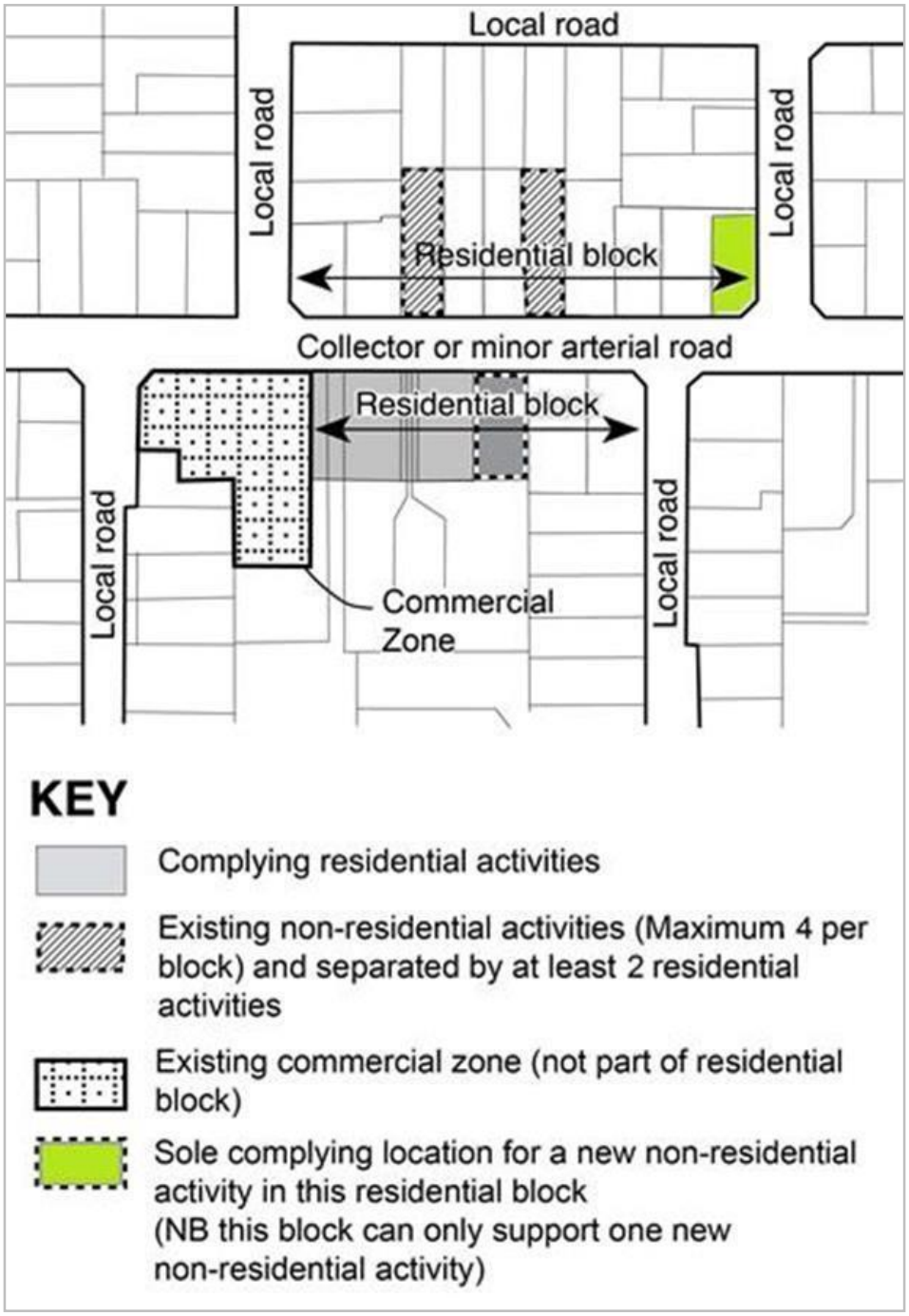


Figure 1: Residential coherence

[Note – this figure needs to be updated to reflect correct terminology and rule references]

14.3.2.2 Controlled activities

The activities listed below are controlled activities.

Unless otherwise specified, controlled activities will not require written approval and shall not be publicly or limited notified.

Discretion to impose conditions is restricted to the matters over which control is reserved in Rule 14.13, as set out in the following table.

Activity		**The Council's control is reserved to the following matters:**
C1	Residential units (including any sleep-outs) containing more than six bedrooms in total	a. Scale of activity – 14.13.5 b. Traffic generation and access safety – 14.13.6
C2	Activities that do not comply with Rule 14.3.3.2 – Tree and garden planting	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
C3	Activities and buildings that do not comply with Rule 14.3.3.11 - Building overhangs	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
C4	Residential units that do not comply with Rule 14.3.3.13 - Ground floor habitable space	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
C5	Residential units that do not comply with Rule 14.3.3.14 – Service, storage and waste management spaces	a. Service, storage and waste management spaces – 14.13.20

14.3.2.3 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table.

Activity		**The Council's discretion shall be limited to the following matters:**
RD1	The erection of new buildings and alterations or additions to existing buildings including all accessory buildings, fences and walls associated with that development, that result in: a. three or more residential units; or b. one or two residential units on a site smaller than 300m^2 gross site area (prior to subdivision); or	a. Residential design principles - 14.13.1 b. Minimum unit size and unit mix - 14.13.4

Activity		The Council's discretion shall be limited to the following matters:
	c. one or two residential units resulting in residential floor area greater than 500m^2; or d. over 40m^2 of a building used for other activities, on a site. Except (until date of completion of the infrastructure work) on any site located within the Riccarton Wastewater Interceptor Overlay. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	
RD2	Retirement villages	a. Retirement villages - 14.13.10
RD3	Boarding house	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6
RD4	Student hostels owned or operated by a secondary education activity or tertiary education and research activity containing 7 to 9 bedrooms	a. Scale of activity – 14.13.5
RD5	Convenience activities where: a. the site is located on the corner of a minor arterial road; b. the total area occupied by retailing on the site is no more than 50m^2 public floor area; c. the activity does not include the sale of alcohol; d. outdoor advertising is limited to no more than 2m^2 and shall be within the road boundary setback; e. the hours of operation when the site is open to business visitors or clients are limited to between the hours of 0700 – 2200 Monday to Sunday and public holidays; and f. there is no provision of on-site parking area for visitors or service purposes.	a. Residential design principles - 14.13.1 b. Scale of activity – 14.13.5 c. Non-residential hours of operation – 14.13.22 d. Traffic generation and access safety – 14.13.6
RD6	Retail activity with frontage only to public access ways identified in Sumner Master Plan Overlay (Appendix 14.14.6)	a. Urban design - 15.8.1.a.viii only

Activity		The Council's discretion shall be limited to the following matters:
RD7	Integrated Family Health Centres where: a. the centre is located on sites with frontage and the primary entrance to a minor arterial or collector road where right turn offset, either informal or formal is available; b. the centre is located on sites adjoining a Neighbourhood, District or Key Activity Centre; c. the centre occupies a gross floor area of building of between 301m^2 and 700m^2; d. outdoor advertising signage is limited to a maximum area of 2m^2; and e. the hours of operation when the site is open to patients, or clients, and deliveries is limited to between the hours of 0700 – 2100.	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6 c. Non-residential hours of operation - 14.13.22
RD8	Activities that do not comply with any one or more of the activity specific standards in Rule 14.3.2.1 (except for P7-P10 activity standard i., refer to D2) for: a. P4 Home occupation; b. P7 Education activity; c. P8 Pre-schools; d. P9 Health care facility; or e. P10 Veterinary care facility. Any application arising from these rules will not require written approval and shall not be publicly or limited notified.	As relevant to the breached rule: a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6 c. Non-residential hours of operation - 14.13.22
RD9	Community corrections and community welfare facilities that do not comply with any one or more of the activity specific standards in P12 or P13. Any application arising from these rules will not require written approval and shall not be publicly or limited notified.	
RD10	Within the Salvation Army Addington Overlay: a. Provision for overnight beds for addiction services which exceed the maximum number in activity specific standard Rule 14.3.2.1,	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6

Activity		The Council's discretion shall be limited to the following matters:
	P18.2 a ii., up to a maximum total of 25 overnight beds. b. Provision for supportive housing which exceeds the maximum number of residents in activity specific standard Rule 14.3.2.1, P18.3 a ii., up to a maximum total of 100 residents. c. Any upgrades (including exterior alterations or additions) to buildings existing on the 20 August 2014, or any replacement buildings for the activities specified in P18.2, P18.3 and P18.4, that do not comply with any one or more of the relevant built form standards Rule 14.3.3.	
RD11	Temporary lifting or moving of earthquake damaged buildings that does not comply with the standards in Rule 14.3.2.1 P17. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Relocation of buildings and temporary lifting or moving of earthquake damaged buildings – 14.13.17 *[Note that this was the subject of Decision 2 and that minor changes have been made to numbering and format]*
RD12	Buildings that do not comply with Rule 14.3.3.7(6) relating to rail corridor boundary setbacks	a. Whether the reduced setback from the rail corridor will enable buildings to be maintained without requiring access above, over, or on the rail corridor.
RD13	Spiritual facilities that do not comply with the hours of operation in Rule 14.3.2.1 P14. Any application arising from this rule shall not be publicly notified and shall only be limited notified to directly abutting land owners and occupiers that have not given their written approval	a. Scale of activity - 14.13.22
RD14	Buildings that do not comply with Rule 14.3.3.3 up to a maximum height of 14 metres (unless otherwise provided for in that rule)	a. Impacts on neighbouring property – 14.13.3
RD15	Buildings that do not comply with Rule 14.3.3.6 – Daylight recession planes	

Activity		The Council's discretion shall be limited to the following matters:
RD16	Activities and buildings that do not comply with Rule 14.3.3.4 – Site coverage	a. Site density and site coverage –14.13.2
RD17	Buildings that do not comply with Rule 14.3.3.7 – Minimum building setback internal boundaries and railway lines (other than 14.3.3.7(6); refer RD12)	a. Impacts on neighbouring property – 14.13.3 b. Minimum building, window and balcony setbacks – 14.13.19
RD18	Buildings that do not comply with Rule 14.3.3.8 – Minimum setback and distance to living area windows	
RD19	Residential units that do not comply with 14.3.3.5 – Outdoor living space Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Outdoor living space – 14.13.21
RD20	Buildings that do not comply with Rule 14.3.3.9 – Road boundary building setback Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
RD21	Buildings that do not comply with Rule 14.3.3.10 – Street scene amenity and safety – fences Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	
RD22	Residential units that do not comply with Rule 14.3.3.12 – Minimum unit size. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Minimum unit size and unit mix – 14.13.4
RD23	Residential units that do not comply with Rule 14.3.3.15 – Water supply for fire fighting. Any application arising from this rule will not require the written approval of any entity except the New Zealand Fire Service and shall not be fully publicly notified. Limited notification if	a. Water supply for fire fighting – 14.13.8

Activity		The Council's discretion shall be limited to the following matters:
	required shall only be to the New Zealand Fire Service.	

14.3.2.4 Discretionary activities

The activities listed below are discretionary activities.

Activity	
D1	Any activity not provided for as a permitted, controlled, restricted discretionary, non-complying, or prohibited activity
D2	Activities that do not comply with any one or more of the activity specific standards in Rule 4.3.2.1 for: a. P1 Residential activity; b. P3 Conversion of an elderly person's housing unit into a residential unit; c. P5 Care of non-resident children in a residential unit; d. P6 Bed and breakfast; e. P11 Place of assembly; or f. Storage of more than one heavy vehicle for activities for P7-P10 and P14.
D3	Student hostels owned or operated by a secondary education activity or tertiary education and research activity containing 10 or more bedrooms
D4	Show homes
D5	Integrated family health centres which do not comply with any one of more of the requirements specified in Rule 14.3.2.3 RD7
D6	Redevelopment of brownfield areas for mixed commercial and residential activities on the following sites: 25 Deans Avenue (Former Saleyards)

14.3.2.5 Non-complying activities

The activities listed below are non-complying activities.

	Activity
NC1	Activities and buildings that do not comply with Rule 14.3.3.3 where the height is over 14 metres (unless otherwise specified in that rule)

	Activity
NC2	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity): i. within 12 metres of the centre line of a 110kV or 220kV National Grid transmission line or within 12 metres of the foundation of an associated support structure; or ii. within 10 metres of the centre line of a 66kV National Grid transmission line or within 10 metres of a foundation of an associated support structure; or b. Fences within 5 metres of a National Grid transmission line support structure foundation. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Transpower New Zealand Limited. Notes: 1. The National Grid transmission lines are shown on the planning maps. 2. Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.
NC3	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity): i. within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or ii. within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator. Notes: 1. The electricity distribution lines are shown on the planning maps. 2. Vegetation to be planted around electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.

14.3.2.6 Prohibited activities

There are no prohibited activities.

14.3.3 Built form standards

14.3.3.1 Site density

Note: There is no site density standard in the Residential Medium Density Zone.

14.3.3.2 Tree and garden planting

Sites shall include the minimum tree and garden planting as set out in the below table:

	For all activities, except permitted commercial activities in the Sumner Master Plan Overlay
1	a. A minimum of 20% of the site shall be provided for landscape treatment (which may include private or communal open space), including a minimum of 1 tree for every 250m^2 of gross site area (prior to subdivision), or part thereof. At least 1 tree shall be planted adjacent to the street boundary. b. All trees required by this rule shall be not less than 1.5 metres high at the time of planting. c. All trees and landscaping required by this rule shall be maintained and if dead, diseased or damaged, shall be replaced. d. For multi-unit residential complexes, social housing complexes, retirement villages, and groups of older person's housing, the minimum tree and garden planting requirements shall be determined over the site of the entire complex.
2	In the Salvation Army Addington Overlay – a landscape and planting plan be prepared with a method of implementation and maintenance for the full site area. This plan shall be implemented within two growing seasons of its approval and thereafter maintained. Attention shall be paid to that area 4 metres from the boundary with each road and around the stream to enhance the area, create restful space and encourage bird life.

14.3.3.3 Building height and maximum number of storeys

The maximum height of any building shall be:

	Activity	**Standard**
1.	All buildings in areas not listed below	11 metres provided there is a maximum of 3 storeys
2.	Residential Medium Density Lower Height Limit Overlay	8 metres
3.	Sumner Residential Medium Density Zone	9.5 metres

4.	Sumner Master Plan Overlay, on the two prominent corners identified in Appendix 14.14.6	13 metres Provided that the area above 9.5 metres is limited to no more than 100m^2 in gross floor area and is located at the apex of the street corner.
5.	Within the Residential Medium Density Zone in the Commercial Local Zone (St Albans) Outline Development Plan shown as Area A in Chapter 15 Appendix 15.10.4.	14 metres
6.	Residential Medium Density Higher Height Limit Overlay at Deans Avenue	20 metres
7.	Residential Medium Density Higher Height Limit Overlay at Carlton Mill Road	30 metres
8.	Residential Medium Density Higher Height Limit Overlay at New Brighton and North Beach	14 metres North Beach 20 metres Central New Brighton
9.	All Residential Medium Density Height Limit Overlays (other than at Carlton Mill Road)	Any building shall not exceed 5 storeys above ground level
10.	In the Salvation Army Addington Overlay	11 metres

Note: See the permitted height exceptions contained within the definition of height.

14.3.3.4 Site coverage

The maximum percentage of the net site area covered by buildings shall be 50%.

For multi-unit residential complexes, social housing complexes, retirement villages and groups of older person's housing, the percentage coverage by buildings shall be calculated over the net area of the site of the entire complex or group, rather than over the net area of any part of the complex or group.

14.3.3.5 Outdoor living space

a. For residential units with two more bedrooms outdoor living space shall be provided on site for each residential unit, and shall not be occupied by parking or access. The required outdoor living space shall be within the following dimensions:

Note: the outdoor living space can be in a mix of private or communal areas at the ground level or in balconies**.**

Minimum total area for each residential unit	Minimum private area	Minimum dimension private area when provided at ground level	Minimum dimension private area when provided by a balcony	Minimum dimension of communal space	Accessibility of communal space	General accessibility for each residential unit	Minimum required outdoor living space at ground level for entire site
30m^2	16m^2	4 metres	1.5 metres	4 metres	Accessible by all units	At least one private outdoor living space shall be accessible from a living area of a residential unit	50%

b. For one bedroom units or studios on the ground floor outdoor living space shall be provided, and shall not be occupied by parking or access, within the following dimensions:

Minimum total private area for each residential unit	Minimum dimension private area when provided at ground level
16m^2	4 metres

c. For one bedroom units or studios entirely at an upper level outdoor living space shall be provided within the following dimensions. The required outdoor living space can be in a mix of private and communal areas, at the ground level or in balconies within the following dimensions:

Minimum total private area for each residential unit	Minimum private balcony dimensions
16m^2	6m^2 area 1.5 metres dimension

d. In the Salvation Army Addington Overlay the outdoor living space shall be communal and shall be based on 10m^2 per residential unit.

e. This rule does not apply to residential units in a retirement village.

14.3.3.6 Daylight recession planes

a. Buildings, shall not project beyond a building envelope constructed by recession planes, as shown in, Appendix 14.14.2 diagram C, from points 2.3 metres above:

   i. ground level at the internal boundaries; or

   ii. where an internal boundary of a site abuts an access lot or access strip the recession plane may be constructed from points 2.3 metres above ground level at the furthest boundary of the access lot or access strip or any combination of these areas; or

   iii. where buildings on adjoining sites have a common wall along an internal boundary the recession planes shall not apply along that part of the boundary covered by such a wall.

b. Where the building is located in an overlay that has a permitted height of 11m or more, the recession plane measurement shall commence from points 2.3 metres above ground level at the internal boundaries and continue on the appropriate angle to points 11m above ground level, at which point the recession plane becomes vertical.

Refer to Appendix 14.14.2 for permitted intrusions.

c. Where sites are located within a Flood Management Area, and a breach of the recession planes determined in accordance with standards a. or b. above is created solely by the need to raise the floor level to meet minimum floor levels, the applicable daylight recession plane shall be determined as follows:

   i. within the Fixed Minimum Floor Level Overlay, the daylight recession plane shall be determined as if the ground level at the relevant boundary was the minimum floor level set in the activity specific standards for P1 and P2 in Rule 5.3.1.1, or natural ground level, whichever is higher; or

   ii. outside the Fixed Minimum Floor Level Overlay, the daylight recession plane shall be determined as if the ground level at the relevant boundary was the minimum floor level specified in a Minimum Floor Level Certificate calculated in accordance with Rule 5.3.1.2, or natural ground level, whichever is higher.

d. Except that:

   i. In the Residential Medium Density Zone Higher Height Limit Overlay the recession plane shall be as shown in Appendix 14.14.2 diagram D, unless the building is higher than 11 metres, in which case refer to diagram E.

   ii. In the Residential Medium Density Lower Height Limit Overlay and Daylight Recession Plane Overlay the recession plane shall be as shown in Appendix 14.14.2 diagram B.

   iii. In the Residential Medium Density Zone 15 metre Higher Height Limit Overlay the recession plane shall be as shown on Appendix 14.14.2 diagram D, unless the building is higher than 11 metres, in which case refer to diagram E.

   iv. Except that in the Residential Medium Density Lower Height Limit Overlay the recession plane shall be as shown in Appendix 14.14.2 diagram B.

14.3.3.7 Minimum building setbacks from internal boundaries and railway lines

The minimum building setback from internal boundaries shall be:

1.	All buildings not listed below	1 metre
2.	Where residential buildings on adjoining sites have a ground floor window of a habitable space located within 1m of the common internal boundary	1.8 metres from that neighbouring window for a minimum length of 2 metres either side of the window – refer diagram below. This rule also applies to accessory buildings.
3.	All other accessory buildings where the total length of walls or parts of the accessory building within 1 metre of each internal boundary does not exceed 10.1 metres in length	Nil
4.	Buildings that share a common wall along an internal boundary	Nil
5.	All other buildings where the internal boundary of the site adjoins an access or part of an access	1 metre
6.	On sites adjacent or abutting railway lines, buildings, balconies and decks	4 metres from the rail corridor boundary

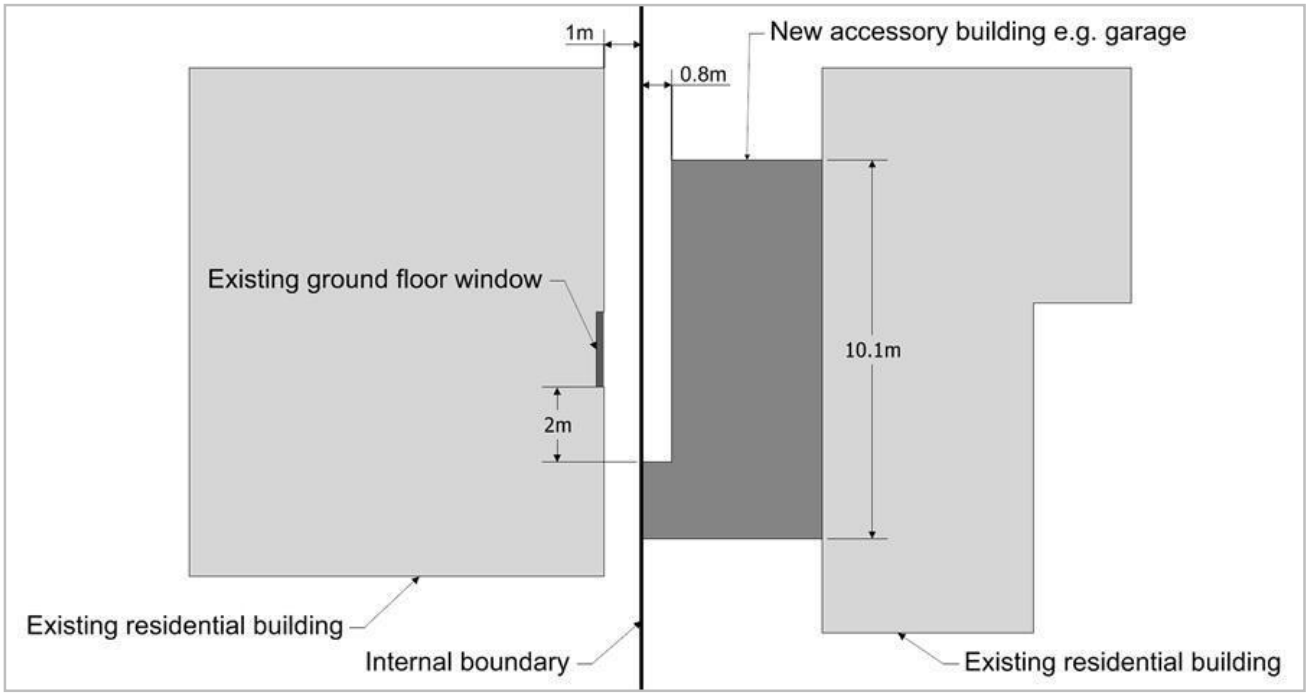


Figure 2: Separation from neighbours

[Note – this figure needs to be updated to reflect amended rules]

Note: This diagram is an illustrative example only, showing one way the rule may be applied (Refer to full rule for application of 1.8 metre separation).

14.3.3.8 Minimum setback and distance to living area windows and balconies and living space windows facing internal boundaries

a. The minimum setback for living area windows and balconies at first floor or above from an internal boundary shall be 4 metres.

b. At first floor level or above, where a wall of a residential unit is located between 1 metre and 4 metres from an internal boundary, any living space window located on this wall shall only contain glazing that is permanently obscured.

c. For a retirement village, this rule only applies to the internal boundaries of the site of the entire retirement village.

Note:

A. This rule shall not apply to a window at an angle of 90 degrees or greater to the boundary.

B. See sill height in the definition of window.

C. For the purposes of this rule, permanently obscured glazing does not include glazing obscured by applied means such as film or paint.

14.3.3.9 Road boundary building setback

a. The minimum road boundary garage and building setback shall be:

	Building type and situations	**Minimum setback**
1.	For all buildings and situations not listed below	2 metres
2.	Where a garage has a vehicle door that does not tilt or swing outwards facing a road	4.5 metres
3.	Where a garage has a vehicle door that tilts or swings outward facing a road	5.5 metres
4.	Where a garage has a vehicle door that does not tilt or swing outward facing a shared access way	7 metres measured from the garage door to the furthest formed edge of the adjacent shared access.
5.	Where a garage has a vehicle door that tilts or swings outward facing a shared access way	8 metres measured from the garage door the furthest formed edge of the adjacent shared access.

b. Habitable space front façade

For residential units fronting roads; garages, and other accessory buildings (excluding basement car parking and swimming pools) shall be located at least 1.2 metres further from the road boundary than the front façade of any ground level habitable space of that residential unit.

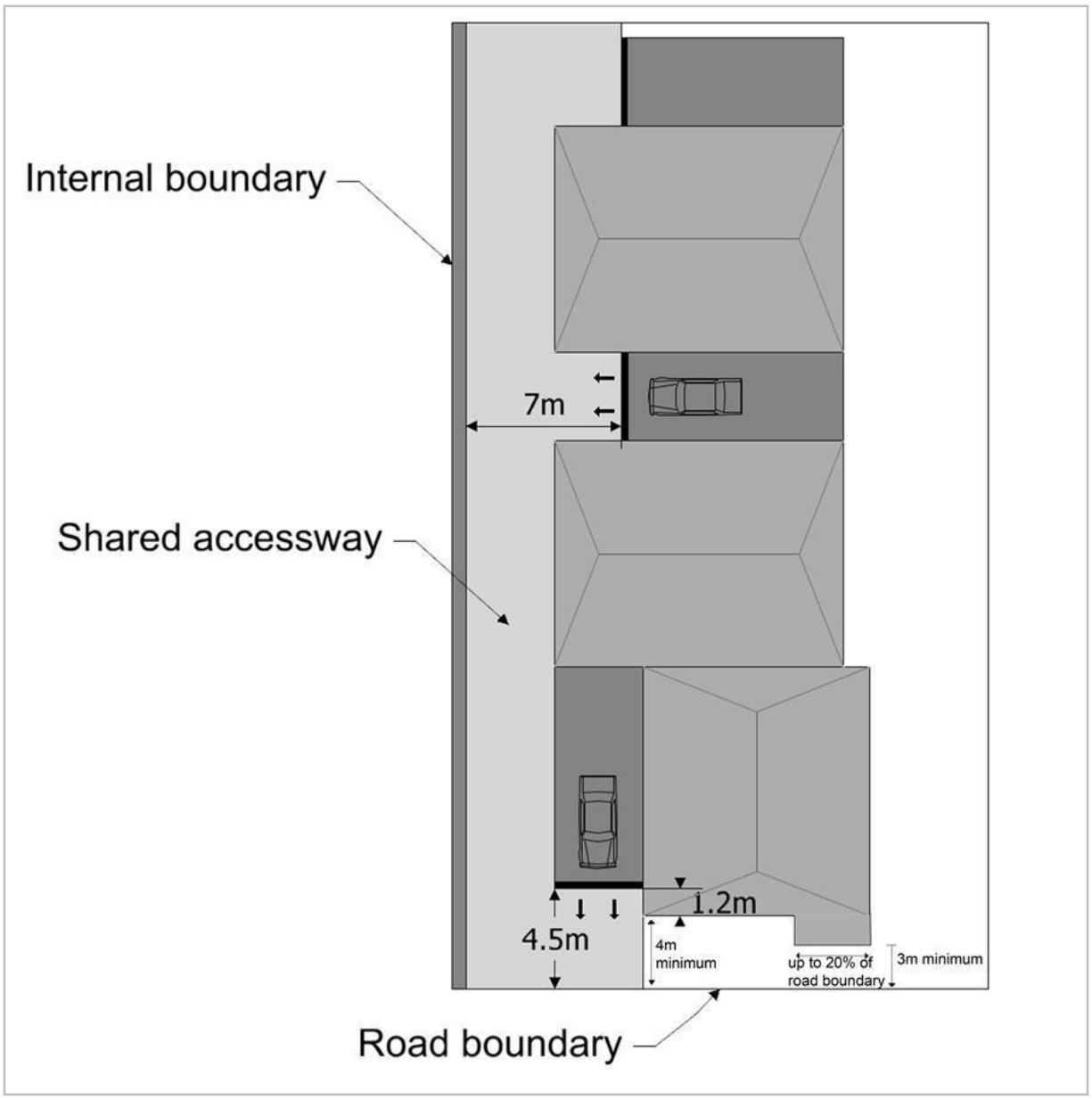


Figure 7: Street scene and access ways

[Note – this figure needs to be updated to reflect amended rules]

Note:

A. This diagram is an illustrative example only, showing one way the rule may be applied in the Residential Medium Density Zone.

B. These setback distances apply where garage doors do not tilt or swing outwards.

14.3.3.10 Street scene amenity and safety - fences

a. The maximum height of any fence in the setback from a road boundary on a local road shall be:

1.	Where at least 50% of the fence structure is visually transparent.	1.8 metres
2.	Where less than 50% of the fence structure is visually transparent.	1 metre

b. The maximum height of any fence in the setback from a road boundary on any collector road, or arterial road shall be 1.8 metres.

c. a. and b. shall not apply to fences or other screening structures located on an internal boundary between two properties zoned residential; or residential and commercial or industrial.

Note: For the purposes of this rule, a fence or other screening structure is not the exterior wall of a building or accessory building.

d. Parking areas shall be separated from road boundaries, conservation, open space, or adjoining residentially zoned sites by fencing that meets the requirements in a. above.

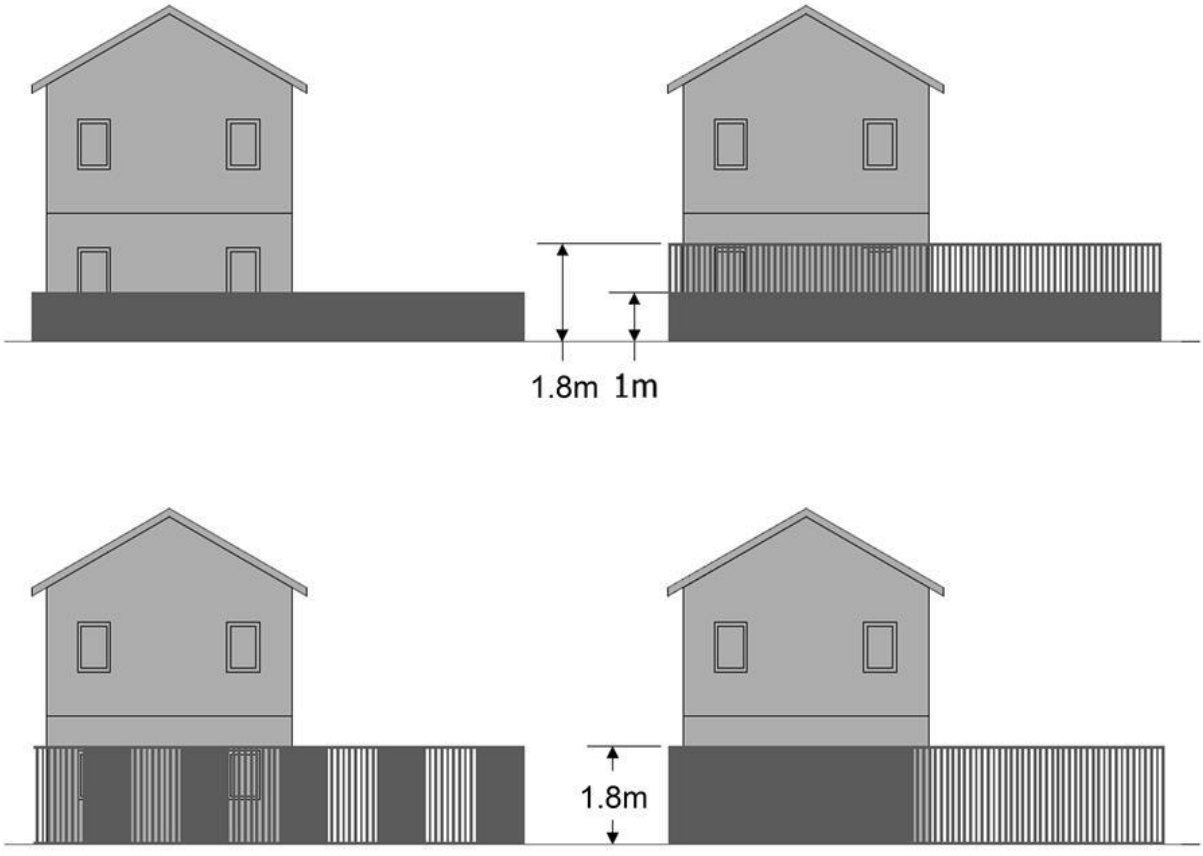


Figure 8: Fencing and screening structures

14.3.3.11 Building overhangs

No internal floor area located above ground floor level shall project more than 800mm horizontally beyond the gross floor area at ground level.

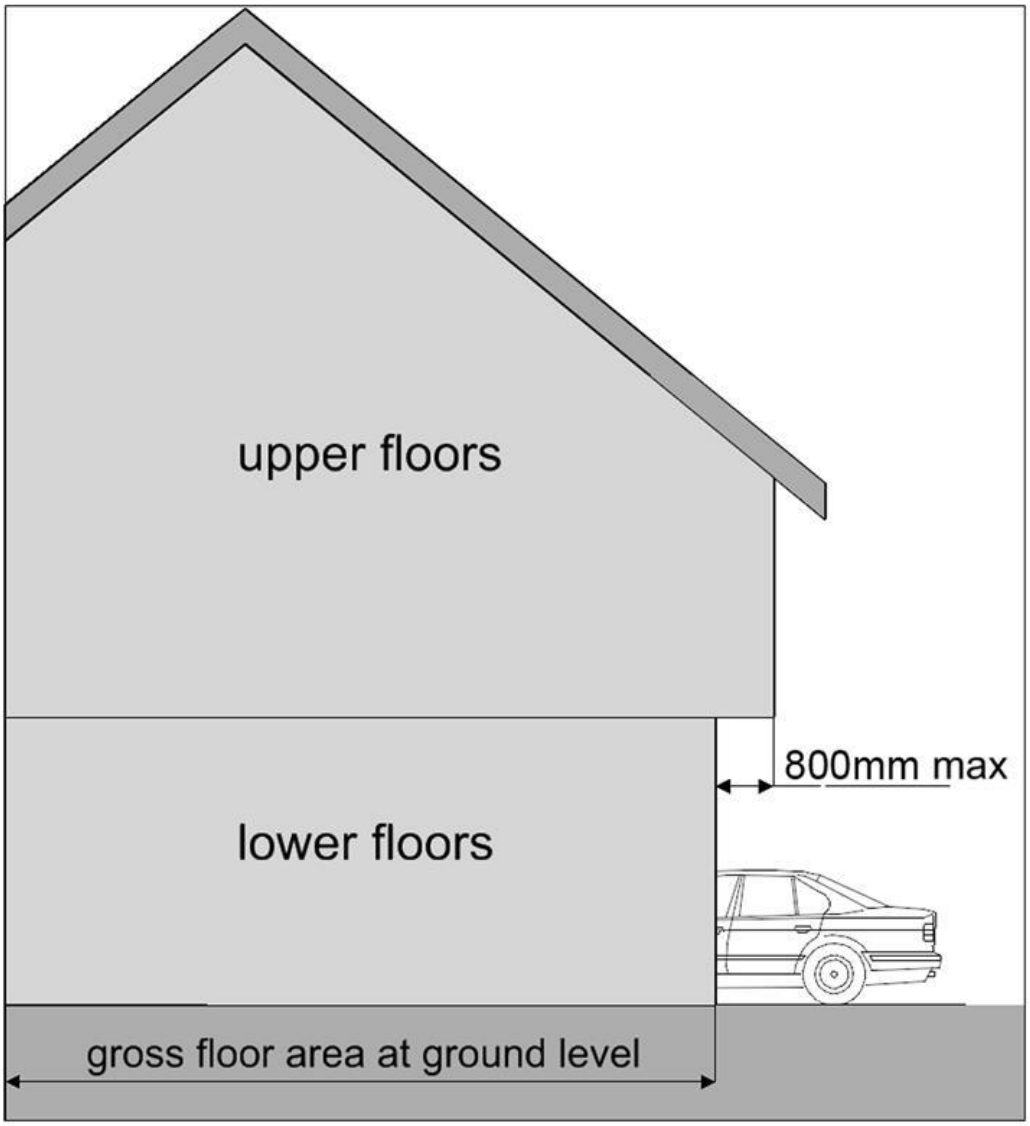


Figure 9: Building overhangs

Note: This diagram is an illustrative example only, showing a way the rule may be applied.

14.3.3.12 Minimum unit size

a. The minimum net floor area (including toilets and bathrooms, but excluding carparking, garaging or balconies) for any residential unit shall be:

	Number of bedrooms	Minimum net floor area

1.	Studio	35m^2
2.	1 bedroom	45m^2
3.	2 bedrooms	60m^2
4.	3 or more bedrooms	90m^2

b. This rule does not apply to residential units in a retirement village.

14.3.3.13 Ground floor habitable space

a. Where the permitted height limit is 11 metres or less (refer to Rule 14.3.3.3):

   i. any residential unit fronting a road or public space shall have a habitable space located at the ground level; and

   ii. at least 50% of all residential units within a development shall have a habitable space located at the ground level.

b. Each of these habitable spaces located at the ground level shall have a minimum floor area of 12m^2 and a minimum internal dimension of 3 metres and be internally accessible to the rest of the unit.

c. Where the permitted height limit is over 11 metres (refer to Rule 14.3.3.3), a minimum of 50% of the ground floor area shall be occupied by habitable spaces and/or indoor communal living space. This area may include pedestrian access to lifts, stairs and foyers.

d. This rule does not apply to residential units in a retirement village.

14.3.3.14 Service, storage, and waste management spaces

a. Each residential unit shall be provided with:

   i. an outdoor service space of 3m^2 and waste management area of 2.25m^2, with a minimum dimension of 1.5 metres; and

   ii. a single, indoor storage space of four cubic metres with a minimum dimension of 1 metre.

b. Any space designated for waste management, whether private or communal, shall be screened from adjoining sites, conservation or open space zones, roads, and adjoining outdoor living spaces to a height of 1.5 metres.

c. If a communal waste management area is provided within the site, the minimum required outdoor service space is 3m^2 or each residential unit.

d. If a communal waste management area is provided, it must be demonstrated to be:

   i. of a sufficient size to accommodate the number and dimensions of bins required to meet the predicted volume of waste generated by the residential units;

   ii. accessible and safe for use by all residents; and

   iii. easily accessible for the collection of bins by waste management contractors.

e. This rule does not apply to residential units in a retirement village.

14.3.3.15 Water supply for fire fighting

Sufficient water supply and access to water supplies for fire fighting shall be made available to all residential units via Council's urban fully reticulated system and in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice (SNZ PAS:4509:2008).

14.3.4 Area specific rules – Residential Medium Density Zone

The following rules apply to the areas specified. All activities are also subject to the rules in 14.3.2 and 14.3.3 unless specified otherwise.

14.3.4.1 Area specific restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table:

Activity		**The Council's discretion shall be limited to the following matters:**
RD1	Retail activity with frontage only to public access ways identified in Sumner Master Plan Overlay in Appendix 14.14.6	a. Urban design - 15.8.1.a.viii
RD2	Activities and buildings that do not comply with Rule 14.3.4.3.2 road boundary garage and building setback, for sites with frontage to Bealey Avenue, Fitzgerald Avenue or Deans Avenue (south of Blenheim Road), and within the Sumner Master Plan Overlay (Appendix 14.14.6) Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Street scene - road boundary building setback, fencing and planting - 14.13.19
RD3	Activities that do not comply with Rule 14.3.4.3.1 - Area specific development plans, Wigram special RNZAF provisions shown in Figure 6. Any application arising from this rule will not require the written approval of any entity except the New Zealand Defence Force and shall not be fully publicly notified. Limited notification if required shall only be to the New Zealand Defence Force.	a. Specific setback provisions - Residential Suburban Zone Wigram - 14.13.14

RD4	Development in Areas A, B and C of the Commercial Local Zone / Residential Medium Density Zone in the Commercial Local Zone (St Albans) Outline Development Plan Chapter 15 Appendix 15.10.4	a. Development plans - 14.13.16
RD5	Activities that do not comply with Rule 14.3.4.3.1 – Area specific development plans, Residential Medium Density Higher Height Limit and Site Density Overlay at Deans Avenue, and Sumner Master Plan Overlay (Appendix 14.14.6)	a. Development plans - 14.13.16

14.3.4.2 Area specific discretionary activities

The activity listed below is a discretionary activity.

Activity	
D1	Retail and commercial activity in the Sumner Master Plan Overlay that does not have frontage to public access ways identified in the Sumner Master Plan Overlay in Appendix 14.14.6

14.3.4.3 Area specific built form standards

14.3.4.3.1 Area specific development plans

a. This rule applies to:

i. Residential Medium Density Higher Height Limit and Site Density Overlay at Deans Avenue;

ii. Residential Medium Density Zone Wigram shown on Figure 6; and

iii. Residential Medium Density Zone in Sumner Master Plan Overlay in Appendix 14.14.6.

	Area	**Standard**
1.	Residential Medium Density Higher Height Limit and Site Density Overlay at Deans Avenue	Sites shall not have access to Deans Avenue other than via the proposed road to be located between 100m and 110m from the intersection of Moorhouse and Deans Avenue. As shown on Appendix 14.14.3 Development Plan Addington.
2.	Residential Medium Density Zone Wigram shown on Figure 6	Residential units shall have their primary outdoor living area facing away from the aerodrome site. Windows to living areas which directly face the RNZAF Bequest Land shall be doubled glazed. In addition, a 2 metre wide landscape strip and a close, solid and continuous 1.8 metre high fence shall be placed along the boundary of the RNZAF Bequest Land and be completed before any residential units are built.

3.	Sumner Master Plan Overlay (Appendix 14.14.6)	Retail activities and commercial services shall be located along the identified road frontages in accordance with the Sumner Master Plan Overlay (Appendix 14.14.6)

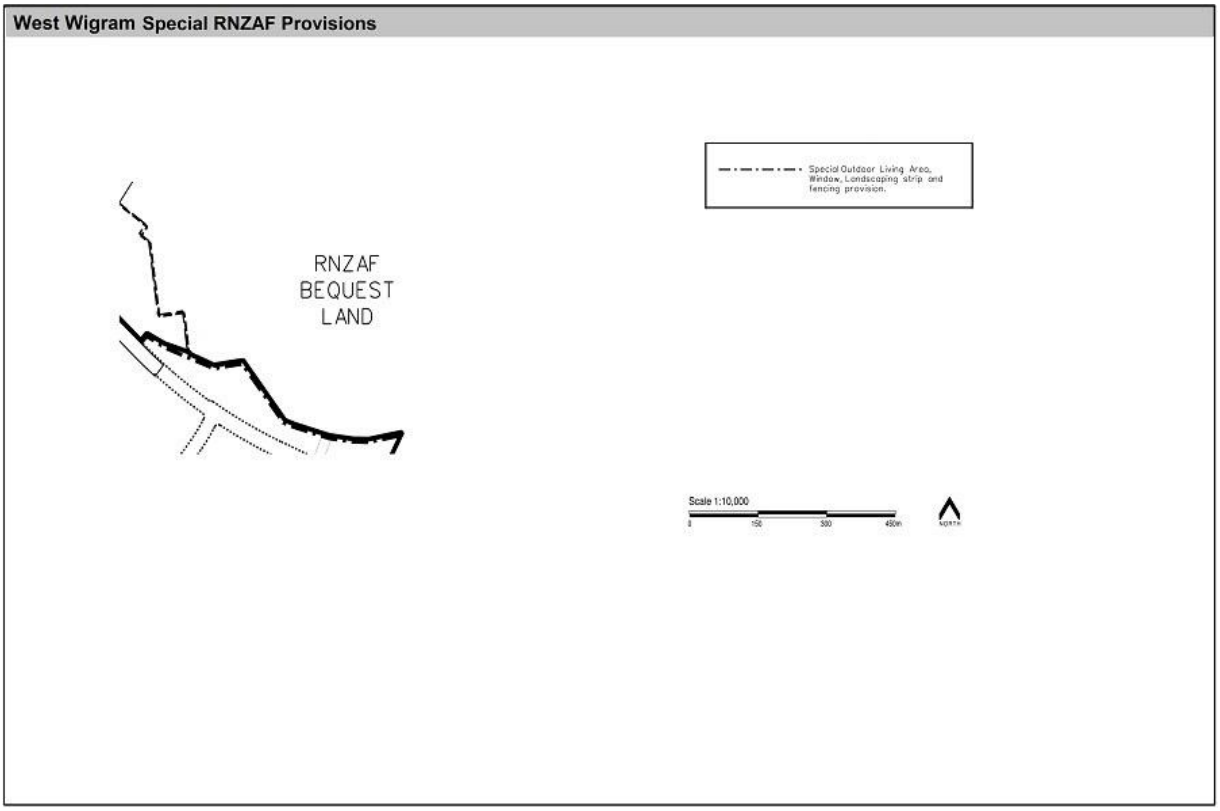


Figure 6: West Wigram Special RNZAF Provisions

14.3.4.3.2 Road boundary garage and building setback

This rule applies to sites with frontage to Bealey Avenue, Fitzgerald Avenue, or Deans Avenue (south of Blenheim Road), and within the Sumner Master Plan Overlay (Appendix 14.14.6).

Rule 14.3.3.8 Road boundary garage and building setback shall not apply on the above sites.

a. For sites with frontage to Bealey Avenue, Fitzgerald Avenue, or Deans Avenue (south of Blenheim Road), the road boundary setback shall be 6 metres.

b. Sumner Master Plan Overlay, shown in Appendix 14.14.6; for retail activities and commercial services with road frontage buildings; buildings shall:

   i. be built up to the road frontage with buildings occupying all frontage not needed for vehicle access to the rear of the site;

   ii. provide a minimum of 60% and a maximum of 90% visually transparent glazing at the ground floor and a minimum of 20% and a maximum of 90% visually transparent glazing at each floor above the ground floor;

   iii. provide pedestrian access directly from the road boundary; and

   iv. provide veranda or other means of weather protection along the full width of the building where it has frontage to a road.

c. Sumner Master Plan Overlay, shown in Appendix 14.14.6; for retail and commercial services with frontage only to public access ways; buildings shall:

   i. occupy the full public access way frontage of the site;

   ii. provide a minimum of 60% and a maximum of 90% of visually transparent glazing at the ground floor and a minimum of 20% and a maximum of 90% visually transparent glazing at each floor above the ground floor; and

   iii. provide pedestrian access directly from the public access way.

14.3.4.3.3 Building height

The maximum height of a building within the Residential Medium Density Zone in the Commercial Local Zone (St Albans) Outline Development Plan shown as Area A in Chapter 15 Appendix 15.10.4 shall be 14 metres.

Rule 14.3.3.3 Building height and maximum number of storeys shall not apply within the above area.

14.4 Rules – Residential Banks Peninsula Zone

14.4.1 How to use the rules

a. The rules that apply to activities in the Residential Banks Peninsula Zone are contained in:

   i. the activity status tables (including activity specific standards) in Rule 14.4.2; and

   ii. built form standards in Rules 14.4.3.

b. Area specific rules also apply to activities within the following specific areas zoned Residential Banks Peninsula Zone in Rule 14.4.4:

   i. Lyttelton Port Influences Overlay.

c. The activity status tables and standards in the following chapters also apply to activities in all areas of the Residential Banks Peninsula Zone:

   5 Natural Hazards;

   6 General Rules and Procedures;

   7 Transport;

   8 Subdivision, Development and Earthworks;

   9 Heritage and Natural Environment;

   11 Utilities, Energy and Infrastructure; and

   12 Hazardous Substances and Contaminated Land

d. Where the word "facility" is used in the rules (e.g. spiritual facility), it shall also include the use of a site /building for the activity that the facility provides for, unless expressly stated otherwise.

   Similarly, where the word/phrase defined include the word "activity" or "activities", the definition includes the land and/or buildings for that activity unless stated otherwise in the activity status tables.

14.4.2 Activity status tables

14.4.2.1 Permitted activities

In the Residential Banks Peninsula Zone, the activities listed below are permitted activities if they comply with the activity specific standards set out in this table, the applicable built form standards in Rule 14.4.3 and area specific rules in Rule 14.4.4.

Activities may also be controlled, restricted discretionary, discretionary, non-complying or prohibited as specified in Rules 14.4.2.2, 14.4.2.3, 14.4.2.4, 14.4.2.5 and 14.4.2.6.

Activity		Activity specific standards
P1	Residential activity, except for boarding houses	a. No more than one heavy vehicle shall be stored on the site of the residential activity. b. Any motor vehicles and/or boats dismantled, repaired or stored on the site of the residential activity shall be owned by people who live on the same site. Note: for residential activities within the Lyttelton Port Influences Overlay refer to area specific Rule 14.4.4.
P2	Minor residential unit where the minor unit is a detached building and the existing site it is to be built on contains only one residential unit	a. The existing site containing both units shall have a minimum net site area of 450m^2. b. The minor residential unit shall have a minimum gross floor area of 35m^2 and a maximum gross floor area 70m^2. c. The parking areas of both units shall be accessed from the same access. d. There shall be a total outdoor living space on the existing site (containing both units) with a minimum area of 90m^2 and a minimum dimension of 6 metres. This total space can be provided as: i. a single continuous area; or ii. be divided into two separate spaces, provided that each unit is provided with an outdoor living space that is directly accessible from that unit and is a minimum of 30m^2 in area.
P3	Retirement villages	a. Building façade length – there must be a recess in the façade of a building where it faces a side or rear boundary from the point at which a building exceeds a length of 16 metres. The recess must: i. be at least 1 metre in depth, for a length of at least 2 metres; ii. be for the full height of the wall; and iii. include a break in the eave line and roof line of the façade.
P4	Conversion of an elderly person's housing unit existing at 6 December 2013, into a residential unit that may be occupied by any person(s) and without the need to be encumbered by a bond or other appropriate legal instrument	Each converted unit shall have: a. a minimum gross floor area, excluding terraces, garages, sundecks and verandahs, of 35m^2; and b. a separate outdoor living space readily accessible from its living area that is at least 30m^2 with a minimum dimension of 3 metres.

Activity		Activity specific standards
P5	Home occupation	a. The gross floor area of the building, plus the area used for outdoor storage area, occupied by the home occupation shall be less than 40m^2. b. The maximum number of FTE persons employed in the home occupation, who reside permanently elsewhere than on the site, shall be two. c. Any retailing shall be limited to the sale of goods grown or produced on the site, or internet-based sales where no customer visits occur. d. The hours of operation, when the site is open to visitors, clients, and deliveries, shall be limited to between the hours of: i. 0700 – 2100 Monday to Friday; and ii. 0800 – 1900 Saturday, Sunday and public holidays. e. Visitor or staff parking areas shall be outside the road boundary setback. f. Outdoor advertising shall be limited to a maximum area of 2m^2.
P6	Care of non-resident children within a residential unit in return for monetary payment to the carer	There shall be: a. a maximum of 4 non-resident children being cared for in return for monetary payment to the carer at any one time; and b. at least one carer residing permanently within the residential unit. Note: for P6 activities within the Lyttelton Port Influences Overlay refer to area specific Rule 14.4.4.
P7	Bed and breakfast	There shall be: a. a maximum of 6 guests accommodated at any one time; b. at least one owner of the residential unit residing permanently on site ; and c. no guest given accommodation for more than 90 consecutive days. Note: for bed and breakfast within the Lyttelton Port Influences Overlay refer to area specific Rule 14.4.4.
P8	Education activity	The activity shall: a. only locate on sites with frontage and the primary entrance to a minor arterial or collector road where right turn offset, either informal or formal, is available; b. only occupy a gross floor area of building of less than 200m^2; or in the case of a health care facility, less than 300m^2; c. limit outdoor advertising to a maximum area of 2m^2;
P9	Pre-schools	
P10	Health care facility	
P11	Veterinary care facility	

<table>
<tr><th colspan="2">Activity</th><th>Activity specific standards</th></tr>
<tr><td></td><td></td><td>d. limit the hours of operation when the site is open to visitors, students, patients, clients, and deliveries to between the hours of:
<table>
<tr><td>Education activity</td><td>i. 0700 – 2100 Monday to Saturday; and
ii. Closed Sunday and public holidays.</td></tr>
<tr><td>Pre-schools</td><td rowspan="3">i. 0700 – 2100.</td></tr>
<tr><td>Health care facility</td></tr>
<tr><td>Veterinary care facility</td></tr>
</table>
e. only locate on sites where any residential activity on an adjoining front site, or front site separated by an access, with frontage to the same road is left with at least one residential neighbour. That neighbour shall be on an adjoining front site, or front site separated by an access, and have frontage to the same road;
f. only locate on residential blocks where there are no more than two non-residential activities already within that block;
Note: See Figure 1.
g. in relation to pre-schools, limit outdoor play areas and facilities to those that comply with the Group 1 acoustic standard for residential zones;
h. in relation to veterinary care facilities, limit the boarding of animals on the site to a maximum of 4;
i. not include the storage of more than one heavy vehicle on the site of the activity.
Note: For P8, P9, P10 and P11 activities within the Lyttelton Port Influences Overlay refer to area specific Rule 14.4.4.</td></tr>
<tr><td>P12</td><td>Spiritual facilities</td><td>The facility shall:
a. limit the hours of operation to 0700-2200; and
b. not include the storage of more than one heavy vehicle on the site of the activity.
Note: for P12 activities within the Lyttelton Port Influences Overlay refer to area specific Rule 14.4.4.</td></tr>
<tr><td>P13</td><td>Community corrections facilities</td><td rowspan="2">The facilities shall:
a. limit the hours of operation when the site is open to clients and deliveries to between the hours of 0700 – 1900; and
b. limit signage to a maximum area of 2m^2.
Note: for P14 activities within the Lyttelton Port Influences Overlay refer to area specific Rule 14.4.4.</td></tr>
<tr><td>P14</td><td>Community welfare facilities</td></tr>
</table>

Activity		Activity specific standards
P15	Emergency services facilities	a. Nil
P16	Repair or rebuild of multi-unit residential complexes damaged by the Canterbury earthquakes of 2010 and 2011 on properties with cross leases, company leases or unit titles as at the date of the earthquakes *[This was the subject of Decision 3, numbering and text referring to multi-unit residential complexes is amended by this decision under Cl 13(5) and (6)(a)]*	a. Where the repair or rebuild of a building will not alter the building footprint, location, or height, the building need not comply with any of the built form standards. b. Where the building footprint, location, or height is to be altered no more than necessary in order to comply with legal or regulatory requirements or the advice of a suitably qualified and experienced chartered engineer: i. the only built form standards that shall apply are those specified in Rules 14.4.3.2 – Building height and 14.4.3.5 – Daylight recession planes; ii. in relation to the road boundary setback, the repaired or rebuilt building shall have a setback of at least 3 metres; iii. the standards at (i) and (ii) shall only apply to the extent that the repaired or rebuilt building increases the level of non-compliance with the standard(s) compared to the building that existed at the time of the earthquakes. Clarification: examples of regulatory or legal requirement that may apply include the New Zealand Building Code, Council bylaws, easements, and other rules within this Plan such as the requirements for minimum floor levels in Chapter 5. c. If paragraphs a. and b. do not apply, the relevant built form standards apply. Any application arising from non-compliance with standards a. and b.i. will not require written approval except from the affected adjoining landowner(s) and shall not be publicly notified. Any application arising from non-compliance with standard b.ii. (road boundary setbacks), will not require written approval and shall not be publicly or limited notified.
P17	Temporary lifting or moving of earthquake damaged buildings where the activity does not comply with one or more of: a. 14.4.3.2 – Building height; b. 14.4.3.3 – Site coverage; c. 14.4.3.4 – Minimum building setback from side and rear internal boundaries and railway lines; or	a. Buildings shall not be: i. moved to within 1 metre of an internal boundary and/or within 3 metres of any waterbody, scheduled tree, listed heritage item, natural resources and Council owned structure, archaeological site, or the coastal marine area; or ii. lifted to a height exceeding 3 metres above the applicable recession plane or height control. b. The building must be lowered back or moved back to its original position, or a position compliant with the District Plan or consistent with a resource consent, within 12 weeks of the lifting or moving works having first commenced. c. In all cases of a building being moved or lifted, the owners/occupiers of land adjoining the sites shall be informed of the work at least seven days prior to the lift or move of the

Activity		Activity specific standards
	d. 14.4.3.5 – Daylight recession planes. *[This was the subject of Decision 2, numbering and text is amended by this decision under Cl 13(5) and (6)(a)]*	building occurring. The information provided shall include details of a contact person, details of the lift or move, and the duration of the lift or move. d. The Council's Resource Consents Manager shall be notified of the lifting or moving the building at least 7 days prior to the lift or move of the building occurring. The notification must include details of the lift or move, property address, contact details and intended start date.
P18	Heli-landing areas	a. Sites shall be greater than 3000m^2 in area. b. The number of flights shall not exceed 12 (24 movements) in any calendar year. c. The flights (movements) shall not take place on more than 5 days in any 1 month period. d. The flights (movements) shall not exceed 3 in any 1 week. e. Any movements shall only occur between 0800 and 1800 hours. f. No movements shall take place within 25 metres of any residential unit unless that residential unit is owned or occupied by the applicant. g. A log detailing the time and date of each helicopter movement shall be maintained and made available for inspection by the Christchurch City Council when requested.
P19	Relocation of a building	a. Nil
P20	Temporary military or emergency service training activities	
P21	Market gardens, community gardens, and garden allotments	

14.4.2.2 Controlled activities

The activities listed below are controlled activities.

Unless otherwise specified, controlled activities will not require written approval and shall not be publicly or limited notified.

Discretion to impose conditions is restricted to the matters over which control is reserved in Rule 14.13, as set out in the following table.

Activity		The Council's control is reserved to the following matters:
C1	Residential units (including any sleep-outs) containing more than 6 bedrooms in total	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6

14.4.2.3 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table.

Activity		The Council's discretion shall be limited to the following matters:
RD1	Minor residential unit where the minor unit is a detached building and does not comply with any one or more of the activity specific standards in Rule 14.4.2.1 P2 a, b, c, or d.	a. Minor residential units 14.13.23
RD2	Temporary lifting or moving of earthquake damaged buildings that does not comply with any one or more of the activity specific standards in Rule 14.4.2.1 P17. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Relocation of buildings and temporary lifting or moving of earthquake damaged buildings - 14.13.17 *[This was the subject of Decision 2, numbering and text is amended by this decision under Cl 13(5) and (6)(a)]*
RD3	Buildings that do not comply with Rule 14.4.3.6 – Building setbacks from road boundaries. Any application arising from non-compliance with this rule will not require written approvals and shall not be publicly or limited notified.	a. Street scene – road boundary building setback, fencing and planting – 14.13.18
RD4	Residential units that do not comply with Rule 14.4.3.1 – Site density	

Activity		The Council's discretion shall be limited to the following matters:
RD5	Activities and buildings that do not comply with Rule 14.4.3.3 – Site coverage	a. Site density and site coverage - 14.13.2
RD6	Buildings that do not comply with Rule 14.4.3.2 – Building height	a. Impacts on neighbouring property - 14.13.3
RD7	Buildings that do not comply with Rule 14.4.3.5 – Daylight recession planes	
RD8	Buildings that do not comply with Rule 14.4.3.4 (other than 14.4.3.4(3); refer to RD16) – Minimum building setback from side and rear internal boundaries and railway lines	a. Impacts on neighbouring property - 14.13.3 b. Minimum building window and balcony setbacks - 14.13.19
RD9	Residential units that do not comply with Rule 14.4.3.7. Any application arising from this rule will only require the written approval of the New Zealand Fire Service to not be limited notified and shall not be fully publicly notified.	a. Water supply for fire fighting - 14.13.8
RD10	Multi-unit residential complexes	a. Residential design principles — 14.13.1
RD11	Activities that do not comply with any one or more of the activity specific standards in 14.4.2.1 (except for P8-P11 activity standard i., refer to D2) for: a. P5 – Home occupation; b. P8 – Education activity; c. P9 – Pre-schools; d. P10 – Health care facility; or e. P11 – Veterinary care facility. Any application arising from these rules will not require written approval and shall not be publicly or limited notified.	As relevant to the breached rule: a. Scale of activity — 14.13.5 b. Traffic generation and access safety — 14.13.6 c. Non-residential hours of operation — 14.13.22
RD12	Integrated family health centres where: a. the centre is located on sites with frontage and the primary entrance to a minor arterial or collector road where right turn offset, either informal or formal is available;	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6

Activity		The Council's discretion shall be limited to the following matters:
	b. the centre is located on sites adjoining a Neighbourhood, District or Key Activity Centre; c. the centre occupies a gross floor area of building of between 301m^2 and 700m^2; d. outdoor advertising is limited to a maximum area of 2m^2; and e. the hours of operation when the site is open to patients, or clients, and deliveries, is limited to between the hours of 0700 – 2100.	c. Non-residential hours of operation - 14.13.22
RD13	Community corrections and community welfare facilities that do not comply with any one or more of the activity specific standards in Rule 14.4.2.1 P13 or P14. Any application arising from these rules will not require written approval and shall not be publicly or limited notified.	As relevant to the breached rule: a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6 c. Non-residential hours of operation - 14.13.22
RD14	Retirement villages that do not comply with any one or more of the activity specific standards in Rule 14.4.2.1 P3	a. Retirement villages 14.13.10
RD15	Boarding house	a. Scale of activity - 14.13.5 b. Traffic generation and access safety - 14.13.6
RD16	Activities and buildings that do not comply with Rule 14.4.3.4(3) relating to rail corridor boundary setbacks.	a. Whether the reduced setback from the rail corridor will enable buildings to be maintained without requiring access above, over, or on the rail corridor.
RD17	Spiritual facilities that do not comply with the hours of operation in Rule 14.4.2.1 P12. Any application arising from this rule shall not be publicly notified and shall only be limited notified to directly abutting land owners and occupiers that have not given their written approval.	a. Scale of activity - 14.13.22

14.4.2.4 Discretionary activities

The activities listed below are discretionary activities.

Activity	
D1	Any activity not provided for as a permitted, controlled, restricted discretionary, non-complying or prohibited activity
D2	Activities that do not comply with any one or more of the activity specific standards in Rule 4.4.2.1 for: a. P1 Residential activity; b. P4 Conversion of an older person's housing unit into a residential unit; c. P6 Care of non-resident children in a residential unit; d. P7 Bed and breakfast; or e. Storage of more than one heavy vehicle for activities for P8-P12.
D3	Show homes
D4	Camping grounds
D5	Place of assembly (except for a Lyttelton Port Noise Sensitive Activity within the Lyttelton Port Influences Overlay) where: a. the minimum site area is not less than 30m^2 per person; b. all outdoor areas associated with the activity are screened with a 1.8m high fence or solid planting which ensures privacy for adjoining sites; c. the hours of operation are between 0700 – 2200 hours Monday to Sunday and public holidays; and d. there is no use of heavy vehicles associated with the activity.
D6	Health care facility (except for a Lyttelton Port Noise Sensitive Activity within the Lyttelton Port Influences Overlay) where: a. the maximum floor area used for health care activities on any site does not exceed 100m^2; and b. there is no use of heavy vehicles associated with the activity.
D7	Retail activity where: a. all outdoor areas associated with the activity are screened with a 1.8 metre high fence or solid planting which ensures privacy for adjoining sites; b. the hours of operation are between 0700 – 2200 hours Monday to Sunday and public holidays; c. the maximum floor area used for retail activities on any site does not exceed 50m^2; d. the activity does not include trade or yard-based suppliers or service stations; and e. there is no use of heavy vehicles associated with the activity.
D8	All other non-residential activities not otherwise listed in these tables

Activity	
D9	Integrated family health centres which do not comply with any one of more of the requirements specified in Rule 14.4.2.3 RD12

14.4.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC1	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity): i. within 12 metres of the centre line of a 110kV or 220kV National Grid transmission line or within 12 metres of the foundation of an associated support structure; or ii. within 10 metres of the centre line of a 66kV National Grid transmission line or within 10 metres of a foundation of an associated support structure; or b. Fences within 5 metres of a National Grid transmission line support structure foundation. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Transpower New Zealand Limited. Notes: 1. The National Grid transmission lines are shown on the planning maps. 2. Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.
NC2	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity): i. within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure; or ii. within 5 metres of the centre line of a 33kV electricity distribution line or within 5 metres of a foundation of an associated support structure. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator. Notes: 4. The electricity distribution lines are shown on the planning maps. 5. Vegetation to be planted around electricity distribution lines should be selected

	and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 6. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in relation to National Grid transmission lines. Buildings and activity in the vicinity of National Grid transmission lines must comply with NZECP 34:2001.

14.4.2.6 Prohibited activities

There are no prohibited activities.

14.4.3 Built form standards

14.4.3.1 Site density

a. Each residential unit shall be contained within its own separate site. The site shall have a minimum net site area as follows:

	Area/Location	**Standard**
1.	Residential Banks Peninsula Zone	400m^2
2.	Residential Banks Peninsula Zone – Diamond Harbour Density Overlay	600m^2
3.	10 Pages Road, Lyttelton (described as Lot 2 DP 52500)	5 or fewer residential units in total may be erected on the site
4.	10 Harmans Road, Lyttelton (described as Lot 1 DP 71436)	5000m^2
5.	Multi-unit residential complexes	There shall be no minimum net site area for any site for any residential unit
6.	Retirement villages	

14.4.3.2 Building height

a. The maximum height of any building shall be 7 metres.

b. The maximum height of any accessory buildings shall be 4.5 metres.

Note: See the permitted height exceptions contained within the definition of height.

14.4.3.3 Site coverage

The maximum percentage of the net site area of any site covered by buildings shall be 35%, excluding:

a. fences, walls and retaining walls;

b. eaves and roof overhangs up to 600mm in width from the wall of a building;

c. uncovered swimming pools up to 800mm in height above ground level; and

d. decks, terraces, balconies, porches, verandahs, bay or box windows (supported or cantilevered) which:

   i. are no more than 800mm above ground level and are uncovered or unroofed; or

   ii. where greater than 800mm above ground level and are covered or roofed, are in total no more than $6m^2$ in area for any one site.

14.4.3.4 Minimum building setback from side and rear internal boundaries and railway lines

The minimum building setback from side and rear internal boundaries shall be:

1.	Side internal boundaries	One of 1.5 metres and one of 2 metres
2.	Rear internal boundaries	2 metres
3.	On sites adjacent or abutting railway lines, buildings, balconies and decks	4 metres from the rail corridor boundary

There shall be no minimum setback from internal boundaries for accessory buildings where the length of any wall within the setbacks specified in 1. is less than 6 metres.

14.4.3.5 Daylight recession planes

No part of any building shall project beyond a building envelope contained by a 45 degree recession plane measured at any point 2 metres above ground level at any adjoining site boundary, that is not a road boundary.

14.4.3.6 Building setbacks from road boundaries

Minimum building setback from road boundaries shall be:

	Applicable to	**Standard**

1.	Where a garage contains a vehicle entrance way which generally faces a road	5 metres
2.	All other buildings	3 metres

14.4.3.7 Water supply for fire fighting

Sufficient water supply and access to water supplies for fire fighting shall be made available to all residential units via Council's urban reticulated system (where available) in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice (SNZ PAS: 4509:2008). Where a reticulated water supply compliant with SNZ PAS:4509:2008 is not available, or the only supply available is the controlled restricted rural type water supply which is not compliant with SNZ PAS:4509:2008 water supply and access to water supplies for fire fighting that is in compliance with the alternative firefighting water sources provisions of SNZ PAS 4509:2008 must be provided.

14.4.4 Area specific rules – Residential Banks Peninsula Zone

The following rules apply within the Lyttelton Port Influences Overlay. All activities are subject to the rules in 14.4.2 and 14.4.3 unless specified otherwise.

14.4.4.1 Area specific permitted activities

	Activity	**Area specific standards**
P1	Extension to an existing habitable space or the erection of a new habitable space associated with an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space does not exceed 40m^2 within a 10 year continuous period	a. Compliance with Rule 14.4.4.4.
P2	Replacement for an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space does not exceed the combined gross floor area of the habitable spaces contained in the previous residential unit by more than 40m^2 within a 10 year continuous period	a. Compliance with Rule 14.4.4.4.

14.4.4.2 Area specific restricted discretionary activities

	Activity	**The Council's discretion shall be**

		limited to the following matters
RD1	Extension to an existing habitable space or the erection of a new habitable space associated with an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space exceeds 40m^2 within a 10 year continuous period with a no complaints covenant, provided that the works comply with Rule 14.4.4.4. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.	a. Lyttelton Port Influences Overlay - 14.13.15
RD2	Replacement residential unit for an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space exceeds the combined gross floor area of the habitable space contained in the previous residential unit by more than 40m^2 within a 10 year continuous period with a no complaints covenant, provided that the works comply with Rule 14.4.4.4. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.	

14.4.4.3 Area specific non-complying activities

	The activities listed below are a non-complying activity
NC1	Extension under Rule 14.4.4.1 (P1) in the Lyttelton Port Influences Overlay that does not comply with Rule 14.4.4.4. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.
NC2	Replacement under Rule 14.4.4.1 (P2) in the Lyttelton Port Influences Overlay that does not comply with Rule 14.4.4.4. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.
NC3	Extension to an existing habitable space or the erection of a new habitable space associated with an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space exceeds 40m^2 within a 10 year continuous period that: a. does not have a no complaints covenant; and/or b. does not comply with Rule 14.4.4.4. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.

NC4	Replacement residential unit for an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space exceeds the combined gross floor area of the habitable space contained in the previous residential unit by more than 40m^2 within a 10 year continuous period that: a. does not have a no complaints covenant; and/or b. does not comply with Rule 14.4.4.4. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.
NC5	New noise sensitive activities in the Lyttelton Port Influences Overlay. Any application arising from this rule shall not be publicly notified and shall only be limited notified to Lyttelton Port Company where it has not given its written approval.

14.4.4.4 Area specific built form standards

14.4.4.4.1 Internal sound design level in the Lyttelton Port Influences Overlay

New habitable space or extensions to existing habitable space in the Lyttelton Port Influences Overlay shall have an internal sound design level of 40dBA L^{dn} (5 day) with ventilating windows or with windows and doors closed and mechanical ventilation installed and operating.

For the purposes of this rule, the design shall achieve an internal design sound level of a habitable room, the external noise environment will be the modelled level of port noise taken from the predicted dBA Ldn (5 day) contour closest to the habitable room, in accordance with the methodology of NZS 6809:1999 Port Noise Management and Land Use Planning.

Note: There will be a port noise contour map attached to a Port Noise Management Plan, which is to be prepared and regularly updated in accordance with Chapter 6 of this plan. This map will show the dBA Ldn (5 day) contour lines, in 1 dBA increments, across Lyttelton Township and would be available for a property owner's acoustic design consultant to use.

14.5 Rules - Residential Hills Zone

[placeholder]

14.6 Rules - Residential Bach Zone

[placeholder]

14.7 Rules - Residential Large Lot Zone

[placeholder]

14.8 Rules - Residential Small Settlement Zone

[placeholder]

14.9 Rules – Residential New Neighbourhood Zones

[deferred to NNZ Hearing]

14.10 Rules - Residential Guest Accommodation Zone

[deferred to General Rules Hearing]

14.11 Rules — Enhanced Development Mechanism

14.11.1 How to use these rules

a. The rules that define where the Enhanced Development Mechanism can be used are contained in the qualifying standards in Rule 14.11.2.

b. The following rules determine the activity status of resource consents applications to use the Enhanced Development Mechanism:

   i. the activity status tables in Rule 14.11.3; and

   ii. the built form standards in Rule 14.11.4.

c. The information that is required for resource consent applications is set out in Rule 14.11.5.

d. On any particular site the provisions of the Enhanced Development Mechanism may apply or the provisions of the zone in which the site is located may apply.

e. Where the word "facility" is used in the rules (e.g. spiritual facility) it shall also include the use of a site /building for the activity that the facility provides for, unless expressly stated otherwise. Similarly, where the word/phrase defined include the word "activity" or "activities", the definition includes the land and/or buildings for that activities unless stated otherwise in the activity status tables.

14.11.2 Qualifying standards

Qualifying sites shall comply with the following qualifying standards.

14.11.2.1 Zoning qualifying standards

a. Qualifying sites shall be located in the Residential Suburban Density Transition Zone, or the Residential Medium Density Zone, or the Cultural 3 Zone or the Residential Banks Peninsula Zone.

14.11.2.2 Site size qualifying standards

a. Qualifying sites shall be:

   i. of a size greater than 1500m^2 and less than 10,000m^2; and

   ii. in one continuous block of land.

14.11.2.3 Housing yield qualifying standards

a. Comprehensive development of a site shall deliver a minimum density of 30 households per hectare (one unit per 330m^2), and a maximum density of 65 households per hectare (one unit per 150m^2).

14.11.2.4 Location qualifying standards

Accessibility criteria

a. Qualifying sites shall lie fully within all of the following four criteria:

   i. 800 metres EDM walking distance of:

      A. A Central City Business Zone , or Central City Mixed Use Zone, or a Commercial Core Zone; or the Commercial Banks Peninsula Zone in Lyttelton; or

      B. An EDM Qualifying Supermarket - except that B does not apply to EDM in the Residential Banks Peninsula Zone;

   ii. 800 metres EDM walking distance of either a primary or intermediate school;

   iii. 400 metres EDM walking distance of an Open Space 2 Zone or an Open Space 1 Zone that has an area greater than 4000m^2; and

   iv. 600 metres EDM walking distance of an EDM core public transport route – except that iv. does not apply to EDM in the Residential Banks Peninsula Zone.

Note: For ii. – iv. above where the walking route is bisected by an arterial road in Chapter 7 Transport Appendix 7.12, the EDM walking distance shall be measured at a formal pedestrian crossing point.

Constraint criteria

b. No part of a qualifying site shall lie within:

   i. a Special Amenity Area identified in the City Plan as at 6 December 2013; or

   ii. 400 metres of the boundary of an Industrial – Heavy Zone; or

   iii. the tsunami inundation area as shown in Appendix 14.14.5; or

   iv. the Riccarton Wastewater interceptor catchment. In the identified lower catchment this standard only applies until infrastructure work creating capacity has been completed.

14.11.3 Activity status tables

14.11.3.1 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table.

Until 31 December 2018, resource consent applications in relation to these rules shall not be publicly or limited notified, except as specified in RD3 and RD4 below.

Activity		The Council's discretion shall be limited to the following matters:
RD1	Residential activities utilising the Enhanced Development Mechanism that comply with all qualifying standards in Rule 14.11.2 and are not in breach of the built form standards in Rule 14.11.4.	a. Residential design principles – 14.13.1
RD2	Residential activities utilising the Enhanced Development Mechanism that comply with all qualifying standards in Rule 14.11.2 but do not comply with one or more of the built form standards in Rule 14.11.4 (except 14.11.4.13 and 14.11.4.14; refer to RD3 and RD4 below).	a. Residential design principles – 14.13.1 b. As relevant to the breached built form standard: i. Site density and site coverage - 14.13.2 ii. Impacts on neighbouring property - 14.13.3 iii. Street scene – road boundary building setback, fencing and planting – 14.13.18 iv. Minimum building, window and balcony setbacks - 14.13.19 v. Outdoor living space - 14.13.21 vi. Minimum unit size and unit mix - 14.13.4 vii. Service, storage and waste management spaces - 14.13.20 viii. Acoustic insulation - 14.13.9 ix. Traffic generation and access safety - 14.13.6
RD3	Residential activities utilising the Enhanced Development Mechanism that comply with all qualifying standards in Rule 14.11.2 but do not comply with Rule 14.11.4.13. Until 31 December 2018, any application arising from this rule will only require the written approval of the New Zealand Fire Service to not be limited notified and shall not be fully publicly notified.	a. Residential design principles – 14.13.1 b. Water supply for fire fighting - 14.13.8
RD4	Residential activities utilising the Enhanced Development Mechanism that comply with all qualifying standards in Rule 14.11.2 but do not comply with Rule 14.11.4.14 relating to rail corridor boundary setbacks	a. Residential design principles – 14.13.1 b. Whether the reduced setback from the rail corridor will enable buildings to be maintained without requiring access above, over, or on the rail corridor.

Activity		The Council's discretion shall be limited to the following matters:
	Until 31 December 2018, any application arising from this rule shall not be publicly notified and shall only be limited notified to KiwiRail where it has not given its written approval.	

14.11.3.2 Discretionary activities

The activities listed below are discretionary activities.

Activity	
D1	Residential activities utilising the Enhanced Development Mechanism where part of the site, but not all of the site, complies with all of the location qualifying standards in Rule 14.11.2.4, and complies with all other qualifying standards in Rule 14.11.2

14.11.3.3 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC1	Residential activities utilising the Enhanced Development Mechanism that do not comply with zoning qualifying standards in Rule 14.11.2.1
NC2	Residential activities utilising the Enhanced Development Mechanism that do not comply with site size qualifying standards in Rule 14.11.2.2
NC3	Residential activities utilising the Enhanced Development Mechanism that do not comply with housing yield qualifying standards in Rule 14.11.2.3

14.11.4 Built form standards

For the purpose of this rule, site refers to the entire site area being utilised for the Enhanced Development Mechanism, which may include a number of titles.

14.11.4.1 Building height

Within 15 metres of the site boundary, the maximum height of any building shall be 8 metres where the site adjoins the Residential Suburban Zone. Across the rest of the site area the maximum building height shall be 11 metres.

14.11.4.2 Daylight recession planes

Buildings shall not project beyond a building envelope constructed by recession planes from points 2.3 metres above boundaries with other sites as shown in Appendix 14.14.2, diagram C except that:

a. where an internal boundary of a site abuts an access lot, access strip, or access to a rear lot, the recession plane may be constructed from points 2.3 metres above the furthest boundary of the access lot, access strip, or access to a rear lot or any combination of these areas;

b. where buildings on adjoining sites have a common wall along an internal boundary the recession planes shall not apply along that part of the boundary covered by such a wall.

Note: The level of internal boundaries shall be measured from filled ground level except where the site on the other side of the internal boundary is at a lower level, then that lower level shall be adopted.

14.11.4.3 Street scene

Buildings shall be set back a minimum of 4.5 metres from road boundaries, other than where a site has a road boundary that is subject to another standard in this Plan, except that:

a. where a garage has a vehicle door facing a road the garage door shall be set back a minimum of 4.5 metres unless the garage door(s) provided tilt or swing outwards, in which case the garage door shall be set back a minimum of 5.5 metres;

b. where a garage has the vehicle door facing a shared access way, the garage door shall be set back a minimum of seven metres measured from the garage door to the furthest formed edge of the adjacent shared access unless the garage door(s) provided tilt or swing outwards, in which case the garage door shall be set back a minimum of eight metres; and

c. for residential units fronting the street; garages, and other accessory buildings (excluding basement car parking and swimming pools) shall be located at least 1.2 metres further from the road boundary than the front facade of any ground level habitable space of that unit.

14.11.4.4 Separation from neighbours

a. Buildings that adjoin an access lot, access strip, or access to a rear site shall be set back a minimum of 1 metre from that part of an internal boundary of a site.

b. Accessory buildings which face the ground floor window of a habitable space on an adjoining site shall be set back a minimum of 1.8 metres from that neighbouring window for a minimum length of two metres either side of the window.

c. In all other instances buildings shall be set back a minimum of 1.8 metres from internal boundaries of a site, except that:

    i. no setback is required from an access lot or access strip on the same site, provided that any windows on the ground floor facing and within one metre of the access lot or access strip are non-opening;

ii. other than provided in b. above, no setback for accessory buildings is required, provided the total length of walls or parts of accessory buildings facing and located within the setback is less than nine metres;

iii. no setback is required along that part of an internal boundary where buildings on adjoining sites have a common wall along the internal boundary; and

iv. no setback is required for basements, provided that any part of a basement located within 1.8 metres of an internal boundary is wholly below ground level.

d. Parts of a balcony or any window of a living area at first floor level or above shall not be located within 4 metres of an internal boundary of a site, except that this shall not apply to a window at an angle of 90 degrees or greater to boundary, or a window or balcony which begins within 1.2 metres of ground level (such as above a garage which is partly below ground level).

14.11.4.5 Minimum unit size, and mix of units

a. The minimum net floor area (including toilets and bathrooms, but excluding carparking, garaging, or balconies) for any residential unit shall be:

	Number of Bedrooms	**Minimum net floor area**
1.	Studio	35m^2
2.	1 bedroom	45m^2
3.	2 bedrooms	60m^2
4.	3 or more bedrooms	90m^2

b. Where the residential activities utilising the Enhanced Development Mechanism include six or more residential units as part of a social housing complex or a multi-unit residential complex, there shall be a mix of at least 2 unit size types ranging across 1, 2, 3 or more bedrooms. No unit size type shall account for more than two thirds of the overall number of units on a site.

14.11.4.6 Ground floor habitable space

a. Any residential unit facing a road or public space, unless built over an access way, shall have a habitable space located at ground level.

b. At least 50% of all residential units within a comprehensive development shall have a habitable space located at the ground level.

c. Each habitable space located at the ground level shall have a minimum floor area of 12m^2 and a minimum internal dimension of 3 metres.

14.11.4.7 Outdoor living space

a. For residential units with 2 or more bedrooms a minimum of 30m^2 of outdoor living space shall be provided on site for each residential unit, and shall not be occupied by parking or access. The required outdoor living space can be in a mix of private and communal areas, at the ground level or in balconies, provided that:

   i. each unit shall have private outdoor living space of at least 16m^2 in total. The balance of the outdoor living space required for each residential unit may be provided as communal space;

   ii. private outdoor living space shall have a minimum dimension of 4 metres when provided at ground level and a minimum dimension of 1.5 metres when provided by a balcony;

   iii. at least one private outdoor living space shall be directly accessible from a living area of that unit;

   iv. outdoor living space provided as a communal space shall be accessible for use by all units and shall have a minimum dimension of 4 metres; and

   v. 50% of the outdoor living space required across the entire site shall be provided at ground level.

b. For one bedroom residential units on the ground floor a minimum of 16m^2 private outdoor living space with a minimum dimension of 4 metres shall be provided on site for each residential unit, and shall not be occupied by parking or access.

c. For one bedroom residential units entirely at an upper level at total of 16m^2 of outdoor living space shall be provided on site for each residential unit provided that:

   i. one space can be a private balcony with a minimum area of 6m^2 and a minimum dimension of 1.5 metres;

   ii. the balance 10m^2 can be provided in a communal space.

14.11.4.8 Service, storage, and waste management spaces

a. Each residential unit shall be provided with:

   i. an outdoor service space and waste management area of 5m^2 with a minimum dimension of 1.5 metres; and

   ii. a single, indoor storage space of 4m^3 with a minimum dimension of 1 metre;

   unless otherwise provided for in c. below.

b. Any space designated for waste management, whether private or communal, shall not be located between the road boundary and any habitable space and shall be screened from sites, conservation or open space zones, roads, and adjoining outdoor living spaces to a height of 1.5 metres.

c. If a communal waste management area is provided within the site:

   i. the minimum required outdoor service space may be reduced to 3m^2 for each residential unit; and

   ii. it must be demonstrated to be:

      A. of a sufficient size to accommodate the number and dimensions of bins required to meet the predicted volume of waste generated by the residential units;

      B. accessible and safe for use by all residents; and

C. easily accessible for the collection of bins by waste management contractors

14.11.4.9 Landscaping and tree planting

a. A minimum of 20% of the site utilising the Enhanced Development Mechanism shall be provided for landscape treatment (which may include private or communal open space), including a minimum of one tree for every 250m^2 of gross site area (prior to subdivision), or part thereof. At least one tree shall be planted adjacent to the street boundary.

b. All trees shall be not less than 1.5 metres high at the time of planting.

c. All trees and landscaping required by this rule shall be maintained and if dead, diseased or damaged, shall be replaced.

14.11.4.10 Acoustic insulation

Any habitable space within a residential unit which is within:

a. 40 metres of the edge of the nearest marked traffic lane of an arterial road, or a railway line; or

b. 20 metres of the edge of the nearest marked traffic lane of a collector road as defined in Chapter 7 Transportation Appendix 7.12;

shall achieve a minimum internal to external noise reduction of 30dBA (Dtr, 2m, nT)

Note:

A. Compliance with this rule may be achieved by ensuring any construction is in accordance with the acceptable solutions listed in Appendix 14.14.1 Measurement and Assessment of Noise. No alternative ventilation is required in situations where the rule is only met with windows closed. Alternatively, compliance with the rule can be achieved through certification by a qualified acoustic engineer that the design is capable of achieving compliance with the performance standard.

B. Where no traffic lane is marked, the distances stated shall be measured from 2 metres on the road ward side of the formed kerb.

14.11.4.11 Parking space numbers

a. A minimum of one car parking space shall be provided for each residential unit.

b. Parking areas shall be screened on internal boundaries by landscaping, wall(s), fence(s), or a combination of these to a minimum height of 1.5 metres from any adjoining site. Where this screening is by way of landscaping it shall be for a minimum depth of 1.5 metres.

c. A minimum of one cycle space shall be provided at ground level for each residential unit except where parking for that unit is provided in a garage.

Note: this development standard applies in place of any equivalent minimum or maximum car or cycle parking requirement for the underlying zone in Chapter 7 Transportation of this Plan.

14.11.4.12 Maximum building coverage within Enhanced Development Mechanism areas

The maximum percentage of the gross area covered by buildings within developments using the Enhanced Development Mechanism shall be 40%.

14.11.4.13 Water supply for fire fighting

Sufficient water supply and access to water supplies for fire fighting shall be made available to all residential units via Council's urban fully reticulated system and in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice (SNZ PAS:4509:2008).

14.11.4.14 Minimum building setbacks from railway lines

The minimum building setback shall:

1.	On sites adjacent or abutting rail way lines buildings, balconies and decks	4 metres from the rail corridor boundary

14.11.5 Information requirements for applications

Any application for resource consent using the Enhanced Development Mechanism must include a detailed 'design statement' (prepared by an expert suitably qualified in architecture or urban design).

14.12 Rules - Community Housing Redevelopment Mechanism

14.12.1 How to use the rules

a. The areas that show where the Community Housing Redevelopment Mechanism (CHRM) can be utilised are shown on Planning Maps 18, 23, 24, 25, 26, 29, 30, 31, 32, 33, 37 and 45.

b. The following rules determine the activity status of resource consent applications to use the Community Housing Redevelopment Mechanism:

   i. the activity status tables in Rule 14.12.2; and

   ii. the built form standards in Rule 14.12.3.

c. The information that is required for resource consent applications is set out in Rule 14.12.4.

d. On any particular site the provisions of the Community Housing Redevelopment Mechanism may apply or the provisions of the zone in which the site is located may apply.

e. Where the word "facility" is used in the rules (e.g. spiritual facility) it shall also include the use of a site /building for the activity that the facility provides for, unless expressly stated otherwise. Similarly, where the word/phrase defined include the word "activity" or "activities", the definition includes the land and/or buildings for that activities unless stated otherwise in the activity status tables.

14.12.2 Activity status tables

14.12.2.1 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in 14.13 for each standard, or as specified, as set out in the following table.

Until 31 December 2018, resource consent applications in relation to these rules shall not be publicly or limited notified, except as specified in RD3 and RD4 below.

Activity		**The Council's discretion shall be limited to the following matters:**
RD1	Residential activities utilising the Community Housing Redevelopment Mechanism on sites located within the CHRM areas shown on Planning Maps 18, 23, 24, 25, 26, 29, 30, 31, 32, 33, 37 and 45 that are not in breach of the built form standards in Rules 14.12.3	a. Residential design principles – 14.13.1
RD2	Residential activities utilising the Community Housing Redevelopment Mechanism on sites located within the CHRM areas shown on Planning Maps 18, 23, 24, 25, 26, 29, 30, 31, 32, 33, 37 and 45 but do not comply with one or more of the built form standards in 14.12.3 (except 14.12.3.15 and 14.12.3.16.1, refer to RD3 and RD4	a. Residential design principles – 14.13.1 b. As relevant to the breached built form standard: i. Site density and site

	below; and 14.12.3.13 and 14.12.3.14; refer to NC2 and NC3)	coverage - 14.13.2 ii. Impacts on neighbouring property – 14.13.3 iii. Street scene - road boundary building setback, fencing and planting - 14.13.18 iv. Minimum building, window and balcony setbacks - 14.13.19 v. Outdoor living space - 14.13.21 vi. Minimum unit size and unit mix - 14.13.4 vii. Service, storage and waste management spaces - 14.13.20 viii. Acoustic insulation - 14.13.9 ix. Traffic generation and access safety - 14.13.6
RD3	Residential activities utilising the Community Housing Redevelopment Mechanism on sites located within the CHRM areas shown on Planning Maps 18, 23, 24, 25, 26, 29, 30, 31, 32, 33, 37 and 45 that do not comply with Rule 14.12.3.15. Until 31 December 2018, any application arising from this rule will only require the written approval of the New Zealand Fire Service to not be limited notified and shall not be fully publicly notified.	a. Residential design principles – 14.13.1 b. Water supply for fire fighting - 14.13.8
RD4	Residential activities utilising the Community Housing Redevelopment Mechanism on sites located within the CHRM areas shown on Planning Maps 18, 23, 24, 25, 26, 29, 30, 31, 32, 33, 37 and 45 that do not comply with Rule 14.12.3.16.1 relating to rail corridor boundary setbacks Until 31 December 2018, any application arising from this rule shall not be publicly notified and shall only be limited notified to KiwiRail where it has not given its written approval.	a. Residential design principles – 14.13.1 b. Whether the reduced setback from the rail corridor will enable buildings to be maintained without requiring access above, over, or on the rail corridor

14.12.2.2 Non-complying activities

The activities listed below are a non-complying activity.

Activity	
NC1	Residential activities utilising the Community Housing Redevelopment Mechanism on sites not located within the within the CHRM areas shown on the planning maps
NC2	Residential activities utilising the Community Housing Redevelopment Mechanism that do not comply with Rule 14.12.3.13 – Community housing site size
NC3	Residential activities utilising the Community Housing Redevelopment Mechanism that do not comply with Rule 14.12.3.14 - Community housing unit proportion and yield

14.12.3 Built form standards

For the purpose of this rule, site refers to the entire site area being utilised for the Enhanced Development Mechanism, which may include a number of titles.

14.12.3.1 Building height

Within 15 metres of the site boundary, the maximum height of any building shall not exceed 8m where the site adjoins the Residential Suburban Zone and the Residential Suburban Density Transition Zone. Across the rest of the entire site of the Community House Redevelopment Mechanism area the maximum building height shall not exceed 11 metres.

14.12.3.2 Daylight recession planes

Buildings shall not project beyond a building envelope constructed by recession planes from points 2.3 metres above boundaries with other sites as shown in Appendix 14.14.2, diagram C, except that:

a. where an internal boundary of a site abuts an access lot, access strip, or access to a rear lot, the recession plane may be constructed from points 2.3 metres above the furthest boundary of the access lot, access strip, or access to a rear lot or any combination of these areas; and

b. where buildings on adjoining sites have a common wall along an internal boundary the recession planes shall not apply along that part of the boundary covered by such a wall.

Note: The level of internal boundaries shall be measured from filled ground level except where the site on the other side of the internal boundary is at a lower level, then that lower level shall be adopted.

14.12.3.3 Street scene

Buildings shall be set back a minimum of 4.5 metres from road boundaries, other than where a site has a road boundary that is subject to another standard in this Plan, except that:

a. where a garage has a vehicle door facing a road the garage door shall be set back a minimum of 4.5 metres unless the garage door(s) provided tilt or swing outwards, in which case the garage door shall be set back a minimum of 5.5 metres;

b. where a garage has the vehicle door facing a shared access way, the garage door shall be set back a minimum of 7 metres measured from the garage door to the furthest formed edge of the adjacent shared access unless the garage door(s) provided tilt or swing outwards, in which case the garage door shall be set back a minimum of 8 metres;

c. for residential units fronting the street; garages and other accessory buildings (excluding basement car parking and swimming pools) shall be located at least 1.2 metres further from the road boundary than the front facade of any ground level habitable space of that unit; and

d. on properties fronting Emmet Street the setback shall be 6.5 metres.

14.12.3.4 Separation from neighbours

a. Buildings that adjoin an access lot, access strip, or access to a rear site shall be set back a minimum of 1 metre from that part of an internal boundary of a site.

b. Accessory buildings which face the ground floor window of a habitable space on an adjoining site shall be set back a minimum of 1.8 metres from that neighbouring window for a minimum length of two metres either side of the window.

In all other instances buildings shall be set back a minimum of 1.8 metres from internal boundaries of a site, except that:

i. no setback is required from an access lot or access strip on the same site, provided that any windows on the ground floor facing and within one metre of the access lot or access strip are non-opening;

ii. other than provided in b above, no setback for accessory buildings is required, provided the total length of walls or parts of accessory buildings facing and located within the setback is less than 9 metres;

iii. no setback is required along that part of an internal boundary where buildings on adjoining sites have a common wall along the internal boundary; and

iv. no setback is required for basements, provided that any part of a basement located within 1.8 metres of an internal boundary is wholly below ground level.

Parts of a balcony or any window of a living area at first floor level or above shall not be located within four metres of an internal boundary of a site, except that this shall not apply to a window at an angle of 90 degrees or greater to the boundary, or a window or balcony which begins within 1.2 metres of ground level (such as above a garage which is partly below ground level).

14.12.3.5 Minimum unit size, and mix of units

The minimum net floor area (including toilets and bathrooms, but excluding car parking, garaging or balconies) for any residential unit shall be:

	Number of bedrooms	**Minimum net floor area**

1.	Studio	35m^2
2.	1 bedroom	45m^2
3.	2 bedrooms	60m^2
4.	3 or more bedrooms	90m^2

14.12.3.6 Ground floor habitable space

a. Any residential unit facing a road or public space, unless built over an access way, shall have a habitable space located at ground level.

b. At least 50% of all residential units within a comprehensive development shall have a habitable space located at the ground level.

c. Each habitable space located at the ground level shall have a minimum floor area of 12m^2 and a minimum internal dimension of 3 metres.

14.12.3.7 Outdoor living space

a. For residential units with two or more bedrooms a minimum of 30m^2 of outdoor living space shall be provided on site for each residential unit, and shall not be occupied by parking or access. The required outdoor living space can be in a mix of private and communal areas, at the ground level or in balconies provided that:

   i. each unit shall have private outdoor living space of at least 16m^2 in total. The balance of the outdoor living space required for each residential unit may be provided as communal space;

   ii. private outdoor living space shall have a minimum dimension of 4 metres when provided at ground level and a minimum dimension of 1.5 metres when provided by a balcony;

   iii. at least one private outdoor living space shall be directly accessible from a living area of that unit;

   iv. outdoor living space provided as a communal space shall be accessible for use by all units and shall have a minimum dimension of 4 metres; and

   v. 50% of the outdoor living space required across the entire site shall be provided at ground level.

b. For one bedroom residential units on the ground floor a minimum of 16m^2 private outdoor living space with a minimum dimension of 4 metres shall be provided on site for each residential unit, and shall not be occupied by parking or access.

c. For one bedroom residential units entirely at an upper level at total of 16m^2 of outdoor living space shall be provided on site for each residential unit provided that:

   i. one space can be a private balcony with a minimum area of 6m^2 and a minimum dimension of 1.5 metres; and

   ii. the balance 10m^2 can be provided in a communal space.

14.12.3.8 Service, storage, and waste management spaces

a. Each residential unit shall be provided with:

   i. an outdoor service space and waste management area of $5m^2$ with a minimum dimension of 1.5 metres; and

   ii. a single, indoor storage space of $4m^3$ with a minimum dimension of 1 metre;

   unless otherwise provided for in c. below.

b. Any space designated for waste management, whether private or communal, shall not be located between the road boundary and any habitable space and shall be screened from adjoining sites, conservation or open space zones, roads, and adjoining outdoor living spaces to a height of 1.5 metres.

c. If a communal waste management area is provided within the site:

   i. the minimum required outdoor service space may be reduced to $3m^2$ for each residential unit; and

   ii. it must be demonstrated to be:

      A. of a sufficient size to accommodate the number and dimensions of bins required to meet the predicted volume of waste generated by the residential units;

      B. accessible and safe for use by all residents; and

      C. easily accessible for the collection of bins by waste management contractors.

14.12.3.9 Landscaping and tree planting

a. A minimum of 20% of the site shall be provided for landscape treatment (which may include private or communal open space), including a minimum of one tree for every $250m^2$ of gross site area (prior to subdivision), or part thereof. At least one tree shall be planted adjacent to the street boundary.

b. All trees required by this rule shall be not less than 1.5 metres high at the time of planting.

c. All trees and landscaping required by this rule shall be maintained and if dead, diseased or damaged, shall be replaced.

14.12.3.10 Acoustic insulation

Any habitable space within a residential unit which is within:

a. 40 metres of the edge of the nearest marked traffic lane of a minor arterial, or major arterial road, or a railway line; or

b. 20 metres of the edge of the nearest marked traffic lane of a collector road as defined Chapter 7 Transportation Appendix 7.12 shall achieve a minimum internal to external noise reduction of 30 dBA (Dtr, 2m, nT).

Note: Compliance with this rule may be achieved by ensuring any construction is in accordance with the acceptable solutions listed in Appendix 14.14.1. No alternative ventilation is required in situations where the rule is only met with windows closed. Alternatively, compliance with the rule can be achieved through certification by a qualified acoustic engineer that the design is capable of achieving compliance with the performance standard.

Where no traffic lane is marked, the distances stated shall be measured from 2 metres on the road ward side of the formed kerb.

14.12.3.11 Parking space numbers

a. A minimum of one car parking space shall be provided for each residential unit.

b. Parking areas shall be screened on internal boundaries by landscaping, wall(s), fence(s), or a combination of these to a minimum height of 1.5 metres from any adjoining site. Where this screening is by way of landscaping it shall be for a minimum depth of 1.5 metres.

c. A minimum of one cycle space shall be provided at ground level for each residential unit. Except where parking for that unit is provided in a garage.

Note: this development standard applies in place of any equivalent minimum or maximum car or cycle parking requirement for the underlying zone in Chapter 7 Transportation of this Plan.

14.12.3.12 Maximum building coverage within Community House Redevelopment Mechanism Areas

The maximum percentage of the gross area covered by buildings within developments using the Community Housing Redevelopment Mechanism shall be 40%.

14.12.3.13 Community housing site size

Sites utilising the Community Housing Redevelopment Mechanism shall be:

a. of a size greater than 1500m^2 and less than 10,000m^2; and

b. in one continuous block of land.

14.12.3.14 Community housing unit proportion and yield

a. Residential activity utilising the Community Housing Redevelopment Mechanism shall demonstrate that community housing units will comprise:

   i. at least one third of the residential unit yield; or

   ii. a quantity equal to the amount of community housing units on the application site either occupied or unoccupied at 6 December 2013;

   whichever is the greater.

b. Residential activity utilising the Community Housing Redevelopment Mechanism shall deliver a minimum density of 30 households per hectare (one unit per 330m^2), and a maximum density of 65 households per hectare (one unit per 150m^2).

14.12.3.15 Water supply for fire fighting

Provision shall be made for sufficient water supply and access to water supplies for fire fighting consistent with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice (SNZ PAS:4509:2008), where by all residential units must be connected to the Council's urban reticulated system that provides sufficient fire fighting water supply.

Sufficient water supply and access to water supplies for fire fighting shall be made available to all residential units via Council's urban fully reticulated system and in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice (SNZ PAS:4509:2008).

14.12.3.16 Minimum building setbacks from railway lines

The minimum building setback shall be as follows:

1.	On sites adjacent or abutting rail way lines buildings, balconies and decks	4 metres from the rail corridor boundary

14.12.4 Information requirements for applications

Any application for resource consent using the Community Housing Redevelopment Mechanism must include a detailed 'design statement' (prepared by an expert suitably qualified in architecture or urban design).

14.13 Controlled and restricted discretionary matters

14.13.1 Residential design principles

New developments shall be assessed against the six residential design principles a.-f. set out below. Each residential design principle is accompanied by relevant considerations which are a guide to applicants and consent officers when considering an application against the residential design principles themselves.

The relevance of the considerations under each residential design principle will vary from site to site and, in some circumstances, some of the considerations may not be relevant at all. For example, a.ii. is likely to be highly relevant to a development adjacent to heritage buildings; whereas a.ii. might be less relevant to a development in an area void of heritage buildings.

City context and character

a. Whether the design of the development is in keeping with, or complements, the scale and character of development anticipated for the surrounding area and relevant significant natural, heritage and cultural features.

   The relevant considerations are the extent to which the development:

   i. includes, where relevant, reference to the patterns of development in and/or anticipated for the surrounding area such as building dimensions, forms, setbacks and alignments, and secondarily materials, design features and tree plantings; and

   ii. retains or adapts features of the site that contribute significantly to local neighbourhood character, potentially including existing heritage buildings, site contours and mature trees.

Relationship to the street and public open spaces

b. Whether the development engages with and contributes to adjacent streets, and any other adjacent public open spaces to contribute to them being lively, safe and attractive.

   The relevant considerations are the extent to which the development:

   i. orientates building frontages including entrances and windows to habitable rooms toward the street and adjacent public open spaces;

   ii. designs buildings on corner sites to emphasise the corner; and

   iii. avoids street facades that are blank or dominated by garaging.

Built form and appearance

c. Whether the development is designed to minimise the visual bulk of the buildings and provide visual interest.

   The relevant considerations are the extent to which the development:

i. subdivides or otherwise separates unusually long or bulky building forms and limits the length of continuous rooflines;

ii. utilises variety of building form and/or variation in the alignment and placement of buildings to avoid monotony;

iii. avoids blank elevations and facades dominated by garage doors; and

iv. achieves visual interest and a sense of human scale through the use of architectural detailing, glazing and variation of materials.

Residential amenity

d. In relation to the built form and residential amenity of the development on the site (i.e. the overall site prior to the development), whether the development provides a high level of internal and external residential amenity for occupants and neighbours.

The relevant considerations are the extent to which the development:

i. provides for outlook, sunlight and privacy through the site layout, and orientation and internal layout of residential units;

ii. directly connects private outdoor spaces to the living spaces within the residential units;

iii. ensures any communal private open spaces are accessible, usable and attractive for the residents of the residential units; and

iv. includes tree and garden planting particularly relating to the street frontage, boundaries, accessways, and car parking.

Access, parking and servicing

e. Whether the development provides for good access and integration of space for parking and servicing.

The relevant considerations are the extent to which the development:

i. integrates access in a way that is safe for all users, and offers convenient access for pedestrians to the street, any nearby parks or other public recreation spaces;

ii. provides for car parking and garaging in a way that does not dominate the development, particularly when viewed from the street or other public open spaces; and

iii. provides for suitable storage and service spaces which are conveniently accessible, safe and/or secure, and located and/or designed to minimise adverse effects on occupants, neighbours and public spaces.

Safety

f. Whether the development incorporates Crime Prevention Through Environmental Design (CPTED) principles as required to achieve a safe, secure environment.

The relevant considerations are the extent to which the development:

i. provides for views over, and passive surveillance of, adjacent public and publicly accessible private open spaces;

ii. clearly demarcates boundaries of public and private space;

iii. makes pedestrian entrances and routes readily recognisable; and

iv. provides for good visibility with clear sightlines and effective lighting.

14.13.2 Site density and site coverage

a. Whether the non-compliance is appropriate to its context taking into account:

i. whether the balance of open space and buildings will maintain the character anticipated for the zone;

ii. any visual dominance of the street resulting from a proposed building's incompatible scale;

iii. any loss of opportunities for views in the Residential Banks Peninsula *and Residential Conservation [defer to Stage 2]* Zones; and

iv. the proportion of the building scale in relation to the proportion of the site.

14.13.3 Impacts on neighbouring property

a. Whether the increased height, reduced setbacks, or recession plane intrusion would result in buildings that do not compromise the amenity of adjacent properties taking into account:

i. overshadowing of adjoining sites resulting in reduced sunlight and daylight admission to internal and external living spaces beyond that anticipated by the recession plane, and where applicable the horizontal containment requirements for the zone;

ii. any loss of privacy through being overlooked from neighbouring buildings;

iii. whether development on the adjoining site, such as large building setbacks, location of outdoor living spaces, or separation by land used for vehicle access, reduces the need for protection of adjoining sites from overshadowing;

iv. the ability to mitigate any adverse effects of increased height or recession plane breaches through increased separation distances between the building and adjoining sites, the provision of screening or any other methods; and

v. within a Flood Management Area, whether the recession plane infringement is the minimum necessary in order to achieve the required minimum floor level.

14.13.4 Minimum unit size and unit mix

a. When considering under sized units, whether the reduced unit size is appropriate taking into account:

i. the floorspace available and the internal layout and their ability to support the amenity of current and future occupants;

ii. other onsite factors that would compensate for a reduction in unit sizes e.g. communal facilities;

iii. scale of adverse effects associated with a minor reduction in size in the context of the overall residential complex on the site; and

iv. needs of any social housing tenants.

14.13.5 Scale of activity

a. Whether the scale of activities and their impact on residential character and amenity are appropriate, taking into account:

   i. the compatibility of the scale of the activity and the proposed use of the buildings with the scale of other buildings and activities in the surrounding area;

   ii. the ability for the locality to remain a predominantly residential one; and

   iii. the appropriateness of the use in meeting needs of residents principally within the surrounding living environment.

b. The adverse effects of additional staff, pedestrian and traffic movements during the intended hours of operation on:

   i. the character of the surrounding living environment; and

   ii. noise, disturbance and loss of privacy of nearby residents.

c. For home occupations, whether the non-compliance is an integral and necessary part of the home occupation.

d. For residential units with more than 6 bedrooms, whether there should be a limit on the number of bedrooms over 6 bedrooms based on the impact on the surrounding neighbourhood and residential character.

e. The ability to avoid, remedy or appropriately mitigate any adverse effects of the extended hours of operation; and other factors which may reduce the effect of the extended hours of operation, such as infrequency of the activity or limited total hours of operation.

f. The opportunity the activity provides to support an existing nearby commercial centre.

g. The opportunity the activity provides to support and compliment any existing health related or community activities in the surrounding area.

14.13.6 Traffic generation and access safety

a. Whether the traffic generated is appropriate to the residential character, amenity, safety and efficient functioning of the access and road network taking into account:

   i. in the case of effects on residential character and amenity:

      A. any adverse effects in terms of noise and vibration from vehicles entering and leaving the site or adjoining road, and their incompatibility with the noise levels acceptable in the respective living environments;

      B. any adverse effects in terms of glare from headlights of vehicles entering and leaving the site or adjoining road on residents or occupants of adjoining residential sites;

      C. any reduction in the availability of on-street parking for residents, occupants or visitors to adjoining residential sites to the point that it becomes a nuisance;

      D. any adverse effects in terms of fumes from vehicles entering or leaving the site, on residents or occupiers of adjoining residential sites; and

      E. the ability to mitigate any adverse effects of the additional traffic generation such as through the location and design of vehicle crossings, parking and loading areas or through the provision of screening and other factors that will reduce the effect of the additional traffic generation, such as infrequency of the activity, or limited total time over which the traffic movements occur; and

ii. in the case of the safe and efficient functioning of the road network:

A. any cumulative effect of traffic generation from the activity in conjunction with traffic generation from other activities in the vicinity;

B. adverse effects of the proposed traffic generation on activities in the surrounding living environment;

C. consistency of levels of traffic congestion or reduction in levels of traffic safety with the classification of the adjoining road;

D. the variance in the rate of vehicle movements throughout the week and coincidence of peak times with peak traffic movements on the wider network; and

E. the location of the proposed access points in terms of road and intersection efficiency and safety, and the adequacy of existing or alternative access points.

14.13.7 Stormwater ponding areas within three kilometres of Christchurch International Airport

[deferred to Stage 2 General Rules]

14.13.8 Water supply for fire fighting

a. Whether sufficient fire fighting water supply provision to ensure the health and safety of the community, including neighbouring properties, is provided.

14.13.9 Acoustic insulation

a. Whether a reduction in acoustic insulation is appropriate taking into account:

i. a reduced level of acoustic insulation may be acceptable due to mitigation of adverse noise impacts through other means, e.g. screening by other structures, or distance from noise sources;

ii. there is an ability to meet the appropriate levels of acoustic insulation through alternative technologies or materials; and

iii. the provision of a report from an acoustic specialist provides evidence that the level of acoustic insulation is appropriate to ensure the amenity of present and future residents of the site.

14.13.10 Retirement villages

For the avoidance of doubt, this is the only matter of discretion that applies to retirement villages.

a. Whether the developments, while bringing change to existing environments, is appropriate to its context taking into account:

i. engagement with, and contribution to, adjacent streets and public open spaces, with regard to:

A. fencing and boundary treatments;

B. sightlines;

C. building orientation and setback;

D. configuration of pedestrian entrances;

E. windows and internal living areas within buildings; and

F. if on a corner site is designed to emphasise the corner;

ii. integration of access, car parking and garaging in a way that is safe for pedestrians and cyclists, and that does not visually dominate the development, particularly when viewed from the street or other public spaces;

iii. retention or response to existing character buildings or established landscape features on the site, particularly mature trees, which contribute to the amenity of the area;

iv. appropriate response to context with respect to subdivision patterns, visible scale of buildings, degree of openness, building materials and design styles;

v. incorporation of Crime Prevention Through Environmental Design (CPTED) principles, including effective lighting, passive surveillance, management of common areas and clear demarcation of boundaries and legible entranceways;

vi. residential amenity for occupants and neighbours, in respect of outlook, privacy, noise, odour, light spill, weather protection, and access to sunlight, through site design, building, outdoor living and service/storage space location and orientation, internal layouts, landscaping and use of screening;

vii. creation of visual quality and interest through the separation of buildings, variety in building form, distribution of walls and openings, and in the use of architectural detailing, glazing, materials, and colour; and

viii. where practicable, incorporation of environmental efficiency measures in the design, including passive solar design principles that provide for adequate levels of internal natural light and ventilation.

14.13.11 Use of site and buildings - Prestons Road Retirement Village Overlay

a. Whether the use of site and buildings is appropriate taking into account:

i. enhancement of services of value to the older person's housing complex, or assistance in retaining the viability of the complex;

ii. the likely effect of any additional activities on traffic generation, and the safety and efficiency of traffic movement within the older person's housing complex and the wider road network; and

iii. the effect of additional activities on residential amenities in the vicinity, particularly noise, traffic safety, parking congestion and visual amenity.

14.13.12 Concept plan - Prestons Road Retirement Village Overlay

a. Whether the concept plan for the whole site is appropriate taking into account:

i. coordination and integration of road and pedestrian access with adjoining networks;

ii. provision for landscaping, outdoor living space, passive recreational facilities, and stormwater systems, swales for stormwater soakage, wetlands and retention basins. These must be planted with native species (not left as grass) that are appropriate to the specific use, recognising the ability of particular species to absorb water and filter waste for 165 independent units and a multi storey health facility including 45 services apartments;

iii. the provision, and design and layout of pedestrian circulation and connectivity of pedestrian access to Snellings Drain reserve;

iv. the efficient design and layout of carparking, vehicle manoeuvring, and garaging;

v. the incorporation and enhancement of existing landscape and water features;

vi. the external appearance of the health facility and how it respects the character and amenity values of the area, including building colours and materials, roof pitch and the effect and form of façade modulation, while recognising the use and functional nature of the health facility;

vii. adequacy of provision of planting for amenity and screening, enhancement of ecological and habitat values, and interface with surrounding areas. The incorporation of a minimum of 60% indigenous endemic species into new plantings;

viii. the effectiveness, environmental sensitivity of the stormwater management systems; and

ix. the integration of the stormwater management systems with the Council's drainage network.

14.13.13 Vehicular access - Prestons Road Retirement Village Overlay

a. Whether vehicle access for the whole site is appropriate taking into account:

i. the actual or potential level of vehicle and pedestrian traffic likely to be generated from the proposed access;

ii. adverse effects on the traffic use of the access on the traffic function or safety of Prestons Road or both;

iii. adequate mitigation for the adverse effects of additional vehicle movements on the access; and

iv. safe ingress and egress in relation to site distances at the access from Prestons Road with reference to the Austroads Guide.

14.13.14 Special setback provision – Residential Suburban Zone Wigram

a. Whether the location, form and function of the outdoor living area is appropriate taking into account:

i. adverse effects on the outdoor living needs of the likely future residents of the site;

ii. any alternative provision on, or in close proximity to, the site for outdoor living space to meet the needs of likely future residents of the site;

iii. adequacy of mitigation of potential adverse reverse sensitivity effects on current Royal New Zealand Air Force functions and operations through the location of outdoor living space, windows and the provision of fencing and/or landscaping;

iv. adequacy of mitigation of adverse effects from current Royal New Zealand Air Force functions and operations through the location of outdoor living space, windows and the provision of fencing and/or landscaping; and

v. adequacy of glazing, window design and location in mitigating the potential adverse effects form current Royal New Zealand Air Force functions and operations.

14.13.15 Lyttelton Port Influences Overlay

a. Whether the development is appropriate taking into account:

i. increased potential for reverse sensitivity effects, including complaints, on the port activities resulting from residential outdoor living area activities; and

ii. any other methods to reduce the potential for reserve sensitivity effects on the port operator, other than the required acoustic insulation, that have been or can be incorporated into the design of the proposal.

14.13.16 Development plans

a. Whether the development need be in accordance with the development plan taking into account:

i. coordination of development, particularly roading access and cycle linkages, with adjoining land;

ii. the adequacy and location, of open space areas within the development;

iii. any adverse effects on the visual appearance of development in the zone as seen from outside the zone, particularly where the land is highly visible;

iv. adverse effects on the strength of definition of the rural urban boundary;

v. any potential adverse effects on the surrounding road network;

vi. any adverse effects on Christchurch International Airport and its approach path, including any reverse sensitivity complaints;

vii. any adverse effects on the visual amenity of residents in adjoining areas;

viii. any adverse effects in terms of the enhancement of waterways within the development; and

ix. effective, efficient and economically viable provision of services.

14.13.17 Relocation of buildings and temporary lifting or moving of earthquake damaged buildings

a. Whether the relocation of the building is appropriate taking into account:

i. the likely appearance of the building upon restoration or alteration;

ii. the compatibility of the building with buildings on adjoining properties and in the vicinity;

iii. the exterior materials used, and their condition and quality;

iv. the period required for restoration work to be undertaken; and

v. any requirements to impose a bond or other condition to ensure completion of restoration work to an acceptable standard.

b. Whether the temporary lifting or moving of the earthquake damaged building is appropriate taking into account:

i. the effect of reduced proximity on the amenity and/or operation of any neighbouring sites, water way, coastal marine area, archaeological site, or protected tree;

ii. the duration of time that the building will intrude upon the recession plane;

iii. any adverse effects on adjoining owners or occupiers relating to shading and building dominance; and

iv. occupancy of the neighbouring properties of the duration of the works, the extent to which neighbouring properties are occupied for the duration of the works.

14.13.18 Street scene – road boundary building setback, fencing and planting

a. The extent to which the proposed building will detract from the coherence, openness and attractiveness of the site as viewed from the street.

b. The ability to provided adequate opportunity for garden and tree planting in the vicinity of road boundaries.

c. The ability to provide passive surveillance of the street.

d. The extent to which the breach is necessary to enable more efficient, cost effective and/or practical use of the remainder of the site, or the long term-protection of significant trees or natural features on the site.

e. For fencing, whether solid fencing is appropriate to provide acoustic insulation of living spaces where the road carries high volumes of traffic.

f. The ability to provide adequate parking and manoeuvring space for vehicles clear of the road or shared access to ensure traffic and pedestrian safety.

g. The effectiveness of other factors in the surrounding environment in reducing the adverse effects.

14.13.19 Minimum building, window and balcony setbacks

a. Any effect of proximity of the building on the amenity of neighbouring properties through loss of privacy, outlook, overshadowing or visual dominance of the buildings.

b. Any adverse on the safe and effective operation of site access.

c. The ability to provide adequate opportunities for garden and tree plantings around buildings.

d. The extent to which the intrusion is necessary to enable more efficient cost. Effective and/or practical use of the remainder of the site, or the long term protection of significant trees or natural features on the site.

14.13.20 Service, storage and waste management spaces

a. The convenience and accessibility of the spaces for building occupiers.

b. The adequacy of the space to meet the expected requirements of building occupiers.

c. The adverse effects of the location, or lack of screening, of the space on visual amenity from the street or adjoining sites.

14.13.21 Outdoor living space

a. The extent to which outdoor living areas provide useable space, contribute to overall on-site spaciousness and enable access to sunlight throughout the year for occupants.

b. The accessibility and convenience of outdoor living space for occupiers.

c. Whether the size and quality of communal outdoor living space or other open space amenity compensates for any reduction in private outdoor living space.

d. The extent to which a reduction in outdoor living space will result in retention of mature on-site vegetation.

14.13.22 Non-residential hours of operation

a. Whether the hours of operation are appropriate in the context of the surrounding residential environment taking into account:

   i. traffic or pedestrian movements which are incompatible with the character of the surrounding residential area;

   ii. any adverse effects of pedestrian activity as a result of the extended hours of operation, in terms of noise, disturbance and loss of privacy, which is inconsistent with the respective living environments;

   iii. any adverse effects of the extended hours of operation on the surrounding residential area, in terms of loss of security as a result of people other than residents frequenting the area; and

   iv. the ability to avoid, remedy or appropriately mitigate any adverse effects of the extended hours of operation; and other factors which may reduce the effect of the extended hours of operation, such as infrequency of the activity or limited total hours of operation.

14.13.23 Minor residential units

a. Whether the minor residential unit is appropriate to its context taking into account:

   i. location of the minor residential unit so that it is visually hidden from the road leaving the site with a similar street scene to that of a single residential unit;

   ii. the adverse visual effects associated with parking and access of any additional driveway to accommodate the minor residential unit on the street-scene;

   iii. the size and visual appearance of the minor residential unit and its keeping with the existing level of buildings in rear gardens or rear sections surrounding the site;

   iv. the consistency of the number of bedrooms and level of occupancy with a single large residential unit;

   v. the convenience of the location of outdoor living space in relation the respective residential units; and

vi. the adequacy of size and dimension of the outdoor living space to provide for the amenity needs of future occupants.

14.14 Appendices

14.14.1 Appendix - Measurement and assessment of noise

a. The measurement of noise shall be in accordance with NZS 6801:1991, 'Measurement of Sound' and assessed in accordance with NZS 6802:1991, 'Assessment of Environmental Sound'.

b. For the purposes of administering these rules the following meanings shall apply:

   i. dBA means the A-frequency weighted sound pressure level in decibels relative to a reference sound pressure of 20 micro pascals.

   ii. L10 means the L10 exceedance level set in A-weighted decibels which is equalled or exceeded 10% of the measurement time.

   iii. Lmax means the period of time between 10pm and 7am the following day.

   iv. Night-time means the period of time between 10pm and 7am the next day.

   v. Long-term average sound level shall be the time-average sound level (day-night level) Ldn and shall be determined from the inverse-logarithmic mean of the measured Ldn level for each day over any five day period in a week.

   vi. The 'notional boundary' of any boundary shall be 20 metres from the façade of that dwelling, or the legal boundary of the site where this is closer to the boundary.

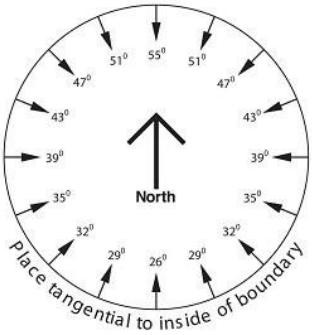
Minimum construction requirements for all central city zones

	Building Element	**Minimum Construction Requirement**
1.	External walls of habitable spaces	a. Walls with cladding: Minimum not to be less than 25kg/m [1] being the combined mass of external and internal linings excluding structural elements (e.g. window frames or wall studs). Assumes minimum 100mm wall cavity. Minimum exterior cladding to be 20mm timber or 9mm compressed fibre cement sheet over timber frame (100mm x 200mm). Fibrous acoustic blanket (Batts or similar) required in cavity for all exterior walls. Interior: One layer of 13mm gypsum plasterboard. Mass walls: 190mm concrete block, strapped and lined internally with 9.5mm gypsum plaster board OR 150mm concrete wall. Note: [1] (e.g. brick veneer or minimum 25mm stucco plaster), internal wall linings need to be no thicker than 10mm gypsum plasterboard. [2] Where exterior wall cladding has a mass of greater than 25kg/m.
2.	Windows of habitable spaces	a. Windows of up to 35% of floor area: 10/12/6 double glazing or 14mm laminate glass or glazing systems of equivalent acoustic performance.

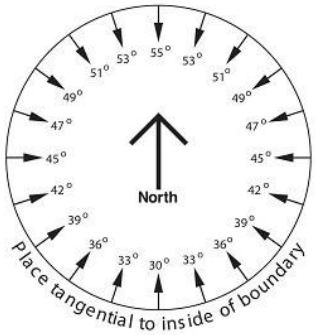
	Building Element	Minimum Construction Requirement
		b. Window areas greater than 35% of floor area will require a specialist acoustic report to show conformance with the insulation rule. c. Frames to be new aluminium window frames with compression seals or equivalent.
3.	Pitched roof	a. Cladding: 0.55mm profiled steel or tiles or 6mm corrugated fibre cement. Frame: Timber truss with 100mm acoustic blanket. Fibrous acoustic blanket (Batts or similar) required for all ceilings with combined mass of less than 25kg/m^2. Ceiling: 13mm gypsum plaster board. Note: (e.g. brick veneer or minimum 25mm stucco plaster), internal wall linings need to be no thicker than 10mm gypsum plasterboard.
4.	Skillion roof	a. Cladding: 0.55mm profiled steel of 6mm fibre cement. Sarking: 20mm particle board (no gaps). Frame: 100mm gap with acoustic blanket. Ceiling: two layers of 9.5mm gypsum plaster board (no through ceiling lighting penetrations unless correctly acoustically rated). Fibrous acoustic blanket (Batts or similar) required for all ceilings with combined mass 25kg/m^2. Note: (e.g. brick veneer or minimum 25mm stucco plaster), internal wall linings need to be no thicker than 10mm gypsum plasterboard.
5.	External Door to habitable spaces	a. Solid core door (min 24kg/m^2) with weather seals (where the door is exposed to exterior noise). Note: (e.g. brick veneer or minimum 25mm stucco plaster), internal wall linings need to be no thicker than 10mm gypsum plasterboard.
Note: 1. Compliance with ventilation requirements of any other Act and these District Plan noise insulation requirements shall be concurrent. Ventilation should be provided in accordance with the provisions of the New Zealand Building Code G4 in a manner which does not compromise sound insulation. To this effect, relying on opening windows for ventilation will compromise the sound insulation performance provided by the District Plan standard. Alternative ventilation methods such as mechanical ventilation or passive methods should be considered. Inlets and outlets for passive and mechanical ventilation systems, and ventilation ductwork, are to be designed to incorporate acoustic insulation to ensure that the acoustic		

	Building Element	Minimum Construction Requirement
		performance of the building facade achieves a minimum noise reduction consistent with the relevant rules. 2. In determining the insulation performance of roof/ceiling arrangements, roof spaces are assumed to have no more than the casual ventilation typical of the jointing, capping and guttering detail used in normal construction.

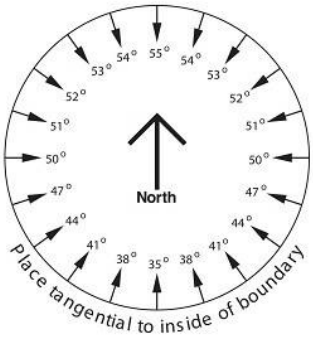
14.14.2 Appendix - Recession planes



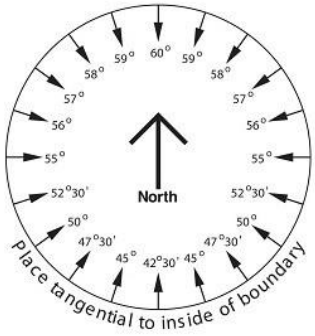
A Applicable to all buildings:
- in the Residential Suburban Zone
- on sites in other non residential zones that adjoin the Residential Suburban Zone



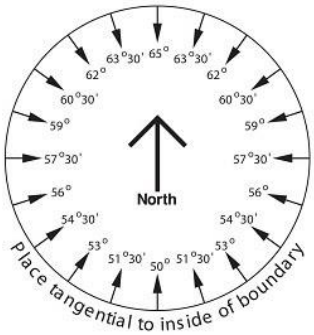
B Applicable to all buildings:
- Residential Suburban Density Transition Zone
- On sites on other non residential zones that adjoin the Residential Suburban Density Transition Zone



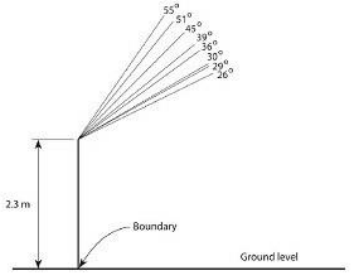
C Applicable to all buildings:
- in the Residential Medium Density Zone
- on sites in other non residential zones that adjoin the Residential Medium Density Zone

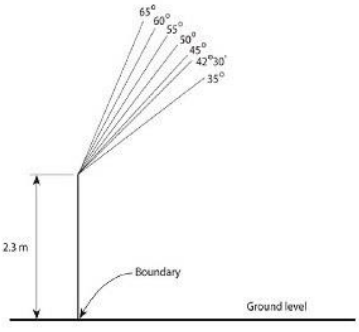


D Applicable to all buildings:
- in the medium density higher height limit zones
- on sites in other non residential zones that adjoin the medium density higher height limit zones
- in the medium density higher height limit zones (except those bulidings over 11 metres in height)
- on sites in other non residential zones that adjoin the medium density (except those buildings over 11 metres in height)



E Applicable to all buildings:
- over 11 metres in height in the medium density higher height limit zones
- over 11 metres in height on sites in other non residential zones that adjoin the medium density higher height limit zones





Note: North is true north

Note: The following intrusions are permitted:

a. Gutters and eaves by up to 0.2 metres;

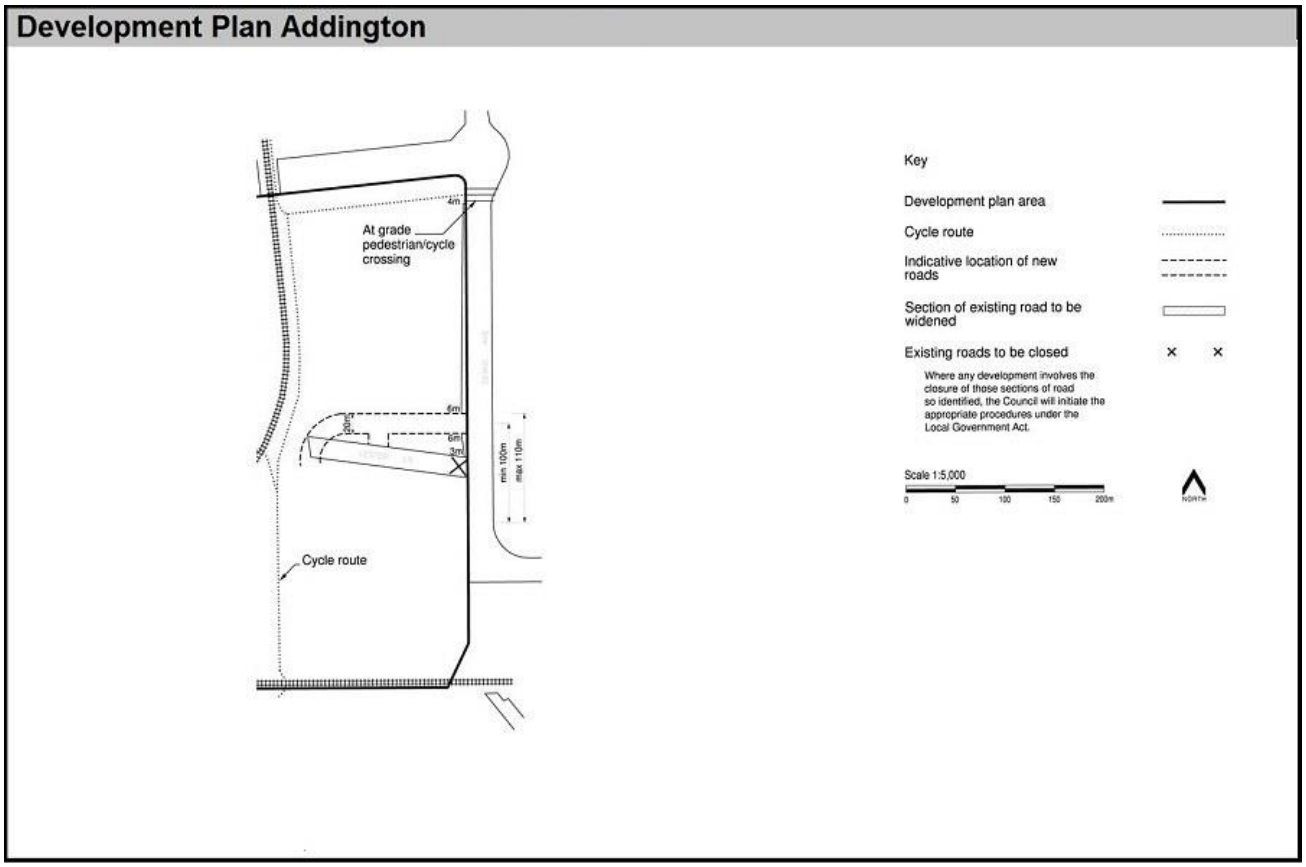
b. Solar panels up to two metres in length per boundary;

c. Chimneys, ventilation shafts, spires, poles and masts (where poles and masts are less than nine metres above ground level), provided that the maximum dimension thereof parallel to the boundary for each of these structures shall not exceed 1 metre.

d. Lift shafts, stair shafts, and roof water tanks provided that there is a maximum of one intrusion of a lift shaft or stair shaft or roof water tank (or structure incorporating more than one of these) permitted for every 20 metre length of internal boundary and the maximum dimension thereof parallel to the boundary for this structure shall not be 20 metres, and provided that for buildings over three storeys, such features are contained within or are sited directly against the outside structural walls.

e. Where a single gable end with a base (excluding eaves) of 7.5 metres or less faces a boundary and a recession plane strikes no lower than half way between the eaves and ridge line, the gable end may intrude through the recession plane.

14.14.3 Appendix - Development plan Addington

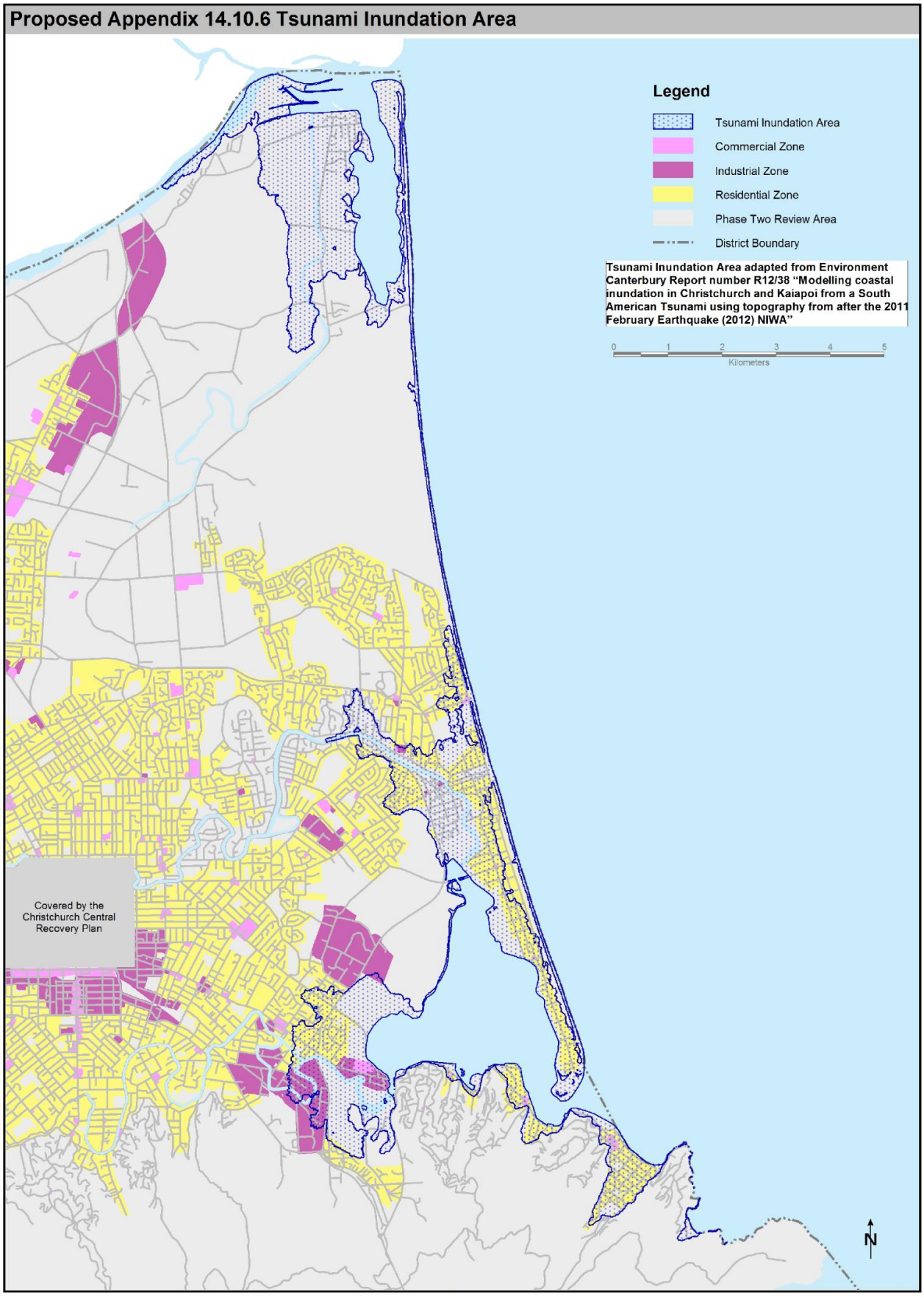


14.14.4 Appendix – Aircraft noise exposure

This appendix derives from Rule 14.2.4.4.7

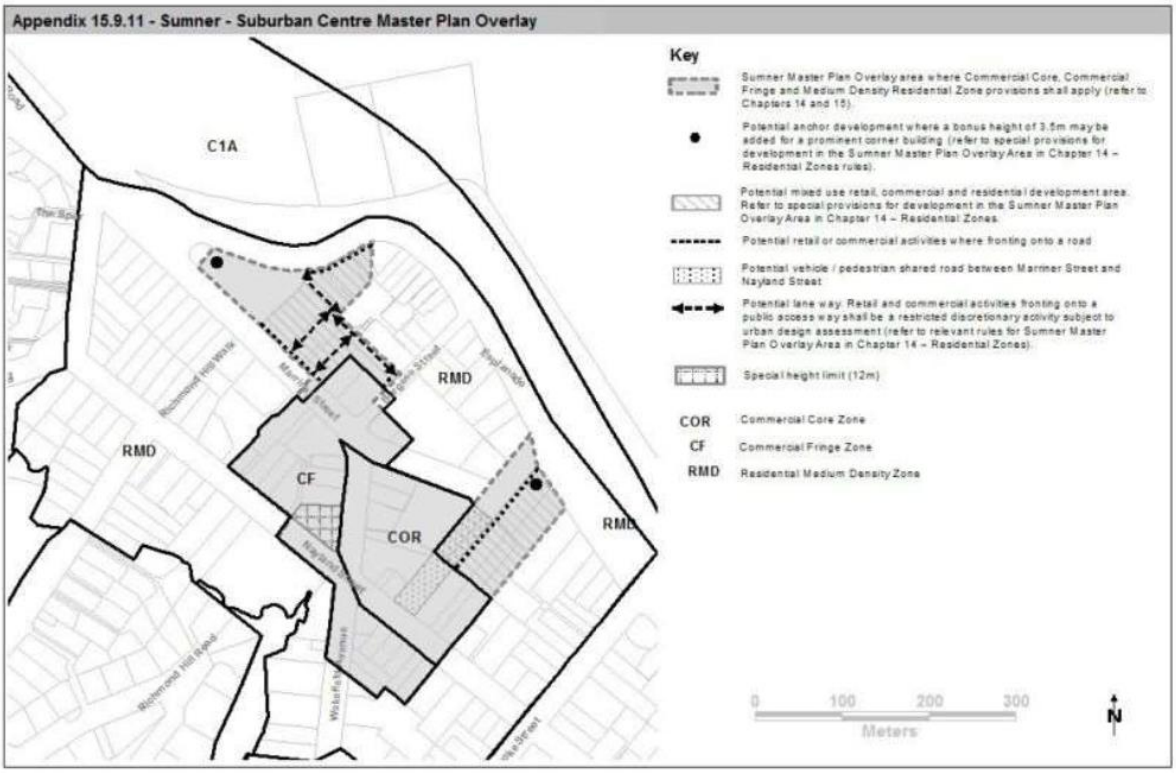
1.1 Indoor design sound levels		
New buildings and additions to existing buildings located within the 50 dBA L_{dn} line as shown on the planning maps shall be designed to ensure the indoor sound levels stated in the table below, are not exceeded with all windows and doors closed.		
Indoor design sound levels		
Building type and activity	Indoor design and sound levels	
	SEL dBA	dBA Ldn
Residential units and older person's housing		
Sleeping areas	65	40
Other habitable areas	75	50
Travellers' accommodation, resort hotels, hospitals and healthcare facilities		
Relaxing or sleeping	65	40
Conference meeting rooms	65	40
Service activities	75	60
Education activities		
Libraries, study areas	65	40
Teaching areas, assembly areas	65	40
Workshops gymnasia	85	60
Retail activities commercial services and offices		
Conference rooms	65	40
Private offices	70	45
Drafting, open offices, exhibition spaces	75	50
Typing, data processing	80	55
Shops, supermarkets, showrooms	85	60
1.2 Noise insulation calculations and verification		
(a) Building consent applications must contain a report detailing the calculations showing how the required sound insulation and construction methods have been determined.		
(b) For the purpose of sound insulation calculations the external noise levels for a site shall be determined by application of the airport noise contours L_{dn} and SEL. Where a site falls within the contours the calculations shall be determined by linear interpolation between the contours.		
(c) If required as part of the final building inspection, the sound transmission of the facade shall be tested in accordance with ISO 140-5 or ASTM to demonstrate that the required facade sound insulation performance has been achieved. A test report is to be submitted. Should the facade fail to achieve the required standard then it shall be improved to the required standard and re-tested prior to occupation.		

14.14.5 Appendix – Tsunami inundation area



14.14.6 Appendix – Sumner Master Plan Overlay

[Image to be updated to amend title and to show Commercial Fringe changing to Commercial Core, refer to Rebuttal Evidence of Mark Stevenson, Map 48. Clearer image required.]



SCHEDULE 2

Provisions (and related submissions) in respect of which hearing and determination has been deferred to Stages 2 and 3:

(a) The notified 'New Neighbourhood zone' provisions ('NNZ provisions');[1]

(b) Residential Banks Peninsula Conservation Zone,[2] including Policy 14.1.5.6 (Notified Version) Heritage Values in Residential Areas of Lyttelton and Akaroa and Policy 14.1.5.5 (Notified Version) Neighbourhood Character and Residential Amenity in Residential Areas of Banks Peninsula;[3]

(c) New Brighton Density Overlay;[4]

(d) Kauri Lodge Rest Home Submission (1022);[5]

(e) The following provisions that were notified in error by the Christchurch City Council as set out in its Application to set aside land from proposals where the land was re-notified in Stage 2 proposals ('Application to set aside'):[6]

(i) All legal roads on the Stage 1 planning maps that were incorrectly zoned residential and re-notified in Stage 2 as Transport Zone;

(ii) All of the open space sites shown on the Stage 1 planning maps identified in Attachment A to Application to set aside that were incorrectly zoned residential and re notified in Stage 2 as Open Space;

(iii) All of the school and tertiary education sites shown on the Stage 1 planning maps identified in Attachment C to the Application to set aside that were

1 Minute dated 16 July 2015 and 20 August 2015, and full list of provisions deferred as set out in the Order confirming allocated provisions dated 3 November 2015.
2 Opening submission for the Council at para 13.4; Closing submissions for the Council at para 7.2; Transcript, page 1109.
3 Updated Statement of Issues for Stage 2 Residential Proposal, 11 August 2015, at paras 2.1(a) and 2.2.
4 Deferred to Stage 2 Commercial and Industrial decision.
5 Direction of Hearings Panel, 11 February 2015.
6 Application to set aside land from Stage 1 proposals, where land has been re notified in Stage 2 proposals, 17 June 2015; and application granted on 26 June 2015.

incorrectly zoned residential and re-notified in Stage 2 as Specific Purpose (School) and Specific Purpose (Tertiary Education) Zones;

(iv) All of the cemetery sites shown on Stage 1 planning maps identified in Attachment E of the Application to set aside that were incorrectly zoned residential.

(f) As set out in our directions dated 3 November 2015, the following Airport-related issues are deferred to be heard in conjunction with Chapter 6, General Rules and Procedures:

(i) Bird strike issues; and

(ii) Airport noise contour issues as to the 50 dBA L_{dn} and 55 dBA L_{dn} noise contour (except as to the related land use restrictions determined by this decision).

SCHEDULE 3

Table of submitters heard

This list has been prepared from the index of appearances recorded in the Transcript, and from the evidence and submitters statements shown on the Independent Hearing Panel's website.

Submitter Name	№	Person	Expertise or Role	Filed/ Appeared
Ken Sitarz	13	Mr K Sitarz		Filed/Appeared
Ashley Seaford	15	Mr A Seaford		Filed/Appeared
Fendalton Mall Limited	24	Mr G Dewe	Planner	Filed
Gillian Herrick	56	Ms G Herrick		Filed/Appeared
James King	60	Mr J King		Filed/Appeared
Robin Curry	88	Mr R Curry		Appeared
Nick Blakely	110	Ms H Broughton		Appeared
Rachel Malloch	115	Ms R Malloch		Filed
Alan and Robyn Ogle	137	Ms H Broughton		Appeared
Mike Percasky	138	Mr A Fitzgerald	Planner	Filed/Appeared
Brett and Elizabeth Rayne	151	Mr B Rayne		Appeared
Catherine Spackman	152	Ms H Broughton		Appeared
Maria Simmonds	155	Ms M Simmonds		Filed/Appeared
Janet Reeves	157	Ms J Reeves	Planner and urban designer	Filed/Appeared
Grant Miles	160	Mr G Miles	Architectural designer	Filed/Appeared
Richard Jarman	164	Ms H Broughton		Appeared
Janette Webber	171	Ms H Broughton		Appeared
Ross Divett	181	Mr R Divett		Filed
Riccarton Wigram Community Board	254	Mr M Mora		Filed
Marianne and Robin McKinney	256	Ms H Broughton		Appeared
JD & JE Campbell, Fendall Properties Limited, Campbell Family Trust	273	Ms H Broughton		Appeared
Janet Begg	280	Ms J Begg		Filed
Cats Protection League	287	Ms A Brown		Filed
		Ms P Harte	Planner	Appeared
Tony Dale	291	Mr T Dale		Appeared

Submitter Name	№	Person	Expertise or Role	Filed/ Appeared
Denise Bryce	294	Ms D Bryce/ Mr Church		Filed
Tim & Felicity Scott	297	Ms H Broughton		Appeared
Jessie Wells	300	Ms H Broughton		Appeared
Tony and Christine Simons	308	Mr T Simons		Appeared
Christchurch City Council	310	Mr S Blair	Planner	Filed/Appeared
		Dr D Fairgray	Geographer and economist	Filed/Appeared
		Mr A MacLeod	Planner	Filed/Appeared
		Mr G McIndoe	Architect and urban designer	Filed/Appeared
		Mr R Norton	Planning engineer	Filed/Appeared
		Ms B O'Brien	Planning engineer	Filed/Appeared
		Mr N Redekar	Transportation Planner	Filed/Appeared
		Ms E Sakin	Architect	Filed/Appeared
		Mr M Teesdale	Urban designer	Filed/Appeared
		Mr C Gregory	Engineer	Filed/Appeared
John Frizzell	321	Ms E Stewart	Planner	Filed/Appeared
		Mr J Frizzell		Filed/Appeared
		Mr K Suckling		Filed/Appeared
DT King & Co Limited	329	Mr R Edwards	Traffic engineer	Filed/Appeared
Robert Paton	336	Mr R Edwards	Traffic engineer	Filed/Appeared
Akaroa Civic Trust	340	Ms J Cook		Filed/Appeared
Maurice R Carter Limited	377	Mr J Phillips	Planner	Filed/Appeared
Oakvale Farm Limited	381	Mr J Phillips	Planner	Filed/Appeared
JC & H McMurdo Family Trust	387	Ms H McMurdo		Appeared
The Salvation Army	422	Ms W Barney		Filed/Appeared
		Mr G Parfitt		Filed/Appeared
Robin Shatford	445	Mr R Shatford		Appeared
Riccarton Bush-Kilmarnock Residents' Association	462	Mr J Hardie		Appeared
Fulton Hogan Land Development Limited	473	Ms J Comfort	Planner	Filed/Appeared
Jane Taylor	475	Ms H Broughton		Appeared
Siana Fitzjohn	487	Mr R Muir		Filed/Appeared
Housing New Zealand Corporation	495	Mr P Commons	General Manager, Canterbury Recovery and Redevelopment	Filed/Appeared
		Mr M Dale	Planner	Filed/Appeared

Submitter Name	№	Person	Expertise or Role	Filed/ Appeared
Crown	495	Ms V Barker	Planner	Filed/Appeared
		Ms J Doyle	Policy Director, Construction and Housing Markets	Filed/Appeared
		Mr K Gimblett	Planner	Filed/Appeared
		Mr B Klein	Life stage, energy and water efficiency and consenting issues	Filed/Appeared
		Ms Y Legarth	RMA policy advisor	Filed/Appeared
		Mr M McCallum-Clark	Planner	Filed/Appeared
		Ms S McIntyre	Planner	Filed/Appeared
		Ms A McLeod	Planner	Filed/Appeared
		Mr A Merry	Manager, Strategic Development	Filed/Appeared
		Mr I Mitchell	Planner	Filed/Appeared
		Mr R Rouse	Asset rebuild manager, horizontal infrastructure	Filed/Appeared
		Mr J Schellekens	Economist	Filed/Appeared
		Ms L Taitua	District Manager, Community Probation	Filed/Appeared
		Mr M Teesdale	Urban designer	Filed/Appeared
		Mr T Walsh	Planner	Filed/Appeared
Nurse Maude Association	525	Mr R Nixon	Planner	Filed/Appeared
Rosalie Souter	540	Mr L Telfer		Appeared
Deans Avenue Precinct Society	549	Ms C Mulcock		Filed/Appeared
Retirement Village Association of New Zealand Inc	573	Mr J Collyns		Filed/Appeared
		Mr J Kyle	Planner	Filed/Appeared
Helen Broughton	592	Ms H Broughton		Filed/Appeared
Going Properties Limited	593	Ms P Harte	Planner	Filed/Appeared
Rosalee Jenkin	601	Mr R Muir		Filed/Appeared
Mebo Family Trust	604	Ms M Mullins		Filed/Appeared
Catherine Collier	636	Mr R Muir		Filed/Appeared
Ruth Deans	643	Ms H Broughton		Appeared
Canterbury District Health Board	648	Dr A Humphrey	Medical Officer of Health	Filed/Appeared
Catholic Diocese of New Zealand	656	Mr R Nixon	Planner	Filed/Appeared
Belgravia Investments Limited	678	Mr J Clease	Planner and urban designer	Filed/Appeared
Residential Construction Limited	684	Ms F Aston	Planner	Filed/Appeared
		Mr P de Roo		Filed/Appeared

Submitter Name	№	Person	Expertise or Role	Filed/ Appeared
Jack Randall	688	Mr R Muir		Filed/Appeared
Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited	705	Mr D Thorne		Filed
Matthew Scobie	711	Mr R Muir		Filed/Appeared
Rowan Muir	713	Mr R Muir		Filed/Appeared
Bryndwr Community Group	715	Ms M Ainsworth		Appeared
Mobil Oil New Zealand Limited, Z Energy Limited and Banks Peninsula Oil New Zealand Limited	723	Ms K Blair	Planner	Filed/Appeared
Ilam and Upper Riccarton Residents' Association	738	Mr R English		Filed/Appeared
Ryman Healthcare Limited	745	Mr J Kyle	Planner	Filed/Appeared
		Mr A Mitchell		Filed/Appeared
Bronwyn Williams	748	Ms B Williams		Appeared
Alpine Presbytery	752	Mr R Nixon	Planner	Filed/Appeared
Christchurch Polytechnic Institute of Technology	756	Ms L Buttimore	Planner	Filed/Appeared
		Ms A Hanlon	Director of Learning Resources	Filed
Methodist Church of New Zealand and Christchurch Methodist Central Mission	763	Mr R Nixon	Planner	Filed/Appeared
Summerset Group Holdings Limited	765	Ms P Harte	Planner	Filed/Appeared
Gayle Cook	773	Ms H Broughton		Appeared
Jane Murray	780	Ms J Murray		Filed/Appeared
The Order of St John, South Island Region Trust Board	785	Ms R Hardy	Planner	Filed/Appeared
K Bush Road Limited and Brian Gillman Limited	788	Mr W McCall	Surveyor	Filed/Appeared
		Ms K Seaton	Planner	Filed/Appeared
		Mr H Wheelans		Filed/Appeared
Church Property Trustees	793	Ms R Hardy	Planner	Filed/Appeared
Erfort Properties Limited and Sala Sala Japanese Restaurant Limited	796	Mr G Ottmann		Appeared
University of Canterbury	797	Ms L Buttimore	Planner	Filed/Appeared
		Ms A Hanlon	Director of Learning Resources	Filed/Appeared
AMP Capital Palms Pty Limited	814	Mr J Phillips	Planner	Filed/Appeared
R L Broughton	820	Mr R Broughton		Appeared

Submitter Name	№	Person	Expertise or Role	Filed/ Appeared
Transpower New Zealand Limited	832	Mr D Campbell	Environmental Policy and Planning group manager	Filed/Appeared
		Mr M Copeland	Economist	Filed/Appeared
		Ms A McLeod	Planner	Filed/Appeared
		Mr R Noble	Asset engineering manager	Filed/Appeared
Groovy Costumes Limited	839	Mr S Fletcher	Planner	Appeared
Ngai Tahu Property Limited	840	Mr J Jones	Planner	Filed/Appeared
		Mr M Timms	Surveyor	Filed/Appeared
		Mr T Watt	Architect	Filed/Appeared
David Philpott & Associates	841	Mr S Fletcher	Planner	Filed/Appeared
Kotare Downs Limited	843	Mr S Fletcher	Planner	Filed/Appeared
Audrey Smith	854	Ms A Smith		Appeared
Douglas Horrell	858	Mr R Muir		Filed/Appeared
Christchurch International Airport Limited	863	Mr M Bonis	Planner	Filed/Appeared
		Mr R Boswell	Environmental Manager	Filed/Appeared
		Mr C Day	Acoustic Engineer	Filed/Appeared
		Dr P Harper	Ornithologist	Filed/Appeared
		Mr K McAnergney	Manager, Airport Planning	Filed/Appeared
		Mr P Osborne	Economist	Filed/Appeared
Reefville Properties Limited	866	Mr G Percasky		Filed/Appeared
D&S Grimshaw	893	Mr S Fletcher	Planner	Filed/Appeared
Kiwirail Holdings Limited	897	Ms D Hewett	Senior RMA Advisor	Filed
Freyberg Development Limited	907	Ms J Comfort	Planner	Filed/Appeared
Lyttelton Port Company Limited	915	Mr M Copeland	Economist	Filed/Appeared
		Mr N Hegley	Acoustic Engineer	Filed/Appeared
		Ms K Kelleher	Environmental Manager	Filed/Appeared
		Mr A Purves	Planner	Filed/Appeared
Orion New Zealand Limited	922	Ms L Buttimore	Planner	Filed/Appeared
		Mr S Watson	Network Assets Manager	Filed/Appeared
Milns Road Farm Limited and Blakesfield Limited	931	Ms J Comfort	Planner	Filed/Appeared
Richard Batt	937	Mr R Batt		Appeared
Katia De Lu	944	Mr R Muir		Filed/Appeared
Commercial Vehicle Centre Limited	961	Mr R Edwards	Traffic engineer	Filed/Appeared
Barrington Issues Group	964	Mr R Curry		Filed/Appeared
Davie Lovell-Smith Limited	969	Ms J Comfort	Planner	Filed/Appeared

Submitter Name	№	Person	Expertise or Role	Filed/ Appeared
Mobil Oil New Zealand Limited	988	Ms K Blair	Planner	Filed/Appeared
John Raso	1049	Mr J Raso		Filed/Appeared
Fredrik Rohs	1051	Mr F Rohs		Appeared
R & H Investments, R & H Properties Limited and Sandridge Hotel Limited	1069	Mr R Edwards	Traffic engineer	Filed/Appeared
Beach Road Tyre and Auto Centre Limited	1077	Mr T Walsh	Planner	Filed/Appeared
Terra Dumont	1085	Mr R Muir		Filed/Appeared
Christian Jordan	1122 1098	Mr C Jordan		Filed/Appeared
Danne Mora Holdings Limited	1134	Mr M Brown	Planner	Filed/Appeared
		Mr A Hall	Engineer	Filed/Appeared
		Mr A Penny	Traffic engineer	Filed/Appeared
ADNZ Canterbury/Westland Region	1142	Mr G Miles	Architectural designer	Filed/Appeared
Mahaanui Kurataiao Limited and Te Rūnanga O Ngāi Tahu	1145	Mr T Vial	Planner	Filed/Appeared
Generation Zero	1149	Mr R Muir		Filed/Appeared
Jeanette Quinn	1174	Ms J Quinn		Appeared
Andrew Evans	1181	Mr A Evans		Filed/Appeared
Colin Stokes	1182	Mr C Stokes		Filed/Appeared
Urbis TPD Limited	1207	Mr R Edwards	Traffic engineer	Filed
Michael Hughes	1241	Mr M Hughes		Appeared
Horticulture NZ	1323	Ms L Wharfe	Planner	Filed/Appeared

ORIGINAL

10 FEB 1997

Decision No. 10/97

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First Schedule of the Act

BETWEEN THE AUCKLAND REGIONAL COUNCIL

(Appeal RMA 749/96)

Appellant

AND THE AUCKLAND CITY COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge DFG Sheppard (presiding)
Mr P A Catchpole
Mr I C Kerr

HEARING at AUCKLAND on 2 and 3 December 1996

APPEARANCES

Mr B I J Cowper and Miss J C Campbell for appellant
Mr D A Kirkpatrick for respondent

DECISION

Introduction

The Auckland Regional Council has referred to the Environment Court a rule of the Auckland City Council's proposed district plan which classifies activities in Business 5 and 6 zones as permitted, controlled and discretionary activities. The Regional Council seeks that permitted activities which are likely to be adversely affected by discharges to air from other activities in the vicinity be reclassified as controlled activities or discretionary activities.

The case involves two matters : the appropriateness of providing in a district plan for 'reverse sensitivity', and the interface between the functions of regional councils and territorial authorities in respect of the effects of discharges to air.

The term 'reverse sensitivity' is used to refer to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in the carrying on of those other activities. There was an issue about the extent to which it is appropriate for district plans to contain provisions of that kind.

The proposed district plan

We start with relevant provisions of the proposed district plan. Part 8 of the plan identifies resource management issues, and states objectives, policies and strategy in respect of business activity. The issues include the following :

- The need for Plan provisions which address the effects of business activities, and which identify acceptable business outcomes.

...

- The need to provide suitable locations for specific industries and for those which require separation.

Relevantly there are these policies (among others) :

- By providing and maintaining different standards of amenity for business activity throughout the City.

...

- By applying controls which protect and enhance environmental values, public safety and amenity values.
- By applying controls which impose limitations on the use, storage and handling of hazardous substances for environmental and safety reasons.
- By applying measures to all business zones in order to avoid or minimise air, water and soil pollution.

The strategy for industries is :

> While the mixed-use zones will cater for the majority of industrial activities it is still necessary to provide particular locations for industries which require separation from other activities (eg heavy or noxious industry) or which are site specific (eg quarry operations). Concerns peculiar to those activities will be recognised through the application of special zonings. Heavy or noxious industry in particular will be confined to the traditional heavy industrial areas of the district. Facilities using or storing hazardous substances are also likely to congregate in these areas as the levels of hazardous substances permitted will be higher than in other zones of the district. Because it is unlikely that any further land will be available for heavy/noxious activities in the future and due to inherent safety concerns, the zone will provide only limited opportunity for the establishment of other activities.
> ...

The Business 5 and 6 zones are intended for mixed and heavy industry. We set out the objectives and policies for the Business 5 zone :

(a) Objective

To recognise that certain business activity functions more effectively in an environment of less stringent amenity controls.

Policies

- By identifying existing industrial areas on the Isthmus which exhibit little or no visual or physical amenity.
- By limiting controls within the zone to those which achieve defined environmental outcomes, maintain public safety and the safe and efficient movement of vehicles.

(b) Objective

To ensure that any adverse effect of business activity on the environment within the zone or on adjacent residential and open space zones is avoided or reduced to an acceptable level.

Policies

- By adopting controls which limit the intensity and scale of development to a level appropriate to the environment of the zone.
- By requiring acceptable noise levels at the interface between residential zones and business activity.
- By adopting controls which seek to protect adjacent residential zones privacy and amenity.
- By the imposition of controls to ensure the safe handling, use and storage of hazardous substances.
- By requiring the establishment and maintenance of buffer areas between activities within the zone and any adjacent residential or open space zones.
- By the adoption of controls which limit activities to those which do not cause traffic conflict or congestion within the zone or on roads leading to the zone.

The strategy for that zone recognises that the quality of the environment within the zone is less than in the Business 4 zone, and continues:

> With changing technology and the merging of commercial and industrial activities, the Council considers that the overall environmental amenity of most of the City's business areas should be of a good quality, so that the City remains an attractive location for business.
>
> However the Plan acknowledges that for some industrial activities the attainment of such an environment is not a pre-requisite to growth or viability, but rather it may discourage or serve to expel such activities. Therefore the Plan makes limited provision within the Isthmus for areas of a lesser quality environment. The Business 5 zone is applied to some of these areas.
>
> The zone has been designed to cater for activities which are unable to locate in the other mixed use business zones because of amenity constraints. As a consequence other activities not so constrained which choose to locate in the zone must appreciate that amenity levels on factors such as noise, dust and odour control will be considerably lower than found in the Business 1-4 zones.
>
> In addition the Council is concerned to ensure that other activities do not impose amenity and safety constraints on traditional industrial activities which have always located in these areas. Therefore over a certain scale or intensity some non-industrial activities are deemed discretionary so that these matters can be addressed.
>
> ...
>
> Expected outcomes
>
> This zone will provide a location for general industry and other businesses which do not seek a quality environment. However defined environmental outcomes will be achieved and maintained. Tighter controls and better monitoring of the use, handling and storage of hazardous substances will lead to better and safer business practices for some operations. Some retail and office activity will occur in the zone, particularly that associated with industrial activities or which require large sites or buildings. However no greater amenity will be provided for those activities. In general it is expected that such activity will choose to locate in the more attractive environments of the Business 2, 3, and 4 zones.

The objectives and policies for the Business 6 zone include :

> (a) Objective
>
> *To provide for the operation of noxious and unpleasant industrial activities within the City.*
>
> Policy
>
> - By recognising through zoning, existing noxious and heavy industry areas on the Isthmus.
>
> (b) Objective
>
> *To ensure that the safety of the public is not compromised by hazardous or dangerous activities within the zone.*
>
> Policies
>
> - By requiring industries using or storing hazardous substances to mitigate any risks, to a level compatible with other risks commonly faced by the public.
> - By requiring adequate buffers between hazardous facilities and other activities, especially residential zones and valuable natural habitats.

- By requiring all new and existing facilities proposing to, or currently using or storing significant quantities of hazardous substances to provide risk assessments, and risk mitigation and contingency plans.
- By limiting activities in the zone to those which do not involve large movements of customers and the public into the zone, so as not to increase the risk to the public from hazardous facilities.

(c) Objective

To ensure that the effects or impacts of industrial uses do not adversely affect the environment.

Policies

- By imposing controls to manage the storage and use of hazardous substances in order to minimise the probability of accidents.
- By requiring adequate buffers between business activities and valuable natural habitats, particularly along the coastline.
- By requiring existing activities which generate unsatisfactory environmental effects to upgrade to meet the defined environmental outcomes within the planning period.

The strategy for the Business 6 zone contains the following:

The purpose of the Business 6 zone is to make provision for heavy, noxious or otherwise unpleasant industrial activity within the City. Such activity typically generates significant effects which may pose a serious threat to the natural environment and compromise the amenity and safety enjoyed by surrounding land users. For these reasons it is important that heavy and noxious industry is located in areas where the impacts of these effects can be minimised and isolated.

...

The heavy or noxious nature of activities within this zone is recognised in its lower zonal amenity. While activities will be required to meet defined environmental outcomes no controls are imposed to ensure an acceptable amenity level within the zone, of factors such as odour, noise and dust emission. The zone overall will have a low standard of amenity and it is not intended to see this standard raised over time. Activities or users which expect or desire higher standards of amenity should locate in the other business zones.

While many of the activities within the Business 6 zone will have existing use status under the Act, this does not imply that these activities can continue to generate the same effects indefinitely. If the adverse environmental effects generated by a particular activity are likely to be unsustainable, the Council will use its powers under section 17 of the Act to ensure that defined environmental outcomes are not compromised by the activity or the effects it generates.

The zone is also designed as a primary location for industries that carry out hazardous activities or use hazardous substances. As a consequence of the concentration of such activity, risks associated with industrial accidents have a higher probability. Therefore Council considers public safety to be an issue of importance and intends to minimise the general public's exposure to these risks by discouraging activities within the zone that are likely to attract members of the public to the area. Typically these activities will be of a retail and office nature.

Expected Outcomes

This zone will be the location for most of the hazardous, noxious or heavy industrial activities within the City. A lower level of amenity will exist within the zone except in those areas which adjoin coastal margins or residential zone boundaries. Those businesses which traditionally prefer lower levels of amenity will find it easier to locate in this zone than in others. However, defined environmental outcomes will be achieved and maintained. As the acceptable level of risk from hazardous or noxious activities will be higher in the zone than in other zones, activities such as retailing and residential will be severely limited so as to ensure public

safety. Tighter controls and stricter monitoring will result in better business practices with regards to the use, handling and storage of hazardous substances.

Rule 8.7.1 contains a table which classifies activities as permitted, controlled or discretionary in various Business zones. Relevantly, the table classifies building improvements and hire centres, bulk stores, health-care services, horticulture, laboratories, motor-vehicle sales and service premises, and warehousing and storage as permitted activities in both Business 5 and 6 zones. Commercial or public carparking areas, community welfare facilities, garden centres and workrooms are classified as permitted activities in the Business 5 zone. Offices are permitted activities in the Business 5 zone, and offices not exceeding 100 square metres in area as permitted activities in the Business 6 zone. Retail premises, restaurants, cafes and other eating places with more than 100 square metres gross floor area are permitted activities in the Business 5 zone, and those not exceeding 100 square metres are permitted activities in both zones; and taverns are permitted activities in the Business 5 zone.

The plan also prescribes specific criteria for deciding applications for residential units and care centres in the Business 5 zone, and restaurants, cafes and other eating places, retail premises and offices exceeding 100 square metres gross floor area in the Business 6 zone.

The criteria for assessing proposals for residential units and care centres in the Business 5 zone include:

(a) Safety considerations, in particular:

Applications must demonstrate that adequate measures have been taken to isolate the proposed activity from adjacent industrial activities or sites (such measures may take the form of buffer or separation distances or the construction of block walls) and that a contingency plan has been produced to cater for any emergency which may arise in the vicinity.

(b) ...

(c) Amenity Considerations:

Where the subject site is adjacent to other business zoned sites, adequate measures to the satisfaction of the Council should be incorporated into the design and/or location of the proposed residential buildings or care centre so as to ensure internal acoustic privacy.

Explanation

The Business 5 zone is designed to provide a location for those business activities which do not require a high level of amenity to operate. Some of those activities generate levels of

noise, dust and odour not normally acceptable to non-business activities. They may also use, store or handle hazardous substances.

While the plan provides some flexibility for other activities to locate in the zone, it is stressed that no additional amenity will be provided or protected by the zone's provisions.

The criteria for assessing proposals for retail premises, restaurants, cafes and other eating places, and offices exceeding 100 square metres gross floor area in the Business 6 zone include safety considerations in the same terms as item (a) for residential units and care centres in the Business 5 zone, already quoted.

The criteria just referred to are illustrations of provisions for reverse sensitivity.

We have set out those provisions at length because taken together they give a clear description of the character which the Council has held out that the Business 5 and 6 zones are intended to have. That is important because the Regional Council generally agrees that those provisions and the intended character are appropriate, but contends that the rules in the proposed plan do not reflect that intended character.

The appellant's case

As indicated already, the relief sought by the Regional Council on this reference was that permitted activities which are likely to be adversely affected by discharges to air from other activities in the vicinity be reclassified as controlled activities or discretionary activities. From the analysis of the table in Rule 8.7.1, the classes of activity which are classified as permitted activities in one or both of those zones are building improvements and hire centres, bulk stores, garden centres, health-care services, horticulture, laboratories, motor-vehicle sales and service premises, offices, retail premises, restaurants, cafes, and other eating places, taverns, and warehousing and storage.

The appellant's main ground for seeking those changes was that zones for heavy industry are a scarce resource needed to provide an environment in which heavy industry can function effectively, and to ensure that public health and safety is not

compromised by inappropriate location of sensitive uses. On its behalf it was contended that the classes of activity referred to are in general sensitive to the kind of activity for which the Business 5 and 6 zones are primarily intended. It was argued that they should be discretionary activities so that consideration could be given to the effect which the existence of a particular proposal might have on the freedom of industrial activities in the area to operate as intended in those zones without restraints for the amenities of the properties used for more sensitive activities, or for the safety of occupiers of those properties and their visitors.

The Regional Council maintained that the changes which it sought would implement the objectives and policies stated in the plan for the Business 5 and 6 zones. In that regard, counsel mentioned references in the plan to the limited availability of land for the heavy industrial zones; to the increased efficiency of industrial activity in an environment of less stringent amenity controls; to risk to the public, both people and property; to isolating the impacts of heavy and noxious industry; and to the concept of reverse sensitivity (although not so-called).

Although not contained in the reference, the Regional Council also suggested at the appeal hearing that as a consequence, additional criteria should be inserted in the district plan for assessment of resource consent applications for any of those discretionary activities, namely :

> Public safety –
>
> Applications must demonstrate that adequate measures have been taken to isolate the proposed activity from the effects of industrial activities existing in the zone, and that a contingency plan has been produced to cater for any emergency which may arise in the vicinity.
>
> Ambient air quality –
>
> Applications must demonstrate the extent to which the proposed activity can provide protection within the site against the actual and potential adverse effects of air discharges within the zone to protect human health and avoidance of nuisance.

The Council 's response

The City Council opposed the amendments sought by the Regional Council. It raised the question whether a district plan may contain rules regulating activities

affected or potentially affected by emissions caused by activities of others and if so, to what extent. It submitted that by the Resource Management Act, managing air discharges is a function of regional councils, not territorial authorities; and that if the appellant wishes to control activities in the manner proposed, it should do so by regional rules, not by district rules.

The City Council acknowledged that provisions of its proposed district plan go some way to restraining sensitive activities from the Business 5 and 6 zones, and submitted that activities the subject of this appeal either provide service to other activities in the zones, or require sites of sizes found in those zones and few others. It was contended that those wishing to undertake sensitive activities will do so in zones other than the Business 5 and 6 zones.

The respondent also acknowledged that some control should be exercised over activities that attract or have the potential to attract large numbers of people to an area. Counsel remarked that the plan does this by limiting the size of a number of activities in the Business 6 zone, such as offices and eating places, and by not providing for others, such as places of entertainment (which are discretionary activities in the Business 5 zone).

The City Council also questioned the appropriateness of the suggested criteria.

There are therefore three main issues to be considered: whether provisions of the kind sought should be in regional rules rather than district rules; whether they are inappropriate because they are provisions for reverse sensitivity; and whether the suggested criteria are appropriate. We consider each issue separately, in that order.

Regional and district functions

By section 30(1)(f) of the Resource Management Act, every Regional Council has the function, for the purpose of giving effect to the Act in its region, of the control of discharges of contaminants into air. There is no equivalent provision in the list of functions of territorial authorities in section 31.

Those provisions formed the basis for the submission on behalf of the City Council that, being a territorial authority not a Regional Council, it has no function to control discharges of contaminants into air. However that is not what the Regional Council is proposing. Rather, accepting that control of discharges to air is a regional function, it is proposing that certain land uses be regulated in the district plan because of their sensitivity to discharges of contaminants into air from other land uses.

The functions of territorial authorities listed in section 31 of the Act include the implementation of objectives, policies and methods to achieve integrated management of the effects of the use of land (paragraph (a)); and the control of actual or potential effects of the use of land (paragraph (b)). We have set out the objectives and policies adopted by the City Council for its Business 5 and 6 zones. There are references in them to limiting opportunities in those zones for non-industrial activities, and particularly those which would attract members of the public into the zone, offices, retailing and residential activities being specifically mentioned; and to tolerating lower amenity levels in the zone, specifically in respect of dust and odour.

Mr Kirkpatrick warned us against applying the term "integrated management" as though it were a kind of slogan that could overcome the clear words of the Act. However that term is used in section 31(a) of the Act, being the first item in the list of functions of territorial authorities.

The amendments proposed by the Regional Council would have the effect that specific consideration would have to be given by the City Council to every proposal for a new land use of any of the kinds specified. On any resource consent application for such a use, consideration of the matters listed in section 104(1), and reference to the contents of Part II, would lead to a decision to grant or refuse consent for achieving the purpose of the Act. That would include, where relevant, consideration of the effects of discharges of contaminants to air in the vicinity on the health and safety of those engaged in the proposed land use, whether as operators, employees, customers or otherwise; and also avoiding, remedying or mitigating any

adverse effects of activities on the environment. That framework of decision-making embraces consideration of effects on the environment of the proposed activity, and also effects on the environment of other activities. Consideration of both leads to a single decision on the application.

We consider that such a process can properly be described as integrated management of the effects of the use of land, and associated natural and physical resources of the district, as contemplated by section 31(a). We do not accept that this is using the term "integrated management" as a slogan. Rather, it is giving meaning to the very words of the statute.

The proposed amendments also serve the function described in section 31(b), the control of actual and potential effects of the use of land. The objectives and policies already quoted show that the City Council has determined not to control the effects of heavy industry in the Business 5 and 6 zones to the extent of eliminating activities which emit contaminants such as dust and those creating odour. For the reasons it has explained, the City Council has chosen to impose lower standards in those zones, and has warned people contemplating establishing businesses there not to expect the high environmental standards required in other Business zones. Making the non-industrial uses consent activities would lead to specific consideration of each proposal having regard to the local air quality, and the sensitivity of the proposed use, and also provides opportunity to impose conditions of consent where appropriate. That is a way of controlling the actual and potential effects of the use of land.

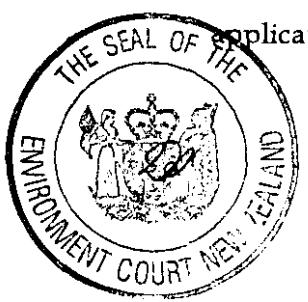
For those reasons we hold that the provisions proposed by the Regional Council would implement objectives and policies to achieve integrated management of the effects of the use of land, and would control actual or potential effects of the use of land, being functions of territorial authorities in terms of section 31. Therefore we do not accept the City Council's submission that incorporation of those provisions would exceed the limits of a territorial authority's functions under the Act.

Reverse sensitivity

For the City Council Mr Kirkpatrick acknowledged that there have been rare cases in which discretionary activity for a new activity with few if any adverse effects of its own has been refused because of incompatibility with existing uses. He referred to *Aratiki Honey v Rotorua District Council* (1984) 10 NZTPA 180; *Himatangi Farms v Manawatu District Council* Decision W37/91; and *McQueen v Waikato District Council* Decision A45/94.

However those were all cases of applications for planning consent. Mr Kirkpatrick submitted that rules to protect enterprises from their own folly in choice of location (that is, sites that are unsuitable because of low air quality due to discharges of dust or odour from industries in the vicinity) would not be authorised under the Resource Management Act. Counsel remarked on the need or desirability for certain non-industrial activities in industrial areas, citing workers' or caretakers' accommodation; food and convenience shops; and premises for industrial health workers. He also urged that people are best able to judge their own needs when choosing sites, and referred to the warnings in the district plan about lower standards of amenity in these zones. Mr Kirkpatrick also submitted that the Resource Management Act has a clear emphasis on dealing with adverse effects "on" the environment, rather than adverse effects suffered "from" the environment. He contended that the Act follows a "polluter pays" approach, requiring creators of adverse effects to internalise those effects rather than force the rest of society and the environment to bear the burden of dealing with them. However he agreed that the approach described is not absolute.

Mr Kirkpatrick also made a submission based on the common law principle that relief is not granted to someone who "comes to the nuisance". He observed that although the Act calls for adverse effects on the environment to be avoided, remedied or mitigated, it does not call for existing use rights to be overridden. Counsel also referred to the general duty to avoid, remedy or mitigate effects imposed by section 17, and to the limitations in sections 316(2) and 319(2) on applications for enforcement orders in that regard.



Mr Kirkpatrick also offered some comment about the Regional Council's current practice in respect of complaints of air pollution from industries in the Business zones. However we do not think that consideration of the adequacy or propriety of the Regional Council's practice in that regard is able to help us to decide the issue in these proceedings.

We do not accept the submissions based on leaving promoters of enterprises to judge their own locational needs, not protecting them from their own folly, or failing to consider the position of those who come to a nuisance. We consider that those submissions do not respond to the functions of territorial authorities under the Resource Management Act, nor do they respond to the thrust of the provisions sought by the appellant. The functions include integrated management of the effects of the use of land, and control of actual or potential effects of the use of land. The thrust of the provisions is to regulate the establishment of the activities to which they would apply. It would do so by requiring specific consideration of proposals to establish them in the Business 5 and 6 zones. That consideration would include having regard to the local air quality, the sensitivity of the proposed use to that quality of air, the safety and amenities of those involved, and the possibility of imposing conditions of consent. The process would be apt to integrate the effects of the proposed activity with the effects of other activities in the vicinity, and to control the actual or potential effects of the use of land. In our opinion, to reject provisions of the kind proposed, on the basis of leaving promoters to judge their own needs, of not protecting them from their own folly, and of failing to consider the effects of those who may come to the nuisance, would be to fail to perform the functions prescribed for territorial authorities. It would also fail to consider the effects on the safety and amenities of people who come to premises as employees, customers, and other visitors.

We accept that even in Business 5 and 6 zones there may be need for some non-industrial activities, such as workers' or caretakers' accommodation, food and convenience shops, and premises for industrial health care. Such activities would not be precluded by the provisions proposed by the Regional Council. Rather each proposal would be specifically considered according to its location, the local conditions, and the extent to which the building and other conditions may avoid,

remedy or mitigate effects on its environment. The coarse pattern of zoning would be refined by providing for consent activities. Not all examples of each class of consent activities are necessary appropriate on all sites in the zone, but some examples of each might, in certain conditions, be appropriate on some sites in the zone.

We consider that this technique, which the Act provides for, would be apt for performing the territorial authority functions already mentioned. It is also consistent with the status that the Act gives to existing use rights; and we do not see it being inconsistent with the provisions about enforcement orders in sections 316(2) and 319(2).

We acknowledge that, as Mr Kirkpatrick submitted, the Resource Management Act contains references to effects on the environment. Sections 5(2)(c) and 104(1)(a) are notable examples. However the references to effects in the description of the functions of territorial authorities in section 31 (a) and (b) are not so qualified. Section 76(3) provides:

> In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect; and rules may accordingly provide for permitted activities, controlled activities, discretionary activities, non-complying activities, and prohibited activities.

The direction in that subsection is that a territorial authority, in having regard to actual or potential effects on the environment of activities, may provide for discretionary activities (among other classes of activity). The authority to provide for controlled and discretionary activities (and other classes) is not limited to the classes of activity that give rise to the actual or potential effect. It is consistent with our understanding of a territorial authority's functions (already stated) that in having regard to actual or potential effects on the environment of activities, district rules might provide for other activities to be any of the classes of activities listed in the subsection, as the performance of the authority's functions may indicate is appropriate in achieving the purpose of the Act.

In summary, we do not accept that the provisions proposed by the Regional Council should be rejected on the ground that they provide for reverse sensitivity.

Criteria

We now address the criticism of the proposed criteria for deciding resource consent applications for activities of the kinds which are the subject of this appeal.

Public safety

On the proposed new public safety criterion, counsel for the respondent challenged the elements of isolation and a contingency plan. He remarked that if an activity has to be isolated from its neighbours, perhaps it should not be there at all; and questioned whether, if a person chooses to locate in the Business 5 or 6 zone, they should "be required to seal themselves off from the zone." He added an argument based on exposure to discharges from later activities, and submitted that the only effective response is control on the producer of effects, and warning others of lower amenity values to be expected in the zones.

Counsel for the appellant remarked that the respondent's district plan already contains criteria of that kind for deciding applications for consent activities in the Business 5 and 6 zones. Comparison of the criteria proposed by the appellant with those provided in the district plan for assessing proposals for residential units and care centres in the Business 5 zone (already quoted) bears that out.

We accept Mr Kirkpatrick's submission that if an activity has to be isolated from its neighbours, perhaps it should not be there at all. That is why it may be appropriate for some activities to be consent activities, so that case-specific consideration can be given to whether consent for a proposal should be refused, or granted subject to conditions.

Contingency plan

On the contingency plan requirement, counsel contended that it is too broad, and that the best person to prepare contingency plans is the person who may be responsible for causing the emergency. Mr Kirkpatrick also argued that protection of health from air discharges is a matter for which the Regional Council is

responsible, and also the public health and occupational health and safety authorities.

Mr Cowper accepted that those who have contaminants or hazardous substances on their properties should provide contingency plans, but submitted that as a matter of commonsense people in the vicinity should have their own emergency plans such as evacuation drills. He referred to the safety criterion in the district plan for proposals for residential units and care centres (already quoted).

We accept Mr Kirkpatrick's submission that there are other authorities which have responsibility for protection of health from discharges of contaminants to the atmosphere. However that does not make it inappropriate for a consent authority, in considering a proposal for a sensitive activity, to have regard to the practicality of protecting people from adverse effects of poor air quality, and to the value of requiring a contingency plan.

In summary, we have concluded that the insertion of criteria such as those suggested would be appropriate and would assist those preparing resource consent applications and those reporting on them and deciding them. However some of the wording of the provisions suggested by the Regional Council ("Applications must demonstrate ..."), while consistent with the wording of the existing safety criterion for residential units and care centres, is more appropriate to a condition than to an assessment criterion. We consider that the suggested criteria should be amended by omitting the words just quoted, and substituting in the public safety criterion the words "The extent to which".

Conclusion

We refer to the test adopted in *Nugent Consultants v Auckland City Council* [1996] NZRMA 481 at 484; 2 ELRNZ 254 at 257:

In summary, a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the

purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan.

We hold that a rule in the respondent's district plan classifying the subject activities as discretionary activities in the Business 5 and 6 zones, and prescribing the assessment criteria (as they are to be amended) is necessary in achieving the purpose of the Act, in particular managing use and development of land in a way that enables people and the community to provide for their economic wellbeing and for their health and safety while meeting the objectives stated in paragraphs (a) to (c) of section 5(2), and especially the latter. We have already stated our finding that such a rule would assist the territorial authority to carry out its functions in order to achieve the purpose of the Act. We have not accepted the submissions advanced for the City Council in opposition to the proposed rule amendments, and find that they are the most appropriate means of exercising those functions. Finally we record our acceptance of the Regional Council's submission that the amendments would implement more fully the objectives and policies stated in the plan for the Business 5 and 6 zones, as appears from the text of them already quoted.

Mr Kirkpatrick submitted that the changes sought by the Regional Council are so significant that they should only be implemented by a process which is notified and is open to submissions, and suggested that they should be the subject of a variation. We do not accept that. We consider that the amendments sought by the Regional Council are consistent with other provisions of the proposed district plan, and would more fully implement the objectives and policies for the relevant zones stated in that instrument. The amendments were the subject of a submission made in respect of the proposed district plan, which others had opportunity to support or oppose. Further, anyone within the classes defined in section 274(1) could have taken part in the appeal hearing. There is no evidence that anyone who would wish to make representations about the amendments sought has not had opportunity to do so in the way contemplated by Parliament or otherwise to do justice.

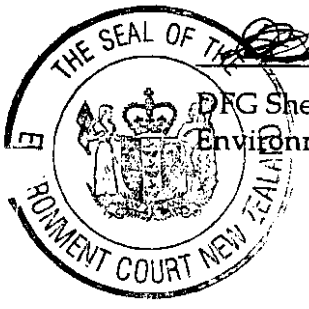
The Environment Court has authority in these proceedings to direct the City Council to amend its proposed district plan as sought by the Regional Council's reference - see clause 15(2) of the First Schedule to the Act. It also has authority to direct consequential amendments to give full effect to the amendments sought in the

appeal - see sections 292(1)(b) and 293(1). We have considered whether the Court should give a further opportunity to interested parties to consider and be heard on the amendments sought as contemplated by section 293(2). However as the Regional Council's submission attracted no opposition (other than from the City Council itself), and as there is no evidence that anyone now wishes to be heard, we have concluded that further notification would be wasteful, and unwarranted.

In the outcome then, the appeal is allowed, and the Court will direct the respondent to make amendments to its proposed district plan in accordance with this decision. We invite counsel to submit a formal direction setting out the amendments to be made.

There will be no order for payment of costs.

DATED at AUCKLAND this 4th day of February 1997.



DFG Sheppard
Environment Judge

ORIGINAL

Decision No. W 082 /2004

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under s120 of the Act

BETWEEN AFFCO NEW ZEALAND LIMITED
First Appellant

RICHMOND LIMITED
Second Appellant

NAPIER SANDBLASTING LIMITED
(ENV W 0046/04)
Third Appellant

AND THE NAPIER CITY COUNCIL
Respondent

AND LAND EQUITY GROUP
Applicant

BEFORE THE ENVIRONMENT COURT
Environment Judge C J Thompson
Environment Commissioner W R Howie
Environment Commissioner P A Catchpole

HEARING at NAPIER: 16 - 20 August 2004. Site visit 20 August 2004.
Evidence taken before a Registrar: 15 September 2004
Final submissions received: 30 September 2004

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

COUNSEL

J K MacRae and M A Stirling for AFFCO New Zealand Limited, Richmond Limited, and Napier Sandblasting Limited

I N Gordon and M J Slyfield for Land Equity Group

M B Lawson and H I Kyle for the Napier City Council

S J Webster for the Hawkes Bay Regional Council – s274 party

J P Matthews and A McEwan for Port of Napier Limited – s274 party

DECISION

Introduction

[1] After a hearing before a Commissioner on 3 and 4 December 2003, the Napier City Council, on the recommendation of the Commissioner, granted a land use resource consent to Land Equity Group to establish and operate a large format retail facility at Pandora Road, on the western edge of central Napier City. It is that decision which is the subject of this appeal. The applicant has been referred to throughout by the shortened title of Land Equity Group, but we are informed by Mr Gordon that the correct name of the owner of the land is Equity Development (Gateway) Limited. The original appellants have been joined by the Hawkes Bay Regional Council and the Port of Napier Limited as s274 parties. The Port of Napier opposes the granting of the resource consent. The Regional Council originally opposed it also but has now modified its approach and, if its concerns can be met by conditions, does not oppose the grant of consent. The land in question has an industrial zoning, and the essential issue is whether the proposed activity is appropriate to that zone, having regard to its own effects, and the effects of the activities conducted on surrounding sites.

The Council's position

[2] The City Council found itself in the slightly uncomfortable position of having adopted the Commissioner's recommendation to grant consent when its Senior Planner, Mr O'Shaughnessy, had quite strongly recommended against that course. Further, at the time of the hearing before us, other obligations made it impossible for Mr O'Shaughnessy to attend, and Mr Alastair Thompson, the Council's Planning Manager was briefed to appear in his place. In light of developments in demand for large format retailing space in the meantime, and other more recent information, Mr Thompson was not as opposed to the proposal. In essence he adopted a neutral stance, saying, at the end of his written brief:

> I believe the present application will have minimal effects on the industrial area where it is sited. Equally it will not enhance the area by its presence.

Mr O'Shaughnessy was able to give evidence before the Registrar at a later date, and we have of course read the transcript of what he and Mr Thompson had to say. In general terms, Mr O'Shaughnessy saw no reason to change his earlier views on matters of substance. Faced with all of that Mr Lawson, very properly, did not take a partisan stance either way but offered his assistance to the Court by way of submissions which we found very helpful.

The site and the general proposal

[3] The subject site is on the western side of Pandora Road at its intersection with Thames Street. It contains 2.7044 hectares and is rectangular in shape with frontages of 270m to both Pandora Road and Tyne Street, which forms its western edge, and 105m to Thames Street, which is its northern edge.

[4] Most of the site is occupied by a former wool store of around 20,000m2; some of which is presently short-term tenanted for a variety of uses. The proposal is to demolish parts of the wool store and to convert the site into three blocks of retail tenancies arranged around an outdoor carpark, facing generally towards Pandora Road. Eleven individual retail tenancies, with floor areas ranging between 3720m2 and 500m2 are proposed, with carparking for 392 vehicles, giving a ratio of carparks to gross retail floor area of 1:33m2. Loading docks are to be provided to the rear and side of the tenancies adjoining Tyne Street. Vehicle entrances will be off Thames Street and Tyne Street but with egress to only Tyne Street. Landscaping by way of large palms, smaller trees and shrubs, grasses, planter boxes and the like are proposed for all street frontages, and within the carpark.

The applicable law

[5] The original application was made to the Council on 11 August 2003. The Resource Management Amendment Act 2003 therefore applies.

District planning documents and planning status

[6] The Napier City Transitional District Plan was promulgated under the Town and Country Planning Act 1977. Under that Plan the site is within the *Pandora Manufacturing* [illegible]. There is no provision for a proposal such as the present in that Plan and it would therefore be *non-complying* with no specified assessment criteria.

[7] The Proposed District Plan was notified in 2000 and is not yet operative, although we understand that the process for public participation is almost at an end and that recommendations *in principle* have been made by the Council's Hearing Committee. We are informed that it is unlikely that there will be any substantial change to the proposed zoning of the relevant site. The Proposed Plan has the site within the *Main Industrial Zone* but it also has Objectives, Policies and Performance Standards which enable a wider range of activities than would be possible under the Transitional Plan. Some limited retail activity would be permitted on the site but the large format retail proposal would be a *discretionary* activity. There are assessment criteria for assessing non-industrial uses within the zone.

[8] As between the Transitional and Proposed Plans, the Transitional Plan is now approaching 20 years old, and was prepared under the earlier legislation. The Proposed Plan has now progressed to the point where it represents fairly settled thinking on the part of the Council, and its Policies and Objectives about the Industrial zones provide useful guidance, as do its assessment criteria. Subject to what we are about to say in the next two paragraphs, we think predominant weight should be given to the Proposed Plan.

[9] The Proposed Plan has no category of *non-complying* activity. Note 1.6.1 contains this explanation:

> The Council has deliberately avoided the use of the non-complying activity status as it is generally not well understood by resource users and has not been widely applied. Land uses that do not comply with all of the relevant conditions can be successfully dealt with by means of the discretionary activity status. This approach is also in line with the proposed changes to the Resource Management Act.

As is evident, the Plan was drafted at a time when mooted amendments to the Resource Management Act would have done away with that status altogether, and the draft anticipated that. That legislative change did not occur, but the Council has retained the Plan strategy. In the end, the absence of that status may not make much practical difference, save that it does remove from the spectrum a classification of activity which, while short of *prohibited*, might be taken as implying a presumption against the activity, with the possibility that it might win through if it can, as a preliminary step, pass either of the s104D gateways. It does also raise an issue about the decision in *Doherty v Dunedin City Council* (C6/04). That Decision held that, by definition, a *discretionary* activity cannot be contrary to the objectives and policies of

a Plan and that as a *discretionary* activity it is accepted as being generally appropriate in the relevant zone. Some counsel submitted that, even in the case of a Plan with a *non-complying* status, that decision may go one step too far. We think we need not try to resolve that general issue here. It can at least be said that where what would elsewhere be *non-complying* activities are to be dealt with as *discretionary*, then *discretionary* must logically include activities that might be contrary to objectives and policies. That is because *non-complying* activities do include those which conflict with objectives and policies, but they might still be consented to if their adverse effects are no more than minor.

[10] It is common ground that the activity is non-complying under the Transitional Plan and discretionary under the Proposed Plan. The proposal must therefore in any case first pass through either gateway in s104D, before we can assess it under the general discretion in s104. Strictly, the activity requires consents under both Plans: see *Bayley v Manukau CC* [1999] 1 NZLR 568.

[11] As an aside (to which we shall return) witnesses versed in local real estate trends say the comment in the Proposed Plan at 2.1.1 that:

> Research has shown that there is ample vacant land, infill potential and empty industrial premises within the City's existing industrial areas to cope with the anticipated level of market demand for industrial sites well beyond the 10-year lifespan of this district plan. Consequently there is no need to expand the presently industrially zoned areas

has already been proved wrong. There is in fact a shortage of larger (2ha or more) industrial sites close to the City.

[12] We set out what seem the more important Objectives and Policies from the Transitional and Proposed Plans in Appendix 1.

Regional planning documents

[13] The Hawkes Bay Regional Council is finalising outstanding references to its Proposed Regional Resource Management Plan. That Plan will include the Regional Policy Statement (which is already operative) and the Operative Regional Air Plan. The Proposed Regional Plan defines the issue of conflicting land use in this way:

> The occurrence of nuisance effects, especially odour, smoke, dust, noise, and agrichemical spray drift, caused by the location of conflicting land use activities. (Section 3.5.1)

We have collected what appear to us to be the most relevant Objectives and Policies of this Plan in Appendix 2.

[14] Both the Regional Council's Environmental Regulation Manager, Ms Helen Codlin, and the Regional Council's Consultant Planner, Ms Rowena Macdonald, confirmed the Regional Council's concern about reverse sensitivity issues, particularly odour. They foresee the possibility that even if there are *no complaint* convenants in the leases, at the very least shoppers will bring their complaints about odour to the Regional Council.

Retail Strategy

[15] In October 2003 the Council adopted a Retail Strategy as a framework for the management and sustainability of future retailing patterns and the growth of retail activities across the city. It is the Council's intention, after the statutory procedures have been complied with, to incorporate elements of the Strategy into the Proposed Plan, but that is some way off yet. For the moment the document has no formal status, but it might be taken as at least an indication of the Council's general thinking on the topic. It was, apparently, the product of considerable consultation, which is laudable in its own way, but the document is criticised by Mrs Sylvia Allan, the Port's consultant planner, as being a *camel*: - a horse designed by a committee - and as lacking rigorous analysis of the issues. That may be a little harsh. The document has its uses, among them a spin-off appraisal of the traffic issues arising from the Report's scenarios, completed by Traffic Design Group in association with Gabites Porter. It may also be a relevant consideration among the *...any other matters...* to be considered under s104(1)(c), if the proposal passes the gateway tests and we consider other elements of s104.

[16] The Strategy recognises the possibility of large format retailing in Industrial zones where:

- individual tenancies have a minimum floor area of 500m2
- at least 75% of tenancies have a floor area of or exceeding 1000m2
- there is a café/and or lunch bar per 10,000m2 of floor area.

This proposal would not comply with the second or third of those points, although it was not suggested that the lack of a food outlet was significant. In fact, given the reverse sensitivities

raised, such an absence may be an advantage. In terms of the second point, 55% of the 11 proposed tenancies would have a floor area of or exceeding 1000m2. Arguably, it may not comply with other suggested criteria about access and parking either, but the carparking issue is dependent on traffic generation, and we shall discuss the difficulty of accurately predicting that. We are inclined to accept the view that the proposed number of parks will be quite adequate.

[17] The assessed level of interest in retailing upon which the Strategy was based has already been outstripped. According to Mr Thompson, the City's requirement for new large format retailing space is now assessed at 70,000m2. Previously, the assessed space requirement over the next five years, or even more, was 30,000m2. (See Mr Copeland's evidence at para 32).

Permitted baseline

[18] In discussing the permitted baseline concept, it is necessary to bear in mind that it is a baseline of effects that is to be considered, not activities. There was considerable discussion about the permitted operation of retailing in the zone, provided that the space it occupied did not exceed 35% of the area of the relevant site. That is to allow for operations such as garden centres, building suppliers and the like. Large format retailing would almost certainly produce more traffic than those sorts of operations. Apart from that it seems to us that the effects which could be generated by permitted activities in this industrial zone are plainly well beyond anything that could be reasonably contemplated as arising from the proposal. Unless the world goes completely mad, a large format store, or even eleven of them, selling such things as furniture, whitewear, fabrics and the like, are not going to be noisier, smellier, dustier, or produce more effluent than, say, an abattoir/tannery, or a sawmill.

[19] We cannot therefore imagine that there might be adverse effects created by the proposal, with the possible exception of traffic generation, that will exceed the effects of permitted and non-fanciful baseline activities. That needs to be acknowledged. But the two situations are just so different that we see no assistance in trying to take the concept of baseline further than that simple acknowledgement: ie that the proposed activity is, in comparison with what might otherwise occur there, relatively benign. We do not need to go so far as to exercise our discretion under s104(2) to put the permitted baseline entirely aside, when and if we come to examine the proposal under s104(1)(a).

Principal issues

[20] From the range of submissions and evidence presented, four principal issues arise for consideration both in terms of the gateway tests under s104D and, assuming either of those is passed, under the general criteria of s104. They are:

[a] Whether traffic generated by the proposal will cause significant adverse effects to the road network in the vicinity of the site.

[b] Whether the sensitivity of the activity may result in reverse sensitivity effects for adverse effect emitting neighbouring activities.

[c] Whether the use of the site for a non-industrial activity might adversely affect the sustainability of the surrounding industrial land resource. (This may be better phrased as an issue of plan integrity and of attempting to achieve *sustainable management*).

[d] Whether any effect of the proposed activity might have adverse effects on transport to and from the Port of Napier or the ability of the Port to be supported by industrial infrastructure.

Traffic generation

[21] In the course of cross-examination of Mr MacKenzie, the applicant's consultant traffic engineer, Mr MacRae put to him paragraphs from the Court's decision in *The National Trading Company of New Zealand Limited v North Shore City Council* (A 182/02). The paragraphs referred to were a discussion by the Court of so-called *pass-by trips*:- ie an estimate of vehicle movements into and out of a development which arise from vehicles which would have passed the development in any event, rather than going to it as a specific destination.

[22] That point is perhaps not of immediate relevance. But *The National Trading Company* decision turned almost entirely on questions of traffic generation and its effect on the surrounding roading network. We particularly noticed a comment from the Court in the context of estimates of traffic generation. The Court said this:

> The amount of traffic that would be generated by a future food market is not susceptible of calculation. Having heard the experts' opinions, we have to make our own finding, recognising that in the nature of the subject matter, the amount of traffic generated cannot (and need not be) be predicted with precision.

[23] In answer to a question from the Court, Mr MacKenzie accepted that that was the situation here. He confirmed, as is plain, that nobody can really know how much traffic will be generated by this proposal. The best that can be done is to give estimates based on certain assumptions. If those assumptions prove to be wrong, the estimates will be wrong. It is futile to pretend that calculations of likely traffic generation are a precise science. They simply are not.

[24] The point is emphasised by Mr Mark Georgeson who was subpoenaed to give evidence for the applicant. Mr Georgeson is a member of the same traffic engineering consulting firm as Mr MacKenzie, but had been independently retained to undertake a study for the Napier City Council on traffic management proposals arising out of various retailing scenarios being considered for the City. The study projected estimates out to the year 2026. The two engineers operate from different offices of the firm and, we accept, undertook this work completely independently. Mr Georgeson acknowledged that he and Mr MacKenzie would have different conclusions about estimates of traffic volumes likely to be generated by the proposal. His figures would be somewhat higher than Mr MacKenzie's. Nevertheless, his conclusion was that whichever set of figures was taken, the roading network in the immediate area was well able to cope without significant modification. His further view was that if the proposal generated more traffic than was expected, or if other developments in the area added to traffic generation, modifications were possible to the network, particularly to the Pandora Road/Thames Street intersection, which would enable it to deal with future traffic flows.

[25] In common with other traffic engineering witnesses, Mr Georgeson made reference to the Roads and Traffic Authority (RTA) "Guide to Traffic Generating Developments" (December 1993, Issue 2.0). We understand that this document is regarded as a useful and authoritative reference to assist in making estimates of likely traffic flows to be generated by various types of developments. At paragraph 3.6.8, the Guide discusses traffic generation by *Bulky Goods retail stores* in surveys undertaken to provide figures for the Guide. A variety of Bulky Goods retail stores ranging from specialist furniture stores to lighting and electrical appliance retailers, were surveyed. The weekday evening range extended from 0.1 to 6.4 vehicles per hour per 100m^2 of gross leaseable floor area (GLFA). The range for the weekend was from 0.7 to 16.9 vehicles per hour per 100m^2 of GLFA. That range would seem to amply support the comment in paragraph 3.6.8:

> The trip generation rates varied so widely that average generation rates cannot be recommended.

The comment we have cited from the *National Trading Company* decision seems amply supported. We find it difficult, and in the end unhelpful, to try to make decisions based on any particular traffic statistic. The proposal will undoubtedly generate some traffic, and in all probability that increase will be significant. The issue to focus on is whether the local roading infrastructure is robust enough to cope with a statistically significant increase.

General traffic issues and local infrastructure

[26] Part of the Port of Napier's concern was the possible effect of the development on the potential use of its land adjacent to Thames Street. It owns some 7ha on the northern side of Thames Street. The Port's General Manager, Mr Donald Cowie, told us that it is possible (but only possible) that the Port may choose to move its container storage depot from its wharf site to the land at Pandora. If it did so, it would generate, on present rates of turnover, some 39,000 truck movements to and from the Port each year; ie an average of over 100 movements for every day of the year. If that ever came about, he agreed, the Thames/Pandora intersection would require an upgrade, regardless of whatever might happen on the subject site.

[27] There is considerable conflict about the capacity of the surrounding roading network to absorb the sort of increases likely to be generated by the proposal, whatever that might be. Mr Tuohey, the appellant's traffic engineer, believed that the applicant had underestimated traffic generation and that at a more realistic volume the Pandora/Thames intersection would not safely and efficiently cope. Mr Georgeson's study assesses Pandora Road as having significant redundant capacity, enabling it to absorb future increases in traffic flows. Mr McKenzie has concerns about delays and safety at the Pandora/Thames intersection. He believes that there is likely to be a particular problem with traffic turning right out of Thames St to travel south on Pandora Rd. But those concerns seemed to presume that the intersection was unchangeable, which of course it is not. Roads are not ends unto themselves, they are there to serve the traffic that requires to use them. If the design of an intersection is inadequate for increased traffic, then it can be changed, with one option at least being the installation of a roundabout. We saw nothing that persuaded us that any potential problem with this intersection was irresolvable. While recognising the possibility of some issues arising for Pandora Road and Thames Street, we do not see them as of a magnitude that would cause us to decline the consent.

[28] We do though accept that there could be issues about Tyne St. For understandable reasons, the proposal is that all traffic leaving the development's carpark will do so into Tyne St, and will then turn right onto Thames St. Effectively, that will mean that almost all of its traffic will enter off Thames St, and leave by Tyne St. The Mainfreight depot at the end of Tyne St, and the AFFCO plant, will continue to produce substantial truck traffic and there will also be truck traffic generated by the proposal itself. There is an obvious potential for conflict between the two types of traffic on Tyne Street in particular. This is an effect which deserves attention in its own right, and it is also, potentially, an issue of reverse sensitivity which is of concern to AFFCO at least. We turn next to consider reverse sensitivity as a separate issue.

Reverse sensitivity

[29] It is almost inevitable that industries of various kinds and scales may produce effects on their surrounding environments, or at least people believe they do. In turn, reactions to those effects, or perceived effects, by way of complaints or actions in nuisance can give rise to pressures on the industries that can stifle their growth or, in an extreme case, drive them elsewhere. That stifling, or that loss, may be locally, regionally or even nationally significant. If an industry or activity likely to emit adverse effects seeks to come into a sensitive environment, the problem should be manageable by designing appropriate standards and conditions, or by refusing consent altogether. It is when sensitive activities seek to establish within range of a lawfully established effect emitting industry or activity that management may become difficult. This is the concept known as *reverse sensitivity*. A very helpful definition of the concept comes from an article by Bruce Pardy and Janine Kerr: *Reverse Sensitivity – the Common Law Giveth and the RMA Taketh Away:* ((1999) 3 NZJEL 93, 94)

> Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

[30] In a number of previous decisions this Court has held that reverse sensitivity is itself an *adverse effect* in terms of s3 RMA (eg *Winstone Aggregates & Auckland Regional Council v Papakura District Council* (A49/02) para [12] and *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16, para [57]). That has a significant consequence.

If reverse sensitivity is an adverse effect, then there is a duty, subject to other statutory directions, to avoid, remedy or mitigate it, so as to achieve the Act's purpose of sustainable management. Whether one should deal with an adverse effect by avoiding it, remedying it or mitigating it is a question of judgement in each case. It will depend on a matrix of issues; for instance, the nature of the effect; its impact on the environment and amenities; how many people are affected by it; whether it is possible to avoid it at all and, if so, at what cost.

[31] Of the range of possible effects which might give rise to reverse sensitivity complaints: - noise, odour, vibration etc, noise is not a live issue here. The evidence of Mr Hegley for the applicant was not seriously disputed and no other acoustic evidence was called to contradict his views. Of the appellants, AFFCO is concerned about complaints of odour emitted from its tannery immediately opposite the site on Tyne St. Richmond's main concern is about odour complaints also. It has a plant in Mersey St, a block west of the site. Napier Sandblasting is also in Mersey St, next to Richmond, and it is concerned about possible complaints about dust. There are other industries in the Pandora industrial area, such as another, smaller, tannery, a timber sawmill and so on which might also be possible candidates for complaints from an incoming sensitive activity. We have mentioned in para [28] the issue of traffic in Tyne Street as potentially giving rise to reverse sensitivity concerns also. Of all of those possibilities, traffic is the one which stands out as being the most difficult, if not practically impossible, for the existing activities to internalise. As discussed in *Winstone Aggregates v Matamata-Piako District Council* (W55/04), emitting activities should be required to internalise effects to the greatest extent reasonably possible, although the law does not require total internalisation in every case.

[32] We see large format retailing as rather middling on the scale of activities which are sensitive to industrial effects such as noise and odour and on the scale of those likely to produce complaints and thus reverse sensitivity. Unlike activities such as residential, educational or health care, for instance, shopping centres are not places people (or at least the shoppers) have to remain in. If shoppers find the amenities unpleasant, they can and will leave, and not return. There will not be the sort of attractions in the development to encourage it being seen as a leisure destination. There will not, for instance, be cafes or outdoor markets or activities. If shoppers do stay away because of adverse effects, we do recognise the likelihood that the tenants will almost certainly promote complaints from their customers, even if *no-complaints* covenants in their leases prevent them from complaining themselves.

But complaints based on perceived trading issues, rather than genuine adverse environmental effects, can be recognised for what they are. On the other hand, if emitted odour is objectively offensive and objectionable beyond the emitting site boundary, then the emitter will almost certainly not be complying with its own discharge consent, and the complaint may be entirely justified. We add that we accept the validity of the suggestions made in evidence that industrial activities are likely to be tolerant of the effects emitted by other industries, if only on a tacit *live and let live* basis. That is a tolerance less likely to be shared by different classes of activities.

[33] Nor does history suggest that there is a great problem here. The closest parts of the residential area of Napier Hill are of the order of only 200m from the Pandora zone boundary, but there is only a very modest history of complaint from residents about adverse effects. Mr Rhys Flack, the General Manager of Richmond's Leather Division says that there has been no recorded complaint about odour from the Richmond's tannery in Mersey St in the last five years. Odour is probably one of the more difficult effects to internalise. In general terms, the Richmond operation is comparable in scale with the AFFCO plant.

[34] The Ahuriri Mixed Use zone, containing what seems a surprising combination of commercial, retail, residential and semi-industrial activities, commences on the other side of Pandora Rd and Thames St from the site. The two zones appear to co-exist in harmony. Mr Stephen Hill has for five years operated a car sales yard in the mixed use zone, on the corner of Thames St and Pandora Road, immediately opposite the site. He gave evidence for the applicant. He has more than 100 cars on his site, and most of the contact with prospective purchasers is conducted in the open air. He says that the only noticeable noise comes from Pandora Rd itself, not from local industry. There is occasionally a noticeable odour, largely dependent on wind direction. It is not strong enough to call for comment, and has never been complained about. For his business, he says that odour is *...simply not an issue.*

[35] We acknowledge the possibility of reverse sensitivity issues arising, but we are not convinced it is a major issue. On its own, it would not have persuaded us that consent should be refused.

Non-Industrial Use of Industrial Zoned Land

[36] We mentioned briefly at para [11] that the confident assertion in the Proposed District Plan that the City was well provided for in terms of industrial land has not proved to be accurate. We have looked to the evidence of Mr John Reid, who practises as a property analyst and valuer, and Mr Francis Spencer and Mr Patrick Turley, both of whom similarly practise in land valuation and consultancy. Mr Spencer estimates that the subject site, at 2.7ha, comprises about 3% of the industrially zoned land in Pandora and Corunna Bay. On its face, that seems like a relatively small amount of land. In turn, the total area of Pandora and Corunna Bay represents about 28% of the total industrial land in Napier City. But both witnesses agree that industrial zoned land in lots of 2ha or more is simply not available for purchase in Pandora, and that there is a significant unsatisfied demand for Lots of that size in particular. While perusal of a map or aerial photograph would indicate that there are areas of vacant land in Pandora, that appearance is misleading. More than 20ha of that land is, we understand, in Crown ownership and is not presently available for sale because it is being reserved for possible settlement of Treaty claims. There is 12ha of land at Awatoto which is zoned as *deferred industrial*. Again we understand that this is not presently available for use as industrial land, and is unlikely to be so in the foreseeable future. There are issues about the nearby effluent treatment plant and the like.

[37] Mrs Allan's view was that not enough consideration has been given to alternative sites for a large format retail development. She said: *There are other possible sites, which are more appropriate locations for a large format retail development in Napier:* although it was not quite clear what alternative sites she had in mind. Mr Turley, the Port of Napier's consultant valuer, mentioned possible alternatives in the Lagoon Farm development (which he acknowledges would require a plan change) and the old *Write Price* site in Wellesley Road. In the end, we think we need to decide this on issues other than the insufficient exploration of alternatives, as a topic in itself.

[38] Mr Spencer mentions that there is possibly 12ha of land presently in the Rural Zone which might be the subject of a rezoning application to make it industrial. That seems to be simply a possibility at the moment. It is not presently available. The problem cannot be solved by simply rezoning other land as industrial. As Mrs Allan points out (para 6.11) Napier is running out of greenfield options for any kind of expansion. Residential growth can be accommodated in the western hills, but that is not an option for industry.

[39] The end result is clear enough. Napier presently has little available industrial land at all, and none in lots of 2ha or more. It is therefore presently a scarce and increasingly valuable resource. The issue of the sustainable management of that resource therefore comes into sharp focus. Mrs Allan regards this shortage as a significant factor. In her opinion it is *...not sound planning...* (para 2.17) to use this scarce resource for retailing purposes. Reflection since the hearing has brought us to the same view. It is now apparent that the City has an unsatisfied demand for industrial land, particularly in larger lot sizes. Equally, the current demand for large format retailing space was unforeseen and has taken the planning process by surprise, but that is not a reason to place that activity on land that should be reserved for activities requiring particular, and scarce, attributes.

[40] There is a related issue. At a cost of some $3M the Council has constructed a trade waste sewer to service the Pandora Industrial zone. It discharges to the Awatoto effluent treatment plant. The capital cost is recovered from users by way of trade waste charges. Objectors to the proposal express concern that a non-industrial use of the site will lessen the number of contributing users, thus raising the per capita cost to the users. The wool store on the site at present does not use the trade waste sewer, nor is there any assurance that an incoming industrial activity would use it either. It would depend entirely on the type of industry being conducted. Again, this is an issue that, taken on its own, is not of anything like decisive weight. But it does help bring home the point that Pandora has been zoned as an industrial area, and provided with infrastructure to deal with the effects of significant and *wet* industrial activity.

[41] It is true that, to a degree, the provision of land for industrial purposes is a regional issue, and that land at Whakatu and closer to Hastings City may be available. But adequate provision of industrial land close to Napier remains a significant issue. Local economic well-being, by way of employment opportunities and otherwise, is an issue addressed by both Napier Plans. Additionally, proximity to the region's port and airport are factors for some industries at least.

[42] This is a piece of land of land of some 2.7ha within a clearly defined industrial zone, with other industrial activities closely adjoining. The proposed activity has potential effects for that industrial zone (even if they are not individually acute) and will not add to the

efficient use of the trade waste sewer. More importantly, it will occupy a category of land that is in very short supply and which cannot presently be duplicated elsewhere within Napier City. Because of its effects, industry needs to go into an industrial zone. Large format retailing does not need to go into an industrial zone. It is an activity which has traffic generation issues (even if they may be largely unquantifiable in advance) but does not produce *noxious* effects, such as odour, noise, vibration or dust. It can be accommodated within a much wider spectrum of land categories than any true industrial activity. It cannot be assumed that sites or activities are interchangeable. While the RMA is permissive and effects based, Plans allocate zones in recognition of the likely effects of types of activities.

[43] We do not see this as an issue of precedent. It is rather an issue of plan integrity and of promoting *sustainable management.* That is, the management of the use of a scarce resource in a way which best enables the community to provide for its economic well-being and safety, while avoiding, remedying or mitigating adverse effects of, in this case industrial, activities on the environment.

Effects on transport to and from the Port.

[44] While originally put as a separate ground of objection to the proposal, in substance this head is really a sub-set of the general traffic and roading infrastructure issue, which we have already discussed. If the Port does relocate its container storage facility to its Thames Street property, the Thames/Pandora intersection will need substantial attention in any event. That possibility aside, there was nothing in the evidence that caused us concern about access to the Port generally, whether via Hyderabad Road, or by any other route.

The s104D gateways

[45] It may make our thinking clearer if we address the s104D gateways in reverse order. In paras [36] to [43] we have set out our concerns about the appropriateness of using this piece of land for other than industrial purposes. Addressing the provisions of the two Plans demonstrates that the issues giving rise to those concerns are captured in the Plans. We refer in particular to:

Transitional Plan:

Objective 14.3.1 and Policy 1

Objective 14.3.2 (in the sense that if this land is not retained for industrial use there may be pressure to locate industry in other, less suitable places), and Policies 2 and 5.

Objective 14.3.3 and Policy 2

Objective 14.3.4 and Policy 1

Proposed Plan

Objective 22.2 and Policies 22.2.1 and 22.2.2 (and their accompanying reasons).

Objective 22.3 and Policies 22.3.1 to 22.3.4 (and their accompanying reasons).

We have said that the Proposed Plan should be given more weight, but note that s104D(1)(b)(iii) draws no distinction between *relevant* and *proposed* plans. In any event, in our judgement the concerns we have outlined mean that this proposal is contrary to those Objectives and Policies of both Plans, in the sense that it is in conflict with them, not just that it cannot find support in them, or support in other provisions of the Plans.

[46] Turning to the question of effects, the same sets of issues come into play. In paras [26] to [28] we discussed adverse effects on Traffic and roading infrastructure. While not of themselves of sufficient moment to decline consent, they did raise a live issue. Similarly, in paras [29] to [35] we discussed the adverse effect of reverse sensitivity. Again, while not of itself of sufficient weight to require a refusal of consent, this too raised a live issue. Most significantly, the potential adverse effects of allowing the scarce resource of industrial zoned land to be used for an activity which does not need land of that category has been discussed in paras [36] to [43].

[47] The last of those, for the same reasons that put it in conflict with the Objectives and Policies of the Plans, would be of itself be sufficient to take the adverse effects beyond the scope of *minor*. When put together with the traffic and reverse sensitivity issues, the cumulative adverse effects, or, put another way, the accumulated effects of those phenomena are undoubtedly more than *minor*.

[48] On that analysis, we cannot be satisfied that the proposal passes either of the gateways contained in s104D. It follows therefore that a resource consent may not be granted.

[49] Given the absence of a non-complying status from the Proposed Plan, we are conscious that such a view may not be thought entirely adequate. So we should say that if we were considering this proposal solely as a discretionary activity, or if we were not brought to those conclusions about s104D, the very same process of analysis would have lead us to decline consent in the exercise of our judgement under s104. The use of this land for a non-industrial

purpose is definitely not, in our judgement, something which will promote *sustainable management*. We should say that we heard significantly more evidence and submissions than did the Council's Commissioner, and that it is an analysis of all of that material that has brought us to a different result.

Result

[50] For the reasons we have outlined, the decision of the Council is not upheld, and the resource consent is declined.

Costs

[51] Any applications for costs should be lodged within 15 working days from the release of this decision, and any response lodged within a further 10 working days.

DATED at Wellington this 4th day of November 2004

For the Court

C J Thompson

Environment Judge

APPENDIX 1

Relevant Objectives and Policies

Transitional District Plan

Objective 14.3.1:

"To provide the opportunities for industrial growth in the district to ensure ample employment opportunities for the people of Napier."

Policies:

"1. For the Council to develop and service land for industrial purposes either as a landowner or in consultation with other landowners.

2. To co-ordinate with other Government and local agencies to ensure that all the essential services are available to meet the demand for industrial land."

Objective 14.3.2:

"To provide locations for industries to establish so that they have the least disruptive effect on the residential suburbs."

Policies:

"1. To encourage noxious industries to locate at Awatoto or to modify their options so that they can be accepted within the city.

2. To retain Onekawa and Pandora as the principal industrial sub-districts for Napier.

3. To retain a substantial area of Ahuriri for industrial activities.

4. To permit certain service industries within the commercial sub-district and retain some areas for service industries adjacent to shopping centres.

5. To establish a new industrial area to the west of Pandora. The development of this area to be known as The Pandora West Sub-District, will depend on the demand for land and the financial resources of developers and the local authorities."

Objective 14.3.3:

"To ensure that the industries are compatible and that the combined effect is not detrimental to the environment."

Policies:

"1. To establish a hierarchy of industrial areas which recognises the compatibility of industrial groups.

2. To control the effects of industries on each other and on the adjoining residential areas by the use of performance standards."

Objective 14.3.4:

"To ensure an efficient use of land to satisfy... industry."

Policies:

"1. To encourage the utilisation of industrial sites that are already fully serviced to avoid the creation of an excess of developed land before demand.

2. To ensure that the siting of buildings allows sufficient open space for storage of goods and materials, the loading and unloading of trade vehicles and the manoeuvring of all vehicles associated with the site."

Proposed District Plan

Main Industrial Zone

Objective 22.2:

"To enable the continued use and development of industrial activities and resources through:

- *The identification of defined areas for industrial activity.*
- *The provision of clear and certain environmental performance standards within, or in some cases adjacent to those industrial areas.*
- *The restriction of sensitive land uses in defined industrial areas."*

Policies:

"To achieve this Objective the Council will:

22.2.1 Continue to zone the Pandora, Onekawa, Awatoto and Port of Napier areas for industrial activities.

22.2.2 Enable and provide for the use and development of physical industrial resources without unnecessary restriction. ...

22.2.4 Ensure the avoidance, remediation or mitigation of adverse environmental effects associated with the establishment and location of sensitive land uses within the identified industrial areas."

Principal Reasons for Adopting Objectives and Policies

Pandora, Onekawa, Awatoto and Port of Napier have traditionally been utilised for industrial activity purposes. Much of Napier City's industry is located in these areas. Thus, it is important that these areas continue to be zoned industrial to provide certainty for these businesses, and prevent undue restrictions being imposed upon industrial activities that would not otherwise be able to operate and develop elsewhere within the City. ... Sensitive land uses should be carefully assessed before being permitted to establish within or adjacent to existing industrial activities that are operating using the best practicable method, in the defined industrial zones. Reverse sensitivity arises when a sensitive land use is located next to a less sensitive one, which then potentially constrains the operation and viability of the encroached land use by demanding increasing levels of amenity or reduction in risk that which was previously acceptable. For example, careful consideration would be needed for a people orientated land use to be permitted next to a bulk storage facility, which could raise reverse sensitivity issues.

Objective 22.3:

"To avoid, remedy or mitigate the adverse effects on the environment of land uses within the industrial areas of the City."

Policies:

"To achieve this Objective, the Council will:

22.3.1 Ensure that land uses are managed to avoid, remedy or mitigate any adverse effects on the environment and people's health, safety and well-being.

22.3.2 Control retailing land uses to retain the existing amenity of industrial zones and to manage the adverse effects on the environment, particularly the roading network.

22.3.3 Control the establishment of sensitive land uses within the City's industrial areas.

22.3.4 Ensure that non-industrial activities do not compromise or limit the efficient and effective use and development of existing lawfully established industrial activities, or new industrial activities."

Principal Reasons for Adopting Objectives and Policies

It is important that industrial activities are provided with a location, and accompanying operating conditions, that allow them to undertake their business activities with certainty. However it is also important that environmental standards and the wellbeing of people within and adjacent to industrial areas are not compromised below acceptable levels.

Significant effects can be generated as a result of industrial traffic and increased numbers of vehicles due to retailing land uses occurring in industrial areas in Cities. Limiting the scale of retailing land uses occurring in industrial areas ensures that any adverse effects associated with increased traffic flows are avoided. Retail land uses, if left unmanaged, can also have an adverse effect on other physical resources throughout the city, primarily the art deco building resource of the Central Business District.

Sensitive land uses are likely to be susceptible to effects generated by typical industrial activities now and in the future. This may lead to the occurrence of reverse sensitivity, potentially leading to limits on traditional industrial operating requirements. Discouragement of sensitive uses in the industrial areas of Awatoto, Onekawa, Pandora and service industrial type areas will ensure that industrial uses are not compromised by reverse sensitivity issues.

APPENDIX 2 PROPOSED REGIONAL PLAN

Particularly relevant Objectives and Policies under the Regional Plan are:

Objective 16

For future activities the avoidance or mitigation of nuisance effects arising from the location of conflicting land use activities.

Policy 7

Problem Solving Approach – Future Land Use Conflicts

To:

a) Recognise that the future establishment of potentially conflicting land use activities adjacent to, or within the vicinity of, each other is appropriate provided no existing land use activity (which adopts the best practicable option or is otherwise environmentally sound) is restricted or compromised. This will be primarily achieved through liaison with territorial authorities and the use of mechanisms available to territorial authorities, which recognise and protect the ongoing functioning and operation of those existing activities. ...

Policy 8

Decision-making Criteria – Odour Effects

To have regard to the following factors when considering conditions on resource consents where a discharge of odour to air occurs:...

c) The nature of the local environment where odour may be experienced and the reasonable expectation of amenity within that environment given its zoning...

e) The extent to which lawfully established resource use activities operate in a manner that adopts the best practicable option, or which is otherwise environmentally sound.

Section 3.5.7 of the Plan states:

The crux of this principle is that where an existing activity produces a situation that a new activity would likely regard as noxious, dangerous, offensive or objectionable, then the new activity should not be sited next to the existing one. Alternatively, safeguards should be put in place to ensure that the new activity does not curtail the existing one.

ORIGINAL

Decision No. A103/2003

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of two appeals under section 120 of the Act

BETWEEN **INDEPENDENT NEWS AUCKLAND LIMITED**

(RMA 901/01)

AUCKLAND INTERNATIONAL AIRPORT LIMITED

(RMA 906/01)

Appellants

AND **THE MANUKAU CITY COUNCIL**

Respondent

AND **CENTRAL GARDENS LIMITED**

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge R G Whiting (presiding)
Environment Commissioner C E Manning
Environment Commissioner D H Menzies

HEARING at Auckland on 3, 4, 5, 6 and 7 March 2003

APPEARANCES

Mr R Brabant for Central Gardens Limited
Mr S Brownhill for Manukau City Council
Mr D A Nolan and Ms C J Somerville for Auckland International Airport Limited

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

DECISION

Introduction

[1] The single main issue on this appeal is the potential for conflict between the owners and users of the Auckland International Airport and future residents of household units likely to be affected by the noise of landing aircraft.

[2] The appeal concerns an application for consent by Central Gardens Limited for the development of 349 household units on a Business 5 zoned site, at 18 Lambie Drive, Manukau City. The site is identified by the Manukau Operative District Plan 2002, as being subject to moderate and high levels of aircraft noise from aircraft operations at Auckland International Airport.

[3] The site is located directly beneath the westerly approach path for aircraft landing at the airport. Recognising the effect of noise generated by such aircraft, the district plan has endeavoured to minimise conflict between the development and use of the airport, and activities which are sensitive to airport noise. This is achieved by the adoption of rules for the purpose of limiting aircraft noise levels of more than Ldn 65 dBA to the high aircraft noise area[1] and noise levels of more than Ldn 60 dBA to the moderate aircraft noise area[2].

[4] The district plan also contains land use controls in relation to activities sensitive to aircraft noise[3] in the high aircraft noise area and moderate aircraft noise area. Household units, and therefore this development as a whole, are classified as activities sensitive to aircraft noise. Such activities in the high noise area are a non-complying activity. The majority of the site is located in the high aircraft noise area, with only the northern portion of the site located in the moderate aircraft noise area.

[5] The Council granted consent to the application on 12 September 2001. Auckland International Airport Limited appealed the Council's decision, primarily on the reverse sensitivity effects on the airport arising from the development. Independent News Auckland Limited, an industrial neighbour, also appealed on reverse sensitivity grounds, however that appeal was resolved. A draft consent order

[1] Referred to in the plan as HANA.
[2] Referred to in the plan as MANA.
[3] Referred to in the plan as ASANS.

was filed, the terms and conditions of which, formed the basis for the conditions of consent sought by Central Gardens.

[6] The Council initially resolved to defend its decision to grant the consent. Since the time of filing the appeals, the aircraft noise area rules of the then proposed plan (which was made operative, in part, on 21 October 2002) have changed as the result of a consent order issued by the Environment Court on 10 December 2001. As a consequence, the activity status of the proposal changed from discretionary to non-complying[4].

[7] Following the amendments to the proposed plan, the Council considered it necessary to review the proposal under the operative plan and determined not to support its original decision.

The locality and the proposal

[8] The property is zoned Business 5 under the district plan. It is 2.82 hectares in area with access legs to Lambie Drive and Ryan Place. It is effectively a rear site, although the width of the access leg at Ryan Place results in it meeting the district plan definition of a front site.

[9] The property is surrounded on three sides by industrial uses of various kinds, which include printing premises, a pressurised tank testing facility which releases odourised gases, warehousing, heavy vehicle servicing and panel beating.

[10] Immediately to the north of the site is an existing residential area with frontage to Ihaka Place. The north-east corner of the site adjoins the playing fields of the Seventh Day Adventist School which has frontage to Puhinui Road. The site is undeveloped and is basically flat (and gently contoured).

[11] The proposal is to construct, for residential use, 4 apartment towers, 23 terraced-houses, and 6 studio warehouse units. Associated with that development are the required site works, infrastructure facilities, parking, landscaping and facilities for the use of residents. These are to include a recreation building that would have a gym, lap pool, small shop and café. There would also be an outdoor

[4] At the time of the Council hearing it was also assessed as a non-complying activity under the then operative transitional plan.

swimming pool and changing room. Areas of open space around the buildings will be landscaped to provide a level of amenity for the development, as well as additional passive recreation areas.

[12] The 4 apartment tower blocks are to be arranged in a square configuration in the middle of the site, with recreation areas and the office/reception/gym building between them. Manager's accommodation will be on the upper level of that building. There will be two levels of parking for occupants, visitors, service vehicles and the like; one below ground, and one above.

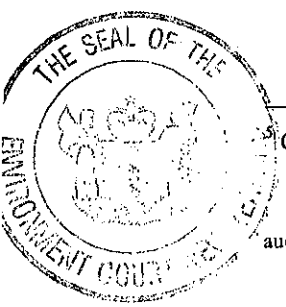
[13] The two-storied terraced houses are proposed to be built along the northern boundary at the interface with the adjoining Residential zone. Parking for these terraced houses is contained within each unit entitlement area.

[14] The six studio warehouse units with associated parking are proposed on the part of the site that has access to Ryan Place. These warehouse units provide an opportunity for small businesses to establish in premises that have flexible manufacturing/storage opportunities, office and living space.

[15] The main vehicle and pedestrian access to the property is from Lambie Drive. This has been designed as a two-way internal road providing access to all units. It will also comply with the requirements for emergency vehicle access. Vehicle and pedestrian access is also available through Ryan Place.

[16] The apartment towers each have 8 floors, with 10 apartments per floor, giving 80 apartments per tower. In addition, there are two levels of parking in each tower. The approximate height of each tower is 32.5 metres. There will be 320 apartments in total, 192 one-bedroom units and 128 two-bedroom units.

[17] The buildings comply with all the development controls and have been purpose-designed to meet the Council's latest Acoustic and Ventilation Standards for activities sensitive to aircraft noise.[5]



[5] Compliance with rule 5.21.4 – refer paragraph [48].

The hearing

[18] The hearing took place over a period of 5 days. During that time we heard extensive opening submissions from counsel. We also heard from a number of witnesses namely:

- Mr D J Snell, architect and designer of the proposal;
- Mr J M Burgess, traffic engineer;
- Mr A L McKenzie, mechanical engineer;
- Mr N I Hegley, acoustical consultant;
- Ms J A Hudson, planning and resource management consultant;
- Mr D J Medrickey, the project manager for the proposal – all called by Central Gardens.
- Mr J M McShane, environment and planning manager for the Airport Company;
- Mr D Osborne, planning consultant;
- Mr C W Day, acoustical consultant;
- Mr S Milne, executive director of the Board of Airline representatives of New Zealand Incorporated – all called by the Airport Company.
- Mr M A Nielson, resource management planner for the Council.

[19] At the conclusion of the evidence leave was given for the Airport Company and Central Gardens to file closing submissions. Two memoranda by Central Gardens and a memorandum by the Airport Company were filed – the last on Monday 19th May 2003. The closing memoranda were detailed and extensive, totalling in all 119 pages.

[20] In the interests of brevity we have not been able to address all of the matters referred to in the submissions and in the evidence. However, we have had regard to all that was said.

The relevant statutory setting and the legal framework

[21] As the proposal is a non-complying activity, sections 104 and 105 of the Act apply. The following parts of section 104 are relevant:

(i) subject to Part II – section 104(1);

(ii) the actual and potential effects on the environment of allowing the activity – section 104(1)(a);

(iii) the regional policy statement – section 104(1)(c); and

(iv) the district plan – section 104(1)(d).

[22] We are also required to determine whether the proposal satisfies the gateway criteria in section 105(2A). We therefore propose:

(i) firstly, to identify and discuss the relevant general criteria in section 104;

(ii) secondly, to discuss the gateway criteria in section 105(2A); and

(iii) thirdly, to exercise our discretion under section 105(1)(c).

Section 104 matters

Part II

[23] Section 5 is the "lodestar" of the Act. It was described in this way in ***Lee v Auckland City Council***[6]**:**

> In effect, section 5 of Part II of the Act is the only section in the present Act which contains the philosophy of sustainable management as its purpose, and the proscriptive criteria against which effects (as defined in section 3) and the plan provisions may be measured. Section 5 under the 1993 Amendment to the Act may be considered the "lodestar" which guides the provisions of section 104 and in this appeal we are guided by the over-arching purpose of sustainable management as defined.[7]

[24] The approach taken to the application of section 5 is now settled by several clear and consistent decisions[8].

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[6] 1995 NZRMA 241.

[7] At page 248.

[8] See *New Zealand Rail Limited v Marlborough District Council* 1994 NZRMA 70; *Trio Holdings Limited v Marlborough District Council* 1997 NZRMA 97; *North Shore City Council v Auckland Regional Council* 1997 NZRMA 59 (upheld on appeal in *Green and McCahill Properties v Auckland Regional Council* 1997 NZRMA 519); *Eden Park Trust Board v Auckland City Council* (A130/97); *Aqua Marine Limited v Southland Regional Council* (C126/97); and *Solid Energy New Zealand Limited v Gray District Council* (A8/98).

[25] The application of section 5 was summarised in ***New Zealand Rail Limited*** as follows:

> Part II of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not a part of the Act which should be subject to strict rules and principles of statutory construction which aims to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meaning and its connotations which is intended to allow the application of policy in a general and broad way.[9]

[26] The general approach taken by the Courts has been described as the "overall judgment" approach.[10] This requires an overall broad judgment of whether the proposal would promote the sustainable management of natural and physical resources. Such a judgment allows for comparison of conflicting considerations and the relative scale and degree of them[11], and their relative significance in the final outcome[12].

[27] Sustainable management requires that the use, development and protection of physical resources, in this case the Airport and the Central Gardens' site, be managed in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing – a matter that we will return to later in this decision.

[28] Also of relevance in this case is section 7, particularly:

(i) The ethic of stewardship – sub-paragraph (aa);
(ii) The efficient use and development of natural and physical resources – section 7(b);
(iii) The maintenance and enhancement of amenity values – section 7(c);
(iv) The maintenance and enhancement of the quality of the environment – section 7(f); and
(v) Any finite characteristics of natural and physical resources – section 7(e).

[9] Page 72.
[10] *Aqua Marine*, page 141.
[11] *North Shore City Council*, at page 93.
[12] *New Zealand Rail Limited.*

The relevant statutory instruments

The relevance of earlier plans

[29] We have already adverted to the fact that when the application was first assessed, the relevant district plan provisions included those under the transitional plan and the proposed plan. Since the time of filing the appeals, the proposed plan has been made operative and some of the plan provisions that the application is to be assessed against have changed significantly. All parties agreed that under section 88A of the Act, the operative plan is the only relevant district plan in terms of sections 104 and 105 of the Act.

The Auckland Regional policy statement

[30] Issue 2.3.4, contained in the "regional overview and strategic direction" section of the regional policy statement, is directly relevant to this appeal. It states:

> Regionally significant physical resources, including infrastructure, are **essential** for the communities' **social and economic wellbeing.** The location, development and redevelopment of infrastructure is of strategic importance in its effects on the form and growth of the region. However, the long-term viability of regionally significant infrastructure and physical resources can be compromised by the adverse effects, including cumulative effects, of other activities. These regionally significant resources can equally give rise to adverse effects, including cumulative effects on the environment, and on communities. **They can be adversely affected by conflicts if sensitive uses are allowed to develop near them or if they are inappropriately located.** (emphasis added)

[31] The policy statement goes on to say that regional infrastructure includes airports and airport flight paths. Examples of significant regional infrastructure are given in Appendix D. That appendix includes, as an example of regional infrastructure, the Auckland International Airport.

[32] The following key issues are identified in the policy statement (as part of Issue 2.3.4) in relation to regional infrastructure:

- Provision (or non-provision) of infrastructure is a major influence in the overall pattern and direction of regional development.
- The need for expansion, replacement or upgrading of infrastructure in order to avoid environmental problems and/or to increase the capacity of infrastructure to accommodate growth.

- The need to avoid, remedy or mitigate the adverse effects generated by proposed changes to infrastructure and to consider alternative ways of avoiding or remedying them. Relocation of infrastructure or restrictions on the location of infrastructure or restrictions on the establishment of sensitive land uses in close proximity may be required to overcome the environmental problems faced.

- An absence of co-ordination between infrastructure providers and other agencies responsible for urban growth and development may increase the likelihood of adverse effects.

[33] From these issues and the policy statements flow the "Strategic Direction" for the Auckland Region. Strategic objectives in 2.5.1 relevantly include:

> 1. To ensure that provision is made to accommodate the Region's growth in a manner which gives effect to the purpose and principles of the Resource Management Act, and is consistent with these Strategic objectives and with provisions of this RPS.
>
> ...
>
> ...
>
> 6. To promote transport efficiency, and to encourage the efficient use of natural and physical resources, including urban land, infrastructure, and energy resources.

[34] Strategic policy 2.5.2(3) further states:

> 3. Urban development is to be contained, within the metropolitan urban limits shown on Map Series 1 and the limits of rural and coastal settlements as defined so that:
>
> ...
>
> (iii) **urban intensification at selected locations** is provided for and encouraged. Selection of these places will take into account, amongst other things, any **significant adverse effects which arise from the interaction with any regionally significant infrastructure** and other significant physical resources. (emphasis added)

[35] Strategic policy 2.5.2(6) states:

> 6. Provision is to be made to enable the safe and efficient operation of existing regional infrastructure which is necessary for the social, and economic wellbeing of the region's people, and for the development of regional infrastructure (including transport and energy facilities and services) in a manner which is consistent with this strategic direction and which avoids, remedies or mitigates any adverse effects of those activities on the environment.

[36] The Airport is identified as a significant regional infrastructure in the regional policy statement. The statement notes that reverse sensitivity effects on regionally significant infrastructure must be taken into account when selecting locations for urban intensification.

The operative district plan

[37] As the proposal is a residential activity and the site is located in the Business 5 zone, the planning witnesses addressed both Business 5 and residential provisions of the plan. We have regard to those provisions. However, as we consider that the proposal fits comfortably within the relevant provisions of both the Business 5 and Residential zones, we do not propose to discuss them.

[38] Of particular concern to the issues raised by the appeal, are the objectives and policies relative to the Auckland International Airport. Section 17.6 of the district plan contains most of the resource management issues, objectives and policies relating to the operation of the airport, including the issue of aircraft noise and reverse sensitivity to that noise.

[39] Section 17.6.2.1 of the plan emphasises the local, regional and national importance of Auckland International Airport. This is reinforced in issue 17.6.2.2 which states in part that:

> There are significant positive effects arising from the operation of Auckland International Airport and it is important that the Airport is recognised and provided for so that it can serve the wider community, both now and in the future.

This is further reinforced by objective 17.6.3.8 which states:

> To recognise and provide for the positive effects arising from the operation of Auckland International Airport and to take these into account when considering any adverse effects of the Airport on the environment.

[40] The effect of aircraft noise is raised as an issue in Issue 17.6.2.7 which states:

> Amenity values and quality of the environment in some areas may be adversely affected by aircraft arising from use of the existing runway at Auckland International Airport.

The issue statement goes on to say:

> ...the District Plan recognises the importance of limiting the amount of additional residential development in areas affected or potentially affected by high aircraft noise (ie: aircraft noise levels greater than Ldn 65 dBA).

The issue statement having specifically identified additional residential development as a particular type of sensitive activity that should be limited within the high aircraft noise area, then goes on to state that:

> This is because, while it is possible to acoustically insulate dwellings and other activities sensitive to aircraft noise, it is not possible to use such methods to mitigate the effects of aircraft noise on the external environment.

[41] Issue 17.6.2.9 is also relevant. It states:

> The location of activities sensitive to aircraft noise in areas where high and moderate aircraft noise levels cannot be avoided creates incompatibilities between the operation of Auckland International Airport and land use activities.

The issue statement refers to as yet undeveloped areas of the City which are planned to accommodate regional growth and notes that parts of these areas will be adversely affected by aircraft noise. It then goes on to say:

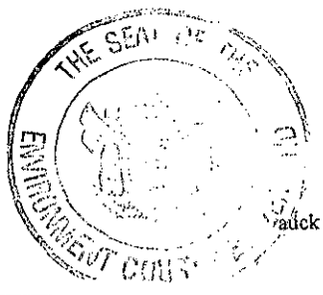
> Although they will still be able to be developed for residential purposes, as they are not within the High Aircraft Noise Area on the Planning Maps, they may require appropriate measures to be taken to mitigate aircraft noise such as the installation of acoustic insulation and ventilation systems. Within the High Aircraft Noise Area, the establishment of new Activities Sensitive to Aircraft Noise should generally be avoided, as people will inevitably be exposed to noise in the external environment.

This is further emphasised by objective 17.6.3.7 which says:

> To minimise conflict between the development and use of Auckland International Airport and activities which are sensitive to aircraft noise.

[42] In our view, policies 17.6.4.9, 10 and 11 are also relevant. They state:

> Policy 17.6.4.9
>
> The adverse effects of high and moderate levels of aircraft noise arising from the use of the existing runaway at Auckland International Airport on the amenity values and quality of life in existing and future residential areas of the City and on Activities Sensitive to Aircraft Noise in other areas should be avoided, remedied or mitigated.



The "Explanation/Reason" for Policy 17.6.4.9 says:

> The adverse effects of use of the existing runway can be avoided by limiting the location of sensitive activities in areas of high cumulative noise. Activities Sensitive to Aircraft Noise are defined in the District Plan to include activities, such as household units, hospitals, educational institutions, and rest homes. Adverse effects may be remedied or mitigated by the installation of acoustic insulation and ventilation systems in the case of buildings containing activities which are sensitive to aircraft noise within areas of high or moderate aircraft noise.
>
> ...
>
> and;
>
> Policy 17.6.4.10
>
> The location of new activities which are sensitive to aircraft noise in areas subject to high aircraft noise levels, (areas identified as being within the Ldn 65 dBA contour or higher are subject to high aircraft noise levels) should generally be avoided unless the adverse effects of those activities on Auckland International Airport can be avoided, remedied or mitigated.
>
> ...
>
> and further;
>
> Policy 17.6.4.11
>
> The location of new activities which are sensitive to aircraft noise in Business zones and the Mangere-Puhinui Rural zone which are subject to moderate aircraft noise levels, (areas identified as being between the Ldn 60 dBA contour and the Ldn 65 dBA contour are subject to moderate aircraft noise levels) should only occur if the adverse effects of those activities on Auckland International Airport can be avoided, remedied or mitigated.

[43] Interestingly the "Explanation/Reasons" for policies 7.6.4.10 and 7.6.4.11 says:

> The Airport and its flight paths are identified in the Auckland Regional Policy Statement as regionally significant infrastructure. The establishment of Activities Sensitive to Aircraft Noise within the High Aircraft Noise Area or, in the case of the Business Zones within the High or Moderate Aircraft Noise Areas, has the potential to compromise the sustainable management of that infrastructure.

[44] It is also worthy of note, that under paragraph 17.6.5 headed "Strategy for Aircraft Noise Management and Land Use Planning of Areas Affected by Aircraft Noise" the plan says:

> Areas of the City currently affected by aircraft noise arising from the use of the existing runway will continue to be affected. The degree to which some areas are affected may increase over time. In particular, there is an area within the Main Residential Zone which is bounded by Puhinui Road in the north, the NIMT in the west and the Grayson/Brett Avenue and Liverpool Avenue Business 5 land in the east and south which is and will continue to be within the High Aircraft Noise Area. Long term it is not desirable that this area remains zoned for residential purposes. It is the Council's intention to initiate a plan change and, subject to the outcome of that change, to set in place a programme to assist the transition of the area from residential to business zoning. It is envisaged that the Council would work with property owners and residents and stakeholders in the area to ensure that any such transition is as smooth as possible.

[45] The relevant issues, objectives and policies of the plan are given effect to by the rules and restrictions contained in the conditions of Designation 231 which relate to the Auckland International Airport and the rules in Chapter 5.21.

[46] Of importance is the definition of ASAN in Chapter 5.21:

> **"Activity sensitive to aircraft noise"** or **"ASAN"** means household units, minor household units, pre-schools/education facilities, schools, other educational facilities, childcare centres and other care centres, residential centres, hospitals, other health care facilities, rest homes and other homes for the aged.[13]

We note that activities sensitive to aircraft noise include a range of other activities in addition to household units. It is therefore necessary, when considering an application for a resource consent for an activity in one of the aircraft noise areas, to have regard to the type of activity that is subject to the application for consent.

[47] Under rule 5.21.2 an activity sensitive to aircraft noise shall be a non-complying activity save for some exceptions which are not relevant to these proceedings. Any such activity is subject to the acoustic standards and terms in rule 5.21.4. As mentioned, the proposal complies with the acoustic standards and terms of rule 5.21.4 and the relevant general development and performance standards.

[48] We also note, by way of analogy, rule 5.21.4C(g) which contains the following assessment criteria:

> **Nature, size and scale of development**
>
> (g) In the case of ASANS in the Business Zones in the MANA and in the case of any ASAN, (except household units, minor household

[13] Page 1, Clause 18 – Definitions, Plan.

> units and educational facilities) elsewhere in the MANA, whether having regard to all the circumstances (including location in relation to the Airport, likely exposure of the site to aircraft noise, noise attenuation and ventilation measures proposed, and the number of people to be accommodated), the nature, size and scale of development is likely to lead to potential conflict with and adverse effects upon Airport activities.

[49] The plan provides a two-fold method for managing the effects of aircraft noise, while at the same time providing for the continued operation and sustainable management of the airport as a significant physical resource. Firstly, by restricting the manner of the airport's operation by noise limitations and imposing obligations on the airport owners to acoustically insulate existing dwellings in areas affected by high and moderate aircraft noise. Secondly, by containing issues, objectives, policies and rules that control the establishment of activities sensitive to aircraft noise in the areas most affected by aircraft noise.

[50] Mr M A Nielson, a resource management planner for the Council, pointed out what he considered to be three particularly important points to draw on the district plan policies and accompanying explanations. These are:

(i) Policy 17.6.4.10 which specifically states that new sensitive activities in the high noise aircraft area should be avoided unless the effects of those activities can be avoided, remedied or mitigated;

(ii) Issue 17.6.2.7 indicates that the outdoor component of residential activities cannot be insulated from aircraft noise; and

(iii) The "explanation/reasons" to policies 17.6.4.10 and 17.6.4.11 state that new sensitive activities in the high noise aircraft noise areas have the potential to compromise the sustainable management of the airport.[14]

[14] Nielson, EiC, paragraph 17.17.

[51] We also consider it pertinent to refer to the "Anticipated Environmental Results" listed in clause 17.6.7 which relevantly states:

> From the identification of the resource management issues and the objectives, policies and rules for the Airport the expected environmental outcomes are identified as follows:
>
> - A reasonable quality of amenity values in rural, business and public open space zones adjacent to and neighbouring the Airport.
> - Avoidance of new Activities Sensitive to Aircraft Noise within the High Aircraft Noise Area.
> - Acoustic treatment of activities sensitive to Aircraft Noise within the High and Moderate Aircraft Noise Areas.

[52] On analysis, we are satisfied that the issues, objectives, polices and rules of the district plan demonstrate that generally, high density residential accommodation within the high noise areas should be avoided. The reason for such an approach is to avoid actual and potential effects on the airport, including the adverse effect of reverse sensitivity.

Effects of the proposal

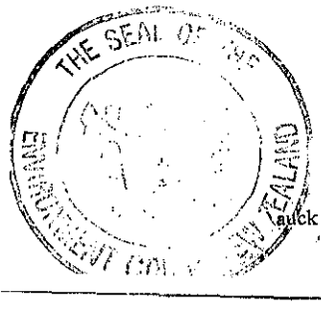
Positive effects

[53] In our view, a number of positive effects will result from the proposal. These include:

(i) the proposed development represents an efficient use and development of land and resources in that it will utilise a large area of land that has remained vacant for some time;

(ii) the proposal will enable people to reside close to employment opportunities and public transport, hence, it promotes more efficient use of transport networks and other infrastructure; and

(iii the site is designed and landscaped so as not to undermine or adversely affect either the adjacent industrial or residential areas.



Reverse sensitivity

Introduction

[54] As already noted, the single main issue in this case is the potential for conflict between the owners and users of the Airport and future residents of Central Gardens. It was submitted by Mr Nolan, on behalf of the owners of the airport, that reverse sensitivity effects on the airport will inevitably flow from granting the consent. Reverse sensitivity is relevant to section 105(2A)(a) "adverse effects on the environment", and section 104(1)(a) "actual and potential effects".

[55] The Airport Company's concern is succinctly encapsulated in paragraph 4.8 of the evidence of Mr Osborne where he said:

> Turning to the key issue of aircraft noise and reverse sensitivity, ...it is common ground that the site is exposed to high levels of aircraft noise. In the context of this application, the term "reverse sensitivity" refers to the likely sensitivity of new residents of the proposed residential complex to aircraft noise and the potential effect that resulting complaints or pressure from those residents could have on the future operations of Auckland International Airport.[15]

[56] Mr Osborne's comments reflect the reasons for appeal contained in the notice of appeal which assert that the proposed development:

> ...would expose a large number of people to moderate to high levels of aircraft noise in an area where residential uses are not expected to be located. The granting of consent therefore fails to take into account, or to adequately take into account, the reverse sensitivity effects of the proposed development on Auckland International Airport.

[57] Reverse sensitivity as a concept, although not specifically referred to in the Act, has been recognised as an effect that requires consideration.[16] In ***Auckland Regional Council v Auckland City Council*** the Environment Court defined reverse sensitivity as:

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[15] Osbourne, EiC, paragraph 4.8.

[16] See for example, *Arataki Honey Limited v Rotorua District Council,* A70/84; *McQueen v Waikato District Council,* A45/94; *Auckland Regional Council v Auckland City Council,* 1997 NZRMA 205; *Winstone Aggregates Limited* and the *Auckland Regional Council v Papakura District Council,* A96/98; *Wellington International Airport Limited & Ors v Wellington City Council,* W102/97; *Hill v Matamata-Piako District Council,* A065/99; *Winstone Aggregates Limited v Papakura District Council,* A49/02; *Gargiulo v Christchurch City Council,* C137/00; upheld on appeal to the High Court AP32/00, 6 March 2001, Hansen J.

> The term refers to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in the carrying on of those activities.[17]

[58] The term was defined in the article "Reserve Sensitivity – the Common Law Giveth and the RMA Taketh Away", by Bruce Tardy and Janine Kerr as follows:

> Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted , the established use may be required to restrict its operations or mitigate its effects so as to not to adversely affect the new activity.

[59] It is the appellant's position that to allow intensive residential development on this site would expose large numbers of residents to an unacceptable level of noise, with the inevitable consequence that they would endeavour by such means as complaints, lobbying of politicians, submissions on future district plans and the like to have the operations of the airport curtailed or at the very least restricted.

[60] Counsel for Central Gardens Limited contended, that the building would be designed with sufficient acoustic protection and ventilation systems to achieve a high quality internal environment. It further submitted that potential residents were likely to be more inclined to live an indoor lifestyle and that the complex offered good indoor recreation facilities; in any case the development was situated in an area where high levels of noise were permitted from industrial activities and notices on titles would inform potential owners of the surrounding noise environment.

[61] Mr Brabant made an analysis of the cases involving resource consent applications. He referred us to cases such as ***McQueen*** and ***Aratiki*** where the Court's attention was focused on whether or not the effects of the existing use were so significant that the proposed new use should not be permitted at all.

[62] Here, Mr Brabant argued, the challenge to the consent is somewhat different – it postulates complaints in the future, but more importantly postulates that when the provisions of the district plan fall due for review in the future, the airport would be placed at risk by the actions of the residents. Mr Brabant went on to argue, that it is only at this latter stage of the chain of events postulated by the airport that an actual effect on the airport could arise. That is because justified complaints of

[17] At page 206.

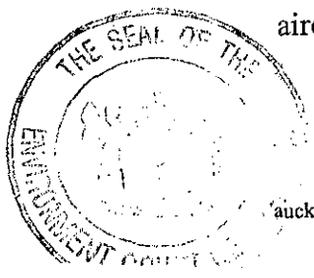
aircraft noise exceeding the rules of the district plan, could not form a basis for opposing the grant of consent, as the airport would be required to modify its operations to comply. Nor can unjustified complaints form a basis for overturning the consent granted by the respondent. The argument rather is, that those who complain, said to be including the residents of this proposed development, will become part of a potential group of opponents of continued aircraft operations as presently permitted by the district plan. Mr Brabant submitted that such a proposition is so speculative that it falls outside the legitimate scope of reverse sensitivity.

[63] Reverse sensitivity effects are not circumscribed by the rules of a district plan. In most, if not all cases, when the benign activity comes within the effects radius of the established activity, the established activity is acting within the rules of the relevant plan. Notwithstanding, complaints can be the first sign of a ground swell of opposition that can chip away at the lawfully established activity. It is this ground swell and its growth which can create potential to compromise the sustainable management of the established activity.

[64] Complaints, whether justified or unjustified in terms of the provisions of the district plan, are just one of the elements that contribute to the reverse sensitivity effect as claimed by the owners of the Airport. As we understand the Airport's case, it is the combination of a number of elements including complaints, lobbying of politicians, submissions on future district plans and the like which create the reverse sensitivity effect.

[65] We agree with Mr Nolan, that in principal, there is no rationale distinction between this case and cases such as ***Arataki.*** In ***Arataki,*** the concern was over the bees from the existing and lawful bee-keeping activity annoying or stinging the proposed campers, who could then be expected to take action against the bee-keeper. With an Airport, there are no bees, but instead there is aircraft noise, discharging from the lawful airport activities and reaching the site of the proposed new residents, with the potential to lead them to take action against the airport.

[66] The issue raised by Mr Brabant as to whether the proposition postulated by the Airport Company is speculative, is a question of fact to which we now turn. We deal with the alleged reverse sensitivity effects firstly by considering the impact of aircraft noise on residents, and secondly, by assessing likely cumulative responses.



Aircraft Noise

[67] Aircraft noise comes as a series of loud single events. The usual way of measuring it is to average the level of noise over a period, to produce a figure described by the phrase Leq. To gain a better idea of the disturbance caused by noise, a 10dBA penalty is added for night time noise (between 10pm and 7am) and the figure is expressed in dBA (Ldn). This differs from the way industrial noise is usually assessed. Industrial noise tends to be more continuous and is usually described by the level exceeded for 10% of the time (L_{10}). When asked to give the court some idea of the relationship between the various types of measurement, Mr C W Day, an acoustical engineer experienced in dealing with airport noise who was called by the appellant, gave the general formula $65dBA_{L10} = 62dBA_{Leq} = 67dBA_{Ldn}$ (where the number of loud single events are equally divided between day and night). The acoustic engineer called by the applicant, Mr N I Hegley, concurred with this description of relationships of the various methods of noise measurement.

[68] Aircraft noise contours are produced by taking the various noise levels produced by the combination of aircraft that will use an airport, distributing them onto their various flight paths and times of use and producing an Ldn figure. This figure is averaged over some months or even a year to obtain a figure that is representative of varied patterns of use, wind conditions and the like. Like other major airports, Auckland International Airport has set its noise contours by looking to potential future use and estimating the number and combination of aircraft expected to use it in 2030. The $65dBA_{Ldn}$ contour passes through the application site, leaving two thirds of the site where the apartment blocks are to be built in the high noise area.

[69] Current aircraft noise on the site varies from $60.5dBA_{L10}$ to $62dBA_{L10}$ and is expected to rise with increased use of the airport. Mr Day told us that the predicted increase in noise level for residents under the flight path from the existing runway would be 4 to 5 dBA Ldn and that such an increase is noticeable. This was not disputed.

[70] Witnesses called by the Airport Company told us that there were limited means available to the airport to reduce noise from its operations. Mr S Milne, the executive director of the Board of Airline Representatives in New Zealand, told us that there was little opportunity to reschedule night-time arrivals and departures away from their present time slots. He said that major overseas airports such as

Heathrow and Sydney operate under significant restraints including curfews. As a result of this, many overseas flights to and from New Zealand can only land and take off during certain "scheduling windows" and that New Zealand had to fit in with those slots. New Zealand, as a small country at the far end of the globe, has no ability to bring about a change to operations or curfews at those other airports to accommodate any curfew that future residents may wish to impose here, and the likely result of restrictions would be aircraft simply not travelling to New Zealand, with dire consequences for the country.

[71] Mr Milne also gave evidence, that while small incremental gains are being made in the noise performance of newer aircraft, they were not likely to be nearly as significant as those made prior to 1990. He described studies by the International Civil Aviation Organisation, which indicated that the cost of relatively modest improvements in noise performance would include higher operating costs, fuel burn, energy costs and air emissions; they concluded that there is limited potential for further reductions of noise at source and such reductions would involve significant costs. Mr Milne opined that the economics of airline operations are such that airlines would be unwilling or unable to upgrade aircraft prematurely merely to service the New Zealand routes, and that, if district plan requirements aimed to enforce such measures, the likely consequence would be the withdrawal of some services and significant fare increases on others. None of this evidence was seriously disputed.

[72] It was the applicant's case that such pressures would either not arise, or need not prevail because the residents would not experience significant adverse effects from airport operations due to the design of the complex and the surrounding environment of industrial noise.

[73] A condition of consent proposed by the applicant was that the combination of building materials used would create an internal noise environment in all habitable rooms of $35dBA_{L10}$ with exterior doors and windows of habitable rooms closed when the noise level at the boundary of the adjacent INL industrial site was $65dBA_{L10}$. Another condition was proposed to ensure that air quality was maintained in the enclosed environment by mechanical outdoor ventilation and/or air-conditioning capable of maintaining a temperature of not more than 25°. Further conditions prevent future alterations reducing the effectiveness of the buildings' acoustic design without council consent, and require the owner, among other things, to inform prospective residents of noise from overhead air traffic.

[74] Mr Hegley and Mr A L McKenzie, a graduate design engineer working for Economical Services Limited, the firm contracted to design mechanical services for the proposal, described in their evidence how the internal environment within the apartments could be achieved. Mr McKenzie told us that sufficient design work had been done to ensure that the required ventilation and air-conditioning installations could be incorporated into the buildings. This was accepted by the other parties.

[75] In the opinion of both Mr Hegley and Ms J A Hudson, a qualified planner with 22 years experience called by the applicant, the implementation of these conditions would ensure that residents of the building did not suffer adverse effects from aircraft noise.

[76] The first argument advanced to support this proposition was that residents of the apartments were likely to have chosen a predominantly indoor life-style. Ms Hudson commented that the nature of the development was such that residents were not reliant on access to outdoor living areas to have an acceptable quality of life and high standards of amenity. Mr Hegley likewise preferred this style of development to lower density development with increased outdoor areas for this site. He said "it is preferable to construct apartments on the site for people who do not want an outdoor lifestyle".

[77] No research was brought to our attention which showed that apartment-dwellers do not also enjoy the outdoors. Mr Day however commented that one of the advantages of living in a development like the one proposed was to take advantage of the more useable large outdoor recreation areas. He said that on this site the high external noise environment would significantly degrade these areas. He also noted the balconies attached to most units, and when asked about this in cross-examination told us that the balconies make up 20% of the total floor area for some of the apartments.

[78] Mr Day also referred us to the study of Bradley[18], which examined responses to aircraft noise in Toronto, Osaka, Oslo, Switzerland, the United Kingdom and Sydney. He pointed out that the climate in the northern hemisphere centres would require both insulation of at least the significance proposed for this development and the closing of windows and doors for long periods. Yet these centres, with higher density housing than Sydney showed a higher adverse response to aircraft noise,

[18] *Bradley (1996) Determining Acceptable Limited for Aviation Noise, Internoise 96*

despite the generally lower density housing and emphasis on outdoor living in the New South Wales capital. However, in cross-examination, he acknowledged that in the locations he had referred to it did get hot in the summer.

[79] We note that the property developer employed by the applicant to assist with the development of the site, Mr D J Medricky, acknowledged that the residents would have a variety of needs for open space. He told us that the architects design "has achieved a range of differing areas which have a multiple and varied use. This has been created with a mix of gardens, grass areas and elevated paving areas with seating and pergolas. It was important to have a variety of these different spaces to cater for the range of needs of the potential occupants". It is also proposed to provide an outdoor pool and barbeque area. We do not believe these areas have been provided for no purpose, and while potential residents will have varied needs, we find that there will be an expectation on the part of residents to enjoy both their balconies and the outdoor facilities of the site.

[80] The second leg of the applicant's argument was that the noise generated by the airport would not differ markedly from that permitted by the surrounding industrial properties, and for that reason residents would not perceive it as a nuisance. It was Mr Hegley's evidence that an agreement had been reached between the parties that if the noise from an adjacent industrial site was designed on the basis of 65dBA_{L10} and 90dBA_{L}max at the site boundary, the proposal would be within an acceptable limit for residents. He opined "It would be illogical for a level of 65-66dBA_{Ldn} not to be found acceptable for the same site simply because the noise came from a different direction".

[81] This was not the opinion of Mr Day. When pressed on this point by counsel for the applicant he told us that the noise level at the boundary of the site was restricted to 65dBA_{L10}. If noise at this level was produced from the INL site it would have reduced to 60dBA_{L10} by the time it reached the eastern façade of the site and to 50dBA_{L10} on the farthest side from the source. Even if the noise came from two sources contemporaneously, we infer that it would have considerably reduced by the time it is experienced in the central open air facilities. There would be no similar reduction in aircraft noise.

[82] Mr Day also disputed the statement that industrial noise controls the noise environment; moreover aircraft and industrial noise were different in kind and required different forms of assessment.

[83] We were not convinced by the second leg of the applicant's argument. The universally agreed difference in the measurement techniques used to assess aircraft as opposed to industrial noise, (Ldn as opposed to L_{10}) inclines us to the view that the types of noise are different in kind and in effect, and we accept Mr Day's evidence that the impact of industrial noise will diminish as distance from the site boundaries increases.

[84] The final argument of the applicant was that any noise effect on future residents of the apartments could not be considered adverse, because they had voluntarily and in full possession of the facts chosen to live in a noisy environment. Mr Hegley distinguished future residents from the average house or apartment buyer on the basis that they would be advised of both the adjacent industrial zone and noise from the airport. "They will be required to acknowledge these facts so that all owners can make an informed decision prior to purchasing an apartment." Ms Hudson proposed an amendment to condition 24 of the consent to make the noise situation clearer by replacing the words "overhead air-traffic" with the words "moderate to high levels of aircraft noise".

[85] This raises the question of whether the court should intervene to protect people from an adverse effect they have knowingly subjected themselves to. For the respondent council, which took a neutral stance in the proceedings, Mr Brownhill appositely referred us to the view taken by the Court in *Auckland Regional Council v Auckland City Council*. Referring to submissions based on leaving promoters of enterprises to judge their own locational needs, not protecting them from their own folly or failing to consider the position of these who come to a nuisance, the Court said:

> We consider that these submissions do not respond to the functions of territorial authorities under the RMA. ... To reject provisions of the kind proposed on the basis of leaving promoters to judge their own needs, or not protecting them from their folly and to failing [sic] to consider the effects [on] those who may come to the nuisance would be to fail to perform the functions prescribed for territorial authorities. It would also fail to consider the effects on the safety and amenities of people who come to the premises.[19]

With respect, we agree.

[86] We find that there would be an adverse effect on occupants of the premises from noise, and that those effects are properly of concern.

[19] [1997] NZRMA 205 at p 214

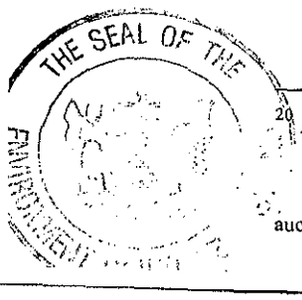
Permitted Baseline

[87] To assess the extent of those effects, we must consider how far those effects exceed those which are permitted by the plan. It was the respondent's submission that no activities fall within the permitted baseline for this site. Mr Brownhill referred us to the Court's decision in *Kalkmann v Thames – Coramandel District Council*[20] for the proposition that only permitted activities fall within the permitted baseline. He referred us to rule 14.12.3.1 by which the council reserves control over activities within 30 metres of a residential boundary in a business zone. Mr Brownhill then argued that because the activities contained within this application cannot be compartmentalised, the permitted baseline must be based on what could take place as of right within the whole application site.

[88] We do not agree. While this proposal cannot be compartmentalised, we can imagine a situation where provided an activity did not spill over into the 30 metres adjacent to the residential zone, it could occur as of right on what is a large site. In this respect we concur with the closing submissions of Mr Brabant.

[89] Among permitted activities beyond the 30 metre buffer with the residential zone are offices, and travellers accommodation. The applicant submitted that these uses could be situated in buildings identical to the apartment towers proposed except for the requirement for insulation. Mr Hegley noted that the effect of such an office –building would be to expose workers and office staff to a level of noise beyond what would be reasonable for a residential site. Ms Hudson likewise opined that there was no good reason to distinguish between the requirement of an occupant of traveller's accommodation for a good night's sleep and that of a permanent occupant of residential premises.

[90] Mr Osborne, disagreed. He noted that travellers' accommodation was not included amongst "Activities Sensitive to Aircraft Noise", opining that it was not sensitive compared with residential accommodation. He suggested that a hotel guest would have a totally different reaction to permanent residents, and that permanent residents lack the flexibility of hotel guests to seek a change of room or move to another establishment quickly. We concur with the views of Mr Osborne.



[20] A152/02 at paragraph 102

[91] We also find an element of fancy in some of the permitted activity scenario suggested by the applicant. For example when Mr Day was asked to compare the effect of noise on occupants of the apartments with that on occupants of an uninsulated office block, he responded that he was required to make some assessment of the materials used in construction, and had not encountered within the last fifteen years an office block of this size where the materials used did not provide some noise protection.

[92] Mr Brabant put to us that public open space was a permitted use on site, presumably to suggest, that for this reason we should give less weight to the appellant's evidence that adverse effects of aircraft noise on the open air areas of the site could not be mitigated. We consider that the users of public open space, as parks, sports fields and the like have different expectations than users of outdoor areas connected with their residence.

[93] We have considered the possibility of office-blocks or travellers accommodation being constructed on the site under the permitted baseline and the possibility of public open space being created. We find that when the effects of allowing this proposal are compared with that baseline the adverse effects on occupants remain significant.

[94] It was the appellant's case that when large numbers of residents are exposed to significant aircraft noise, this would inevitably lead to an attempt on the part of some residents to limit those impacts, and that if such an attempt was successful, the effects on Auckland International Airport, the Auckland economy, and even the New Zealand economy would be very severe. In considering the evidence on this matter we note that the word effect includes in its definition "any potential effect of low probability which has a high potential impact".

Response of residents to aircraft noise

[95] We now turn to the likely perception and response of the residents of the 349 household units who would be exposed to moderate to high levels of aircraft noise. Evidence for both the applicant and the Airport indicated that the proposed units may accommodate some 1000 people.

[96] The number of household units currently located within the high aircraft noise area in Manukau City is estimated to be 350 dwellings[21]. This proposal involves an additional 255 household units in the high aircraft noise area in this proposal. Mr Osborne noted that this is seven times the average net density of the adjacent residential area.

[97] As we have already mentioned, in considering the likely reaction of these new residents to the noise effect from overhead aircraft, Mr Day referred to a study of community responses to aircraft noise undertaken by Bradley.[22] Bradley compared the responses from six different overseas communities exposed to varying levels of aircraft noise expressed in Ldn dBA. At a level of Ldn 65, the Bradley graph indicates that a third of the community is likely to be highly annoyed about the noise. Mr Day noted that the Bradley study supported earlier findings by Schultz on the subjective response of communities to environmental noise.[23] From these studies Mr Day extrapolated the increase in people likely to be highly annoyed by aircraft noise in Manukau City to be more than 70% from this one proposed development.[24]

[98] Mr Brabant was critical both in cross-examination and in his submissions of the fact that full copies of those studies were not provided. In his closing submissions he said:

> In my submission it must be a matter of serious concern that a full copy of the study relied upon by the appellant in opening submissions and in cross-examination of the applicant's witnesses, was not made available.

This criticism of Mr Day was founded on lengthy cross-examination where it was alleged by counsel that the Bradley Report could not be relied on in the present circumstances.

[99] The Bradley Report was referred to in Mr Day's statement of evidence circulated prior to hearing. Central Gardens had its own acoustical consultant to subject the report, and the use made of it by Mr Day, to expert scrutiny. Mr Hegley had ample opportunity through evidence in rebuttal, to respond to Mr Day's usage of the report. He did not do so. Consequently Mr Nolan did not cross-examine him on this issue.

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[21] Evidence of CW Day, at 8.4

[22] Bradley (1996) *Determining Acceptable Limits for Aviation Noise*, Internoise 96

[23] Schultz (1978) *Synthesis of social surveys on noise annoyance,* J. Acoustic. Soc. Am., 64, 2, 377-405.

[24] Evidence of CW Day at 8.4

[100] In our view, in the absence of any challenge to the report or the use put to it by Mr Day, either in expert rebuttal evidence or by way of notification from counsel, we reject the criticism. Mr Day as an expert witness was relying on what appeared, from the circulated evidence, to be an internationally accepted study. If its use by Mr Day was to be challenged, then this should have been signalled and substantiated in the rebuttal evidence. In such a case we would expect the experts to then confer.

[101] We likewise reject the criticism that Mr Day was "evasive and adversarial". In our view such criticism was not warranted.

[102] We have regard to Mr Brabant's extensive cross-examination of Mr Day. Notwithstanding, we find that the Bradley study is a strong basis from which we can conclude that generally, for a population living in an external noise environment of Ldn 65, approximately 33% of the population are likely to be highly annoyed.

[103] Mr Hegley discussed in some detail the proposal and proposed conditions which he then assessed against the relevant provisions of the district plan. He concluded:

> The issue of whether residential activity should be allowed in the HANA as a matter of policy is outside my area of expertise, but I can say that this "greenfields" development will provide superior protection from aircraft and industrial noise then are enjoyed by its industrial neighbours in the adjoining residential zone.[25]

He opined that the number of proposed residents on the site is irrelevant because the same acoustic protection is required, whether for one new resident or a number.

[104] Mr Mendricky, also called by the applicant, submitted an analysis of complaint reports from Auckland Airport. From his analysis of those complaints he stated that there were only two complaints about noise from the high aircraft noise as compared to the relevant 110 complaints elsewhere from those listed in the complaint report summary. From this assessment, and his understanding of overseas research he seemed to be suggesting that the Court could conclude that there would be few people in the high airport noise area (within the proposed development) who would be annoyed or highly annoyed about the noise from over-flying aircraft.

[25] Hegley, EiC, paragraph 8.2.

[105] Mr Milne, the Executive Director of the Board of Airline Representatives of New Zealand (BARNZ), presented information on the wider issue of public opposition and complaints to aircraft noise at airports, on the basis of his many years of experience acting for BARNZ. He described discussions and negotiations in both the Auckland Airport Aircraft Noise Community Consultative Group (ANCCG) and the Wellington Airport Air Noise Management Committee (Wellington Committee).

[106] He told us that the Auckland Consultative Group, which has been meeting regularly since 1997, has a role in public consultation, the Noise Management Plan for Auckland Airport, Airport designation and monitoring. Mr Milne stated that a focus of the bi-monthly Auckland Group and Wellington Committee meetings is individual noise complaints received. The Auckland Group is presently reviewing noise complaints generated by noise that is Ldn 4dBA less than the level anticipated in the future.

[107] He stressed that the increase in traffic movements and size of aircraft using Auckland International Airport will result in a noticeable increase in the noise level from the present level. He noted from his experience in the transport sector as well as with the two committees, that community response tends to be less negative when members of the community are convinced that those responsible are taking steps to minimise noise.

[108] Mr Milne noted that unlike some other airports such as Wellington, where aircraft approach and depart over sea, half of all Auckland aircraft movements are over Papatoetoe and Manukau, and in the prevailing westerly winds, all landings are over these areas. Despite the seeming geographic advantage that Wellington Airport may enjoy, political pressure from Wellington residents from within the moderate to high aircraft noise area resulted in a bylaw which required Air New Zealand to 'hush-kit' aircraft and the imposition of a night curfew and noise abatement procedures for aircraft take off and landing. The promulgation of the Wellington City District Plan in 1994 drew resident submissions seeking further constraints on airport operations. A combination of noise abatement constraints outside the RMA, and planning restraints now apply to Wellington Airport.

[109] These potential impacts can be contrasted with the current situation at Auckland International Airport where, with the exception of the imposition of the noise contours, and associated controls, there is not a curfew or other such limitation to use of the existing runway. However, Mr Milne stated that as a direct result of

opposition from residents living close to the proposed second runway, a night -time curfew and other operational restrictions will apply to this runway. He was concerned that a future plan review would provide further opportunity for consideration of constraints on the Airport.

[110] The concern of BARNZ members, said Mr Milne, was that the substantial residential development proposed within the high aircraft noise area would result in resident and airport conflict about operation of the existing runway. This in turn he saw leading to bitterness and cost for all parties, including complaints and pressures for curfews and reduction in operations of the main runway. He opined that it was not only complaints that may lead to restrictions on the airport from highly annoyed residents, but pressure on the Council, community action groups (such as the 'Residents Against the Northern Runway' group), and instigation of opposition to aircraft operations.

[111] We also heard evidence about the imposition of curfews and operational constraints on other major airports such as Sydney Airport as the result of reverse sensitivity concerns about noise.

[112] While evidence seems to indicate that public pressure is more volatile and vociferous if there is a marked or proposed change in airport operations, nevertheless we find there to be a clear relationship to the number of people exposed to high aircraft noise and the introduction or increase in restraints on airport operations. The potential risk of operational constraints to this regional transportation resource posited by the witnesses, particularly Messrs Day and Milne, resulting from a sizeable increase in residents living in the high aircraft noise area, a significant proportion of whom would be highly annoyed by noise, therefore seems entirely realistic.

The gateways – section 105(2A)

[113] The first gateway requires us to determine whether the adverse effects on the environment as proposed to be remedied and/or mitigated, and taken as a whole, are more than minor.[26] It should be clear from our discussion of adverse effects, that we consider that to allow the proposal will be a catalyst likely to precipitate community

[26] See *Stokes v Christchurch City Council* C108/99.

reaction against the owner and users of the Airport, as a consequence of reaction to moderate to high aircraft noise.

[114] Such a community reaction would, in our view, be a direct reverse sensitivity effect that is more than minor. Consequently, the proposal fails to pass through the first gateway.

[115] The second gateway requires us to determine whether the activity proposed will be "contrary" to the relevant plan. A proposal which is a non-complying activity cannot for that reason alone be said to be contrary. The word contemplates being "opposed to in nature different to or opposite...also repugnant and antagonistic..."[27]. The second gateway process involves an overall consideration of the purpose and scheme of the plan as expressed in its objectives and policies, rather than a checking of whether the non-complying activity fits exactly within the detailed provisions of the plan[28]. A non-complying activity, is by reason of its nature, unlikely to find direct support from any specific provision of the plan[29].

[116] In the present case, the objectives and policies of the district plan recognise that above certain cumulative noise levels, measured in Ldn dBA, aircraft noise can cause a significant nuisance in noise-sensitive areas.[30] The district plan also recognises the regional significance of the airport and its flight paths, and their potential for effects on activities sensitive to high aircraft noise compromising the sustainable management of that infrastructure.[31]

[117] However, the plan does not prohibit sensitive activities, including residential accommodation, from establishing in high aircraft noise areas. Rather, it makes such activities non-complying. It further directs that such activities should generally be avoided "unless the adverse effects of those activities on Auckland International Airport can be avoided, remedied or mitigated".[32] Further, it provides for mitigation measures by way of acoustic and ventilation standards. However, in this case we hold that the effects of this activity on the considerable open air areas of this

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[27] *New Zealand Rail v Marlborough District Council* 1994 NZRMA 70 (HC at 80), 1993 2 NZLR 641 (HC).
[28] See *Eldersly Park Limited and Southern Moore Holdings v Timaru District Council and Countdown Properties Northland Limited* 1995 NZRMA 433 (HC).
[29] *Arrigato Investments Limited and Evensong Enterprises Limited v Auckland Regional Council and Rodney District Council* 2001 NZRMA 481 (CA) paragraph 17.
[30] See in particular Policy 17.6.4.8 and "Explanations/Reasons" for that policy.
[31] See Policy 17.6.4.11 and "Explanations/Reasons" for that Policy.
[32] See Policy 17.6.4.10.

complex cannot be adequately mitigated, and at the very least, the proposed development sits uncomfortably alongside this policy.

[118] Activities sensitive to aircraft noise cannot be said to be contrary to the district plan. Nor is residential accommodation per se contrary to the plan. However, the district plan specifically adopts an approach that seeks to limit reverse sensitivity effects on the airport[33]. The objectives and policies achieve this by requiring the reverse sensitivity effects to be avoided, remedied or mitigated. In some circumstances the remedying and/or mediation measures will suffice. In others they will not, and the "avoiding" aspects of the objectives and policies will come into play.

[119] In the present case, some 349 homes are proposed in an area identified in the district plan as being within the high and moderate air noise areas, and where the physical resource sought to be protected is New Zealand's largest international airport. In our view, the "avoiding" elements of the plan's objectives and policies predominate in this case. There is a plain and unambiguous thread of protecting the airport from increased residential density in the high aircraft noise area. We find that a residential proposal of this magnitude is contrary to the objectives and policies of the district plan.

Discretion – section 105(1)

[120] Having found that the proposal fails to pass the two gateways test, there is no need for us to consider the exercise of our discretion. However, in case we are wrong, we would exercise our discretion against granting the consent.

[121] The importance of the Auckland International Airport to the regional and national infrastructure and the need to ensure sensitive uses are developed so as to avoid conflict are not disputed. This is reflected in the relevant statutory instruments. The district plan manages the effects of aircraft noise. It also seeks to limit residential accommodation in the areas most affected by aircraft noise, in order to avoid adverse effects on the occupiers of such accommodation and thus in turn avoid the potential adverse effects of reverse sensitivity on the Airport.

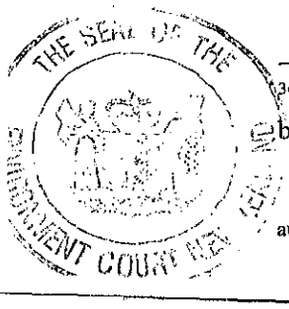
[33] See in particular Policy 17.6.4.9 and 17.6.4.11 and the "Explanation/Reasons" for those policies.

[122] Of particular significance is the emphasis in issue 17.6.2.7, which explicitly recognises the importance of limiting the amount of residential development in areas affected or potentially affected by high aircraft noise (aircraft noise levels greater than Ldn 65) because it is not possible to mitigate the effects of aircraft noise on the external environment. As Mr G J Osborne stated, this issue applies directly to the circumstances of the current case, where an acoustically insulated internal environment is proposed to be created, but nothing can be done to protect the residents from the effects of high aircraft noise when enjoying the outdoor recreational areas provided for in the development. This proposal can be contrasted with other examples of sensitive activities such as hospitals and, perhaps, aged care facilities where patients and inhabitants are bed-ridden and immobile and have no expectation of enjoying the external environment.

[123] In our view we should have regard to the nature, size and scale of the development[34]. The proposal will expose up to 1046 additional residents to high levels of noise in their home environment. It provides for reasonably generous outdoor recreational areas. It creates an activity which the plan recognises as being sensitive to aircraft noise in an area subject to high aircraft noise levels. While the proposed noise attenuation and ventilation measures would apply to the indoor recreational facilities and the units themselves, this will not, in our view, adequately protect recreation areas.

[124] We have discussed at some length the evidence relating to the potential adverse effects of reverse sensitivity. We have measured our findings against what we have found to be the "permitted baseline" We found that aircraft noise will have an adverse effect on the residents. We also found that when the effect of allowing this proposal are compared with the baseline, the adverse effects remain significant. Further, we found there to be a clear relationship to the number of people exposed to high aircraft noise and the introduction of, or increase in, the strength of opposition to airport operations.

[125] While the proposal results in a number of positive effects, they are outweighed by the likely reverse sensitivity effects which could affect an Airport which is the most important international gateway for New Zealand.



[34] See by way of analogy rule 5.21.4C(g) which requires the nature, size and scale of development to be had regard to for an ASAN in the Business Zone in the MANA.

[126] We also have regard to Part II matters, particularly those mentioned earlier in this decision. Section 5 does, among other things, direct that decision makers sustainably manage resources so that they meet the reasonably foreseeable needs of future generations. Section 7(d) and (e) are also particularly relevant. To allow a proposal that has the potential to conflict with such an important component of New Zealand's national infrastructure would not, in our view, be an efficient use and development of resources.

[127] We exercise our discretion against granting the consent.

Determination

[128] The appeal is allowed and the Council decision is set aside.

[129] Costs are reserved but it is our tentative view that costs should lie where they fall.

Independent News Auckland Limited (RMA 901/01)

[130] The parties to this appeal have settled and presented a memorandum of consent together with a draft consent order. Following the determination of RMA 906/01 no consent order will be approved.

DATED at **AUCKLAND** this 24th day of June 2003.

For the Court:

R Gordon Whiting
Environment Judge

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP No. 306/98

UNDER	the Judicature Amendment Act 1972
IN THE MATTER	of the Resource Management Act 1991
BETWEEN	PORTS OF AUCKLAND LTD Applicant
A N D	AUCKLAND CITY COUNCIL First Respondent
A N D	SOUTHERN TRADING COMPANY LTD Second Respondent
A N D	BROADWAY DEVELOPMENTS LTD Third Respondent
A N D	CITY WISE PROJECTS LIMITED Fourth Respondent
A N D	COVINGTON CORPORATION LIMITED Fifth Respondent
A N D	MAGELLAN ORAKEI LTD Sixth Respondent
A N D	NGATI WHATUA O ORAKEI MAORI TRUST BOARD Seventh Respondent

Hearing: 7 - 9 September 1998

Judgment: 18 September 1998

Counsel: J R F Fardell & T Pritchard for Applicant
D Kirkpatrick and K N Phillips for First Respondent
K F Gould for Third Respondent
B O'Callahan for Fifth Respondent
K F Gould for Sixth Respondent
D L Wackrow for Seventh Respondent

INTERIM JUDGMENT OF BARAGWANATH J.

Solicitors
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K F Gould, DX CP20513, Auckland for Third and Sixth Respondent
Carter & Partners, DX CP21005, Auckland for Fifth Respondent
D L Wackrow, DX CP20503, Auckland for Seventh Respondent

INDEX

This case concerns the law's reconciliation of conflicting public interests in land use planning. One is to implement a decision reached by statutory planning processes that industrial land should convert to residential use. A second and related interest is that of the owners and lessees of the land who have embarked upon large scale residential development in reliance upon the planning decisions. A third is the interest that future residents of the land should be free of intolerable noise from neighbouring wharf operations. The fourth, which has precipitated the proceedings, is the maintenance and development of the Port of Auckland as a facility of regional and national importance, necessarily involving noise day and night, without risk of claims by residents that its activity must be restrained as interfering with their enjoyment of reasonable standards of amenity. The reconciliation requires analysis of the respective roles of the planning authorities (here a City Council) and the Court.

Introduction: interim judgment

New Zealand's largest commercial wharf complex, which is in the course of expansion, is sited on the southern side of the Waitemata Harbour, in the centre of the City of Auckland. Immediately to the south across Quay St is

the former Railway Precinct (the Precinct), its western side some 600m from Auckland's main street, Queen St. The Precinct land was returned by the Crown to the Seventh Respondents (Ngati Whatua), the Maori tribe who had been deprived of their ancestral lands in the course of European settlement. Following a decision of the Auckland City Council (the Council) to rezone the Precinct so as to permit within it residential development as a controlled activity under the Resource Management Act 1991 (RMA), Ngati Whatua granted a series of 150 year leases of subdivided parcels to the Sixth respondent (Magellan), which assigned several of its leases to the remaining Respondent developers.

Each developer made successful application to the Council under the RMA for resource consent, to permit the erection of multi-storey residential buildings (in the case of Covington the substantial redevelopment of the existing Railway Station building). Ports of Auckland Limited (the Port company) which operates the wharf complex alleges in this proceeding that the Council erred in law by treating each application as "non-notified" under s94 of the RMA and granting building consents to the developers without notice to the Port company, which would have contended for more stringent noise insulation procedures and so averted the prospect of claims against it by future residents . The proceedings against Southern and Covington have been settled and they have been dismissed as parties; City Wise abides the Court's order; the Council, Broadway, Magellan and Ngati Whatua have defended.

The case is one of "reverse sensitivity". The Port company contends that by granting such consents without the precautions which it would have sought if given notice of the applications, the buildings will be erected without adequate sound proofing. The result, it says, will be the entry into the Precinct of large numbers of residents who will be adversely affected by the noise of the port's 24 hour a day operations in close proximity. They may be expected to react by seeking relief in the High Court or the Environment Court by way of injunctive or other constraints upon the 24 hour operation of an industry of major national importance or, at best, interruption of the port's operations by complaints and opposition to any future developments it may wish to make.

The proceeding is by way of judicial review, seeking the intervention of the Court to restrain conduct of the Council alleged to be unlawful. The essential issues are whether in terms of s94 of the RMA the Council was entitled to form its opinion that the Port company could not be adversely affected by the grant of the resource consents and whether adequate conditions have been imposed in terms of s 105(1)(a). The Council denies the Port company's allegation, asserting that it had solid basis for forming its opinion that the Port company was not "a person who may be adversely affected " by the granting of the resource consents, and denying that there are grounds for the Court to intervene. Broadway, Magellan and Ngati

Whatua support the Council's position and argue in addition that the Court's discretion should be exercised against the grant of relief.

The issues were refined in the course of argument to the extent that the Port company accepts that if the Council can ensure that the noise entering the buildings is no greater than 35dBA $_{L10}$ (35 decibels for no more than 10% of the time) it will have performed its duty. The Council and the other represented respondents agree that the Council should both reserve and exercise the power to prevent the noise from exceeding such level.

The matter in difference has reduced to whether the present protections give the Council such authority. Counsel have undertaken to provide me with a draft form of conditions which their clients agree would give the Council sufficient authority to ensure provide proper protection for the interests of future residents and of the Port company, while avoiding unreasonable imposition upon the developers and Ngati Whatua. They agree that I should deliver an interim judgment, required in any event because City Wise is not represented, which will allow the parties to seek further directions should that be required to secure satisfactory resolution.

It is a matter for congratulation of all parties that the differences in a matter of such importance and difficulty are now limited to whether they can now be resolved by simple directions under s4(5) of the Judicature Amendment Act 1972 making a little more precise the conditions already imposed, or

whether there should be a declaration that on the true construction of the existing conditions they provide adequate protection. I will reserve my decision upon that question until I have seen the draft conditions.

II

Background facts

The plan attached as Appendix 1 shows the general geography of the area.

The Port of Auckland

To the north of the plan is the Port of Auckland, which handles some 52% of New Zealand's container trade, as well as RORO and conventional traffic. Some 70% of the container business relates to the Auckland region.

The importance of the Port to the regional and national economy is recognised by the statutory planning documents having effect under the RMA, namely the Waitemata Harbour Maritime Planning Scheme, the transitional operative Auckland City Council District Plan, the recently notified Central Area section of the Council's proposed district plan and the proposed Regional Coastal Plan. On 24 June 1998 the Environment Court delivered judgment authorising the extension of the Fergusson Wharf container terminal to the east (shown as "NOTE 3" on Appendix 1), because the development of the commercial port on the scale needed to meet the growth

of container cargoes generated by the economic activity of the Auckland region justifies the consequential loss of valuable open public harbour and resulting visual effects.

It is undisputed that the maintenance and development of the Port as a 24 hour a day operation is a fundamental datum of any planning decision.

The Precinct

To the south of the wharf area and separated from it by Quay Street is what is called in the proposed district plan the Former Railyard Precinct (comprising the areas denoted Res 9C, Ind 6B and Com 8H on Appendix 1), until recently serving as a railways complex including shunting yards as well as the large Station building which is the subject of the Covington application. The Government policy of withdrawing from commercial business resulted in the release of the former Railway station and surrounding land within the Precinct, apart from the existing rail corridor that bisects the Precinct and a further corridor for a proposed extension to the west. The Precinct forms part of the Harbour Edge Strategic Management Area in the Council's proposed district scheme which is all reclaimed land bounded to the south by the former cliff line (generally to the south of the Strand and to the west of Beach Road) and to the north by the wharves. The Council's policy is to plan redevelopment of the area to blend visitor, business, residential, and

recreational activities in a way that will both promote the waterfront's natural advantages and reintegrate the harbour and the City. One of its consequences is to remove the former cordon sanitaire between the Port area and residential uses, which had been confined to the high land to the south and east (such as York Street and Balfour Street shown on Appendix 1).

Ngati Whatua have inhabited what is now the City of Auckland since before European contact. Having been deprived of their land by the European settlement they claimed restoration of such part of the land held by the Crown as was not required for public purposes. In the result the fee simple of the Railyard Precinct was vested in them. They made successful application to the Council for rezoning the land (by Variation 11) from Industrial to the range of Commercial and Residential uses indicated on Appendix 1.

The long term leases

Ngati Whatua decided that the most effective use of the land was to lease it *long term for the purpose of large scale development.* It granted a series of 150 year leases to Magellan, which in turn assigned a number of them to Southern, Broadway, City Wise and Covington as shown on the plan. Each transaction was made on the basis of the new zoning of the relevant land, with a view to its development.

The applications for resource consent

Each developer decided upon a project entailing residential use, being a *"controlled activity"* in terms of Variation 11, and made application to the Council for a resource consent for the purpose.

The Council's decisions to treat the applications as non-notified

The Port company urged the Council that it should require applications for resource consent to be publicly notified, to give it the opportunity to be heard as to the conditions to be imposed. The Council decided to treat the applications as non-notified and granted consent to each developer without complying with the statutory notification procedures.

The Port company's claim

The Port company asserted in its pleadings that the Council's decision not to notify the applications was unlawful and that each purported resource consent was unlawful and invalid. That claim being denied by the Council, supported by Ngati Whatua and the developers, this application came on for trial last week.

III

The legislative provisions

These are reproduced to the extent applicable to the case. Important passages are emphasized.

The purpose of the RMA is stated in section 5:

> "SECT. 5. PURPOSE–
>
> (1) **The purpose of this Act is to promote the sustainable management of natural and physical resources.**
>
> (2) **In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while–**
>
> (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment"

By s9, no person may use land in a manner that contravenes a rule in a district plan or a proposed district plan unless the activity is expressly allowed by a resource consent granted by the Council.

In terms of s76(2) of the RMA the rules included by Variation 11 prohibiting, regulating or allowing activities have legislative effect as a regulation: ***Ashburton Borough v Clifford*** (1969) 3 NZTCPA 173 (CA). Rule 14.8.8 of

the Port Precinct Rules provides that between 11pm and 7am measured noise levels shall not exceed $_{L10}$ 60dBA ($_{Lmax}$ 85dBA) on the southern side of Quay Street and $_{L10}$ 50dBA ($_{Lmax}$ 75dBA) at or within the boundary of any property with a residential activity zoning.

Rule 5.5.184 of the Waitemata Harbour Maritime Planning Scheme noise controls provides that between the same hours noise from any use, activity or work in the Port shall not exceed $_{L10}$ 45 dBA as measured on the boundary of any residentially zoned site (which includes those of the respondents). By s88 an application may be made for a resource consent for a controlled activity. The application is required to include a description of the activity for which consent is sought, its location, and an assessment of any actual or potential "effects" that the activity may have on the environment, and the ways in which any adverse effects may be mitigated.

The term "effect" is defined by s 3:

> "SECTION 3. MEANING OF "EFFECT"--
>
> In this Act, unless the context otherwise requires, the term "effect" [ ] includes--
>
> (a) Any positive or adverse effect; and
>
> (b) Any temporary or permanent effect, and
>
> (c) Any past, present, or future effect; and
>
> (d) Any cumulative effect which arises over time or in combination with other effects--
>
> regardless of the scale, intensity, duration, or frequency of the effect, and also includes--

(e) Any potential effect of high probability; and

(f) Any potential effect of low probability which has a high potential impact."

By s92 the Council may require the applicant to provide further information. Where it is of the opinion that any significant adverse effect on the environment may result from the activity for which consent is sought it may require an explanation of any possible alternative methods for undertaking the activity and of the consultation undertaken.

By s93 once the Council is satisfied that it has received adequate information it is required to ensure that notice of the application is served on

> **"such persons who are, in its opinion, likely to be directly affected by the application, including adjacent owners and occupiers of land,** where appropriate... **unless the application does not need to be notified in terms of section 94."**

"Adjacent" land is not confined to land which is adjoining but includes places which are nearby: ***Wellington v Lower Hutt*** [1904] AC 773. I do not doubt that the Port company is an "adjacent occupier" in relation to the applications for resource consent in this case.

By s94(1) an application for a resource consent that relates to a controlled activity need not be notified if

> "(i) **The activity to which the application relates is a controlled activity; and**

(ii) **Written approval has been obtained from every person who, *in the opinion of* the [Council], may be adversely affected by the granting of the resource consent unless, in the [Council's] opinion, it is unreasonable in the *circumstances to require the obtaining of every such approval.*"**

Further, notwithstanding s94(1),

"(5) **if *[the Council] considers special circumstances exist* in relation to any such application, it may require the application to be notified..., even if a relevant plan expressly considers that it need not be so notified."**

[ibid 467]

By s96

"Any person may make a submission to [the Council] about an application that is notified..."

Section 100 provides for a hearing if requested by a person making a submission.

By s104, when considering an application for a resource consent and any submissions received the Council is required to have regard to

"(a) **Any actual and potential effects on the environment of allowing the activity; and**

(i) Any other matters the [Council] considers relevant and reasonably necessary to determine the application."

By s105(1)

"...after considering an application for -

(a) **A resource consent for a controlled activity, [the Council] shall grant the consent, but may impose conditions under section 108 in respect of those matters over which it has reserved control:**

(3) ...the matters described in section 104 shall be relevant only in determining the conditions, if any, to be included in the consent.

(5) [The Council] shall not grant a consent if the application was made without notice and the application should have been made with notice."

By s108:

> *"...a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of the kind referred to in ss. (2).*
>
> (2) A resource consent may include any one or more of the following conditions: ...
>
> (b) A condition requiring that a bond be given in respect of the performance of any one or more conditions of the consent ...
>
> (c) A condition requiring that services or works... be provided;
>
> (d) In respect of any resource consent ... a condition requiring that a covenant be entered into, in favour of the consent authority, in respect of the performance of any condition of the resource consent"

In the case of the whole of the Precinct, the Council has *"reserved control ... in respect of"* all uses, including the developments proposed by the respondents. Rule 2.02:5.3 empowers the Council in granting consent to an application to impose conditions which relate to noise control. In the case of the Industrial 6B zoning, which affects the Broadway application, the rules provide:

> "In considering any application within the ... Industrial 6b zones ... the following specific criteria apply.
>
> i) It shall be demonstrated to the satisfaction of the Council that,
>
> ...
>
> d) Particular regard shall be had in the design of buildings to mitigate the possible effects of noise and glare from adjacent land uses."

In the case of the Residential 9C zoning, which affects the City Wide proposals, the scheme statement provides:

> "This zone applies to part of the former central railyards in The Strand. The purpose of the zone is to further the Scheme's objective to encourage a nucleus of permanent residential accommodation within the Central Area. The zone is also particularly suitable for student accommodation. The zone has advantages for a comprehensively planned development with suitably designed traffic and pedestrian paths and housing clustered about a common open space area, designed to mitigate the possible effects of adjacent land uses. Accordingly, all uses are classed as controlled or conditional uses ..."

The noise rules are to the same effect as those for Industrial 6B zones.

By s 120:

> "SECTION 120. RIGHT TO APPEAL–
>
> (1) Any one or more of the following persons may appeal to the [Environment Court] in accordance with section 121 against the whole or any part of a decision ... the Council ... on an application for a resource consent."

IV

The central issue

In terms of s105 of the RMA residential uses within the Precinct are controlled uses. The central issue is whether consent for such uses should have been given either at all, at least in the terms adopted, or without public notification pursuant to s 93.

The Port company asserts and the Council denies

- that it was "likely to be directly affected" by each application, and that (s 93) the Council had necessarily to form the opinion that the Port company applications did need to be so notified
- that (s 94)(1)(ii)) the Council was bound to determine that it might be adversely affected by the granting of the consent
- that (s 94(1)(ii)) it was not unreasonable to require the obtaining of the Port company's approval
- that (s 94(5)) special circumstances warranted the requirement of notification
- that the failure to give notice entailed procedural error that requires quashing the consents
- that the consents were granted on the basis of a serious mistake of fact, namely that the conditions attaching to them reserved sufficient power to the Council to prevent noise from the wharves from unduly interfering with the comfort of residents of the apartments.
- alternatively, that because the conditions are inadequate to reserve such power, the decisions to grant consent are unreasonable.

V

Summary of the evidence as to noise effects

Evidence on affidavit was given by expert acoustic engineers, Mr Day for the Port company and Mr Hegley for the Council. It is considered in Parts IX and X. No application was made for leave to cross-examine. Both agreed that

for New Zealand conditions the maximum level of noise that may reasonably be permitted to enter residential premises, if the occupiers are to enjoy a tolerable standard of enjoyment of life, is 35 dBA $_{L10}$. The apparent difference between the experts related largely to whether, as Mr Day stated, the noise level is to be measured with the windows open or whether, as Mr Hegley said, the noise is to be measured with the windows closed. That difference was analysed and resolved in argument.

The Waitemata Harbour Maritime Planning Scheme includes noise controls for the Port as recorded on page 13 above, implemented through the transitional operative Auckland City District Plan and the transitional operative Auckland Regional Coastal Plan.

Despite an invitation by Mr Gould to draw contrary conclusions from limited evidence, it was common ground between Mr Fardell and Mr Kirkpatrick that the emission by the Port company of noise within these limits will result in an internal noise level within the developers' residential apartments significantly in excess of the 35dBA level, unless the windows are closed. Mr Fardell initially contended that such result presented the Council with a dilemma: if the windows were open the acceptable noise level would be exceeded; but if they were closed there would be infringement of the regulatory Building Code (SR 1992/150 Regulation 3 and Clause G4) established pursuant to the Building Act 1991, in that there would be inadequate ventilation. In argument he recognised that the stipulation of a 35dBA internal maximum for

externally generated noise would be acceptable, provided that the ventilation was planned on a closed window basis.

His concern, on that footing, was that the current conditions do not give the Council adequate power to enforce concurrent maintenance of both the internal 35dBA level and adequate closed-window ventilation. Whether that submission is made out is crucial to the determination of the case.

VI

The role of the Court

The function of the Court in judicial review, as distinct from appeal, is limited to ensuring that the decisionmaker whose decision is challenged operates within the law. It is the Council, not the Court, whom Parliament has deputed to form the opinion whether (here) the Port company "may be adversely affected by the granting of the resource consent" in terms of s 94(1)(c)(ii). While the verb "affected" is not defined, it must take its colour from the very wide definition of the equivalent noun "effect". Unless a Council could reasonably conclude that the Port company could not be adversely affected by the grant of the particular consent, it is its duty to

notify. The reasons are discussed in ***Murray v Whakatane District Council*** [1997] NZRMA 433 at 467 and 474-5.

Mr Kirkpatrick argued that the test of reasonableness is what may be called the stringent Wednesbury test employed in the rating cases: ***Mackenzie District Council v Electrocorp*** [1992] 3 NZLR 41 at 44-45 and ***Wellington City Council v Woolworth NZ Ltd (No 2)*** [1996] 2 NZLR 537 at 545. There the standard was that of:

> "... A decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person had applied his mind to the question to be decided could have arrived at it."

The reason for that approach is stated by Richardson P at 546, lines 37-42:

> *"There are constitutional and democratic constraints on judicial involvement and wider public policy issues. There comes a point where public policies are so significant and appropriate for weighing by those elected by the community for that purpose that the Courts should defer to their decision except in clear and extreme cases. The larger the policy content and the more the decisionmaking is within the customary sphere of those entrusted with the decision, the less well equipped the Courts are to re-weigh considerations involved and the less inclined they must be to intervene."*

In this case I am relieved from considering the outer limits of reasonableness in a sphere beyond the ordinary experience of the Court. There is no dispute between the experts on both sides that a noise level above 35 dBA $_{L10}$ inside a residential property is unacceptable. What is in dispute is whether the conditions imposed by the Council are sufficient in law and in practice to maintain that result and thereby remove any substantial grounds for the residents to bring a proceeding in nuisance in this Court or proceedings for an enforcement order by the Environment Court under ss 314 and 319 of the RMA, or resist reasonable proposals by the Port company for further

development. While Judges of this Court do not in general claim the specialist qualifications and experience of the Environment Judges appointed under s 250 of the RMA, who have the benefit of sitting with Environment Commissioners contributing the qualifications described in s 253, the business of construing documents and of assessing the prospects of success in injunction proceedings is very much the business of the High Court. The present case is towards the opposite end of the spectrum considered by the President in ***Wellington City Council v Woolworths***. I prefer therefore to employ the lower level test applied in ***Re Erebus Royal Commission*** [1983] NZLR 662 (PC) at 681, namely whether the decision is "based upon an evident logical fallacy". See Walker *What's Wrong with Irrationality?* [1995] Public Law at 556 and 559-561 and reference to the "hard look" approach employed in the USA in ***Pharmac v Roussel Uclaf Australia Pty Ltd*** [1997] NZAR 58 at 59 (CA).

The Port company pleads that in exercising its s 94 power not to notify:

> "Council erred in law and/or acted unreasonably and/or based its decision on mistakes of fact, ...
>
> (b) [The Port company] was likely to be adversely effected by the granting of the .. application in terms of s 94(2)(b)."

It contends that in failing to publicly notify the applications in accordance with s 93 and in granting consents without more stringent condition, the Council acted unlawfully and both the non-notification decision and the consents are *ultra vires* and invalid, because of the prospect of litigation or objection to developments by future residents of the Precinct.

Whether that is so turns upon the application to the facts of the test which I have adopted.

The Environment Court

Section 314(1)(a)(ii) describes as "an enforcement order" an order made under s 319 by the Environment Court which may require a person to cease conduct that in the opinion of that Court:

> "Is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment".

That term is defined by s 2:

> "'Environment' includes-
>
> (a) Ecosystems and their constituent parts, including people and communities; and
>
> (b) All natural and physical resources; and
>
> (c) Amenity values; and
>
> (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:"

The term "amenity values" is also defined by s 2:

> "Amenity values" means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes:"

The jurisdiction of the Environment Court to make orders under s 314 is limited by s 319(2), providing that it shall not make a restraining order under

s 314(1)(a)(ii) against a person (here the Port company) acting in accordance with a rule in the plan or a resource consent if the adverse effects in respect of which the order is sought were expressly recognized by the person granting the resource consent at the time of the grant unless, having regard to the lapse of time and any change of circumstances, is a ground the Court considers it appropriate to do so.

Since the Environment Court visited the issue of port noise as recently as June of this year, there would be a strong submission available to the Port company in terms of s 319(2).

On the other hand, future applications to the Port company to develop further might well be open to objection by residents if they were already suffering intolerable noise.

The High Court

As regards proceedings in this Court the tort of private nuisance has recently been considered by the House of Lords in ***Hunter v Canary Wharf Ltd*** [1997] AC 655. Lord Cook of Thorndon paid tribute to the major advance in the symmetry of the law of nuisance achieved by the members of the appellate committee with whom he sat. Lord Goff of Chieveley at 685 gave as the

classic instance of conduct giving rise to an action in private nuisance in respect of interference with the plaintiff's enjoyment of his land:

> "... something emanating from the defendant's land. Such an emanation may take many forms - noise, dirt, fumes, a noxious smell, vibrations and suchlike."

It is not without significance that noise is the first item mentioned. Their Lordships differed as to whether a right in the land was required for the plaintiff to sue. But there can be no doubt that very many of the potential plaintiffs whom the Port company has in mind will have standing to sue.

It is no defence that the plaintiff has come to the nuisance: ***Sturges v Bridgman*** (1878) 9 Ch D 852.

The law of nuisance developed prior to the town and country planning legislation in New Zealand and, of course, long before the more sophisticated regime of the RMA. The common law is described by Lord Hoffmann in ***Hunter v Canary Wharf Ltd*** at 705 where he referred to:

> "... an important distinction drawn by Lord Westbury LC in ***St Helen's Smelting Co v Tipping*** (1865) 11 HL Cas 642. In that case, the plaintiff bought a 1,300 acre estate in Lancashire. He complained that his hedges, trees and shrubs were being damaged by pollution from the defendants' copper-smelting works a mile and a half away. The defendants said that the area was full of factories and chemical works and that if the plaintiff was entitled to complain, industry would be brought to a halt. Lord Westbury said, at pp 650-651:
>
> > 'My Lords, in matters of this description it appears to me that it is a very desirable thing to mark the difference between an action brought for a nuisance upon the ground that the alleged nuisance produces material injury to the property, and an action brought for a nuisance on the ground that the thing alleged to be a nuisance is productive of sensible personal discomfort. With regard to the latter, namely, the personal inconvenience and interference with one's enjoyment, one's quiet, one's

> personal freedom, anything that discomposes or injuriously affects the senses or the nerves, whether that may or may not be denominated a nuisance, must undoubtedly depend greatly on the circumstances of the place where the thing complained of actually occurs. If a man lives in a town, it is necessary that he should subject himself to the consequences of those operations of trade which may be carried on in his immediate locality, which are actually necessary for trade and commerce, and also for the enjoyment of property, and for the benefit of the inhabitants of the town and of the public at large. If a man lives in a street where there are numerous shops, and a shop is opened next door to him, which is carried on in a fair and reasonable way, he has no ground for complaint, because to himself individually there may arise much discomfort from the trade carried on in that shop. But when an occupation is carried on by one person in the neighbourhood of another, and the result of that trade, or occupation, or business, is a material injury to property, then there unquestionably arises a very different consideration. I think, my Lords, that in a case of that description, the submission which is required from persons living in society to that amount of discomfort which may be necessary for the legitimate and free exercise of the trade of their neighbours, would not apply in circumstances the immediate result of which is sensible injury to the value of the property.'
>
> ***St Helen's Smelting & Co v Tipping*** was a landmark case. It drew the line beyond which rural and landed England did not have to accept external costs imposed upon it by industrial pollution."

Counsel have in the past tended to treat the common law and statutory planning law as independent of one another, despite the obvious relevance of Parliamentary policy as expressed in statute to the development of the common law. (See ***M v L*** [1997] 3 NZLR 424 at 443-4.) So in ***Gillingham Council v Medway Dock Co*** [1993] QB 343 at 359 Buckley J observed:

> "I have not been referred to any case which has directly concerned the interplay between planning permission and the law of nuisance."

The point is of immediate importance here where the Port company has been at pains in planning cases over the years to maintain its protection from the incursion of incompatible uses that might lead to nuisance claims. The question arises - what is to happen what is to happen if residents are

exposed to internal noise from the Port exceeding 35dBA, which exceeds the acceptable limit, and yet results from Port activity which as a result of exhaustive statutory process has been determined to be in the public interest within the 60 dBA boundary limit?

The answer is that such dilemma cannot be permitted to arise. It is the task of the Court and other bodies with responsibility for construing the RMA to recognise that planning decisions are a form of delegated legislation, which must be internally consistent in order to promote sustainable management as Parliament has directed. There must be created a seamless whole within the operation of this single statute that reconciles the competing uses which our sophisticated society requires.

The time should be long past when statute law and common law were seen as occupying different planes. Decision makers, including planning authorities and the Court on judicial review, must consider what construction of the legislation and what development of the common law will avoid anomaly and provide a sensible result.

The time to look at the whole picture is as each statutory decision is made. Otherwise there will occur the kind of bungle seen in ***Gillingham Council v Medway Dock Co*** where the Chatham Royal Naval Dockyard on the River Medway, covering some 500 acres, was granted planning permission to operate a 24-hour commercial port, attracting heavy goods vehicles along the

approach roads at all hours. The Judge found that the use by heavy vehicles of the approach roads between 7.00 p.m. and 7.00 a.m. constituted a substantial interference with the residents' enjoyment of their property, namely, disturbing their sleep and their general comfort, *leaving them tired* through lack of an undisturbed night's sleep. It was admitted that enough residents were affected to constitute a public nuisance if it were not for the other defences.

The Judge expressed the view:

> "... Parliament is presumed to have considered the interests of those who will be affected by the undertaking or works and decided that benefits from them should outweigh any necessary adverse side-effects. I believe that principle should be utilized in respect of planning permission. Parliament has set up a statutory framework and delegated the task of balancing the interests of the community against those of individuals and of holding the scales between individuals, to the local planning authority. There is the right to object to any proposed grant, provision for appeals and inquiries, and ultimately the Minister decides ... The Planning Authority grants permission for a particular construction or use in its area. It is almost certain that some local inhabitants will be prejudiced in the quiet enjoyment of their property. Can they defeat the scheme simply by bringing an action in nuisance? If not, why not? ... The Planning Authority can, through its development plans and *decisions, alter the character of a neighbourhood.* ... The disturbance complained of in this case is not actionable." (pp 359-361)

In ***Hunter v Canary Wharf Ltd*** Pill LJ, in the Court of Appeal, stated at 669:

> "If ... Buckley J was deciding the case on the basis that where planning consent for a development is given and implemented, the question of nuisance will thereafter fall to be decided by reference to a neighbourhood with that development and not as it was previously, I have no difficulty with it. ... If, however, as the defendants content, Buckley J was purporting to broaden the defence of statutory authority so as to include the authority conferred by a planning permission under delegated powers, I have respectfully to disagree."

He cited with approval ***Wheeler v JJ Saunders Ltd*** [1996] Ch 19, 35 where Peter Gibson LJ, having stated:

> "The defence of statutory authority is allowed on the basis of the true construction of the scope and effective of the statute."

added:

> "(i) In the case of planning permission granted pursuant to the statutory scheme contained in the Town and Country Planning legislation it is far from obvious to me that Parliament must have been presumed to have intended that in every case it should have the same effect on private rights as direct statutory authority, regardless of the circumstances that were in fact taken into account ... I am not prepared to accept that the principle applied in the ***Gillingham*** case must be taken to apply to every planning decision. The court should be slow to acquiesce in the extinction of private rights without compensation as a result of administrative decisions which cannot be appealed and are difficult to challenge."

Mr Kirkpatrick referred to s 23(1) of the RMA which provides:

> "Compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, bylaws, ***and rules of law.***" (Emphasis added.)

It would be simplistic to say that because the Port company has its position recognized by the relevant planning documents it cannot be the subject of a successful claim for nuisance. In ***Wheeler v JJ Saunders Ltd*** planning permission to accommodate pigs for breeding did not insulate the defendants from an injunction and damages relating to strong smells emanating from the premises.

In ***Hunter v Canary Wharf Ltd*** it was held that:

> "... more is required than a mere presence of a neighbouring building to give rise to an actionable private nuisance" (685G per Lord Goff) [referring to the ordinary] right of a citizen to build on his own land ... although this may seriously detract from the enjoyment of the [neighbour's] land (ibid D-F)."

It was rightly not argued in this case that emission of noise within the limits of an ordinary and reasonable user and compliance with the Council's rules as to noise levels will be characterised as an unalienable right, whatever the consequences to residents of new apartments within the precinct.

If such a state of affairs were allowed to occur, it would be too late. Such a result would be contrary to the orderly planning that is the general theme of the RMA.

I am not myself prepared to hold that ***Sturges v Bridgeman*** has been emasculated to such extent and I prefer the approach of Pill and Peter Gibson LJJ to that of Buckley J.

VII

The eight basic constraints on adjudication

Here it is a given that the Port must remain where it is; other options have been ruled out as impracticable.

A second given is that the Port must be able to operate 24 hours a day and be permitted to emit noise of up to 60 dBA at the boundary of the south of Quay Street.

In ***Winstone Aggregates Ltd v Papakura District Council***, decision A.96/98, 14 August 1998, Environment Judge Whiting and his Commissioner colleagues sitting on an appeal stated at paragraph 98:

> "We consider that in controlling undesirable effects, territorial authorities should impose restrictions to internalise adverse effects as much as reasonably possible. It is only where those effects cannot be reasonably controlled by restrictions and controls and internalisation, that ... restrictions on ... other sites ... might be appropriate."

The observation, made in the circumstances of that particular case, focuses on the logical enquiry - whether the Port company could be expected to reduce its noise. The answer is clearly, no.

A third given is that the rezoning of the Precinct has removed the former railway yard buffer between the Port and the existing residential uses to the south and east of the Precinct by introducing such uses into it.

A fourth given is that (by s105) the Council must grant consents for such controlled activities; the only constraint is the imposition of conditions.

A fifth given is that the wharf-derived (and other external) noise must not generate more that 35dBA of internal noise within the resulting residential apartments.

A sixth is that the apartments must conform with Building Code ventilation requirements with their windows closed, since otherwise the maximum internal noise level will be exceeded.

In the leading reverse sensitivity case ***Auckland Regional Council v Auckland City Council*** [1997] NZRMA 205 at 214, Principal Environment Court Judge Sheppard and his fellow Commissioners, again sitting on an appeal, rejected:

> "... the submissions based on leaving promoters of enterprises to judge their own locational needs, not protecting them from their own folly, or failing to consider the position of those who come to a nuisance. We consider that those submissions do not respond to the functions of territorial authorities under the Resource Management Act ... To reject provisions of the kind proposed, on the basis of leaving promoters to judge their own needs, on not protecting them from their own folly, and of failing to consider the effects [on] those who may come to the nuisance, would be to fail to perform the functions prescribed for territorial authorities. It would also fail to consider the effects on the safety and amenities of people who come to premises ..."

It would, in my view, be unreasonable, in the relevant sense, to suggest that future occupants of the apartments should be left to negotiate the installation of additional insulation to bring the internal noise level down to an acceptable standard. Nor did counsel for any respondent so contend. That is the seventh given.

Finally, nor is it an answer to try to impose as a condition under s 105(1)(a) restraining owners and occupiers of the apartments from seeking injunctive relief against the Port company.

I am of the view that while a Full Court has decided that a party may surrender personal rights (see ***Christchurch International Airport Ltd v Christchurch City Council*** [1997] NZRMA 14 at 157), neither a Council nor this Court may order an unwilling party to surrender, as a condition under s108, the right as affected party to receive notice of an application under s93(1)(e), to make submissions under s96, and to appeal under s120. Pointers to this conclusion are first that the statute is to be read as a whole, and its provisions as consistent with one another. No condition may be imposed which would abrogate the rights conferred by the statute. Secondly, the principle that a citizen is not lightly to be deprived of access to justice is deep-seated. In ***Regina v Lord Chancellor ex parte Witham*** [1998] QB 575, the Divisional Court struck down as being unconstitutional and *ultra vires* fees increased by the Lord Chancellor with the concurrence of the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice Chancellor which infringed the fundamental right of access to Courts. That principle applies equally in New Zealand. There is no jurisdiction under the guise of a condition to protect the Port company in that fashion. That is the eighth given.

I therefore do not accept the proposal by Mr Day in respect of both the Broadway and City Wise cases that such a covenant might be employed, at least without the consent of the applicant which has not been forthcoming.

One is therefore left, inexorably, with the logical result that it is at this stage when the conditions for the buildings are being set that specific standards must be fixed and sufficient authority reserved by the Council to ensure that the apprehended trouble can never arise.

The Council must retain power, at the time of considering conditions under s105(1)(a), to ensure that the 35 dBA limit is not infringed and that there is proper ventilation with the windows closed. The latter is not in doubt, having regard to its powers under the Building Act. But unless the former are reserved at the time of imposition of conditions on grant of consent there is high prospect of a planning disaster.

These matters require no specialist knowledge; they raise logical questions with which the Court can and must engage to exercise its constitutional role to ensure that the law laid down in Parliament - to achieve rational planning - is given effect.

Mr Fardell did not dispute that, if the Council has imposed conditions sufficiently stringent to allow it to enforce the 35dBA internal limit, there would be no need for notification of an application, because the desired result of notification would have been achieved. His contention was that the present conditions are inadequate.

Equally Mr Kirkpatrick did not challenge the contention that it was the Council's duty to retain power sufficient to enforce the 35 dBA limit. His contention was that the existing conditions are adequate.

I am of the view that if the conditions are inadequate the Port company has made out its case, subject to the issue of discretion. That is because, if they are not, it will be faced with the advent into the Precinct of a very large number of future residents, all of whom will be aggrieved if their internal noise level exceeds 35dBA. They will be likely to seek legal advice and apply for abatement of the noise by procedures which may very well include an application for injunction to restrain the Port from operating at night. At the least they will inhibit the sensible development of the Port by opposing future planning applications. I fancy that the metaphor used in argument, of creating an inadequately insulated hive and introducing numerous angry bees, is not far from the mark, as was so plainly the case in ***Gillingham***.

VIII

Approach to the individual claims in this case

It is necessary to consider the cases individually. Southern having settled its case was struck out as a party prior to hearing. Covington having settled with the Port company applied to be treated similarly. For a time Mr Gould

resisted its application and I deferred ruling until I was fully able to determine the implications. I advised Mr O'Callahan that, the Court having become seized of an issue of public law, and the case continuing against other parties, the overall public interest might point against dismissal: there would be risk of unlike treatment of Mr Gould's clients if relief could not be ordered against Covington in the event that the claim against other parties succeeded. The significance upon the joinder and dismissal of parties of what Fuller called the polycentric nature of public law has yet to be definitively considered (see Allison *The Procedural Reason for Judicial Restraint* [1994] Public Law 45). Ultimately however Mr Gould withdrew his objection and I dismissed Covington from the proceedings. They continued in relation to the applications of City Wise, which abides the Court's decision, and Broadway. The principles are of importance to Magellan, which holds a number of 150 year terms, and Ngati Whatua whose rental may, I am told, be affected by the result.

I turn to the two unsettled cases. The claims must be considered against the constraints discussed in Part VIII.

IX

Broadway

Broadway's site is marked as 6 on Appendix 1, with Industrial 6B zoning under Variation 11. It proposes the development of 140 residential units over 4 levels in the shape of 3 sides of a pentagon, open to the north/north east.

A report dated 23 December 1997 signed by Mr SF Havill, town planner, recorded that Broadway had considered at length the issue of noise and the impact of Port operations. It commented that the building would contain a concrete frame with acoustic rated gib internal lining and insulation in walls and ceilings. It is screened to the north east by the 5 storey railway station and 3 storey adjoining building. It is set at the minimum flood plain 5 metres below the railway line. Only 10 metres will sit above the Quay Park ground datum.

A report dated 12 February 1998 by the Council's Manager, Central Area Planning, proposing that he application be non-notified recorded:

> **"2.2 Reverse Sensitivity Issue**
>
> Although residential accommodation has been provided for on the railway land for a number of years under the Operative Plan, no development has occurred. Following the subdivision of the land in late 1996, the Council has approved two applications for residential development on Quay Park. One proposal is associated with a retail, fast food and service station development on a site zoned Industrial 6b on Quay Street and another is on land fronting The Strand and zoned Residential 9C under the Operative Plan. The Ports Company has recently expressed concern regarding the proximity of all residential developments on Quay Park with respect to the compatibility of such developments with the 24 hour port operation. A letter from POAL's legal advisers is attached as Annex A for the information of the Committee.
>
> The issue is whether the Ports of Auckland would be adversely affected by the granting of the consent on the grounds that future residents might object to the noise and glare associated with the normal port operations. This has been referred to in the Environment Court as 'reverse sensitivity' and arose out of ***Auckland Regional Council v Auckland City Council*** (A10/97) and ***Wellington International Airport Ltd & Others v Wellington City Council*** (W102/97).
>
> The general principle that can be applied from the decisions is that reverse sensitivity is an effect that should be taken into account. The former case gives some guidance in terms of the assessment of specific proposals with respect to the location of the site, the type of building proposed and the local conditions. The location of the proposal and the extent to which the building construction may mitigate any effects of noise and glare are addressed in

other sections of this report. To determine the local conditions with respect to the noise environment a survey has been carried out (refer Appendix 2). The report sets out the results of noise level readings taken over two periods. The readings for this site on the corner of Ronayne Street and The Strand indicate that traffic noise rather than noise from the port functions is the dominant factor at night. the overall conclusion is that the level of acoustic amenity likely to be experienced in the Former Railyards Precinct is acceptable, particularly given the central city location.

2.3 Affected Persons

For this particular proposal it is considered that the written approval of POAL is not required as the Company is not considered to be a party adversely affected by the granting of the resource consent for the following reasons:

1 the site is located some distance away from the port on the southwest corner and future land uses could be expected to provide a buffer from the effects of the noise and glare of the port activity

2 the orientation of the development is towards The Strand and Ronayne Streets rather than to the port

3 the height and bulk of the scheduled railway station building forms an effective barrier between development on the subject site and the port activities.

In addition the applicant has addressed the issue of the compatibility of these adjacent land uses as required by clause 5.7:2.3 of the Operative Plan and 14.13.4 of the Proposed Plan. Acoustic measures and design features as detailed in the additional information in Appendix 2 are considered to meet the criteria in this regard.

It is also noted that the Plan provisions emphasise that the proximity to the port results in a reduced environmental standard and lower amenity within the Quay Park land. While measures have been applied within the Port Precinct provisions to mitigate the generated effects of the port activity on the surrounding environment, no specific measures are adopted to protect residential amenities on the railway land apart from the more stringent noise standards applied within residential buildings in the Proposed District Plan (clause 7.6.3). The provisions also acknowledge the location of the land and the issue of the existing port activity and associated heavy vehicle movements on the major transport routes surrounding the site. Although the Plan provides a wide range of activities to encourage development the importance of the port operation to both the region and city is acknowledged and is protected through the special Port Precinct that is applied in the proposed Plan. In summary, it is considered that conditions of consent can be imposed on this application ensuring adequate noise mitigation measures and acoustic glazing, and that such measures would address the generated effects of the port operation and therefore the matters of concern that are relevant to the Council's determination under s 94."

It recommended approval.

The noise report referred to concluded with the summary:

> "Depending on the site, the noise likely to occur in apartments built on the railway land, arising because of port activities between the hours of 2am and 5am, should be between 35 and 40dBA with windows in the apartment open. This is an acceptable level of acoustic amenity especially in a central city location. In the absence of intrusive port noise from the operation of cranes or straddle carriers there appears to be little if any difference in the noise levels compared to when this equipment is operating.
>
> It should be noted that the proposed Central Area Plan will only require that the noise measured outside the building is a residential precinct to not exceed a $_{L10}$ of 55dBA (and a Lmax of 75dBA). When measured inside the same building with the windows and door closed the noise must not exceed a $_{L10}$ of 45dBA or a Lmax of 65dBA. Noise levels before 2am and after 5am will be higher but this will not be due to the port noise but as a result of higher traffic volumes in the roads around the railway land.
>
> I conclude by suggesting that existing port activities will not have a detrimental effect on residential use of the railway land and the port is unlikely to be affected by any use of the railway land for residential developments which the Council determines to be a non notified application."

Despite vigorous calls by the Port company and its solicitors to deal with the application as notified, on 24 February 1998 the Planning Fixtures Sub-Committee resolved to deal with the application as non-notified. That report formed part of a later s 94 report recommending the grant of consent. On 17 April 1998 counsellors sitting as Planning Commissioners resolved to grant the non-notified application subject, in relation to acoustics, to the following condition:

> "(20) The consent holder shall submit to the Manager: City Planning a report prepared by an acoustic engineer confirming that **appropriate noise attenuation measures** (eg double glazing); sound resistant walls and screening) for residential accommodation in this locality **have been incorporated into the construction standards of the building.**" (Emphasis added)

The resolution included:

"**Advice Notes:**

1 This development is located on land adjacent to or close in proximity to the main container operations area of the Port and to the rail transfer yard serving it. These activities operate 24 hours of the day and can generate a level of noise, glare and traffic not normally found elsewhere in the Central Area. No special or additional measures have been adopted to protect residential activities from the generated effects of the Port or railyards, except for those applied in the Port area itself. Complaints which result from failure to recognise or mitigate against the impact of legitimate operations of the Port and railyards will not be accepted by the Council"

It is unclear to me what is meant by the final sentence. If the decision was lawful there would be no legal ground for complaint; if unlawful the status would not be improved by that statement.

I have referred to the Port company's contention.

- that the application should have been publicly notified
- that the consents should not have been granted except on more stringent conditions.

Mr Fardell accepted that both complaints disappear if the external noise entering the building is in fact limited to 35dBA $_{L10}$.

The author of the noise report, Mr Craig, is a senior planner employed by the Council. While he has academic qualifications, including a distinction pass in the University of Sydney course on Noise Assessment and Control, he did not set out in his affidavit to qualify himself as competent to speak as an expert on matters of judgment about internal noise levels. The important part of his evidence was the provision of test results and other information. While his noise report stated:

"This report was reviewed by Neville Hegley, acoustical engineer, who agrees with its conclusion"

neither Mr Craig nor Mr Hegley confirmed that statement on oath. A statement by Mr Havill contains further reference to Mr Hegley's involvement and retainer as Broadway's acoustic engineer and his being confident that the design would comply with the Advice Note.

Overall, however, the material before the Council Committee is not proved to have included an expert opinion that the external noise entering the apartments would be less than the 35 dBA $_{L10}$ figure which is now agreed to be essential.

Further, the terms of condition 20 are in a form that Mr Day later criticized as inadequate to ensure that the effects of the development in the port on others would be satisfactorily mitigated. In his view, the condition leaves considerable uncertainty as to what constitutes "appropriate noise attenuation measures" and as to what acoustic performance standards should be adopted. Included in the bundle as document 211 is what appears to be Annexure A to Mr Day's affidavit, from which the annexure is missing. He describes it as:

> "A draft of a type of insulation rule which I consider to be suitable for this purpose."

That attachment is reproduced:

> **"PROPOSED SOUND INSULATION PERFORMANCE STANDARDS**
>
> 1. Dwellings shall be designed so that the sound insulation provided by the building envelope can achieve an internal noise level not exceeding 35 dBA (L_{10}) in all habitable spaces (as defined in the Building Regulations 1992), based on the assumed noise level specified below occurring at the facade of the building. Building envelope includes (but is not limited to) windows, doors, walls, roof and airconditioning penetrations.

	Octave Band Centre Frequency (Hz)						
	63	125	250	500	1k	2k	4k
Incident Sound Pressure Level	65	62	60	57	55	54	53

2 A certificate from a recognised acoustic engineer that the proposed acoustic insulation can meet the above internal noise level must be supplied with any application for building consent, and forwarded to the Council and POAL. The above incident sound pressure level shall be used for all facades of the building unless the engineer is able to provide measurements that show to the satisfaction of the Council, that the noise level on the site is normally less than 56 dba (L_{10}) during periods of full port activity.

3 For rooms that contain external windows, the sound insulation requirements specified above can only be achieved with the windows closed. The Council shall ensure that the building is designed and constructed to comply with appropriate ventilation standards with the windows closed.

4 The Council shall ensure, as part of its building inspection procedures, that the building is constructed in accordance with the sound insulation and ventilation requirements specified in the design reports."

Mr Hegley responded to Mr Day's evidence about his Annexure A, stating:

"46 CONDITION 1 is essentially a more detailed wording of the Council's conditions. It is simply a matter of presentation and does not change the essence of what I have covered above.

47 I do not understand why an acoustic design certificate should be provided to Ports of Auckland Limited. Acoustic design is simply another engineering discipline. While the Council requires reports from various designers, such as structural engineers, there is no need at all to provide them to the neighbours of any development. I cannot see why the Port is seeking an acoustic design report when they are not requiring other design reports. Of course, the question immediately raised is what happens if they Port does not agree with any such report. Alternatively, does the Port take responsibility for the design if it is later found to be incorrect.

48 The request to design to the incident sound pressure level (ie the level on the outside of the building facade which would be as high as 60dBA at the Quay Street boundary if Port is operating at maximum level) unless the engineer is able to provide measurements to show the noise level is normally less than 56dBA L_{10} is both unreasonable and open to abuse. It would be very easy to provide such measurements with the full Port operating at the moment but this does not reflect long term Port design levels. However, the design should take into account the long-term development of the Port and

these levels simply are not present at the moment to be measured. However, as set out in the evidence given by Mr Day at the hearing of the Environment Court (and generally accepted by specialists in acoustics) on the Fergusson Container Terminal expansion, there is a drop off of noise over distance across the subject sites and assuming there is 60dBA at Quay Street this drop off can be calculated without any great difficulty."

49 CONDITION 3 as proposed by Mr Day regarding ventilation has already been addressed. I believe this requirement is both unusual and unnecessary for the reasons set out above."

In his reply Mr Day stated:

"Ventilation

2.3 ... Mr Hegley gives some examples of situations where sound insulation has been required, apparently without any requirement for forced ventilation. In each case, he notes that it is necessary for windows and doors to be closed for the acoustic design criteria to be met.

2.4 If windows and doors must be kept shut to achieve an acceptable' internal noise level, then it is reasonable to expect that residents will keep their windows and doors shut in practice. However, if they do, there will be no ventilation (in the absence of some form of forced ventilation).

2.5 The issue of ventilation is addressed by Clause G4 of the Building Code. The objective of Clause G4 is stated to be as follows:

> G4.1 The objective of this provision is to safeguard people from illness or loss of amenity due to lack of fresh air.

2.6 Under the heading "Performance", Clause G4 states:

> G4.3.1 Spaces within buildings shall have means of ventilation with outdoor air that will provide an adequate number of air changes to maintain air purity.

The Code goes on to explain that the flow of outdoor air through the building envelope can be provided with either natural ventilation or mechanical ventilation.

2.7 In my view, it is inappropriate for a residential building to be designed on the basis that the windows must be kept shut to meet one criteria (ie acoustic performance) but must be kept open (or be able to be opened) to meet another criteria (ie ventilation).

2.8 The result is to create a conflict for the residents. Either they have to keep their windows shut, and thereby suffer a loss of air quality, or else they open them, and thereby lose the benefit of the sound insulation.

2.9 In practice, I believe that the latter outcome is more likely, particularly in the Auckland climate. The result, of course, is that the residents become exposed to the full impact of the very noise which the sound insulation was supposed to protect them against. In the present case, this would seriously undermine the effectiveness of any sound insulation as a means of addressing the issue of complaints by residents about port noise.

2.10 The history of complaints by existing residents living near the various ports around New Zealand supports this view. Residents around the ports in Auckland, Tauranga, Nelson and Otago are all exposed to lower noise levels than would be experienced on the railway land, and even with their older style of construction, the buildings would achieve the required internal noise level of 35dBA with windows closed. However, in the absence of forced ventilation, the New Zealand environment requires windows to be opened, and as a result, complaints are received from these residents about port noise.

2.11 In summary, I consider the failure to provide for forced ventilation to be a major design flaw, both in general terms and, in particular, in terms of the effects of the developments on POAL.

2.12 At paragraph 36 of his affidavit, Mr Hegley refers to the Draft Port Noise Standard (DZ6809) and states that the question of ventilation was raised during the development of the standard. In particular, he states that:

> The consensus by this Committee was that the issue of ventilation lay with the Building Industry Authority.

2.13 In my view, the BIA has clearly ruled on the issue through the provisions of the Building Code. As explained above, people must be safeguarded from illness or loss of amenity due to lack of fresh air. Where the implementation of an acoustic performance standard may lead to a loss of amenity through a lack of fresh air, it is my view that forced ventilation should be required."

Mr Kirkpatrick initially relied on the important principle stated by McGechan J in ***Tairoa v Minister of Justice***, CP.99/94, Wellington Registry, judgment 4 October 1994 at page 42:

> "If a decision maker ignores or acts in defiance of an incontrovertible fact, or an established and recognised body of opinion, which plainly is relevant to the decision to be made - in a sense that Parliament must have intended it to be taken into account - the decision may be invalidated. Two points, however, require emphasis. First, the fact 'must be an established one or an established and recognised opinion'; and 'it cannot be said to be a mistake to adopt one of two different points of view of the facts, each of which may reasonably be held'" Cooke P, ***NZFIA v MAF*** [[1988] 1 NZLR 544 at 552]. This is judicial review; and not a statutory appeal on fact with power to

> substitute a preferred view. Second, as Tipping J [***Isaac v Minister of Consumer Affairs*** [1990] 2 NZLR 606 at 638] puts it, the fact or opinion must have been 'actually or constructively within the knowledge of the Minister or the Ministry', constructive knowledge being in the sense that the Minister 'should have been aware of the fact of opinion'; or as Cooke P (supra 552) puts it (in the context of mandatory statutory considerations) facts 'which were or ought to have been known to himself or the Ministry'. Third, the matter is to be looked at as at the date of the impugned decision: ***Secretary of State v Tameside BC*** [1977] AC 1014, 1076 per Lord Russell, as adopted by Cooke P in ***Daganayasi v Minister of Immigration*** [[1980] 2 NZLR 130 at 148], and Tipping J in ***Isaac v Minister of Consumer Affairs*** supra 638. Facts which come to light subsequently, and which it cannot be said the Minister or Ministry should have known at the time, are excluded. Administration does not require clairvoyance."

I of course accept that if it was reasonably open to the Council to make its decision on the basis of the material put before it by Mr Craig and that decision did not entail material error, it would have been competent for the Council to make both its non notification decision and its substantive decision in reliance upon it.

Given the quite crucial importance of the issue, there may be some room for doubt whether it was reasonable for the Council to proceed on a non notified basis without the clear opinion of an expert such as Mr Hegley stating categorically that the design would guarantee a maximum of 35 dBA $_{L10}$.

It is, however, unnecessary for me to reach a conclusion upon the point because if the conditions are water-tight, Council retains the power to enforce that limit.

I accept Mr Hegley's response to Mr Day that the ventilation issue is dealt with satisfactorily under the Building Act and it does not need to be separately imposed by condition. I have said that Mr Fardell, in the course of argument, agreed with that position.

But the question as to the sufficiency of the conditions is a matter of more difficulty and is the point which I reserve pending receipt of counsel's joint draft.

X

City Wise

City Wise's site is marked as 7 on Appendix 1, with Residential 9C zoning under Variation 11. It proposes the development of 156 residential units in three level apartment blocks and one five level apartment block. They are located in the form of an L tilted at 45° to the right facing a reverse L tilted at 45° to the left, both orientated towards the central courtyard. A report dated 10 December 1997 signed by John Lovett, Town Planner, recorded that the project architect had been consulted concerning the issues of possible effects of noise and glare from adjacent land uses.

He had advised that consideration had been given in the design of the development to mitigating potential noise and glare from two adjacent land uses - namely the Port and traffic on The Strand, Gladstone Road and Quay Street. He recorded that the physical context of the site provided some mitigation in that it is low-lying, with both Quay Street and that part of The Strand which lies to the east of the site being above the level of the application site. In relation to potential noise from the Port in particular, this will tend to mitigate adverse effects by interrupting the line of sight to most of the existing and future Port area. He considered that the configuration of the proposed development will help further, given its inward focus rather

than being orientated towards the potential sources of noise. He was advised that the design provided for only low level development at the northern end of the site with the medium rise apartment-style block being positioned towards the south and east of the site - away from the Port. He advised that the 6mm glass proposed to be used for the units will be supplemented by the provision of drapes with acoustic insulation properties. The landscaping intended around the periphery of the site should also assist to some extent with mitigation.

He proposed an acoustic condition in the terms:

> "Prior to the issue of a building consent, certification shall be obtained from an experienced acoustical consultant stating that the internal noise levels will not exceed 35 dBA (L_{10}) in bedrooms and 45 dBA in other habitable rooms, based on an external level of 6 d BA (L_{10}) at the site boundaries. This shall be to the satisfaction of the team planner - Special Projects and Monitoring of the Auckland City Council."

A report dated 20 May 1998 by the Council's Manager, Central Area Planning, described the reverse sensitivity issues in much the same manner as in the Broadway report. It added:

> **"2.3 Affected Persons**
>
> For this particular proposal it is considered that the written consent of POAL is not required as the Company is not considered to be adversely affected by the granting of the resource consent for the following reasons:
>
> i) it is proposed that hush glass will be incorporated into the construction of the building;
>
> ii) it is proposed that each unit will contain adequate drapes to mitigate any effects of glare; and
>
> iii) the site is located some distance away from the port on the southeast corner of the former railyard land and future land could be expected to provide a buffer from the effects of the noise and glare of the port activity.
>
> It is also noted that the Plan provisions emphasise that the proximity of the port results in a reduced environmental standard and lower amenity within the Quay Park land. While measures have been applied within the Port

> Precinct provisions to mitigate the generated effects of the port activity on the surrounding environment, no specific measures are adopted to protect residential amenities on the railway land apart from the more stringent noise standards applied within residential buildings in the Proposed District Plan (clause 7.6.3). The provisions also acknowledge the location of the land and the issue of the existing port activity and associated heavy vehicle movement on the major transport routes surrounding the site. Although the Plan provides for a wide range of activities to encourage development, the importance of the port operation to the region and city is acknowledged and is protected through the special Port Precinct that is applied in the Proposed District Plan. In summary, it is considered that conditions of consent can be imposed on this application ensuring adequate noise mitigation measures and acoustic glazing. Further, it is considered that such measures would address the generated effects of the port operation and therefore the matters of concern that are relevant to the Council's determination under section 94."

Again the report recommended non notification. The substantive report bears an **earlier** date - 19 May 1998.

Both approvals were granted by the Planning Fixtures Sub-Committee of the Council on 27 May 1998, the latter recording:

> 3 THE PROPOSAL IS IN ACCORDANCE WITH THE ASSESSMENT CRITERIA ... OF THE TRANSITIONAL DISTRICT PLAN, IN PARTICULAR; ...
>
> (ii) THE CONSTRUCTION OF THE BUILDING INCLUDES NOISE, ATTENUATION AND GLAZING CONTROLS TO MITIGATE ANY GENERATED EFFECTS OF NOISE AND GLARE FROM SURROUNDING ACTIVITIES; ..."

A condition identical to Condition 20 of the Broadway consent was imposed.

Again the decision was made despite vigorous opposition by the Port company and its solicitors.

Mr Fardell submitted that the fact that the s 94 report post-dated the substantive report suggested that the Council was simply performing a meaningless formality. Mr Kirkpatrick responded that the sequence of the officers' reports did not matter: the decision as to notification was not theirs

to make. No allegation of bad faith or improper purpose was pleaded or argued; I regard the point as insubstantial. The crucial issue is again the efficacy of the conditions.

Mr Day's evidence in relation to the City Wise proposal acknowledged that the information permitted a relatively meaningful assessment of the adequacy of the noise attenuation measures and the other features of the development. He considered that the condition offered by City Wise goes a considerable way towards ensuring that satisfactory noise attenuation measures would be adopted.

Mr Day considered there to be two major deficiencies in the City Wise proposal:

(a) The absence of evidence of provision for forced ventilation or air conditioning in the development which would be essential if the noise levels referred to in the condition offered were to be met while providing the quality of air required by the Building Code;

(b) Without a covenant not to sue of the type I have found to be unlawful, the Port company would be vulnerable to complaints regarding its activities.

The former can be disregarded, having regard to the Council's Building Act powers. The latter cannot be imposed.

The evidence did not indicate what changes, if any, Mr Day would propose to the proposed acoustic condition if that is the only protection available.

The strength of City Wise's position is greater than that of Broadway. But having heard no submissions on the matter on behalf of City Wise, I propose to reserve the sufficiency of the conditions in this case also.

XI

Discretion

Submissions against the grant of relief on discretionary grounds were advanced on behalf of Broadway, Magellan and Ngati Whatua. They tended to be in general terms and I think it is likely that, with the building process not having commenced, there would be insufficient basis to decline to give directions under s 4(5) of the Judicature Amendment Act to impose more stringent conditions if that were considered necessary to avoid what I have called the bungle, which it is imperative to avoid. For the purposes of this interim judgment, I reserve my decision of that aspect of the case.

XII

Final resolution of claims

I await receipt of the agreed form of conditions. I reserve leave to all parties to apply for further directions as to the terms of final judgment by memorandum filed and served within 21 days and will hear counsel further if that is requested. In the event of disagreement, I request counsel for the Port company to arrange a telephone conference to timetable further submissions. Costs are reserved.

ORIGINAL

Decision No. C 60 /2004

IN THE MATTER	of the Resource Management Act 1991 **(the Act)**
AND	
IN THE MATTER	of references pursuant to Clause 14 of the First Schedule to the Act
BETWEEN	ROBINSONS BAY TRUST
	(RMA 518A/01)
AND	NATIONAL INVESTMENT TRUST
	(RMA 590B/99 and 527A/01)
AND	CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED
	(RMA 525B&C/99 and 507E/01)
AND	CLEARWATER LAND HOLDINGS & OTHERS
	(RMA 568A,B,C/99, 498A/01)
AND	SUBURBAN ESTATES LIMITED
	(RMA 526A/01)
	Appellants
AND	CHRISTCHURCH CITY COUNCIL
	Respondent

BEFORE THE ENVIRONMENT COURT

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Environment Judge J A Smith (presiding)
Environment Commissioner S J Watson
Environment Commissioner D H Menzies

Hearing: Christchurch on 22-26 March, 29 March to 2 April and 5-8 April 2004

Appearances:

Mr B R D Burke for Robinson Bay Trust, National Investment Trust, Country Estates (Canterbury) Limited (**Robinson Bay**)

Mr E D Wylie QC and Mr T A Coull for Clearwater Land Holdings Limited (**Clearwater**)

Ms P A Steven and Mr K J Reid for Suburban Estates Limited (**Suburban Estates**)

Ms J M Appleyard and Ms B J Burt for Christchurch International Airport Limited (**CIAL**), Board of Airline Representatives (**BARNZ**) and the Canterbury Regional Council (**the Regional Council**)

Mr J G Hardie for the Christchurch City Council (**the Council**)

INTERIM DECISION

Introduction

[1] How much land should be covered by a policy restraining noise sensitive peripheral urban development?

[2] In this case two alternatives were put to the Court:

(1) A line on the Christchurch City Proposed Plan (**the Proposed Plan**) known as the **50 dBA contour line**. This modelled noise contour of 50 dBA Ldn covers a large area of land to the north-west of Christchurch International Airport (**the Airport**) flight path. Importantly, it also covers most of the undeveloped land to the south of the Airport flight path to the existing urban fringe.

(2) A line on the Proposed Plan known as the **55 dBA contour line**. This covers significantly less land to the north of the airport flight path and is around 500 metres further away from the existing city boundary on the southern side of the airport than the 50 dBA Ldn contour line.

[3] A copy of the plan showing the urban areas and the airport and the 50 and 55 dBA Ldn contour lines is annexed hereto and marked "**A**". We were told that the area

to the south of the airport where there is likely to be significant pressure for ongoing urban scale development is the area of critical concern. There are a number of additional references and appeals relating to this area to be determined with reference to the wording of Policy 6.3.7 to the Proposed Plan.

[4] The parties accept that there should be a policy 6.3.7:

> *to discourage peripheral urban growth involving noise sensitive activities within a dBA Ldn contour from the Christchurch International Airport Limited.*

[5] The single issue for this Court is whether this should be at the 50 dBA Ldn line or at the 55 dBA Ldn line. There may be a necessity for consequential changes directly to the explanation and reasons to Policy 6.3.7 and also to other various policies to ensure that the reference to the contour line is consistent throughout the Proposed Plan.

[6] There are other relevant references yet to be resolved, particularly:

(1) the question of the definition of noise sensitive activities and particularly whether various forms of travellers' accommodation should be incorporated within that definition;
(2) the issue of controls over the airport noise that have yet to be resolved which are also the subject of reference.

[7] All parties agree that in addition to the decision of this Court, the final wording of the provisions of the Proposed Plan will need to await the resolution of these two particular issues as well.

Proceedings before the Court

[8] The proceedings in this matter have taken a particularly tortuous route to hearing. These proceedings are part of a large group of proceedings relating to the airport which were initially dealt with together. The group consists of a significant number of references to the Proposed Plan itself and various Variation 52 (**the Variation**) and section 120 appeals. The Court, in preliminary decisions, decided it

should deal with jurisdictional issues in the first instance and identified the question of contour lines as a preliminary jurisdictional issue on which it issued a decision[1]. That decision was successfully appealed to the High Court[2]. Unfortunately, the interpretation of the High Court decision led to ongoing disputes between the parties. These disputes were the subject of further hearings and directions, particularly relating to questions of discovery, before this Court. Potential hearing dates were set and then abandoned.

[9] After the parties had agreed to these proceedings being heard in March and the timetable was set, there were ongoing difficulties requiring further Court directions and conferences as close as one week to the hearing. The end result was that Clearwater sought to take no active part in the proceedings, while reserving their rights. Their status in these proceedings became increasingly tenuous the further the hearing progressed. Mr Coull appeared for Clearwater on the last day of hearing and advised that they were withdrawing proceedings RMA 498A/99, 498B/99, 498C/99, and their notices of interest in 507B/01 and 507D/01. We understand the withdrawal results from an accommodation between the CIAL and Clearwater. No particular details were given to the Court. No other party sought costs in respect of that matter and accordingly those proceedings are at an end, with no order for costs being made. If 498A/99 and 568A/99, B and C are not at an end Clearwater is to advise the Court forthwith. We assume that 568A/99, B and C are also withdrawn although this was not explicitly addressed by Mr Coull.

[10] Because of Clearwater's limited role in the proceedings, the lead role in respect of the hearing was taken over at very short notice by Ms P A Steven for Suburban Estates. Suburban Estates called many of the same witnesses proposed by Clearwater, particularly Dr B F Berry and Dr R B Bullen. However, during the course of the hearing, and after the presentation of the Suburban Estates case, Ms P A Steven withdrew the Suburban Estate's reference RMA 526/01, being the entire reference on Variation 52. No other party sought costs and accordingly those proceedings are at an end and there is no order as to costs.

1 ***Clearwater Resort Limited v Christchurch City Council*** C94/2002.
2 ***Clearwater Resort Limited v Christchurch City Council*** AP 34/02, Young J 14/3/03.

[11] Mr Burke only received instructions for Robinsons Bay very close to the hearing when a conflict of interest arose between Clearwater (et al) and Robinsons Bay and both parties instructed alternative counsel. The withdrawal of the Suburban Estates references, occurring as it did on 31 March during the hearing, placed the case of Robinsons Bay Trust, National Investment Trust and Country Estates Canterbury Limited in some difficulty. Mr Burke had only had limited participation in the hearing to this time and had already presented the case for his client.

[12] Initially there was a question as to whether or not Mr Burke had adopted the evidence of Suburban Estates witnesses. Our notes indicated that he had done so both at the commencement of the hearing and during the course of his opening for the parties he represented. This issue was not pressed further by other counsel. We have therefore concluded that the evidence presented by Suburban Estates was also presented on behalf of Robinsons Bay and will be considered as evidence on the Robinsons Bay and National Investments references. Mr Burke took an active role in the proceedings from 31 March and performed an exemplary task in presenting the case for his clients through cross-examination of the remaining witnesses for the CCC and CIAL.

The scope of the hearing

[13] This reference concerns Policy 6.3.7 of the Proposed Plan and, specifically, whether noise sensitive activities should be discouraged within the 50 dBA Ldn contour line or the 55 dBA Ldn contour line.

[14] The hearing does not include a consideration of movement of the contour lines. That issue was considered in the earlier High Court appeal. While the computer modelling for the contour lines was reconsidered on a without prejudice basis prior to this hearing, all parties agreed at the commencement of the hearing that the location of the modelled noise contour lines was not at issue.

[15] The scope does include consideration of what the noise contour line signifies. This is addressed by consideration of the New Zealand Noise Standard 6805: 1992 (**the Noise Standard**) which is expressly adopted as underpinning the contour lines. The Noise Standard indicated two guideline aspects – the first, a control on land use within

the modelled contour; the other, by implication, a control on noise generated by airport operations. While Policy 6.3.7 refers to a noise contour, the focus of this hearing was on peripheral urban growth involving noise sensitive activities within the lines on the Proposed Plan.

[16] The hearing did not address the relationship of the noise contour lines with other interrelated policies which also influence land users near the airport.

[17] However, the scope did address noise perception and effects as a basis on which conclusions could be reached as to whether the 50 or 55 dBA Ldn contour would better represent the outer control boundary.

[18] As noted, the scope did not address the **definition** of noise sensitive activities. This is to be considered in the future.

[19] We have already noted that this decision must be an interim decision having regard to the matrix of inter-dependent policies which also require resolution, particularly those relating to controls over airport noise and the definition of noise sensitive activities. In simple terms, the question is whether the 50 dBA Ldn contour line or the 55 dBA Ldn contour line better provides for the purpose of the Act, the Regional Policy Statement (**RPS**) and the undisputed policies and objectives of the Proposed Plan.

Points of agreement

[20] There are many points of agreement between the parties including:

(1) The parties agree that the Noise Standard is generally appropriate for use at the Christchurch Airport. This includes an acceptance that it is appropriate to address controls over the airport and over land development by means of an air noise boundary and an outer control boundary. The major distinction between the parties is whether the outer control boundary should be at the 55 dBA Ldn specified in the Noise Standard (clause

1.4.2.2) or should be at the 50 dBA Ldn contour line shown in the Proposed Plan.

(2) Having assessed the evidence of all the witnesses, we conclude it is common ground of the parties that the standard is a guide rather than a mandatory requirement and that it has been utilised in various ways throughout New Zealand. The Noise Standard does not recommend using the 50 dBA Ldn contour line, nor has it been used elsewhere in New Zealand.

(3) The purpose of the outer control boundary is set out in Noise Standard at clause 1.1.5:

> *(b) The Standard establishes a second, and outer, control boundary for the protection of amenity values, and prescribes the maximum sound exposure from aircraft noise at this boundary.*

The level of disagreement therefore relates not to the applicability of the standard but whether, in fact, a lower level than 55 dBA Ldn is appropriate to the circumstances of this case.

Both the Council and the Regional Council advocated the adoption of the 50 dBA contour line as the contour which better supported the purpose of the Act.

(4) The Christchurch City Council and Robinsons Bay agree that either the 50 or 55 dBA contour lines can be adopted without doing violence to the Proposed Plan or the Regional Policy Statement (**the RPS**). Although various witnesses for CIAL suggested to the contrary, under cross-examination they accepted either contour would fit the Proposed Plan and RPS. Notwithstanding the suggestions that the 55 dBA contour line would be contrary to the RPS, Mr McCallum, called for the Regional Council, later accepted in answer to questions that the Proposed Plan did not prohibit development within these contours. He acknowledged that there were other policies and objectives which also militated against development within these contours. He accepted the Proposed Plan as

promulgated by Council was not contrary to the RPS on this issue. We conclude that neither would a 55 dBA Ldn contour line be contrary to the RPS. In fact, Mr McCallum indicated, surprisingly, that some urban residential development within the 50-55 dBA Ldn contour could be justified under the Proposed Plan. We conclude he could only hold such a position if such development is not contrary to the RPS.

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

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

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

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

[22] The question then is whether or not the adoption of a higher standard (the 50 dBA Ldn contour line) is appropriate in this Proposed Plan rather than whether 55 dBA Ldn is appropriate.

Noise issues and effects

[23] There are effects of noise above and below 50 and 55 dBA Ldn. There appeared to be a common approach by the experts to noise which we briefly cite as follows:

(a) noise above 65 dBA Ldn is of concern and is described as a noisy environment;

(b) noise between 55 and 65 dBA Ldn has potential health effects and would be described as a moderately noisy environment;

(c) noise below 55 dBA Ldn is considered a low noise environment and has limited health effects.

[24] We have concluded that below 55 dBA Ldn the major known effect of noise is annoyance (an amenity effect). Dr R F S Job, a psychologist called by CIAL, suggested that the effects of noise continued well below 50 dBA Ldn and even below 40 decibels. Mr C W Day, from CIAL, took a more constrained position that there were effects of noise above 45 dBA Ldn. Having heard all the witnesses, including Dr Berry and Dr Bullen, we have concluded that the annoyance effect of noise decreases under 50 dBA Ldn and is assimilated by background noise at around 45 dBA Ldn. While in a laboratory setting it might be possible to measure effects below that, the noise environment around Christchurch Airport cannot be said to be without other noise sources. We were told by Mr M J Hunt, a noise expert called for Suburban Estates and adopted by Robinsons Bay, that 50% of Christchurch had Ldn levels in excess of 50 dBA. This also accords with the extensive range of evidence this Court has heard in other cases as to noise levels in a diverse range of circumstances. Even in the rural area, we would be expecting ambient Ldn levels to be between 40 and 50 dBA in an non-urbanised state, even without the presence of the airport.

[25] The Council conducted a wide sample residential postal survey of Christchurch in 2002 to assess residents experience with respect to four types of noise environments to identify their "most bothersome noise". Mr J T Baines gave evidence as to the background and the results of that survey. Four types of environmental noise catchments were selected: airport, road traffic, industrial and general neighbourhood noise. Within each catchment, a selection of 400 residential properties was identified to achieve reliable statistical results. "Highly annoyed" levels were relatively similar in areas away from road traffic noise although the prime annoyance was due to the target noise, i.e. 17.1% of respondents in the Airport noise catchment were highly annoyed by aircraft noise; 20.6% of respondents in the Industrial noise catchment were highly annoyed by Industrial noise, and 17.4% of respondents in the General Neighbourhood

catchment areas were highly annoyed by neighbourhood noise. These are largely similar outcomes and reflect the different target noise groups of the analysis. What is clear from this is that a similar number of people are highly annoyed by whatever the dominant noise was within their area, even in a general residential area. These outcomes need to be considered against 39.7% who were highly annoyed within the Road Traffic noise catchment.

[26] Interestingly, in response to questions on positive noise (noise people enjoyed) aircraft noise ranked third after bird and animal life and the sound of children and ahead of sources such as the wind and the ocean and miscellaneous neighbourhood sounds.

[27] We also note that for the Taylor Baines survey the catchment for the airport related noises included very few properties that were within significant noise contours (above 65 dBA Ldn) and a relatively small number that were receiving noise in excess of 55 dBA Ldn. We should explain that although the contours are shown as 50 and 55 dBA Ldn on the Proposed Plan, this is not the current noise environment. We were told that the current noise environment is some 5-7 decibels lower than the drawn contours. The contours represent an estimated noise environment when the airport is fully utilised on its current configuration.

Ldn as an annoyance measure

[28] We accept that the percentage of persons highly annoyed within the 50-55 dBA Ldn contour would be lower than that above 55 dBA Ldn. We consider that a reasonable estimate, based on the various expert witnesses we heard, is about half the level of people being highly annoyed in the 50-55 dBA Ldn contour compared to above 55-60 dBA Ldn. However, it is also clear that a complaint level can exist well below the 50 dBA Ldn contour. Examples were given from both Sydney and Vancouver showing that complaints were occurring well beyond the 55, and even the 50 dBA Ldn, noise contours.

[29] We have concluded that the reason for this is that the Ldn is a useful gauge for measuring annoyance at moderate to high noise levels. It is a less reliable indicator at lower noise levels. The reason for this is founded on the basis by which the Ldn is

calculated. Ldn consists of taking single event noise levels (**SELs**) and averaging these over a period, in this case a rolling twelve month average whereas the Standard provides for a rolling three month average. This also involves adjusting the SELs with a weighting of 10 dBA Ldn for noises occurring between 2200 hours and 0700 hours.

[30] The experts had a high level of agreement that aircraft noise consisted of a lesser number of high energy events. Mr Day, for example, gave evidence that SELs on the 50 dBA Ldn contour when the airport is fully utilised could still be up to the order of 82-85 dBA SEL. The Ldn achieved would, however, be a result of how many of those individual SELs occur, together with lesser noise events and over what period. The difficulty is that Ldn does not directly recognise loud noise events, such as those in the order of 82-85 dBA, that may occur very infrequently. If, for example, there was a limited number of such events, say four or five a day with several at night, it is perfectly possible that the Ldn could be no more than 50-55 dBA.

[31] Evidence given about the difficulties at Sydney Airport by Dr Job indicates that these individual events, standing out against a lower ambient noise level, may create greater disturbance than the environment for people living in a higher Ldn environment but with less differentiation in the range of noise between ambient noise and SELs. A low ambient noise level would mean a low number of aircraft SELs would stand out even with a lower the overall Ldn.

[32] Notwithstanding that, all the experts agreed that the Ldn was the best, if imperfect, descriptor of annoyance levels available. However, we take into account that in assessing Ldns we must regard the lower level Ldns from airport noise with somewhat more caution because of this limitation.

Objectives and policies of the RPS

[33] In considering which contour is better for inclusion in the policy, we have concluded that we should look at the settled objectives and policies of the Proposed Plan and then the provisions of the Act, particularly section 32 and section 5.

[34] The Environment Court and High Court have considered the relevant objectives and policies of the RPS and of the Proposed Plan in the context of an application for subdivision consent[3]. Although those cases were prior to Variation 52, the Environment Court analysis of the RPS remains incisive for current purposes. To that end we will not repeat paragraph 41 of the decision of the Environment Court which identifies parts of Chapter 7 (objective 2 and policy 6) and Chapter 12 (objective 2 and policy 4) of the RPS as relevant.

[35] In addition to this, Chapter 15 of the RPS contains a significant number of statements relating to the airport, including issue 1 which, among other matters, identifies land use as a potential impediment to the expansion of the airport.

[36] Policy 4 of Chapter 12 of the RPS provides an Explanation as follows:

> *The discouragement of noise sensitive development, particularly residential use and residences, in the vicinity of airports and sea ports to minimise the extent of area and number of residences subject to adverse noise impacts, and the discouragement of all urban uses and residences in areas where there is a greater risk of crashes, particularly take off and landing zones, and other risks associated with activities that occur at airports and sea ports such as the storage of hazardous substances.*
>
> ...
>
> *Because of the paramount importance of maintaining the safety of aircraft and ship operations, it is essential that priority be directed at controlling the location and density of noise sensitive land uses, thereby avoiding existing noise problems being further exacerbated, rather than regulating the use of airports and sea ports where that could either reduce safety margins or impede efficient airport and sea port operations.*
>
> ...
>
> *Policy 4 recognises the need to reinforce the use of Air Noise and Outer Control Boundaries along with compatible land use planning principles in areas*

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3 ***Garguilo v Christchurch City Council*** (E.C.) C137/2000;
Garguilo v Christchurch City Council (H.C.) AP 32/00 Hansen J 6/3/2001.

adjacent to major airports to ensure continuation of their efficient operation (see New Zealand Standard 6805:1992).

As we have already noted, we accept in light of this that either contour would be consistent with the RPS.

The provisions of the Proposed Plan

[37] The Environment Court in ***Garguilo v Christchurch City Council***[4] also discussed the provisions of the Proposed Plan in paragraphs 44-47 inclusive. The decision discussed Volume 2 Policy 6.3.7, but the wording of the Proposed Plan at that time was somewhat different to that in Variation 52. Reference within the explanation and reasons discussed the 55 dBA Ldn contour and stated that:

... between the 55 Ldn contour and the Air Noise Boundary, new residential development will be discouraged (except for limited development in the Living 1C zone) ... This policy is expected to protect airport operations and future residents from adverse noise impacts.

[38] Discussion also identified other provisions within the Proposed Plan (Volume 2: Objective 6.3 including Policy 6.3.11; Section 7 including Policies 7.8.1 and 7.8.2; and Sections 10 and 13) leading the Court to a conclusion contained in paragraph 48 as follows:

If it is possible, without being totally simplistic, to summarise the effect of all those objectives and policies in so far as they relate to subdivision and residential use close to the international airport, they come down to three sets:

(a) restricting use of buildings for noise sensitive activities close to the airport (not relevant in this case);

(b) requiring noise attenuation measures in certain buildings within the 55 dBA Ldn contour (again not relevant in this case);

[4] Above C137/2000 at paras 44-47.

(c) keeping the density of dwellings within the 50 dBA Ldn contour to a level so that the number of people living within the noise affected environment is kept to a reasonable minimum.

We find that these objectives and policies are a package: all sets are applicable, but if the first do not apply then the third, more general, set of policies still applies.

[39] On appeal in the High Court, the High Court at paragraphs 39 and 40 addressed the issue in this way:

[39] Ms Steven complained that nowhere in the relevant documents is there a limitation relating to the 50 dBA line. That, of course, was accepted by Mr Hardie, who said if one read Rural 5 for 50 dBA there would be no problem. The difficulty with Ms Steven's submission is that the Court did not rely on the 50 dBA Ldn noise contour. What, in fact, was said can be found at paragraph 39 where the Court stated:

> *"The CCC (and on appeal this Court) does not have to guess whether the effects of subdivision and a new house will be adverse, the RPS and proposed district plan both imply (as we see when we consider them shortly) that subdivision within the 50 Ldn contour at a density greater than one lot per 4 ha does have adverse effects."*
> *[my emphasis].*

[40] Frankly, having read the documents that is an inevitable and necessary implication.

[40] It can be said that these findings are only marginally relevant to the question of the appropriate policy. However, what both these decisions do is reinforce the view we have formed, having heard all the evidence and read the relevant policy provisions, there are a plethora of objectives and policies that seek to protect the airport and limit the introduction of any potentially incompatible activity, particularly residential dwellings.

[41] Putting aside the provisions of policy 6.3.7 and its explanation and reasons, the overwhelming thrust of the Proposed Plan is towards limiting any development in proximity to the airport. These policies and objectives are achieved and implemented by the various zoning and rule provisions which encapsulate the activities broadly within the Rural 5 zone to the south of the airport flight path. The status of any subdivision below four hectares as a non-complying activity within this area further reinforces our view as to the intention of the objectives and policies. We conclude the intention of the Proposed Plan is that the policies and objectives are achieved and implemented by the rules[5] which limit residential activities close to the airport.

[42] This Court has already commented[6] that this is an odd situation where we are effectively retrofitting a policy to an existing matrix of policies and objectives and existing rules. However, our conclusion is that the clear thrust of the matrix of policies and objectives, apart from Policy 6.3.7, is to limit residential development in proximity to the airport. Policies 6.3.11 and 7.8.2 are clear examples of this, together with the environmental result anticipated to Volume 2, Chapter 6 (page 6/16) of the Proposed Plan, namely:

> *Continued unrestricted operation and growth of operations at Christchurch International Airport and protection of future residents from noise impacts.*

Section 32 considerations[7]

[43] Section 32 is noted to be subject to achieving the purpose of the Act which is encapsulated within section 5. In addition to that evaluation, which we will undertake shortly, there are various other criteria which should be examined in considering the appropriate policy to be included in the Proposed Plan. Several of the tests in section 32 have already been encapsulated within our preceding considerations. The questions of necessity under section 32(a)(i) and section 32(1)(c) could be considered in the context of which of these alternatives are desirable or expedient[8]. On the other hand, in

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5 ***Suburban Estates v Christchurch City Council*** C217/2001 para 274.
6 ***Clearwater Resort Limited v Christchurch City Council*** C94/2002 at para 25.
7 The references to the Act are to the Act prior to 1 August 2003.
8 ***Guthrie v Dunedin City Council*** C174/2001.

Suburban Estates v Christchurch City Council[9] the Environment Court, in considering these words in combination with the description of most *appropriate*, expressed the formulation of **better**. We adopt the formulation of **better** in this case because there is a clear option and thus this phrase most appropriately captures the test for the Court.

[44] In reaching a conclusion as to which policy would be better, we take into account the further criteria set out in section 32(1), namely:

- other methods and means (section 32(1)(a)(ii) and (iii)); and
- benefits and costs (section 32(1)(b)).

Alternative methods or means

[45] Section 32(1)(a) refers variously to other methods (section 32(1)(a)(i)), other means (section 32(1)(a)(ii)) and alternative means (section 32(1)(a)(iii)). This must include the potential to do nothing which, of course, is not in dispute in this particular case. The parties are agreed that a policy is necessary and that minimal restriction on landowners' rights would be achieved by the use of the 55 dBA Ldn contour line.

[46] Acquisition of the land would be a possibility for CIAL, to protect the airport, but would be extremely expensive. In the circumstances, such an alternative is not required in a real sense in this particular case. We have reached this conclusion because there are settled policies and objectives which already significantly restrict the ability of landowners to develop their land in accordance with their wishes. We have concluded that the Proposed Plan is relatively liberal in presently allowing a level of development down to four hectares within the Rural 5 zone, even within the 50 and 55 dBA Ldn contours. Thus, not all residential development within the area is discouraged, only certain urban peripheral growth. Furthermore, during the course of the hearing it became clear that Policy 6.3.7 sought to deal only with certain types of noise sensitive activities or residential activities but was not intended to include non-sensitive activities, for example industrial or commercial activities.

[9] C217/2001 at para [276].

[47] The application of Policy 6.3.7 would be particularly limited in its scope. From the explanations given by Council, it appeared to be intended that Policy 6.3.7 apply to proposed development at a density similar to existing living zones. Its application to development at Rural Residential densities of, say, 2000 m^2 or greater appears problematic. We had no clear responses as to whether this level of development was intended to be covered by this particular policy.

[48] However, as we have already discussed, there are a wide range of other policies, rules and other provisions of the Proposed Plan which would still apply to any development in the area. Having regard to that limitation, it must be said that the established policies and objectives and other provisions of the Proposed Plan already form a formidable matrix restricting development. Policy 6.3.7 contributes only one element to this in the context of peripheral urban growth. In short, it supplies an additional control over land use development within the noise contours. Thus its application to the 55 dBA Ldn contour line "releases" only the land between 50-55 dBA Ldn which is affected by other policies and on which the development is still non-complying.

[49] The major argument for adopting the 50 dBA Ldn noise contour in Policy 6.3.7 relates to providing an additional control to reduce the potential for residents to become highly annoyed with aircraft traffic. We accept the clear evidence given to us that noise can create impacts on amenity and some people will become highly annoyed. We also accept that there would be some benefit to the airport in future-proofing its operation. That benefit is one that has local, regional and national significance[10]. It was not clear to us what alternative means would produce this outcome. We conclude that in these circumstances alternative means are not appropriate.

[50] Against the use of the 50 dBA Ldn contour is the additional limitation or barrier this would place on landowners being able to develop their land in an unrestricted way. Because of the significant limitations on the use of this land in any event, we are unable to see this as effectively disenabling these residents if the contour was fixed at 50 dBA

[10] ***Christchurch International Airport Limited v Christchurch City Council*** AP 78/1996 decision of Chisholm J at page 3.

Ldn. The land has historically not been available for urban development, nor does this Proposed Plan (putting aside Policy 6.3.7) provide for such urban development.

[51] The potential for future urban development between 50 and 55 dBA Ldn noise contours may be a benefit from the adoption of a 55 dBA Ldn contour. The adoption of this contour would enable owners of the land to pursue urban development of this land without coming into direct conflict with Policy 6.3.7. However, there are a significant number of other policies which would stand in their way, including most particularly 6.3.4, 6.3.6, 6.3.8 and 7.8.2. Nor do we think that many of these other policies are necessarily limited only to land within the 50 or 55 dBA Ldn contour. Many of these policies, particularly 7.8.1 and 7.8.2, as well as those under Chapter 13, could have application below the 50 dBA Ldn contour, depending on the evidence of effects.

[52] The full wording of Policy 6.3.7, as it currently appears in the Proposed Plan, and its associated explanation and reasons is annexed hereto and marked **"B"**. We do not take the wording:

> *The intention of this policy is that, in general, the 50 dBA Ldn contour (shown on the planning maps) should mark the limit of urban residential growth in the direction of Christchurch International Airport.*

as indicating that development should occur to that contour.

[53] We also attach and mark **"C"** the Policies 7.8.1 and 7.8.2 and their associated explanations and reasons. It is clear that there may need to be consequential amendment to the explanation and reasons of Policy 7.8.1 to ensure that the contour referred to as the outer control boundary is the same as that in Policy 6.3.7. Although Policies 7.8.1 and 7.8.2 note that surrounding land users need protection from adverse effects of the airport, the appropriate limit of the application of that rule remains unclear. It could therefore be said that the use of the 55 dBA Ldn contour in Policy 6.3.9 favours the adoption of this contour in Policy 6.3.7.

[54] In the end whether 55 dBA Ldn is appropriate or not turns largely on whether the level of effect constituted by a 55 dBA Ldn contour is considered appropriate in the circumstances of the case. If it is considered appropriate, then it could be said that the inclusion of the 55 dBA Ldn contour in Policy 6.3.7 will enable the residents in this area and not provide an unreasonable imposition upon the airport. Alternatively, if we conclude that the effect on amenity of aircraft noise between 50-55 dBA Ldn noise contours is not appropriate, then the 55 dBA Ldn noise contour would not enable the airport and would create unacceptable effects on noise sensitive activities within the 50-55 dBA Ldn contour.

Benefits and costs

[55] Section 32(1)(b) requires an evaluation of the likely benefits and costs and the extent to which any provision is likely to be effective. We have concluded that the benefits to landowners from the adoption of the 55 dBA Ldn contour rather than the 50 dBA Ldn contour are minimal in this case. The realities of the situation are that there is a significant matrix of policies, objectives and rules against the establishment of urban residential activity in proximity to the airport. Some provisions relate to flooding, some to versatile soils, and still others to infrastructural and other requirements. Even with Policy 6.3.7 at the 55 dBA Ldn noise contour and equivalent provisions in Policies 6.3.9, 7.8.1 and 7.8.2, there would still be potential for effects to be considered on a case by case basis in respect of applications for non-complying activity resource consent.

[56] We conclude the argument for the developers is even more constrained. A new Policy 6.3.7 may ease the way for the developers who have filed references to the Proposed Plan to argue that their sites should be rezoned. However such a benefit is still contingent and we are unable to conclude at this stage that the alteration of the policy in this way would lead to any different outcome in respect of those references.

[57] We are unable to see that there is any particular cost imposed upon landowners from the adoption of the 50 dBA Ldn contour as opposed to the 55 dBA Ldn contour. The land is still available for a range of permitted uses, including, as we have already discussed, limited residential subdivision and development of one dwelling to four hectares in the Rural 5 zone and one to 20 hectares in the Rural 2 zone. The land is

still available for a wide range of rural uses. Policy 6.3.7 itself it would not, on its face, affect applications for non-noise sensitive activities or subdivisions for commercial or industrial use.

[58] By the same token, we are unable to conclude firmly from the evidence that we have heard that there is in fact any significant cost imposed upon the airport from the imposition of the 55 dBA Ldn as opposed to the 50 dBA Ldn contour. Many witnesses gave evidence based on an assumption that higher density would lead to curfews on the airport. The only distinction between 50-55 dBA Ldn noise contours was that a 55 dBA Ldn contour may introduce a higher concentration of noise sensitive activities to the land between 50 and 55 dBA Ldn. The proposition was that with a higher population in the low noise area there would be more agitation for a curfew. Having heard all the evidence, we have concluded that a curfew due only to the inclusion of buildings between the 50 and 55 dBA Ldn noise contour is unlikely. We do accept that there are likely to be a percentage of persons highly annoyed even below the 50 dBA Ldn noise contour. Although that percentage is significantly less than at the 55 dBA Ldn contour, we accept this may lead to an increased level of complaints. In our view such complaints are going to be inevitable in any event as the noise levels for airport activity within the existing urban area moves towards the 50 and 55 dBA Ldn contours in the next twenty to thirty years.

[59] We have concluded as a fact that a greater number of dwellings between the 50 and 55 dBA Ldn contour will lead to an increased number of persons being highly annoyed by aircraft traffic. That effect is one on the amenity of the persons who may reside under the flight path and accordingly is an effect which we should properly take into account, particularly under section 5 of the Act. However, it is also an effect which has a cost (in the wider meaning of that term) in terms of its effect on the local amenity. It is an effect which is not internalised to the airport and its land and is therefore shifted to the owners of land under the flight path. Thus, although there is no prospect of curfew on the airport at this time, there is likely to be an adverse effect on amenity of persons living within the 50 dBA Ldn contour line and thus an environmental cost imposed.

Section 5

[60] The Act has a single over-arching purpose of sustainable management as that term is defined in section 5. The land in question between the 50 dBA Ldn and 55 dBA Ldn noise contours is land which has little, if any, current urban development. This land is able to be utilised now while not providing for the construction of significant physical resources on it. On the other hand, the physical resource of the airport itself has local, regional and national significance. The continued viability of the airport enables the wider community to provide for their social and economic wellbeing in particular.

[61] The health and safety of people in the community can also be provided for by providing some reasonable constraints over the development of land in proximity to the airport. In this particular case the effects of noise from over-flying aircraft can not in this particular case be entirely avoided or remedied. The contours represent the maximum exposures taking into account the reasonable operation of the airport and appropriate noise reduction measures. Sustaining the airport as a physical resource to meet the reasonably foreseeable needs of future generations militates towards some flexibility in the operation of the airport. Having regard to the known effects of low Ldn noise levels and SEL events, a cautious approach should be adopted in fixing contours.

[62] We accept that this case is not comparable with either Wellington or Auckland Airports and that each airport must be considered on its own merits. In this case the natural and physical resources surrounding the airport between the 50 and 55 dBA Ldn contour are largely in a rural state. The Council has sought to reach a reasonable balance between permitting development in the area and safeguarding the airport as a physical resource. We are satisfied that they have also been minded to maintain the amenity of people who may reside in that area, within reasonable bounds.

[63] To that end, some minor guidance is obtained by reference to the expectation in terms of the Proposed Plan for amenity within the General, Living and Rural zones. In Volume 3 at page 11/7, the Proposed Plan sets out Development and Critical Standards in respect of noise. The relevant development standard is 50 dBA Ldn and the critical standard is 59 dBA Ldn. Effectively, with the adoption of a 55 Ldn contour the Court

would be accepting that there are areas where residential development is not discouraged that would have amenity levels lower than those generally anticipated in terms of the Proposed Plan in respect of noise. Disregarding noise from roads, it could be argued that many development areas of the city may be subject to noise in excess of that proposed under the Proposed Plan. However, in setting the noise level for this area, we take into account that the Proposed Plan has set out a general expectation in residential areas of 50 dBA Ldn. This provision is not critical because these standards are set for new activities to achieve compliance or to be dealt with as discretionary activities. However it is indicative as to the expectation in respect of noise amenity generally.

Conclusion

[64] We must now conclude which noise contour would be better for inclusion in Policy 6.3.7. We have concluded that the 50 dBA Ldn line is better for the following reasons:

(1) the airport has significance in terms of the Proposed Plan, recognising its local, regional and national importance;

(2) high individual SEL levels can have more impact at lower Ldns (under 55 dBA), suggesting a conservative line to avoid amenity impacts;

(3) there is an amenity impact below 55 dBA Ldn and the Proposed Plan reflects a general expectation of lower Ldn levels in residential and rural areas;

(4) the 50 dBA Ldn noise contour line better complements the existing Proposed Plan policies (discussed earlier);

(5) the 50 dBA Ldn line does not foreclose future options. It enables the parties in the sense of conserving options for the future (and future generations). These options apply to both the landowner and the airport. If the 50 dBA Ldn noise contour restrains the landowner at all it does so only in a temporary sense. The policy could be changed in the future to realise the potential for any appropriate development. We conclude that the 50 dBA Ldn line preserves the potential of land for future generations;

(6) in terms of the Noise Standard, the 50 dBA Ldn line would have some effect in setting an amenity standard for noise from the airport operation. As future noise approaches the contours, the expectation of people outside the 50 dBA Ldn line is that they will receive less than that level of noise.

We conclude that the 50 dBA Ldn noise contour better reflects the purpose of the Act to achieve the sustainable management of these physical resources.

Consequential changes

[65] We have not considered in detail whether any changes should be made to the explanation and reasons. Overall they appear to us to be in order although minor changes may need to be made in due course once the Court has considered the associated references relating to air noise boundary controls and the wording of noise sensitive activities.

[66] Again, dependent on those matters, it appears to us that Policy 6.3.7 itself may be improved to link it more directly with peripheral urban growth. We consider that wording:

> ***To discourage peripheral urban growth involving noise sensitive activities within the 50 dBA Ldn contour of the Christchurch International Airport***

may be more appropriate. This is, however, dependent upon an appropriate definition of noise sensitive activities being settled in terms of other references. To that extent the wording for the policy is indicative only and would need to be settled as part of the final decision of the Court.

Costs

[67] This decision is interim only and will be finalised once the associated references are resolved. Our preliminary view is that costs should lie where they fall. Because of the uncertain nature of the continuing involvement of Robinsons Bay in all the other references before the Court, we have concluded that any application for costs should be filed within twenty working days, any reply within ten working days and a final reply

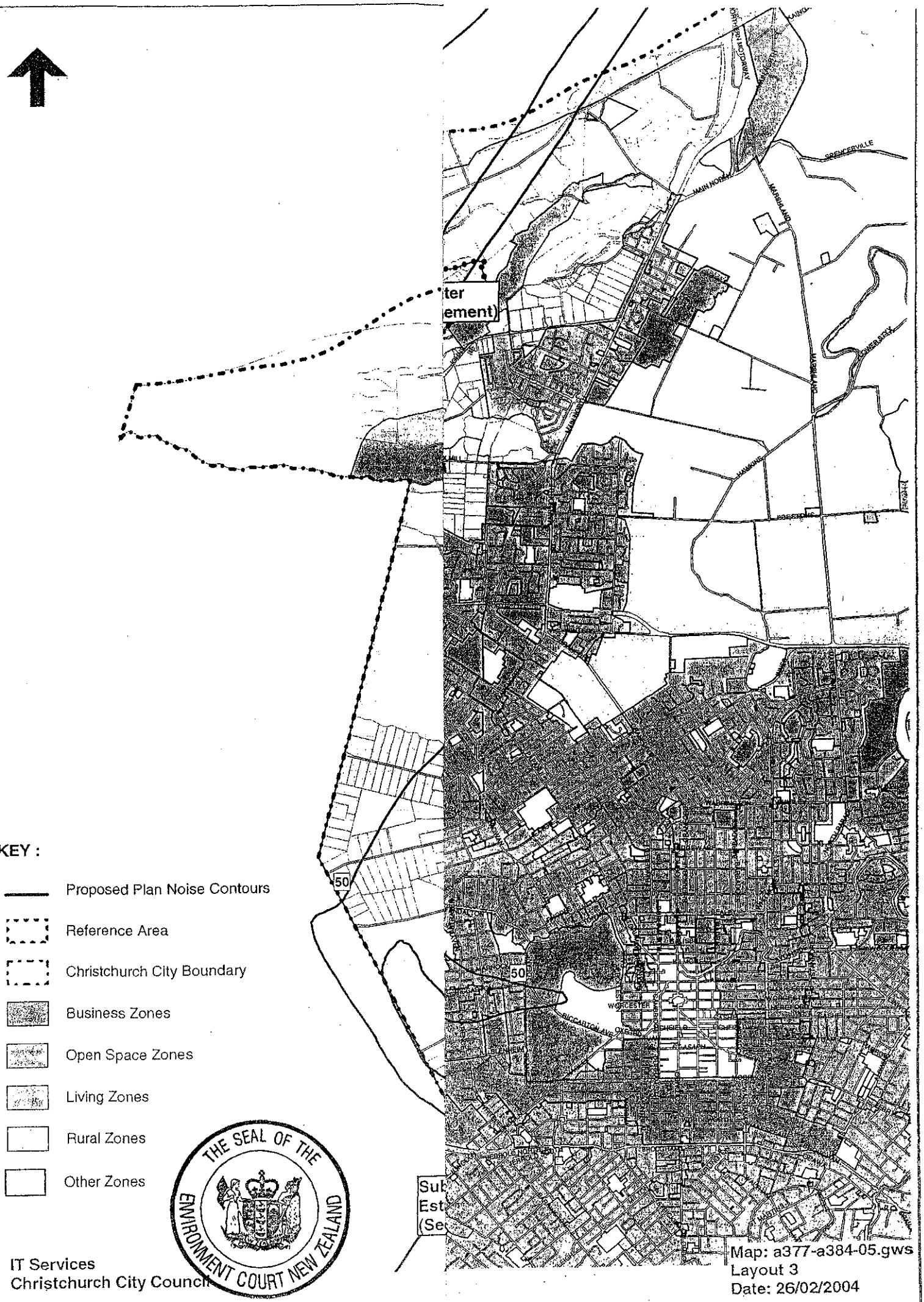
within five working days thereafter. An application for costs is not encouraged and if none is filed within the time limit set, costs are to lie where they fall.

DATED at CHRISTCHURCH this 13th day of May 2004.

J A Smith
Environment Judge

Issued[11]: 13 MAY 2004

11 Smithje/Jud_Rule/D/RMA518A-01.


KEY :
Proposed Plan Noise Contours
Reference Area
Christchurch City Boundary
Business Zones
Open Space Zones
Living Zones
Rural Zones
Other Zones
50
50
THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND
IT Services
Christchurch City Council
Map: a377-a384-05.gws
Layout 3
Date: 26/02/2004

Most of the rural coastal margin in the City is unlikely to be developed and is often unsuitable for development because of unstable dune formations, or potential inundation.

Some portions of the Port Hills are too steep for residential development and are susceptible to erosion and downstream siltation, particularly if large scale earthworks are likely. Often these areas are of high landscape value and are unsuitable for development for these reasons.

Avoidance of development in areas susceptible to hazards is justified to protect life and property from undue risk. The cost of protection works can be excessive in undeveloped areas, and caution has to be exercised that mitigation measures (such as filling) do not in themselves detract from the environment by impeding natural floodplains, displacing surface waters, or interrupting natural drainage patterns. In assessing a location's suitability for growth, the degree of risk, and its ability to be mitigated, has to be taken into account. Low or moderate risk can in many cases be adequately controlled by mitigation measures, or the degree of risk is so low it can be accepted.

Policy : Airport operations

6.3.7 ~~To ensure that urban growth does not occur in a manner that could adversely affect the future growth and operations of Christchurch International Airport.~~ To discourage urban residential development and other noise-sensitive activities within the 50 dBA Ldn noise contour around Christchurch International Airport.

Explanation and reasons

~~The International Airport is a facility of major significance to the regional economy. Domestic and international passenger movements, freight and Antarctic operations utilise this airport which is not curfewed as to hours of operation. It is unrealistic not to expect noise beyond its boundaries, potentially at levels that would adversely impact people living nearby. Urbanisation in close proximity to the airport could generate complaints and pressures for curfewed operations, with serious impacts on airport operations and the regional economy. This also recognises future growth of the Airport through intensified activities, particularly growth in Airport movements. It is important that there be no extensions to urban residential zones within the 50 dBA Ldn contour to avoid disturbance from aircraft noise.~~

~~In order to ensure the International Airport's operations can continue without undue restriction, urbanisation will be prevented where noise impacts are expected to be significant. While aircraft are expected to be quieter by the year 2000, movements are anticipated to be more frequent. As a result of projections and noise investigations, residential development will not be allowed to occur within the 65 dBA Ldn noise contour or within the SEL 95 dBA contour for a Boeing 747-200 aircraft. The Air Noise Boundary shown on the planning maps is a composite line formed by the outer extremity of the SEL 95 dBA and 65 dBA Ldn noise contours.~~

~~Between the 55 dBA Ldn contour and the Air Noise Boundary, new residential development will be discouraged (except for limited development in the Living 1C Zone) and all additions to existing dwellings will be required to be insulated. Insulation against noise will be required for all new developments between the 55 dBA Ldn contour and the Air Noise Boundary. This policy is expected to protect airport operations, and future residents from adverse noise impacts.~~

~~The policy provides that the 50 dBA Ldn noise contour will generally be the limit of residential development and other noise-sensitive activities in the vicinity of Christchurch International Airport.~~ The intention of this policy is that, in general, the 50 dBA Ldn contour (shown on the planning maps) should mark the limit of urban residential growth in the direction of Christchurch International Airport. Between 50 dBA Ldn and the Air Noise Boundary[1] (also shown on the planning maps) the establishment of aggregations of ~~new~~ residential development ~~and~~ to densities approximating that of Living zones and the establishment and/or extension of other noise sensitive activities will be ~~discouraged., except for limited development in the Living 1C Zone and other living zones which are already largely built out.~~ Residential development and other noise sensitive activities will not be allowed to occur within the Air Noise Boundary. Acoustic insulation will be required for all new residential development and noise sensitive ~~development~~ activities and all additions to such ~~uses~~ activities between the Outer Control Boundary[2] and the Air Noise Boundary.

[1] The Air Noise Boundary is a composite line formed by the outer extremity of the 65 dBA Ldn noise contour and the SEL 95 dBA noise contour for a Boeing 747-200 aircraft on the main runway and a Boeing 767-300 aircraft on the subsidiary runway.

[2] The Outer Control Boundary is the 55 dBA Ldn noise contour.

Christchurch International Airport is a facility of major importance to the regional economy. Domestic and international ~~passenger~~ movements, freight and Antarctic operations utilise the airport 24 hours a day, 365 days a year, and a non-curfewed operation is a pre-requisite for the sustainable management ~~of the~~ for airport purposes and in the long term of the relevant natural and physical resources. It is not possible for noise associated with aircraft ~~movements~~ operations to be contained within the boundaries of the airport. ~~boundaries and it is~~ It must therefore be accepted that the continued operation and future growth ~~in aircraft movements~~ of the airport will have some adverse impact on residents in the surrounding area., ~~which cannot be avoided. However, there are limits in the Plan on the amount of noise that can be generated (refer Volume 2, Section 7 Transport - Policy 7.8.2 (b) and Volume 3, Part 8 Special Purpose Zones - Section 3. Rules - Special Purpose (Airport) Zone).~~

Aircraft noise has an adverse effect on the quality of the living environment ~~and~~, on the amenity values that people obtain from ~~using~~ the use of their residential properties, (both indoors and ~~for~~ outdoors) ~~activities~~ and on the health of affected

people. Overseas research shows that sleep is disturbed and people are "highly annoyed" by aircraft noise as low as 42 to 43 dBA Ldn. Between 50 dBA Ldn and 55 dBA Ldn, 4 to 13% of the population are "highly annoyed" by aircraft noise. Aircraft noise also has the potential to have adverse effects on public health has indicated that these effects may occur as the result of levels at or below 50 dBA Ldn. Past experience in Christchurch, confirmed by international experience, shows has shown also that high levels of annoyance result in produce complaints and pressures for curfews or other restrictions on airport operations. The risk of complaints and pressure for curfews is likely to grow as the number of aircraft movements increases. Both the likelihood of affects adverse to people and of complaints from people (and of pressure for curfews) will increase as the number of aircraft movement increases and as noise levels begin to approach those indicated by the (predicted) noise contours.

This policy is intended to, together with limiting the amount of noise generated by aircraft movements, will ensure that the operations of Christchurch International Airport's operations can continue without undue restriction, and that safeguards residential amenities and the quality of the environment life for people living around the airport are safeguarded. The cost to the community of foregoing residential development on land within the 50 dBA Ldn is relatively small because the need for land for residential development can be met at other locations. In the Christchurch context it is not necessary to permit urban residential development to occur on land within the 50 dBA Ldn contour as sufficient land for residential expansion can be provided at other locations.

The Outer Control Boundary, which is the threshold for the requirement for insulation, and the Air Noise Boundary are identified on the planning maps. The 50 dBA Ldn is also shown as the point of reference for the application of Policy 6.3.7.

In this section, "noise sensitive activities" means residential activities (unless otherwise specified), education activities including pre-school places or premises, travellers' accommodation, hospitals, healthcare facilities and elderly persons housing.

This policy and the other provisions in this Plan that implement it are based upon the premiss that noise generated by aircraft movements will not exceed that indicated by noise contours identified on the planning maps. These contours have been calculated following the approach recommended in the New Zealand Standard NZS 6805:1992, *Airport Noise Management and Land Use Planning.* On the basis of present knowledge it is estimated that the noise levels indicated by these contours will be approached in about the year 2020. If and when this happens the levels of noise in the vicinity of the airport will be significantly higher than at present, as will the effects of airport noise.

NZS 6805:1992 provides that once noise contours have been established the airport operator shall manage its operations so that the limit specified for the Air Noise Boundary is not exceeded, and that if this occurs noise control measures may be necessary. Because there is a designation in place affecting the majority of the land used for the purposes of the Christchurch International Airport it is not possible for effective rules to be included in this Plan for the control of noise resulting either from airport operations or from engine testing. Engine testing is, however, subject to the requirements of *the Christchurch International Airport Bylaws 1989* approved by the Governor General in *The Christchurch International Airport Bylaws Approval Order 1989.*

The Council will continue to monitor the growth of airport related noise and will require the airport operator to contribute to this monitoring process. That monitoring will enable the Council to consider whether (and if so, what) additional measures are necessary for the control of noise from airport operations and engine testing. These measures may include removal of the designation from this or subsequent plans and the establishment of rule based controls.

Policy : Incompatible rural activities

6.3.8 To have regard to the presence of any incompatible activities in the rural area in assessing urban growth proposals.

Explanation and reasons

Any residential development extending into the rural area may bring potential residents into closer contact with orchards, viticulture, intensive livestock operations, or rural industries, a problem which is already apparent with poultry farming operations on the edge of the urban area. Adverse effects can include smell, noise or spray drift. Other activities in the rural area may potentially conflict with growth of the urban area, such as landfills and sewerage treatment facilities, quarries and motorsport facilities.

Rural activities which have legitimately established should not be expected to relocate to accommodate urban growth, unless the developer has taken clear steps to mitigate any adverse effects, or compensate the rural activity if it wishes to relocate by voluntary agreement. The onus is clearly on the urban developer, and urban growth proposals will not be viewed favourably by the Council if incompatible activities are present, unless specific measures to address these effects have been identified.

Policy : Urban extensions

6.3.9 To promote smaller a range of incremental extensions to the urban area distributed over a number of peripheral locations, rather than a major extensions in any one area.

Explanation and reasons

The policy seeks to achieve a pattern of small incremental additions distributed around the urban edge, consistent with the consolidation strategy,

Objective : Access to the City

7.8 Recognition of the need for regional, national and international links with the City and provision for those links.

Reasons

International access to Christchurch for both passengers and freight is provided by Christchurch International Airport and via Lyttelton Harbour, with regional and national access also being provided for by rail, road and sea.

It is essential for the continued development of industry, commerce and tourism in Christchurch that a high level of road access is maintained between the rail, road, airport and port facilities and the City, to provide access for passengers, freight, employees and visitors.

Policies : Airport services

7.8.1 To provide for the effective and efficient operation and development of Christchurch International Airport.

7.8.2 To ~~minimise~~ avoid, remedy or mitigate nuisance to nearby residents through provisions to mitigate the adverse noise effects from the operations of the Christchurch International Airport and Wigram Airfield.

~~7.8.3 To limit the noise generated by aircraft movements at Christchurch International Airport.~~

Explanation and reasons

It is essential to protect the operation of transport facilities from other land uses to allow them to function effectively and safely. It is also necessary to protect outside uses from the noise and related activity associated with transport facilities. The two principal ways of minimising impacts of the landuses on each other is by separating the transport facility from other activities through a buffer of land, or by requiring the various land uses to meet stringent conditions to minimise impacts. ~~**In addition, the amount of aircraft noise that can be generated by aircraft movements associated with the airport will also be limited.**~~

Controls have been in place for many years to limit the extension of residential development towards the International Airport because of the potential conflict between airport activities and residential activity. There is unavoidable nuisance associated with the International Airport, particularly noise, and the nature of its operation does not fit well with noise sensitive activities, such as residential occupation.

Controls are necessary to safeguard the continued operation and development of facilities at the International Airport as they are essential to the development and economic well being of the City. Similarly, surrounding landuses also need protection from the adverse ~~e~~affects of these facilities which, ~~for example, could be~~ are required to operate on a continual basis. The potential effects of airport operations are influenced by the density of surrounding development, particularly residential development and the degree to which buildings are insulated against the impacts of noise. **Rules will be primarily aimed at new residential activity and other noise sensitive uses, but will also apply to the extension of existing residences and buildings.**

In the future, while aircraft are likely to become less noisy, more aircraft movements are expected to occur. It is anticipated that these factors may cancel each other out in terms of noise impacts on surrounding activities, resulting in a long term continuance of current noise levels.

~~As a result of projections and noise investigations, residential development will not be allowed to occur within the 65 LdN noise contour, and between the 55 and 65 LdN contours new residential development will be discouraged and all additions to existing dwellings will be required to be insulated. Insulation against noise will be required for all new development between the 50 and 55 LdN noise contours.~~

If further residential development takes place in the vicinity of the International Airport, it is likely this could lead to requests to restrict and curfew airport operations. This could in turn have adverse effects on the economy of the City and beyond. Residential development closer to this airport potentially subjects residents to adverse noise impacts and a buffer surrounding this airport is considered the most effective means of protecting its operation.

In the urban area, an area of land in the north-west of the City is affected by noise contours projected form cross runway 11/29. Within the existing urban area affected by the 55 dBA Ldn noise contour, new buildings will be required to be subject to some insulation as a measure for mitigating the effects of aircraft noise.

In addition to limiting the density of residential and other noise sensitive activities, requirements for the insulation of buildings have been developed for activities in the vicinity of the Christchurch International Airport. These requirements relate to the position of the building in relation to projected noise contours which take into account the noise produced by aircraft and aircraft operations over a 24 hour period. Within the "outer control boundary" set at the 55 dBA Ldn contour and shown on the planning maps, insulation measures are required for buildings, depending on the sensitivity of the internal building space for specified uses. These measures apply between the 55 dBA Ldn line and the 65 dBA Ldn/95 SEL dBA line, the latter composite line being defined as the "air noise boundary" and will entail higher levels of noise insulation as the levels of noise exposure increase toward the air noise boundary.

Within the Air Noise Boundary, where noise levels are expected to be most intrusive, and potentially damaging to health, no new residential buildings or travellers' accommodation other noise-sensitive activities are permitted. A limited exemption applies to a small number of existing larger vacant allotments within the air noise boundary which were existing as at 24 June 1995 and to allotments within the Living 1C zone where limited development is provided for, subject to compliance with insulation requirements.

The rules are more flexible for alterations to existing buildings within the air noise boundary, where the "affected building" already exists or for some vacant lots existing at 24 June 1995.

~~At the 65 dBA Ldn noise contour, Christchurch International Airport will be required to limit aircraft noise to 65 dBA Ldn. The limit equates with the utilisation of the existing runways at full capacity.~~

Wigram Airfield shall provide for general aviation, training and/or recreational activities utilising primarily single engine or light twin engine aircraft in contrast to Christchurch International Airport which is a full international airport operating 24 hours a day and providing services to the largest aircraft currently operating and which operate both day and night.

While not concerned with aviation operations in the same sense or degree as the International Airport, aircraft operations from Wigram Airfield for general aviation, training and/or recreational activities will also create noise effects which will impact upon surrounding areas and land use activities.

Because of the relatively restricted range of aircraft types likely to be operating from Wigram Airfield (primarily single engine and light twin aircraft), together with a restriction in the hours of any such operations, noise projections have identified a limited area within which adverse noise impacts are likely to occur.

Residential or other noise sensitive development will not be allowed to occur within the 65 **dBA** ~~LdN~~ **Ldn** noise contour, and between the 55 and 65 **dBA** ~~LdN~~ **Ldn** contours any new or replacement residential development and all additions to living or bedroom areas on properties will be required to be insulated against noise. **Appendix 11 (to Volume 3, Part 8, General City Rules) contains standards to ensure noise sensitive activities are required to be insulated against noise.**

~~Because of the limited scale and hours of operation, no restriction on residential development shall be applied below the 50 and 55 LdN contours, as is the case around the International Airport where a higher degree of restriction on residential development has been applied for some years.~~

~~In this section, "noise-sensitive activities" means residential activities (unless otherwise specified), education activities including pre-school places or premises, travellers' accommodation, hospitals, healthcare facilities and elderly persons housing.~~

In this explanation, "noise sensitive activities" means:

- Residential activities other than those in conjunction with rural activities and which comply with the rules in the Plan;
- Education activities including pre-school places or premises, but not including flight training, trade training or other industry related training facilities within the Special Purpose (Airport) Zone;
- Travellers accommodation, hospitals, healthcare facilities and any elderly persons housing or complex.

Policy : Bus services

7.8.3 To ensure bus termini and interchanges are located to enable convenient linkages within and beyond the City, whilst minimising adverse effects on the roading network.

Explanation and reasons

There is a need in the City for bus facilities to cater for the needs of City, tourist and long distance buses. It is essential that they be sited so as to be accessible from all parts of the City and from outside the City, but the function of the road network and the pleasantness of the environment should not be compromised by parked or manoeuvring buses and associated vehicles.

This policy therefore seeks to encourage the efficient movement of people and buses through the provision of accessible facilities, while not compromising the efficiency of the road network.

Policy : Transport links

7.8.4 To ensure high quality transport links between rail, road, port and airport facilities and the City for passengers, freight, employees and visitors.

Explanation and reasons

High quality transport links involve an efficient, safe network appropriate to the types of vehicles which will be using the link. Passenger routes need to return a high environmental quality in addition to providing an efficient link, whereas routes used mainly by commercial delivery vehicles need to provide protection to surrounding landuses in minimising adverse effects. An example of this is Christchurch International Airport which is laid out in such a way as to encourage passenger transport to use Memorial Avenue and commercial vehicles onto Harewood Road. The Port of Lyttelton is also linked to the City by both rail and arterial road links. Rail facilities are similarly linked by road to tourist/passenger destinations and connections for freight distribution and collection.

It is essential to maintain and further develop links that are both efficient and safe to support the viable operation of transport links into, and within, the City for people and goods.

Policy : Rail corridors

7.8.5 To provide for the protection of rail corridors for transport purposes.

Explanation and reasons

The railways play an important role for Christchurch by moving people and goods, particularly bulk goods, over long distances. It is therefore important that they are able to continue to provide an efficient and effective service through the protection of the corridors used.

The rail corridors also provide a potentially valuable resource for other forms of transport. The Council in conjunction with NZ Rail is already using some corridors for pedestrian/cycleways and it is expected that these links will continue to be developed.

If the land occupied by the rail network in part or in total was no longer required for railway purposes in the future, it could provide alternative transport corridors for public transport, or "green corridors" for cyclists and pedestrians. Protection of the corridors is required to ensure an effective and efficient rail service is able to operate.

Environmental results anticipated

Providing for regional, national and international links with the City is expected to produce the following outcomes:

- The effective and efficient operation and development of Christchurch International Airport.
- Enhanced visual amenity for passengers along transport corridors throughout the City.
- Protection of the amenity of land uses surrounding transport facilities and corridors.
- High quality transport links between rail, road, port and airport facilities and the City.
- An effective and efficient rail service within the City and recognition of the value of rail corridors for a range of transport related uses.

Implementation

Objective 7.8 and associated policies will be implemented through a number of methods including the following:

District Plan

- The identification of Special Purpose Zones relating to elements of the transport system, e.g. as applying to the City's roads, rail corridors, and Christchurch International Airport.
- The identification of a Rural 5 (Airport Influences) Zone. Controls on the density of dwellings in Rural Zones, the extent of expansion of urban uses into the rural area and noise insulation standards for dwellings and noise sensitive uses in proximity of the airport.
- Zone rules such as building insulation requirements for the Rural 5 Zone.
- City rules regarding Transport, e.g. controls on high traffic generators on arterial roads.
- The establishment of special controls to safeguard continuing aviation activity at Wigram Airfield and the establishment of noise insulation standards for dwellings and noise sensitive uses in that vicinity.

Other methods

- Provision of works and services , e.g. through the district road programme to maintain and improve directional signage, to provide new links and upgrade existing roads.
- Co-ordination and liaison with transport operators, e.g. Christchurch International Airport Limited, Lyttelton Port Company Limited, and Road Transport Association, including liaison with the Council's own Companies.

BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 108

IN THE MATTER of the Resource Management Act 1991

AND of an application for resource consent referred directly to the court under section 87G of the Act

BY SKYDIVE QUEENSTOWN LIMITED

(ENV-2012-CHC-116)

Applicant

Court: Environment Judge J R Jackson
Environment Commissioner J R Mills
Environment Commissioner W R Howie

Hearing: At Queenstown on 13 to 16 and 21 to 24 May 2013, and 5 May 2014.
Final submissions received 13 May 2014.

Appearances: R E Bartlett for Skydive Queenstown Ltd
J G A Winchester and S J Scott for the Queenstown Lakes District Council
R Brabant and A C Ritchie for Jacks Point Residents and Owners Association Incorporated and the Jacks Point Commercial Interests Group
M C Holm for RCL Queenstown Pty Ltd and Henley Downs Ltd
M J Issott for Lakeside Estates Homeowners Association Inc
C G Geddes for himself

Date of Decision: 16 May 2014

Date of Issue: 16 May 2014

DECISION

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

A: Under section 290 of the Resource Management Act 1991, the Environment Court refuses a replacement resource consent to Skydive Queenstown Ltd to

operate more flights from the airstrip at Remarkables Station, (SH6), near the shores of Lake Wakatipu.

B: Any application for costs may be made by 4 July 2014 and any reply by 30 July 2014.

REASONS

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1. Introduction

1.1 The issue

[1] This is a direct referral to the Environment Court under section 87G of the Resource Management Act 1991 ("the RMA" or "the Act"). The primary question to be decided is whether Skydive Queenstown Ltd ("Skydive") should be granted a replacement resource consent to operate a grass airstrip at the foot of the Remarkables Mountains, near Queenstown, as an "airport" for its existing skydiving business at the site. The core issue is whether Skydive should be given the opportunity to fly more flights than its maximum 35 per day at present, or whether that would impose unsustainable adverse effects on the neighbours.

1.2 The application

[2] Skydive[1] has operated a commercial parachute and associated transport operation on an airstrip on Remarkables Station for about 20 years. We attach a site plan marked "Attachment 1"[2]. Since 1997 it has operated from the airstrip under a resource consent[3] ("the 1997 consent") which, amongst other conditions, restricts the operation to 35 flights per day in total and no more than two aircraft.

[3] Remarkables Station is owned by the D S and J F Jardine Trust and is located on State Highway 6 (Kingston Road). The legal description of the land/farm is Lots 2 and 6 DP 443832[4]. Skydive leases the airstrip and an area for its buildings from the Station.

[4] Skydive applied[5] to the Queenstown Lakes District Council on 26 January 2012 for a new resource consent, in essence to increase the number of flights from the airstrip. This consent is intended to replace[6] an existing consent. The rationale behind the application is that Skydive would like to increase the number of flights it launches. It believes it can increase the number of flights while keeping the total noise to which neighbours are exposed below the noise potentially allowed under the existing resource consent and below what it says is a reasonable objective exposure level in decibels. The reason for the applicant's confidence is that Skydive has recently replaced its aircraft with Cessna Supervans. They are modern turbo-powered aircraft which are generally quieter than the earlier piston-engined Cessna 185 aircraft.

[5] After requesting and receiving further information from Skydive the council notified the application on 23 May 2012. Eighty-one submissions were lodged with the council. The process then diverted from the normal flight path when Skydive applied to the council to refer the application direct to the Environment Court. On 30 July 2012 the council gave its consent to a direct referral.

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1 It operates as "Nzone", and most jumps are tandem drops.
2 Produced by J W Trevathan, evidence-in-chief Attachment 1 [Environment Court document 11].
3 QLDC ref RM 960447.
4 Computer Freehold Register 555574 Otago.
5 QLDC ref RM 120052.
6 See *Sutton v Moule* (1992) 2 NZRMA 41 (CA).

[6] On 17 October 2012 Skydive applied to the court under section 87G of the RMA. After the court issued directions, section 274 notices were received from 22 submitters and the council. A timetable for service of evidence was then set and complied with.

[7] In its evidence[7] Skydive amended its application to operate within these restrictions:

- a maximum of 75 flights per day;
- a maximum average of 50 flights a day over any 7 day period; and
- a maximum noise level on any one day of 57 dB L_{dn};
- a seven-day average noise limit of 55 dB L_{dn} at residential[8] locations.

(A glossary of acoustic terminology is annexed marked "2"). Further, while the application lodged with the council shows a maximum of 60 dB L_{dn} would be received at the nearby Jacks Point Lodge, Mr Day's evidence[9] referred to the "generally accepted noise limit of 55 dB L_{dn} at residential locations in the adjacent Jacks Point land". In his recommended conditions of consent[10] Mr Day adopted the 55 dBA L_{dn} limit.

[8] At the hearing in May 2013 the court received inadequate evidence of the heights at which aircraft operated by Skydive flew over adjacent land (off-site) when taking off and landing. Because the court needed some basic facts about those heights, in December 2013 it sought further evidence. The court subsequently received further expert evidence from Captain L Sowerby and from Mr J N Fogden, and some measurements and opinion evidence from Mr C G Geddes, a nearby resident (and a party to the proceeding).

[9] Due to the other commitments of witnesses and the court's members it was not possible to reconvene the court and resume the hearing until 5 May 2014. Mr Bartlett then sought leave to make further submissions on that evidence and resulting cross-examination. Leave was granted. On 13 May 2014 he advised the Registrar that he did not wish to give further submissions after all.

1.3 The section 274 parties who appeared at the hearing

[10] Immediately adjacent to the airstrip is a residential area which is part of the Jacks Point development. The residents and owners have formed an incorporated society — Jacks Point Residents and Owners Association Inc — which is one section 274 party. Another, also associated with the Jacks Point Zone, is a group of companies[11] including

7 M J G Garland, evidence-in-chief para 34 page 14.
8 C W Day, rebuttal evidence para 3.7 [Environment Court document 9A].
9 C W Day, evidence-in-chief para 2.2 [Environment Court document 9].
10 C W Day, evidence-in-chief para 7.2 [Environment Court document 9].
11 Listed in the evidence of J G Darby at para 1.2 [Environment Court document 12].

Jacks Point Golf Course Ltd. The Association and the group put forward a common case opposing the application. We will call these two section 274 parties collectively "the Jacks Point Interests".

[11] The northern part of the Jacks Point Zone is also earmarked for development. At the time of the hearing it was owned by other section 274 parties, RCL Queenstown Pty Ltd and Henley Downs Ltd, whose counsel appeared with a watching brief. The southern part of the zone is Homestead Bay which is owned by the Jardine family of The Remarkables Station.

[12] Mr C G Geddes, who lives at 13 McKellar Drive about 1.2 kilometres[12] north of the airstrip, lodged a section 274 notice opposing the grant of the resource consent and gave evidence in the proceeding.

[13] Finally, there is another residential enclave — several kilometres south of the airstrip — called Lakeside Estates. The Lakeside Estate Homeowners' Association joined the proceeding as a section 274 party and its president, Mr M J Issott, gave evidence[13] opposing the application.

1.4 Activity status under the Queenstown Lakes District Plan

[14] The district plan contains[14] the following relevant definitions:

Air Noise Boundary	Means a boundary, the location of which is based on predicted day/night sound levels of L_{dn} 65 dBA from future airport operations. The location of the boundary is shown in Figure 31a.
Airport) Aerodrome)	Means any defined area of land or water intended or designed to be used whether wholly or partly for the landing, departure, movement or servicing of aircraft.

The words 'airport' and 'aerodrome' are treated as synonyms[15] by the district plan. The airstrip in this case is "defined" both practically in that it is formed on the ground (and mown, not grazed) and legally in that there is a lease from the landowner to Skydive.

The airstrip

[15] The airstrip is in the Rural General Zone. Consequently, the parties agreed that the application requires the following resource consents:

12 C G Geddes, evidence-in-chief para 15 [Environment Court document 18].
13 M J Issott, statement dated 14 March 2013 [Environment Court document 19].
14 Queenstown-Lakes District Plan.
15 Queenstown-Lakes District Plan p D-1.

- a discretionary activity consent[16] for an "airport"; and
- a restricted discretionary activity consent for an outdoor commercial recreational activity involving more than five persons[17].

[16] If a noise limit of 55 dBA L_{dn} is not met at all residential locations (and we note that 60 dBA L_{dn} was included in the application), a non-complying activity consent would be required[18]. However, as recorded above, the evidence provided by Skydive was based on compliance with the 55 dBA L_{dn} limit.

1.5 The matters to be considered

[17] We record the agreement of the parties that the relevant version of the RMA is that after the Resource Management (Simplifying and Streamlining) Amendment Act 2009 and the 2011 Amendment Act were enacted but prior to the 2013 amendments.

[18] Under section 104 of the RMA we must, subject to Part 2 of the Act, have regard to:

> (a) any actual and potential effects on the environment of allowing the activity; and
> (b) any relevant provisions of —
> (i) a national environmental standard:
> (ii) other regulations:
> (iii) a national policy statement:
> (iv) a New Zealand costal policy statement:
> (v) a regional policy statement or proposed regional policy statement:
> (vi) a plan or proposed plan; and
> (c) any other matter the [Court] considers relevant and reasonably necessary to determine the application.

We understand that to mean that the local authority, or on appeal or direct referral, the Environment Court must make a broad judgment weighing four sets of considerations. The first two are compulsory:

> (a) any actual and potential effects on the environment of allowing the activity; and
> (b) any relevant provisions of [the listed hierarchy of statutory instruments].

[19] The third and fourth considerations are to be considered if necessary. They are:

> (c) any other matter the consent authority considers … relevant; and
> (d) Part 2 of the Act.

It is well-established that the words "subject to" show that Part 2 of the Act only needs to be resorted to if there is a conflict in or between any of the other three sets of considerations in section 104(1) of the Act: *Minister of Conservation v Kapiti Coast*

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16 Under rule 5.3.3.3(v) [QLDP p 5-13].
17 Under rule 5.3.3.3(xi) and site standard 5.3.5.1(ix) [QLDP p 5-18].
18 Under rule 5.3.3.4(vi) and zone standard 5.3.5.2(v)(d) *Noise*.

District Council[19] relying on an earlier decision of the Court of Appeal — *Environmental Defence Society v Mangonui County Council*[20] (on the Town and Country Planning Act 1977) where Cooke J stated "... the qualification "subject to" [is] a standard method of making clear that the other provisions referred to are to prevail in the event of a conflict".

[20] As for the "environment", we hold that the environment includes the actual and practical potential effects of the 1997 consent but subject to the consent holder's duty under section 16 of the RMA to use the best practicable option to ensure that noise from the airstrip does not exceed a reasonable level. We describe that environment in part 2 of this decision.

[21] We are to have regard[21] to several statutory instruments, but the only one with any real significance in the opinion of the expert witnesses is the Queenstown Lakes District Plan ("the district plan"). We outline the relevant provisions in part 3 of this decision.

[22] Finally, we bear in mind that "[i]n a basic way there is always a persuasive burden" on an applicant for resource consent: *Shirley Primary School v Telecom Mobile Communications Ltd*[22]. There is also a legal burden[23]: "... even if the Court hears no evidence from anyone other than the applicant it would still be entitled to decline consent". Both statements were approved by the Court of Appeal in *Ngati Rangi Trust v Genesis Power Ltd*[24].

2. Skydive's environment and its operations

2.1 The airstrip and its surrounds

[23] The airstrip is located west of State Highway 6 as that road runs south along the lake from Frankton to Kingston. Access to the airstrip is gained by the main entrance to the Remarkables Station which has its homestead and principal farm buildings at Homestead Bay to the southwest of the airstrip. The Skydive base is about 500 metres from the highway at the end of a shelterbelt of pines and the airstrip runs on an east-west alignment from the base.

[24] To the north and west of the airstrip, and between it and Lake Wakatipu the topography rises to a lumpy tableland on which past glacial processes are more obvious. At the southern end of the tableland is a rounded high point, with some exposed schist

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19 *Minister of Conservation v Kapiti Coast District Council* (1994) 16 ELRNZ 234, [1994] NZRMA 385 at [8].

20 *Environmental Defence Society v Mangonui County Council* [1989] 3 NZCR 257 at [260]; [1989] 13 NZTPA 202.

21 Section 104(1)(b) RMA.

22 *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 at [121].

23 *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 at [122].

24 *Ngati Rangi Trust v Genesis Power Ltd* [2009] NZRMA 312 at [23] per Ellen France J and at [49] per Chambers J.

outcrops called Jacks Point. That hill has given its name to a large zone and development between the Lake and the State Highway in the Jacks Point Zone. The Jacks Point development at present contains more than 200 houses (there are plans for more), and connecting roads. It also has a range of recreational facilities[25]: an 18 hole golf course and clubhouse, a series of walking and cycling tracks, extensive ecological areas, sports fields, tennis courts and a playground.

[25] Noise from the existing and future Skydive operations is a central issue of concern to the neighbouring Jacks Point residents, the Jacks Point Golf Club, to the nearby Lakeside Estate residents and to the developers of Henley Downs. There are concerns about aircraft-generated noise both from aircraft on the ground when idling and taxi-ing, and when taking off and landing. Some of the objectors also complained of noise generated by the skydivers "whooping and hollering" as they descended.

2.2 Skydive's existing operations

[26] Skydive was New Zealand's first professional tandem skydiving operation[26] when it commenced in 1990. It has grown since then to become an important part of Queenstown's appeal as an adventure destination. Its Managing Director, Mr L Williams, wrote, with justifiable pride, of its safety policies and procedures and of the awards Skydive has won[27]. In 2007 the company was the Supreme Winner in the New Zealand Tourism Awards[28]. Including its Queenstown office, Skydive employs 65 to 70 staff during the peak (summer) season[29].

[27] Skydive's facilities on the site are modern and well-maintained. They include a large operations building which includes a reception area, offices, and a large floor in a hangar-like space for packing parachutes and for other aspects of the skydiving experience. A smaller building to the south of the carpark provides a tea-room and toilets. To the north of the main building is a concrete apron, although passengers usually board aircraft on the airstrip further to the north again.

[28] At the time of the application and section 87F report[30], Skydive was using both a Cessna Supervan 900 (a "Supervan"[31]) and a Cresco 750 aircraft. It has since stopped[32] using the Cresco aircraft and now uses two Supervans, each of which can carry up to 19 passengers.

25 J G Darby, evidence-in-chief para 4.8 [Environment Court document 12]; S J Dent, evidence-in-chief para 4.101 [Environment Court document 20].
26 L Williams, evidence-in-chief para 2 [Environment Court document 8].
27 L Williams, evidence-in-chief paras 2-4 [Environment Court document 8].
28 L Williams, evidence-in-chief para 4 [Environment Court document 8].
29 L Williams, evidence-in-chief para 11 [Environment Court document 8].
30 W A Baker, evidence-in-chief para 23 [Environment Court document 14].
31 A modified Cessna Caravan.
32 W A Baker, evidence-in-chief para 23 [Environment Court document 14].

[29] The "Supervan 900" is 12.7 metres (42 feet) long with a 15.88 metre (52 feet) wingspan. In the lay opinion of a nearby resident, Mr C G Geddes who is a party to this proceeding, the aircraft has a significant "presence" for persons in the vicinity when within 500 feet of the ground on either takeoff or landing[33].

[30] Aircraft generated noise received on the golf course is considerably greater than the noise level suggested for the residential lots and sites for accommodation. Other existing recreational facilities near to the western end of runway or the east-west flight path, such as the sports grounds, the playground and some of the walking and biking tracks are also affected by aircraft noise and presence. A proposed lodge ("The Lodge site") and a large lot residential area known as Lot 14 'The Preserve' are located close to the east-west flight path and are similarly affected. (See the site plan which is Attachment 1).

[31] Take-off is always to the west along a slightly downward sloping grass runway. The current flight path then climbs westward over the rising ground of the golf course. With the Supervans the take-off heading is maintained until clear of the tableland and the aircraft is over Lake Wakatipu. On takeoff the flight path takes the Supervans over, or up to 50 metres south of, Tee 3 and Hole 3 and the edge of a residential enclave (not yet fully developed) known as 'The Preserve' on the Jacks Point Golf Course. The typical observed average heights at which those points are crossed was (from a small sample size):

Tee 3	226 feet above ground level ("feet agl")[34]
	308 feet agl[35]
(Average)	331 feet agl
Hole 3	468 feet agl[36]
	324 feet agl[37]
(Average)	396 feet agl
The Preserve	487 feet agl[38]
	388 feet agl[39]
	378 feet agl[40]
(Average)	418.5 feet agl

33 C G Geddes, supplementary evidence 16 April 2014 para 13 [Environment Court document 37].
34 C G Geddes, evidence-in-chief 17 December 2013 para 10 [Environment Court document 29].
35 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].
36 C G Geddes, evidence-un-chief 17 December 2013 para 10 [Environment Court document 29].
37 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].
38 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 29].
39 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 37].
40 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].

The minimum measured heights (recorded by any party) of the aircraft above those points on takeoff were respectively 285 feet agl[41], 314 feet agl[42], 344 feet agl[43].

[32] The aircraft[44] then climbs following a route generally over the lake and along the face of The Remarkables to heights (above the airstrip) of 9,000ft, 12,000ft and 15,000ft where, at each level, skydivers leave the aircraft. The ascent in a Supervan takes some 15 minutes[45]. A reducing level of aircraft noise can be heard over the general Jacks Point area during the climb.

[33] The aircraft descent takes about 10 minutes[46]. The aircraft approaches the runway more often from the south over Homestead Bay making a low level right hand turn onto the runway, but sometimes from the west over the lake and the golf course. Aircraft noise levels received at the sensitive spots mentioned during this period of the flight do not seem to attract significant adverse reaction except on the golf course on the fewer occasions when the approach is from the west.

[34] As for the height of Skydive's aircraft above neighbouring land on landing approach, Captain Sowerby calculated the theoretical height maximum of the aircraft above key points on landing flight path 'C' which curves around on the inside (the southeastern side) of the trig on Jacks Point and gave one set of measurements of height above ground on that landing path. Mr C G Geddes' evidence was rather more useful about heights on the less frequently used direct flight path (the reciprocal of the takeoff flight path). He recorded[47] the average approach heights when measured from directly below (or slightly to the north, but abeam[48] of) the aircraft as follows[49]:

		Approach
1st Green		Height ft
12/12/2013		148
		154
		115
17/12/2013		236
13/04/2014	1108	102
	1130	93
	1200	84
	1224	162
Average		**129**
Minimum		**84**

41 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 29].
42 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].
43 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 29].
44 From this point all references to aircraft will be to Supervans unless we specifically state otherwise.
45 C W Day, evidence-in-chief Figure 2 [Environment Court document 9].
46 C W Day, evidence-in-chief Figure 2 [Environment Court document 9].
47 C G Geddes, Statement 17 December 2013 paras 5 and 6 [Environment Court document 29].
48 Transcript 5 May 2014 p 41 lines 20 to 27.
49 Compiled from C G Geddes, Statement 17 December 2013 para 10 [Environment Court document 29] and Supplement Statement 16 April 2014 [Environment Court document 37].

2nd Fairway		
12/12/2013		295
		305
		322
16/12/2013		390
17/12/2013		223
		371
Average		**318**
Minimum		**223**
2nd Green		
16/12/2013		308
		285
17/12/2013		177
Average		**257**
Minimum		**177**
3rd Tee		
17/12/2013		308
Preserve Road		
17/12/2013		512
08/04/2014	Time	
	1433	288
	1523	714
Average		**508**
Minimum		**288**

[35] We find that, on the balance of probabilities, Mr Geddes was correct when he said[50] that Skydive's aircraft are "consistently flying below 500ft over ground at all of the locations at which height measurements were made"[51].

[36] We return to the jettisoned skydivers: after they leave the aircraft they plummet in freefall for between 25 and 60 seconds depending on the drop height, and then, popping their parachutes, circle their way down for 5 minutes[52] over the general area around the runway landing near their point of departure beside the runway. Popping of the parachutes and the excitement of the adventure is clearly audible on occasions from the ground.

[37] The drop zone, centred a few metres from Skydive's buildings on site, is one of the two approved by Civil Aviation Authority within the Wakatipu Basin.

[38] At present, on relatively calm days an average of 16-20 flights (32-40 movements) occur from the airstrip. That is because the number of potential

50 C G Geddes, supplementary evidence 16 April 2014 para 14 [Environment Court document 37].
51 C G Geddes, supplementary evidence 16 April 2014 para 14 [Environment Court document 37].
52 Section 87F report page 15 para 4.

parachutists, various logistical difficulties, and/or the weather prevent the 35 flights allowed in the existing resource consent. The highest monthly average number of flights per day in the year from 1 November 2011 to 31 October 2012 was 21.63 in January 2012[53]. In 2009 the number was slightly higher than in recent years.

2.3 The Jacks Point development

[39] The central part of the Jacks Point Zone has been substantially developed with subtle landscaping in a palate of (predominantly) native species with extensive (exotic) grassed areas, and contains neighbourhoods of houses, built with a limited range of materials (often schist) and colours which are carefully sited to fit into the landscape and gain maximum views and solar advantage. The residential development looks superior (and expensive — there is not much sign of affordable housing).

[40] Mr J G Darby, a director of various companies which are members of the Jacks Point Interests, and a practicing landscape architect, wrote that[54]:

> The public and recreational amenities were an essential part of the vision for the JPZ. These recreational activities include the numerous pedestrian, equestrian and cycle trails that have been constructed along with the tennis courts, golf course, playing fields constructed south of the Clubhouse and the Lake Tewa recreational area for kayaking and fishing ... . A new community playground is also currently being constructed within the zone.

[41] He described[55] the costs of creating the golf course in rather general terms[56]:

> A golf course is a land use that provides open space protection for the community. Leaving the issue of land cost aside, championship golf courses typically cost between $10 million and $12 million to construct and approximately $1.5 million per annum to maintain. Without the associated visitor, residential and commercial development, a championship golf course would not be viable in terms of capital investment and annual operating costs.

[42] As for the existing noise environment, Dr J W Trevathan, the acoustic expert called by Jacks Point Interests, wrote[57]:

> ... ambient noise in the area includes distant traffic noise at some locations, other aircraft noise both distant and flying over, sound associated with the natural environment, residential activities and with the golf course (producing noise levels in the order of 30 to 50 dB LA_{eq}).

He added[58]:

> Subjectively however, I was surprised at how distinctive and audible the noise from the aircraft at altitude was, ...

[43] We heard further subjective evidence on the effect of Skydive's existing operations from Mr P M Tataurangi, a professional golfer and consultant golf course

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53 Ex 8.1.

54 J G Darby, evidence-in-chief para 4.8 [Environment Court document 12].

55 J G Darby, evidence-in-chief para 6.7 [Environment Court document 12].

56 We assume to avoid breaching commercial sensitivities.

57 J W Trevathan, evidence-in-chief para 4.19 final bullet point [Environment Court document 11].

58 J W Trevathan, evidence-in-chief para 4.19 final bullet point [Environment Court document 11].

designer. To set the context he described the sense of drama he said is provided by good courses[59], and then he described his experience at Jacks Point[60]. He concluded[61]:

> In New Zealand the remote coastal locations of Kauri Cliffs and Cape Kidnappers have this [dramatic] quality. Jack's Point is in this league but in the grandeur of a mountain/lake setting. The layout enjoys a seamless relationship with the natural surrounds traversing several different environments and giving the golfer the sense at times of being atop one of the surrounding peaks and throughout most of the round of golf at one with nature.

[44] In relation to the existing Skydive operations (under the 1997 consent) he wrote[62]:

> However, unfortunately, I was very surprised to find that encountering low flying aircraft on the opening holes is a part of the golfing experience at Jack's Point. Not only are the aircraft a noise disturbance but for visitors the planes are so low above their heads as to seem a hazard that makes them uncomfortable. An integral part of golf etiquette is to play without undue delay; however when aircraft are flying at such a low altitude on your intended line of play, this causes most players to back-off and wait until the plane has gone. I have also had international guests tell me their experience was compromised by the low flying aircraft. They have all said they were looking forward to a peaceful round at the world-class golf course and did not feel the regularity of the aircraft flying low overhead was commensurate with that.

Cross-examined by Mr Bartlett about how Skydive's flying operations affects the quality of the day and the round of golf[63] Mr Tataurangi answered[64]:

> ... By pure measure of holes two, three and five, when the aircraft is overhead and the noise is, ... at the loudest, ... by percentage, you know, there's three holes out of, of the course of 18 and by average it's 45 minutes to an hour of playing time of those particular holes. However, ... I guess the experience had on those particular holes, because they're the starting holes of the golf course, can have an effect on setting the scene for the golfing experience and because you're aware of them in such a obvious manner in your opening five holes of the golf course, ... therefore you are aware of the activity the whole 18 holes ... which you're playing.

[45] Mr Bartlett submitted at the hearing[65] that because Mr Tataurangi wrote[66] that "... golf is more than just a professional career to me, it is a passion and why I play socially as well as professionally" he was "totally disqualified [from] presenting himself as an independent advisor to the court". We do not accept that. Mr Tataurangi gave evidence about the golf course and the potential effects of Skydive's proposal on it and its users, not about the game of golf in itself. He gave evidence about his experience[67] and knowledge that was not challenged, and he certified[68] that he had read, understood and complied with the code of conduct in the Environment Court Practice Note. He

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59 P M Tataurangi, evidence-in-chief para 13 [Environment Court document 15].
60 P M Tataurangi, evidence-in-chief para 14 [Environment Court document 15].
61 P M Tataurangi, evidence-in-chief para 15 [Environment Court document 15].
62 P M Tataurangi, evidence-in-chief para 16 [Environment Court document 15].
63 Transcript p 447.
64 Transcript p 448.
65 Transcript p 281.
66 P M Tataurangi, evidence-in-chief para 13 [Environment Court document 15].
67 P M Tataurangi, evidence-in-chief paras 2-4 [Environment Court document 15].
68 P M Tataurangi, evidence-in-chief paras 6-9 [Environment Court document 15].

gave his answers to questions in a considered and dispassionate manner. We are prepared to accept his opinion evidence and give it some weight.

[46] Mr A J Tod, an expert[69] on golf management, covered the subjects of golf tourism within New Zealand, the development of New Zealand golf tourism, golf tourism marketing, golf tourism development in the Queenstown Lakes and Central Otago regions, the role of Jacks Point, and the impact of Skydive's current operation and of its proposed consent. As for the characteristics of the Jacks Point Golf Course, he wrote[70]:

> Jacks Point is a significant golf course for the Queenstown region. Feedback I receive from any clients who have played there is that it is one of the Top 4 courses that they play in New Zealand. The design features of Jacks Point have been carefully considered to make the most of the surrounding landscape with a journey around the course, bringing up a number of delightful experiences and surprises on the way.
>
> I agree with the description of the golfing journey outlined in Mt Tataurangi's evidence. It is this experience and the stunning views and the condition of the golf course which are often commented on being some of the best for any golf course in New Zealand, and an underrated player on the world stage[71].
>
> Distinguished golf writer, Mike Nuzzo, believes that there are three types of golfer: Those who relish the playing challenge; those who revere the courses environment; and those who place the enjoyment-factor above all else[72]. In my experience (both as a player and the operator of guided golf tours in New Zealand) Jacks Point is one of the courses in New Zealand that ticks all the boxes for these three criteria.

2.4 The noise from aircraft

[47] Aircraft generate noise while idling, taxi-ing, taking off and landing, and in the air. As for the assessment of that noise, the court was greatly assisted by the experienced acoustic experts called by the parties. Skydive engaged Mr C W Day of Marshall Day Acoustics Limited who produced evidence-in-chief[73] and a rebuttal statement[74]. The section 274 parties engaged Dr J W Trevathan of Acoustic Engineering Services Limited. He produced evidence-in-chief[75], evidence-in-reply[76] and a supplementary statement[77].

[48] The council engaged Dr S Chiles of Chiles Limited (and a contractor to URS New Zealand Limited) who also provided a statement of evidence. He gave a subjective, but independent over-view of noise from Skydive's current operations[78]:

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69 A J Tod, evidence-in-chief paras 2.1 to 2.7 [Environment Court document 16].
70 A J Tod, evidence-in-chief paras 8.1 to 8.3 [Environment Court document 16].
71 http://www.travelgolf.com/blogs/jason.scott/2013/03/12/reflecting-upon-my-recent-golf.
72 Mike Nuzzo — *Golf Architecture — A Worldwide Perspective.*
73 C W Day, evidence-in-chief [Environment Court document 9].
74 C W Day, rebuttal evidence [Environment Court document 9A].
75 J W Trevathan, evidence-in-chief [Environment Court document 11].
76 J W Trevathan, evidence-in-reply [Environment Court document 11A].
77 J W Trevathan, supplementary evidence [Environment Court document 11B].
78 S Chiles, evidence-in-chief para 29 [Environment Court document 10].

> On calm weather days during my two site visits, I have experienced quiet periods around Jack's Point. Much of the area is at least partly screened from the nearby State Highway, and at times there are few anthropogenic sounds audible. Under these conditions, the skydiving plane can be heard for the majority of its ascent; the parachutes can be heard as they open, and some of the parachutists can be heard shouting in the air. At other times, when there is activity on the ground nearby, these sounds from the air are generally not noticeable, although could still be heard if the listener is focused on them. For example, in some areas around the club house the air conditioning plant is relatively noisy and dominates that environment. Elsewhere, sounds such as from grass mowing are louder than sounds from parachutists. The distinctive sounds from the plane, parachutes and parachutists in the air are all noticeable at times and do affect the amenity in Jacks Point, but they are all at relatively low sound levels.

As the Skydive activity already exists, noise measurements were made of the current operations by Mr Day and by Dr Trevathan.

[49] Each aircraft idles while on the ground during the loading of the passengers. Depending on the type and orientation of the aircraft, noise levels at the closest residential boundaries (e.g. at 39 Hackett Road, Jacks Point) at times exceeded levels considered acceptable by all the parties and their acoustic experts because of the idling noise from the Supervans. During taxi-ing aircraft generated noise levels at the closest residential boundaries does at times, as the aircraft faced those sensitive locations, also exceed those suggested acceptable noise levels. The occurrence is brief and depends on the aircraft being flown.

[50] Dr Trevathan reported that the noise level at the closest residential site — 39 Hackett Road (as yet unbuilt on) — from 35 flights of a Supervan is 58 dB L_{dn} with ground idling dominating[79]. If compared to the district plan noise limits Dr Trevathan said ground idle noise from the Supervan when received at 39 Hackett Road exceeds the daytime limit by 10 dB for 4 hours per day.

[51] At the "Jacks Point Residential" location on Jacks Point Rise, Dr Trevathan measured noise[80] from the Supervan at 53 dB L_{dn}. Mr Day measured aircraft noise levels at "The Village" at 78 dB L_{eq} from the Supervan 900.

[52] On the golf course Dr Trevathan measured aircraft noise levels for take-off that followed a track over the golf course[81] of 85 dB L_{max} at hole 2 and 80 dB L_{max} at hole 5. Landing (reversing the same track) produced noise levels of 88 dB L_{max} at hole 2 and 85 dB L_{max} at hole 5. Take-off noise that would disrupt speech lasted 20 seconds and during landing it lasted for 10 seconds. Background noise levels were 30–50 dB.

[53] We have recorded that golfers and others engaged in outdoor activities in the area now experience a fly over event on average 20–40 times a day (i.e. 10–20 flights per day). In a 12 hour day that is an event each 18–36 minutes on average. On the golf course aircraft noise levels are significant with maximum levels of up to 88 dB L_{Amax}.

79 J W Trevathan, evidence-in-chief para 4.20 bullet point 1 [Environment Court document 11].
80 J W Trevathan, evidence-in-chief para 4.20 bullet point 3 [Environment Court document 11].
81 J W Trevathan, evidence-in-chief para 4.20 bullet point 4 [Environment Court document 11].

Three holes of the golf course are particularly affected and if each takes about 15 minutes to play, a golfer can expect (at most) between 1 and 3 fly-overs while on those three holes. Those figures are reduced by the facts that some landings use a flight path that avoids the rise and the tableland by coming in from the south (over Homestead Bay) and that due to various factors flights often do not turn around so frequently. This is the existing condition that the golf course and its members and visitors come to, so it is part of the environment for them.

[54] At the Lodge site Dr Trevathan measured[82] aircraft noise levels of 48 or 51 dB L_{dn} depending on the flight path. Mr Day reported 85 dB L_{eq} at this location. At "The Preserve" (Lot 14) Dr Trevathan measured 55 or 51 dB L_{dn} again depending on the flight path. The council's noise expert, Dr Chiles, did not make any onsite aircraft noise measurements and chose to rely on those made by Dr Trevathan and Mr Day. Dr Chiles also relied on the modelling of aircraft noise generation carried out by those two experts.

[55] The court visited the site, and in particular the locations where the aircraft generated noise was of greater concern, while Skydive operations were being carried out. On the golf course the aircraft take-off was very noticeable and distracting for the 20 seconds or so that the aircraft travelled over the course. The combination of noise, speed, the size of the aircraft and its low path made the temporary event intimidating when directly beneath the flight path.

2.5 The 1997 resource consent

[56] The 1997 consent expressly limits the operation to a maximum of two aircraft and 35 flights per day. The applicant claims that the 1997 consent contains no limitation on aircraft size or type, no limitation on take-off or landing flight paths, no specific noise standards to be complied with, and no termination condition. In fact previous aircraft (smaller Cessna 185s) operated by the company followed a climb path that turned right after take-off and climbed to the north[83] because of a lower climb rate and the need to avoid the rising ground of the tableland. These earlier aircraft had a different "noise signature" — they were noisier in the air. It seems to us that the flight path described by Mr Day which involved a right-turn to the north over or before the golf clubhouse might be an implicit part of the 1997 consent, but for the purpose of this decision we accept the applicant's assertions.

[57] Mr Williams[84] advised that with two Supervans, five flights can be completed in an hour. In ideal conditions and with demand he said 7-8 flights an hour could be achieved. We understand this frequency requires operating the planes near their maximum capability and no holdups on the ground and possibly climbing to levels lower than 15,000ft, and in fact ideal conditions arise relatively infrequently as the tables of daily flights showed.

82 J W Trevathan, evidence-in-chief para 4.20 bullet point 5 [Environment Court document 11].
83 C W Day, rebuttal evidence para 3.3 and Figure 3 [Environment Court document 9A].
84 L Williams, rebuttal evidence para 3 [Environment Court document 8A].

3. The relevant objectives, policies and rules and the noise standard

3.1 The objectives, policies and rules in the district plan

[58] Three chapters[85] in the district plan are relevant to these proceedings. They are:

- Chapter 4 District-wide
- Chapter 5 Rural Areas
- Chapter 12 Special Zones

Chapter 4 (District-wide issues)

[59] Few of the district-wide objectives and policies are relevant, but some in sub-chapter 4.4 (recreation) are. The first recreation objective[86] provides for reserves and is not relevant. The second district-wide recreation objective relates to the environmental effects of recreation. It is[87] to undertake recreational activities or build and use facilities so as to avoid, remedy or mitigate "significant adverse effects" on the environment or on "the recreation opportunities" available in the district. The most relevant implementing policy is[88]:

> 2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquillity of the District.

[60] The third recreation objective is[89] to use open space and recreational areas effectively when meeting the needs of the district's residents and visitors. The relevant implementing policies are[90]:

> 3.1 To recognise and avoid, remedy or mitigate conflicts between different types of recreational activities, whilst at the same time encouraging multiple use of public open space and recreational areas wherever possible and practicable.
>
> ...
>
> 3.3 To encourage and support increased use of private open space and recreational facilities in order to help meet the recreational needs of the District's residents and visitors, subject to meeting policies relating to the environmental effects of recreational activities and facilities.

Chapter 5 (Rural Areas) of the district plan

[61] Outdoor recreational activities, such as skydiving, are contemplated within rural areas of the district (which include the Rural General Zone). The resource management issues[91] for rural areas include "Open Space and Recreation" and then refer back to the Chapter 4 (District Wide) objectives and policies relating to that issue. We have already quoted the relevant policies in that chapter. The general rural "Character and

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85 The divisions in district plan are called "sections" but to avoid confusion with the RMA's provisions, we will call them "chapters".

86 Objective (4.4.3) 1 [QLDP p 4-24].

87 Objective (4.4.3) 2 [QLDP p 4-25].

88 Objective (4.4.3) 2 [QLDP p 4-25].

89 Objective (4.4.3) 3 [QLDP p 4-26].

90 Objective (4.4.3) 3.1 to 3.3 [QLDP p 4-26].

91 Para 5.1, Chapter 5 Rural Areas [QLDP p 5-1].

Landscape"[92] and "Rural Amenity"[93] objectives in Chapter 5 have policies to "allow for" and "ensure" a range of activities including commercial recreation activities[94]. The other important and relevant objective with implementing policies for rural areas is to avoid, remedy or mitigate adverse effects of activities on rural amenity[95].

[62] A more specific objective — called a "purpose" — for the Rural General Zone states[96]:

> The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:
> - protects and enhances nature conservation and landscape values;
> - sustains the life supporting capacity of the soil and vegetation;
> - maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and
> - ensures a wide range of outdoor recreational opportunities remain viable within the Zone.

The first three parts of the purpose are subsumed in the earlier statement of objectives and policies for all rural areas. The fourth bullet point is the only place where the maintenance of outdoor recreational opportunities is expressly identified as an objective of the zone.

[63] The environmental results anticipated in these areas are (relevantly)[97]:

> ...
> (viii) Avoid potential land uses and land management practices ... which create unacceptable or significant conflict with neighbouring land based activities, including adjoining urban areas.
> ...
> (xi) Retention of a range of recreation opportunities.

Chapter 12 (Resort Zones)

[64] We have described how the land adjacent to the airstrip is in a large-scale development called Jacks Point. It is part of the Jacks Point Zone — one of the resort zones which the district plan recognises as having potential to contribute to visitor, employment and economic development within the District. The Resort Zones provide for golf courses and a range of outdoor and indoor sporting and recreational activities. Hotel and other visitor accommodation along with support facilities and services are proposed for Jacks Point. The Resort Zones recognise the special amenities of the rural area in which the development is located and provides for the ongoing implementation of the activities of the resorts.

92 Objective (5.2) 1 [QLDP p 5-2].
93 Objective (5.2) 3 [QLDP p 5-4].
94 e.g. Assessment Matter xvi [QLDP p 5-36].
95 Objective (5.2) 3 [QLDP pp 5-4 and 5-5].
96 Para 5.3.1 Zone Purposes [QLDP p 5-9].
97 Para 5.2.1 [QLDP p 5-8].

[65] The objective and relevant implementing policies for the Jacks Point Zone are:

> **Objective 3 – Jacks Point Resort Zone**[98]
>
> To enable development of an integrated community, incorporating residential activities, visitor accommodation, small-scale commercial activities and outdoor recreation — with appropriate regard for landscape and visual amenity values, servicing and public access issues.
>
> **Policies**
>
> ...
>
> 3.4 To require development to be located in accordance with a Structure Plan to ensure the compatibility of activities and to mitigate the impact on neighbouring activities, the road network and landscape values.
>
> 3.5 To control the take-off and landing of aircraft within the zone.
>
> ...
>
> 3.9 To ensure that development within the sensitive areas of the Zone results in a net environmental gain.

[66] More detail as to what Jacks Point is about can be gained from the Zone Purposes at the start of the Resort Rules[99]. The relevant part of the purpose states[100]:

> The purpose of the Jacks Point Zone is to provide for residential and visitor accommodation in a high quality sustainable environment comprising of two villages, a variety of recreation opportunities and community benefits, including access to public open space and amenities.
>
> ...
>
> In addition, the zoning anticipates an 18-hole championship golf course, a luxury lodge, small-scale commercial activities, provision for educational and medical facilities, craft and winery activities, outdoor recreation and enhanced access to and enjoyment of Lake Wakatipu.

The rules for the Rural General Zone: Airports

[67] As stated earlier, resource consent for the airstrip as an 'airport' is needed for a discretionary activity. That is under Rule 5.3.3.3 which states (relevantly):

> **5.3.3.3 Discretionary Activities**
>
> The following shall be Discretionary Activities, provided that they are not listed as a Prohibited or Non-Complying Activity and they comply with all of the relevant Zone Standards; and they have been evaluated under the assessment criteria in rule 5.4.
>
> ...
>
> v Airports
>
> ...
>
> xi Any activity, which is not listed as a Prohibited or Non-Complying Activity and which complies with all the relevant Zone Standards, but does not comply with one or more of the

98 QLDP pp 12-5 and 12-6.
99 Para 12.2 [QLDP p 12-9].
100 Para 12.2.1 [QLDP p 12-9].

Site Standards, shall be a Discretionary Activity with the exercise of the Council's discretion being confined to the matter(s) specified in the standard(s) not complied with.

[68] The most relevant zone standard[101] states (relevantly):

> v Noise
>
> (a) Sound from non-residential activities measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 shall not exceed the following noise limits at any point within the notional boundary of any residential unit, other than residential units on the same site as the activity.
>
> (i) Daytime (0800 to 2200 hours) 50 dB L_{Aeq} (15 min)
>
> ...
>
> (b) Sound from non-residential activities which is received in another zone shall comply with the noise limits set in the zone standards for that zone.
>
> ...
>
> (d) The noise limits in (a) shall not apply to sound associated with airports .... Sound from these sources shall be assessed in accordance and comply with the relevant New Zealand Standard, either NZS 6805:1992, or NZS 6808:1998. For the avoidance of doubt the reference to airports in this clause does not include helipads other than helipads located within any land designated for Aerodrome Purposes in this Plan.

In effect the district plan rules for the Rural Areas set[102] maximum noise levels of 50 dB $L_{Acq(15min)}$ during daytime, but they exclude noise associated with an airport. Instead assessment of airport noise is to be in accordance with NZS 6805:1992[103] and the airport noise levels are to comply with the standard. Sub-paragraph (b) of that rule provides that sound from the airport which is received at Jacks Point must comply with the noise limits set in the zone standards for the Jacks Point zone.

[69] Mr Bartlett submitted in respect of the rule and the standard and their application[104]:

> 59. The District Plan identifies the noise standard that is to be applied. The application seeks no departure from that standard. To the extent that NZS6805 contains provision for flexibility, as has been described in the evidence, Mr Day has proposed that the flexibility be applied in a way that restricts the applicant.
>
> 60. In the absence of any means of avoiding the District Plan rule which sets no standards for Open Space, Mr Brabant seeks to persuade the Court that a separate amenity issue arises within which the Court may again consider the noise issue, and potentially impose a noise standard unfettered by the provisions of the District Plan.
>
> 61. Noise is a component of amenity. The District Plan cannot be read in a way that enables submitters to have two bites — one on the basis that there is a rule and another on the basis that there is not a rule.
>
> 62. NZS6805 applies a "bucket of noise" approach. The District Plan adopts NZS6805 which does not treat flight frequency as a separate issue for assessment.

101 Rule 5.3.5.2v [QLDP pp 5-20 and 5-21].
102 Rule 5.3.5.2 v (a) [QLDP pp 5-20 and 5-21].
103 Rule 5.3.5.2 v (d) [QLDP p 5-21].
104 Skydive, Closing submissions paras 59-64 [Environment Court document 25].

63. If the District Plan or the framers of the Jack's Point zone had wanted to establish special noise standards to apply to outdoor spaces for that part of the district alone, they could have done so.

64. It would be inappropriate for the Court in the context of a resource consent application to invent an outdoor noise standard in a way that created anomalies with other parts of the district.

[70] Those submissions are incorrect on the key assertions as a matter of simple interpretation of the rules. An airport, as defined in the district plan, is one of the situations which the district plan states is a discretionary activity. The provisos at the start of rule 5.3.3.3 — that is all the words after "... provided that ..." — add to the tests for the activities identified as discretionary.

[71] In other words every activity listed as a discretionary activity must also meet three sets of conditions as set out in the introductory words of rule 5.3.3. A listed activity is a discretionary activity if:

(1) it is not listed as a prohibited or non-complying activity elsewhere in the district plan; and
(2) it complies with all the relevant zone standards; and
(3) it has been evaluated under the assessment criteria in rule 5.4.

[72] In relation to the three preconditions for discretionary status we record first that airports are not listed as a prohibited or non-complying activity.

[73] If Mr Bartlett's submission was correct then the council's discretion would be limited to the matters in the Zone Standard. But if that was the case then the structure of rule 5.3.3.3 and especially sub-rule **xi** (quoted above) show that airports would not have been listed separately in sub-rule **v.** Instead sub-rule **xi** would have applied to airports in addition to commercial recreation activities.

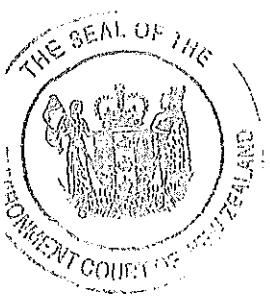
[74] There are two relevant sets of assessment matters for the district's rural areas. They are headed respectively[105]:

xv **Discretionary Activity – Commercial Recreational Activities (other than on the Surface of Lakes and Rivers)**

and

xvii Discretionary Activity - Airports

Their requirements are considered in the next part of this decision where we consider the actual and potential effects of the proposed activity. However, we hold that the discretion is not confined to assessment under those provisions. Rather the assessment



[105] *Queenstown Lakes District Council – District Plan* pp 5-35 and 5-36.

informs the discretion, and compliance with the standard is a bottom line. Depending on the circumstances stronger conditions may be imposed or consent refused.

[75] We hold that because the operation of the airstrip is a fully discretionary activity and not a restricted discretionary activity, any actual or potential adverse effect, may be considered in the overall weighing exercise under section 104 RMA. In particular the effects of the airport are not confined to noise effects (to be assessed primarily under NZS 6805) but include number of flights and their effects on persons underneath (or nearly so) the flight paths.

The rules for the Jacks Point Zone

[76] Similar rules apply to the Jacks Point Zone[106], but curiously in this case there is no requirement to comply with the standard. It refers only to the assessment of airport noise. So, on the face of it, the planes' compliance with the airport noise standard in the Jacks Point Zone is not required. That leaves an absence of specific airport noise standards in the Jacks Point Zone.

The rules for rural areas — commercial activities

[77] The path in the district plan directing that a resource consent is also required for the Skydive operations as a restricted discretionary activity is more tortuous because the Rural Areas rules do not have a separate list of restricted discretionary activities. The relevant rule is simply headed[107] "Discretionary Activities" as quoted above. We have already referred to sub-rule (v) which makes "Airports" a discretionary activity[108]. Rule 5.3.3.3 xi[109] makes the commercial recreation a limited discretionary activity.

[78] Turning to the Site Standards we find (relevantly)[110]:

> **ix Commercial Recreation Activities (other than on the surface of lakes and rivers)**
>
> No commercial recreational activities shall be undertaken except where:
>
> (a) The recreation activity is outdoors;
>
> (b) The scale of the recreation activity is limited to five people in any one group.
>
> ...

[79] Since the matter not being complied with in the Skydive operation is that more than five people (in fact up to 19) may be in any one group, it appears the council's discretion (and ours in this direct referral) in respect of the limited discretionary activity is limited[111] to the effects of the extra people in the groups.

---

106 Rule 12.2.5.2 ix (a) and (e).
107 QLDC Plan p 5-12.
108 QLDC Plan p 5-13.
109 QLDC Plan p 5-13.
110 Rule 5.3.5.1 [QLDP p 5-18].
111 Rule 5.3.3.3 xi [QLDP p 5-13].

3.2 The New Zealand Standard on airport noise management

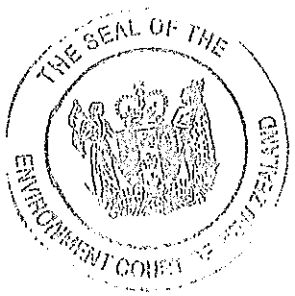
[80] We have noted that the New Zealand Standard for airport noise management and land use planning (NZS 6805:1992) needs to be complied with according to the district plan rules. NZS 6805 states:

> **PART 1 AIRPORT NOISE MANAGEMENT USING THE AIRNOISE BOUNDARY CONCEPT**
>
> **1.1 Scope**
>
> **1.1.1**
> This Standard is for use by territorial or regional government for the control of airport noise. It establishes maximum acceptable levels of aircraft noise exposure around airports for the protection of community health and amenity values whilst recognizing the need to operate an airport efficiently. The Standard provides a guide for territorial authorities wishing to include appropriate land use controls in their district plans, as provided for in the Resource Management Act 1991. In this Standard the words "Airport" and "Aerodrome" are synonymous.
>
> **1.1.2**
> The Standard uses the Airnoise Boundary concept as a mechanism for local authorities to establish compatible land use planning and to set limits for the management of aircraft noise at airports where noise control measures are needed to protect community health and amenity values.
>
> **1.1.3**
> The approach advocated is a recommendation for the implementation of practical land use planning controls and airport management techniques to promote and conserve the health of people living and working near airports, without unduly restricting the operation of airports.
>
> **1.1.4**
> The Standard provides the minimum requirement needed to protect people from the adverse effects of airport noise. A local authority may determine that a higher level of protection is required in a particular locality, either through use of the Airnoise Boundary concept or any other control mechanism [underlining added].
> ...

The wording in paragraph 1.1.4 of the standard reinforces that compliance with it is a bottom line for consent. As Mr Day acknowledged in cross-examination[112] the standard does not impose "... a reasonable level but a minimum requirement". In certain contexts there may be other factors relating to noise which should be weighed by the local authority (here the court) and stricter noise controls then imposed. A key issue in this case is whether the minimum is adequate in the circumstances.

[81] NZS 6805 continues:

> **1.1.5**
> The main features of the recommended method of airport noise management are:
>
> (a) The Standard establishes maximum levels of aircraft noise exposure at an Airnoise Boundary, given as a 24 hour daily sound exposure averaged over a three month period (or such other period as is agreed).



112 Transcript p 138.

(b) The Standard establishes a second, and outer, control boundary for the protection of amenity values, and prescribes the maximum sound exposure from aircraft noise at this boundary.

(c) In establishing the Airnoise Boundary, the Standard requires consideration of individual maximum noise levels from aircraft during any proposed night-time operations.

(d) Noise control measures are necessary when the exposure of the residential community, determined according to Part 2 of this Standard, exceeds 100 pasques (or an L_{dn} of 65), and may be necessary when the exposure exceeds 10 pasques (or an L_{dn} of 55).

(e) The Standard prescribes compatible land uses for those areas in the immediate vicinity of the airport. Compatible land uses at different levels of sound exposure are specified in table 1 and table 2.

1.1.6
The measurement of sound around an airport for use in setting the Airnoise Boundary and monitoring to ensure that the limits are not exceeded, is detailed in Part 2 of this Standard.
...

In this case the district plan contains no Airnoise Boundary or Outer Control Boundary in respect of the airstrip.

[82] The standard continues with some tables giving recommended control measures. These are explained as follows:

1.8 Explanation of tables

C1.8.1
All considerations of annoyance, health and welfare with respect to noise are based on the long term integrated adverse responses of people. There is considerable weight of evidence that a person's annoyance reaction depends on the average daily sound exposure received. The short term annoyance reaction to individual noise events is not explicitly considered since only the accumulated effects of repeated annoyance can lead to adverse environmental effects on public health and welfare. Thus in all aircraft noise considerations the noise exposure is based on an average day over an extended period of time usually a yearly or seasonal average. [Underlining added].
...

1.8.2
Table 1 enumerates the recommended criteria for land use planning within the airnoise boundary i.e. 24 hour average night-weighted sound exposure in excess of 100 Pa^2s (65 L_{dn}).

1.8.3
Table 2 enumerates the recommended criteria for land use planning within the outer control boundary i.e. 24 hour average night-weighted sound exposure in excess of 10 Pa^2s.

[83] The most relevant table in the NZ Standard is Table 2. It states:

Table 2
RECOMMENDED NOISE CONTROL CRITERIA FOR LAND USE PLANNING INSIDE THE OUTER CONTROL BOUNDARY BUT OUTSIDE THE AIR NOISE BOUNDARY

Sound exposure Pa^2s (1)	Recommended control measures	Day/night level L_{dn} (2)
>10	New residential, schools, hospitals or other noise sensitive uses should be prohibited unless a district plan permits such uses, subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment. Alterations or additions to existing residences or other noise sensitive uses should be fitted with appropriate acoustic insulation and encouragement should be given to ensure a satisfactory internal environment throughout the rest of the building.	>55

NOTE -

(1) Night-weighted sound exposure in pascal-squared-seconds of "pasques".

(2) Day/night level (L_{dn}) values given are approximate for comparison purposes only and do not form the base for the table.

[84] In summary, the Airport Noise Standard NZS 6805:1992 *is concerned with land use planning and the management of aircraft noise in the vicinity of an airport, or aerodrome, for the protection of community health and amenity values*[113]. It establishes a maximum level of aircraft noise exposure of 65 dB L_{dn} at an Airnoise Boundary. The noise level is expressed as a 24 hour daily sound exposure averaged over a three month period (or such other period as agreed). It also establishes a second, and outer, control boundary for the protection of amenity values and prescribes the maximum sound exposure from aircraft at this boundary of 55 dB L_{dn}. The Standard advises local authorities to show the areas enclosed by these boundaries on the district plan. The consequences of this planning process are that the airport operator is required to manage its operations so that aircraft noise at the boundaries is not exceeded, the aircraft operator is required to keep aircraft noise emissions as low as possible and the local authority should prohibit new residential, schools, hospitals or other noise sensitive uses within the 55 dB L_{dn} noise contour or require acoustic insulation to ensure a satisfactory internal environment.

[85] However, it is important to note first that neither Skydive nor the council has given any indication that they intend to start the full process described in NZS 6805, i.e. to establish an Airnoise Boundary and an Outer Control Boundary for the airstrip on Remarkables Station. Second, on its face Table 2 does not set a standard or noise control. It is, in the words of Mr Day the acoustic expert for Skydive, " ...a land use planning guideline"[114].

113 Foreword NZS 6805:1992.
114 Transcript p 138 lines 4 and 5.

4. Predicting the effects on the environment

4.1 Introducing the assessment

[86] For the purposes of assessing the potential effects of the proposal on the environment, Mr Bartlett submitted we should compare those effects with those of the current Skydive operations. He submitted that the latter was the maximum allowable under the resource consent (i.e. the effects from 35 flights) even if that is very rarely achieved in practice. In contrast, Mr Brabant submitted we should compare the average predicted effects for the exercise of the consent Skydive is seeking, with the effects of the average number of flights at present. We consider the latter is incorrect: The "environment" in section 104(1)(c) of the RMA — and in part 2 of the Act — usually includes the reasonably likely future environment: see the Court of Appeal's decision in *Far North District Council v Te Runanga a Iwi o Ngati Kahu*[115]. In this case that includes the probability that Skydive will attain a higher average number of flights per day.

[87] However, while initially attracted to Mr Bartlett's idea, on reflection we consider Mr Bartlett was not wholly correct either. Even if demand increases throughout the year so that the number of potential skydivers on any given day is not a limiting factor, the weather and practical problems certainly are[116]. Accordingly we think it is fanciful to suggest that Skydive might sustain maximum numbers of flights for 265 days per year at more than 75% (i.e. 26 flights per day) of the theoretical maximum. On average over 100 days per year are not flown at all and in the year from 1 November 2011 to 31 October 2012 the maximum (actually 34 flights) was only achieved twice, on 26 December 2011 and 9 January 2012[117]. So 26 flights per day (52 movements) is the practical maximum average in the existing environment in 7 day period when flying occurs. We suspect that is being generous since Skydive's own proposed maximum 7 day average is 50 which is only 67% of the daily maximum it proposes.

[88] To describe the potential for a maximum of 26 flights per day ("the practical maximum average") as the existing environment could potentially have caused problems because none of the experts used that figure. Fortunately they did use figures either side of it (average flights of 16-20 per day existing / 50 flights per day proposed; and maximum flights of 35 per day existing / 75 proposed).

[89] The practical maximum average we have identified tends to increase the total noise in the "existing" environment. However, there is another factor which must be taken into account which tends to decrease it. The environment must be assessed on the basis that all obligations imposed by resource consents, district or other plans, and the RMA itself are being fully complied with. That is an important point because, as we

115 *Far North District Council v Te Runanga a Iwi o Ngati Kahu* [2013] NZCA 221 at [80].
116 L Williams, evidence-in-chief para 3 [Environment Court document 8].
117 Source Exhibit 8.1.

have pointed out, the RMA imposes an extra duty on noise emitters. Under section 16 of the RMA Skydive must "... adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level". The moves from Cessna 185s to Supervans and the alteration in holding position to reduce the effect of idling noise from the Supervans can (and should) be seen as easy and thus appropriate steps to comply with the section 16 duty.

[90] Skydive's existing operations (as measured) showed little effort to comply with section 16. The existing operations had not (before the hearing) altered the idling position to reduce noise. Nor had Skydive retained the old take-off flight path with its right-hand turn (to the north) to reduce noise affecting people on the golf course or on the cycling and walking tracks on the rise, or systematically used an alternative landing flight path over Homestead Bay (when conditions allow). Those are simple relatively inexpensive steps that could have been taken which would reduce the existing sound exposure levels. To that (unquantified) extent the noise measurements of the existing environment are exaggerated. (We accept that Skydive appears to have since altered its practices for the better).

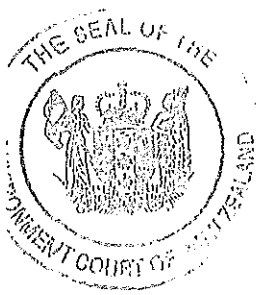
[91] As recorded, there are two relevant sets of assessment criteria in the district plan. The court may in its discretion disregard an adverse effect if the district plan permits an activity with that effect[118] but that is not relevant here.

The commercial recreation assessment matters

[92] The proposal is largely positive when assessed under the commercial recreation criteria. It will not "... result in levels of traffic or pedestrian activity which are incompatible with the character of the surrounding rural area"[119]. Whether there would be any adverse effects of the proposed activity in terms of noise and vibration incompatible with the levels acceptable in a low-density rural environment is a question we consider below.

[93] Given the location of the landing pad at the eastern end of the airstrip we consider it will not result in levels of traffic congestion[120] or produce levels of traffic safety which are inconsistent with the classification of the adjoining State Highway 6, compromise pedestrian safety[121] in the vicinity of the activity, or cause extra litter and waste[122]. No new buildings are proposed, so the question of their compatibility[123] with the character of the local environment does not arise. We were not referred to any relevant Code of Practice[124] so the extent to which the proposal might have been audited and certified is irrelevant. There was no evidence that the activity would have adverse

118 Section 104 (2) RMA.
119 Assessment criteria 5.4.2.3 (xiv)(a) [QLDP p 5-34].
120 Assessment matter 5.4.2.3 (xiv)(b)(iii) [QLDP p 5-35].
121 Assessment matter 5.4.2.3 (xiv)(b)(iv) [QLDP p 5-35].
122 Assessment matter 5.4.2.3 (xiv)(b)(v) [QLDP p 5-35].
123 Assessment matter(s) 5.4.2.3 (xiv)(c) and (e) [QLDP p 5-35].
124 Assessment matter 5.4.2.3 (xiv)(f) [QLDP p 5-35].



effects on the quality of ground and/or surface waters[125] or on the life-supporting capacity of soils[126]. There was no suggestion that the use of the airstrip for the recreational activity will compromise levels of public safety[127], or cause a visual distraction to drivers on arterial routes[128], or cause adverse effects on nature conservation values[129].

[94] There is no evidence of cumulative effects[130] from the activity in conjunction with other activities in the vicinity apart from the (important) fact that the proposal would add to the noise from the existing Skydive operations.

[95] The extent to which the nature and character of the activity would be compatible[131] with the character of the surrounding environment raises questions in relation to the Jacks Point Zone. However, we find that the proposed activity will not result in a loss of privacy or sense of security for residents within the rural environment[132]. Similarly there will be minimal loss of privacy or reduction in any sense of remoteness or isolation[133]. The extent to which it may result in a loss of amenity values is a matter we consider below.

[96] An important assessment matter is[134]:

> The extent to which the recreational activity will adversely affect the range of recreational opportunities available in the District or the quality of experience of the people partaking of those opportunities.

This is a key issue and it is repeated in the airport assessment matters we consider next.

Assessment matters for "airport" noise

[97] A more focused set of assessment matters relates to "airport" noise[135] (bearing in mind that the airstrip falls within the definition of an "airport" under the district plan). Relevantly it requires consideration of:

> (a) The extent to which noise from aircraft is/will:
>
> (i) [be] compatible with the character of the surrounding area.
>
> (ii) adversely affect the pleasant use and enjoyment of the surrounding environment by residents and visitors.

125 Assessment matter 5.4.2.3 (xiv)(g) [QLDP p 5-35].
126 Assessment matter 5.4.2.3 (xiv)(h) [QLDP p 5-35].
127 Assessment matter 5.4.2.3 (xiv)(k) [QLDP p 5-35].
128 Assessment matter 5.4.2.3 (xiv)(m) [QLDP p 5-35].
129 Assessment matter 5.4.2.3 (xiv)(l) [QLDP p 5-35].
130 Assessment matter 5.4.2.3 (xiv)(b)(vi) [QLDP p 5-35].
131 Assessment matter 5.4.2.3 (xiv)(d) [QLDP p 5-35].
132 Assessment matter 5.4.2.3 (xiv)(i) [QLDP p 5-35].
133 Assessment matter 5.4.2.3 (xiv)(b)(ii) [QLDP p 5-35].
134 Assessment matter 5.4.2.3 (xiv)(j) [QLDP p 5-35].
135 Assessment matter 5.4.2.3 (xiv) [QLDP p 5-36].

(iii) adversely affect the quality of the experience of people partaking in recreational and other activities.

(b) The cumulative effect of a dispersed number of airports.

(c) Convenience to and efficient operation of existing airports.

(d) The visual effect of airport activities.

(e) The frequency and type of aircraft activities.

(f) Assessment of helicopter noise pursuant to NZS 6807:1994 ... .

As for (a)(i), we consider that noise from aircraft is generally compatible with the character of the surrounding area given that aircraft taking off and landing on the Queenstown Airport regularly fly over the area (at several thousand feet). We consider (a)(ii) to (e) in the remainder of this decision. Assessment factor (f) is irrelevant as helicopters are not proposed to be used.

4.2 Convenience to and efficient operation of existing airports

[98] The airstrip (as an airport) does already exist, and is very conveniently sited inside the circuits for the larger (commercial) Queenstown Airport.

[99] We received expert evidence for the applicant[136] from Captain Sowerby and for JPROA[137] from Mr J M Fogden in relation to air safety. We accept the evidence of both witnesses, that the proposed activity can be undertaken without significant adverse safety effects. Indeed Captain Sowerby was of the (unchallenged) opinion that allowing Skydive to operate more flights from the airstrip would improve overall safety because it would enable Skydive to move flights (and drops) away from the much busier Queenstown Airport. He wrote[138]:

> The current requirement for [Skydive] to conduct overflow operations from Queenstown International Airport adds complexity to the operation, increased workload for ATC and exposure to the mixture of traffic operating to and from Queenstown International Airport.
>
> The requirement that overflow operations depart/arrive from Queenstown International Airport is driven solely by the current 35 daily flights limitation.

Captain Sowerby concluded[139]:

> In a practical sense, safety is enhanced by the circumstance that all flights, up to the limit of thirty five, remain within close proximity to sole use Jardines Airport, do not transit any populated area and remain clear of the Queenstown International Airport traffic circuit.

[100] We also record that the Queenstown Airport Corporation ("QAC") lodged a submission raising air safety issues, but did not join the proceedings as a section 274

136 L Sowerby, evidence-in-chief para 8.6 [Environment Court document 6].
137 J M Fogden, evidence-in-chief [Environment Court document 17].
138 L Sowerby, evidence-in-chief paras 7.7 and 7.8 [Environment Court document 6].
139 L Sowerby, evidence-in-chief para 5.12 [Environment Court document 6].

party. Captain Sowerby's evidence (and its attachments) state that a condition of consent has been agreed upon and that based upon that condition being included in any consent, QAC will "withdraw" its submission. The condition reads:

> At the completion of the first twelve (12) months of the operation authorised by this consent, Skydive Queenstown shall undertake a review of airspace safety issues arising from these operations. The review shall be conducted in such a way as to require Skydive Queenstown to consult with the QC, Airways NZ, a representative of the Scheduled Airline Operators that utilize Queenstown Airport and the CAA with respect to airspace safety matters. If as a result of the consultation and review, adverse effects on airspace safety are demonstrated to have occurred from the consented operations, then Skydive Queenstown shall be required to immediately adapt its operations to avoid such effects in the future. The results of this review and any measures taken by Skydive Queenstown to adapt its operations shall be reported to the parties listed above within one (1) month of the completion of the review.

4.3 Would the consent impose unreasonable noise on residents?

[101] First we find that the noise from the skydivers (parachutists) is unlikely to have serious adverse effects on the amenities of any of the parties. Nor are they likely to constitute an unreasonable invasion of privacy. The first important effects issue this proceeding turns, rather, on the noise from the aircraft as they takeoff and land.

[102] For Skydive Mr Garland's opinion on the effects of aircraft was that[140]:

> The actual take-offs and landings will have no adverse effect on privacy, amenity values or sense of security for residents with the rural environment. While residents within the Jacks Point urban environment have expressed concerns, these are related to the presence of the drop zone which would remain if aircraft were to operate from another aerodrome.

[103] Focusing on the assessment criteria relating to airport noise[141] he was a little more expansive[142]:

> It is important to note that the extent of noise from the operation consented to in 1997 has been modelled and that it is not proposed to exceed that level of noise exposure. As I understand it, the applicant is happy to be restricted to noise exposure levels rather less than that which would be possible under that consent. When the original consent was granted, no consideration was given to types of aircraft, only to the number of movements. Currently the company is free to use whatever type of aircraft it wishes. That is the level of adverse effects that Jacks Point residents have come to in later years — no noise control, only control of aircraft movements. In my experience, having lived in Wakatipu and largely because of recreational activity, the area is generally noisier than I have experienced in a suburban city area. This is part and parcel of what draws people to the District. Nonetheless, there should be protection from excessive noise and this is what the applicant is proposing while allowing its own established operation to evolve and prosper like any other commercial recreational activity.

Mr Garland admitted[143] that he did not consider the frequency and type of aircraft activities.

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140 M J G Garland, evidence-in-chief para 20(i) referring to commercial recreation assessment matter (i) [Environment Court document 13].

141 Rule 5.4.3.2 xvi [QLDP p 5-36].

142 M J G Garland, evidence-in-chief para 21 [Environment Court document 13].

143 Transcript p 390.

[104] Mr Issott, Mr Geddes and Mr S Dent, a planner for the Jacks Point Interests addressed the effects of noise on the surrounding environment in their evidence. Their evidence related to their living environments and their predicted loss of amenity due to the noise from the aircraft, parachutes and parachutists. Mr Issott and Mr Geddes each expressed their opinion that the current operation is already detrimental to amenity in terms of noise effects and that any increase in the number of flights would cause a further loss of amenity. We consider that their opinions (for the little weight we can give them, given they are parties) are not significantly further weakened by their concessions. Mr Issott and Mr Geddes each conceded that they understood fully the current resource consent held by Skydive Queenstown when they each chose to purchase their dwellings; and that they accepted the effects resulting from the exercise of that consent.

The experts' calculations

[105] Further consultation between the noise experts during the hearing resulted in an agreed table of calculated aircraft noise levels. The aircraft operating was the Cessna Supervan 900 and four levels of operation were modelled for 35 flights per day, 50 flights per day, 75 flights per day and 50 flights per day with idling noise mitigation. Because the Cessna Supervan 900 has a maximum noise signature when operating on the ground that is oriented in a 60 degree cone ahead of the aircraft, mitigation of the significant idling noise on the residential locations can be achieved very simply by facing the aircraft away from the residences. This is referred to as idling mitigation.

[106] The resulting table is reproduced below.

Flights/day	35	50	75	50*
[The Village/ Residential]	44 dB L_{dn} 48 dB L_{eq15}**	46 B L_{dn}	47 dB L_{dn}	46 dB L_{dn} 51 dB L_{eq15}***
[The Lodge]	52 dB L_{dn} 56 dB L_{eq15}**	53 dB L_{dn}	55 dB L_{dn}	53 dB L_{dn} 59 dB L_{eq15}***
[39 Hackett Road]	58 dB L_{dn} 62 dB L_{eq15}**	54 dB L_{dn}*	56 dB L_{dn}*	52 dB L_{dn} 59 dB $L_{eq\,15}$***

* denotes noise received with idling noise mitigation.
** denotes one flight each 15 minutes.
*** denotes two flights each 15 minutes.

[107] In terms of the sound exposure level of 55 dB L_{dn} applied from the standard, NZS 6805:1992, only two cases would cause noise levels at 39 Hackett Road to exceed that level; viz. 35 flights per day with no mitigation of ground idling noise and 75 flights

per day with ground idling noise mitigation. Calculated noise levels at the other locations fall within the limit.

[108] A further column was provided by Mr Day in his evidence for the noise received at The Village/Residential and at The Lodge from the operation of the piston engine aircraft that had been used in the past. That data has not been included in the table above; first, because now only the two Cessna Supervan 900 aircraft (with a turbine engine) are used, and secondly, because the evidence showed no attempts by Skydive to avoid unreasonable noise.

[109] The table also includes an assessment of the aircraft noise, in $L_{eq15min}$ terms, received at the three sensitive sites for 35 flights per day and for 50 flights per day with idling noise mitigation. These measurement units relate to the provisions in the District plan. Those figures show $L_{eq15min}$ units are between 4 and 7 dB higher than the L_{dn} units but, because of various averaging and other adjustment procedures that the acoustic experts say apply, Dr Trevathan considered that the increase would normally be about 2 or 3 dB[144].

[110] At the Village/Residential location, if the aircraft noise was to be compared to the general noise limits of the District plan, flight numbers up to about 50 per day would be acceptable. But on the same basis aircraft noise levels at The Lodge and at Hackett Road would not be acceptable, even at the current maximum numbers of flights per day of 35.

[111] The experts agreed that "55 dB L_{dn} is an appropriate criterion for aircraft noise from this skydiving operation to control noise effects on residential and visitor accommodation activities"[145]. The noise sensitive areas to which this criterion should apply were agreed to be lots on the south side of Jacks Point Rise and Hackett Road, Jacks Point Village, the Lodge site and The Preserve[146]. It is important to note that agreement relates to controlling noise effects on residential and visitor accommodation activities not on other activities (e.g. recreation).

[112] Other items where agreement was reached related to:

- aircraft idling noise being included within the 55 dB L_{dn} criterion;
- the effectiveness of a noise barrier on aircraft idling noise;
- that up to 50 flights per day could comply with the 55 dB L_{dn} criterion with "Noise Abatement Idling";
- a flight track to the south should be used wherever practicable;
- an assumption that only aircraft activity authorised by this consent will use the airstrip; and

144 Transcript p 327 lines 6-8.
145 Joint Statement Acoustic Experts para 5.
146 Annexure A to Joint Statement Acoustic Experts.

- proposed conditions with the exception of those topics where agreement had not been reached.

[113] Three planners were called in the proceeding — Mr M J G Garland for Skydive, Ms W Baker for the council and Mr Dent. In their joint statement[147] they agreed that a "maximum level of 55 dBA L_{dn} at all residential and visitor accommodation locations is an appropriate level". They also agreed that visual effects of the proposal on the landscape would be "minimal"[148], and that "... there are other non-acoustic matters to consider in the context of th[e] application"[149] — without identifying what those are.

[114] The three planners also agreed that a maximum noise level of 55 dBA L_{dn} at all residential and visitor accommodation locations is appropriate. However, they disagreed on how that is to be measured and in particular noise averaging. They wrote[150]:

> We have each relied on expert evidence in regards to the acoustic effects and each based our evidence on the acoustic evidence as provided by those experts engaged by the respective parties. This has resulted in us reaching the same conclusions (and disagreement) in relation to whether or not it is appropriate to include the ability to average the noise over a 7 day period. Specifically, our disagreement with regards to including averaging in the overall noise level is appropriately and adequately summarized by the acoustic experts in paragraphs 14 – 17 of their Joint Statement dated 17 April 2013. This means Ms Baker and Mr Garland are of the view that averaging is appropriate, whereas Mr Dent does not consider it appropriate.

Averaging

[115] In fact for the experts to say they had reached agreement about the maximum "noise bucket" which could be thrown onto residential and visitor accommodation was slightly ingenuous. The figure of 55 dB L_{dn} is a calculated figure, and it is reliant (inter alia) on averaging over a chosen period of time. What period of time is chosen is critical to the calculation.

[116] We accept that it is standard practice for the measurement of sound pressure levels to be averaged over time, (except in the case of maximum levels). For example, the district plan rule for non-airport noise relates to the average over 15 minutes and is a common criterion. The airport noise standard uses the average over a 24 hour period with a penalty added during the night hours. In this case averaging over a 24 hour period when operations are confined to daytime appears to unduly diminish the reported sound level. We were told that if the sound pressure levels were averaged over only the daytime period the levels would be 3–4 dB higher[151]. The airport noise standard NZS 6805:1992 suggests a three month averaging period to determine the location of the airnoise boundaries for inclusion in the district plan. It recognises other averaging periods can be used.

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147 Joint Statement of Planning Experts para 8 [Environment Court document 13B].
148 Joint Statement of Planning Experts para 10 [Environment Court document 13B].
149 Joint Statement of Planning Experts para 9 [Environment Court document 13B].
150 Joint Statement of Planning Experts para 13 [Environment Court document 13B].
151 Transcript p 326 line 30.

[117] NZS 6805 suggests[152] a "yearly or seasonal average". However, the effect of using averages over one year, in this case, would enable Skydive to run large numbers of flights (because down days over winter come into the calculation) so all three experts agreed that was inappropriate.

[118] The averaging of the actual sound levels received at the noise sensitive locations proposed by the applicant and Mr Day was based upon averaging the sound levels measured or deduced over a consecutive seven day period. The idea is that if two of the seven days experienced weather that prevented skydiving then a higher level of activity on the remaining fine five days would be permitted with aircraft noise levels exceeding the criterion on the busier days but, when averaged over the seven days, would not exceed the criterion. Dr Chiles agreed that the seven day averaging of the sound levels would adequately protect residential amenity. However he also considered a cap on total flights in any one day of 50% more than the average would be appropriate, i.e. 75. Dr Trevathan disagreed. In his opinion the averaging is likely to result in the maximum noise exposure occurring on the "best" weather days when residents also wish to enjoy the outdoors.

[119] Dr Trevathan's comment on Dr Chiles' evidence was[153]:

> 2.2 The weather dependence of the operation in conjunction with a 7 day average noise limit creates two issues:
>
> 1. noise on any given day could be very high if there were a number of non-flying days in a week, and
>
> 2. even if there are only 1 or 2 non-flying days in a week, the 7 day average will be skewed by these 'outliers' in the data (the non-flying days) allowing high noise levels on the remaining days.
>
> Only the first of these issues is addressed by the peak day L_{dn} noise limit which Dr Chiles has proposed.
>
> 2.3 The second of these issues has not been addressed. This is a common problem in statistics where one extreme value in a small sample can unduly influence the average. Some solutions are to exclude any outliers, or to consider the 'median' value rather than the mean. This is not an issue for more typical airfields which use a 3 month averaging period so the average is not significantly affected by one-off extreme days, and the 'extreme' days may be more infrequent and moderate.
>
> 2.4 The issue in terms of effects and the 55 dB L_{dn} limit is that the high flying intensity days will correspond with the best weather, whereas on the low or no flying days people are less likely to be outdoors, have doors or windows open and noise may be generated by wind and rain. Some of the L_{dn} levels reported for individual days may also have actually arisen from a part day of very high intensity activity, interrupted by poor weather — which creates the same issue on a smaller scale (in that case the L_{dn} may not appropriately account for the degree of effect on that individual day).

152 NZS 6805 para C 1.8.1.

153 J W Trevathan, evidence-in-reply paras 2.2 to 2.5 [Environment Court document 11A].

> 2.5 The basic problem is that the 'average' noise levels produced in this case will not correlate well with people's experience of the noise.
>
> ...

Numbers of flights

[120] One of the relevant assessment matters is "the frequency and type of aircraft activities"[154]. We note that this in itself suggests that the district plan is not simply concerned with the overall noise bucket but also with the wider effects experienced from takeoff and landing of aircraft. On this issue it will be recalled that we found at the beginning of this part of the decision that the existing environment is — allowing for future increased efficiency in the Skydive operation — 26 flights (52 movements) per day on the 265 days when, on average, parachuting is possible. In contrast the applicant seeks an average of 50 flights (100 movements) per day.

[121] The other topic on which agreement was not reached related to a "limit" on the number of flights per day. Dr Trevathan considered 50 flights should not be exceeded on any single day. Drs Trevathan and Chiles considered a limit on the number of flights daily is required to control amenity on the golf course and in the wider area. Mr Day considered the 55 dB L_{dn} criterion, including the 7 day averaging, is sufficient control of the aircraft noise levels permitted. He added that if a limit on the number of flights is imposed then there would need to be a procedure to change the limit if aircraft type and noise emission changes in the future. Mr Day wrote[155]:

> The proposal is based on the widely accepted principle that noise exposure and community response from aircraft noise is based on a combination of the noise level from individual aircraft movements and the total number of flights.

[122] However, Dr Trevathan considered the unique nature of the Skydive operation compared to a more conventional "airport", requires control over not only the received noise level but also over the number of flights[156]. He referred us to a Swedish study by Rylander and Bjorkman[157] which found that the time aircraft were overhead and the frequency of the events both affected the perception of people subject to the noise. That study is quite important because it suggests that the principle behind Skydive's application is incorrect.

[123] Dr Trevathan relied on the Rylander and Bjorkman study for a qualification to the principle stated by Mr Day. That study found that[158] "... for areas below the breakpoint, (i.e. 70 events per 24 hours) the number of events seems to be the crucial factor". Above that breakpoint the maximum noise level affected responses and below, the number of events was important. Seventy events correspond to 35 flights.

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154 Assessment matter 5.4.2.3 (xvi)(e) [QLDP p 5-36].

155 C W Day, evidence-in-chief para 3.6 [Environment Court document 9].

156 J W Trevathan, evidence-in-chief para 5.3 first bullet point [Environment Court document 11].

157 R Rylander and M Bjorkman "Annoyance by Aircraft Noise Around Small Airports" *Journal of Sound and Vibration* (1997) **205(4)**, 533-537.

158 R Rylander and M Bjorkman "*Annoyance by Aircraft Noise Around Small Airports*" op cit at 536.

[124] Mr Bartlett criticised Dr Trevathan's evidence in two ways. First he discussed[159] the Rylander and Bjorkman paper:

> 25. A discussion of the paper prepared by Rylander and Bjorkman concerned the proposition that notwithstanding compliance with an agreed or acceptable dB L_{dn} limit, the frequency of events required consideration as a separate issue.
>
> 26. Far from creating a difficulty for the applicant, the Rylander and Bjorkman paper supported a view that there was no significant difference in effect between 50 flights and 75 (100 and 150 events) where the authors had identified 70 events as the point at which the extent of annoyance flattened out. Coincidentally, 70 is precisely the number of events available in the presently consented environment (but not subject to the proposed noise mitigation practices that have been discussed in the context of the hearing) and which would be enforceable at any level of activity under the new consent.

We do not accept Mr Bartlett's analysis. First he relies on the Jacks Point environment as, in the future, involving 35 flights (70 movements per day) being the maximum permissible under the 1997 consent. While he is correct — as we have found — in allowing for some future improved performance by Skydive, he has overstated the position.

[125] Second our understanding of the studies on aircraft noise before Rylander and Bjorkman and referred to by them[160] is that the breakpoint of 70 movements per 24 hours was for airports with that much traffic almost every day. Here we had evidence from Mr Williams for Skydive that on average it loses 100 days per year from the weather, i.e. there are no flights of all. Adjusting for that reduces the actual effects of flights on the environment to[161] 51 movements per day on average. In other words, Mr Bartlett has not allowed for the 100 days (on average) in each year on which no parachuting can take place, or the other days on which 100% efficiency cannot be attained through no fault of Skydive's.

[126] Third, Mr Bartlett wrote that[162]:

> Under cross-examination by Mr Winchester, Dr Trevathan[163] confirmed his understanding that NZS6805 was the standard that the Queenstown Lakes District Plan required be used for assessing noise from airports.
>
> He went on to confirm that there were no other suitable standards available in New Zealand for assessing aircraft noise and that in terms of NZS6805 the recreational and open space areas were non-residential uses. When asked by Mr Winchester if recreational facilities and walking tracks were noise sensitive for the purpose of the standard, he avoided the question by repeating that the "focus" of the standard was on residential and similar activities.

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159 Applicant's summary of issues paras 25 and 26 [Environment Court document 21].

160 R Rylander and M Bjorkman "Annoyance by Aircraft Noise Around Small Airports" *Journal of Sound and Vibration* (1997) **205(4)** 533 at 534 and 536.

161 70 x 265 ÷ 365 = 50.9.

162 Skydive Final submissions paras 52-53 [Environment Court document 25].

163 Transcript p 250, lines 26-30.

[127] The precise question actually asked by Mr Winchester[164] was:

> ... and in your opinion and based on your understanding of the standard are the recreational facilities and walking tracks noise-sensitive uses for the purposes of the standard?

And Dr Trevathan's answer was[165]:

> I think when viewed as a whole, the focus of the standard is on residential and similar activities when it talks about land use controls.

That is a reasonable answer. We can find no reference in the NZS 6805 to recreational facilities or walking tracks. So we do not regard Dr Trevathan's answer as evasive. In fact during the hearing we gained the impression that Dr Trevathan was a professional witness attempting to give accurate and objective answers.

[128] We conclude that Dr Trevathan was entitled to put some weight on the Rylander and Bjorkman's study, and in turn that his opinion — that flight numbers are important[166] — should be given some weight.

4.4 Effects on the golf course and recreational users

[129] There was very little evidence-in-chief from the applicant, Skydive, in relation to the effects of increased flight numbers on recreationalists in the Jacks Point Zone. Mr Garland was the planning witness called by Skydive. He is a very experienced planner and has wide, international, experience of airport planning. He wrote, more generally, of the effects of the proposed Skydive operation on neighbours[167]:

> While it may result in more flights, the proposed noise controls will result in less noise exposure to nearby properties than can occur under the existing consented regime which simply limits flight numbers rather than aircraft type or noise footprints.

[130] Mr Garland's one sentence on the effects of the aircraft on the quality of the experience of people involved in recreation[168], was[169]:

> One of the most significant recreational activities nearby is boating activity on the lake — water skiing, fishing and just exploring the lake. Having spent many hours doing just that and at the same time observing the sky diving operation, I do not believe there is any adverse effect.

As that sentence shows, he did not consider the effects of the aircraft and their noise on the experience of those using the playground, on golfers, or on walkers.

[131] Skydive's acoustic expert, Mr Day, did not consider the effects of aircraft activities or noise on recreationalists in his evidence-in-chief, but contented himself with

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164 Transcript p 251.
165 Transcript p 251.
166 For confirmation of this in cross-examination see Transcript p 252.
167 M J G Garland, evidence-in-chief para 9 [Environment Court document 13].
168 Assessment matter 5.4.2.3 (xv)(a)(ii) and (iii) [QLDP p 5-35].
169 M J G Garland, evidence-in-chief para 21 [Environment Court document 13].

calculating the overall noise exposure (L_{dn}) at various residential and visitor accommodation sites[170].

[132] The Jacks Point Interests' witness, Mr Darby, expressed his opinion that[171]:

> The proposed increase in flights will adversely affect the experience of individual users of the trails, and may cause safety issues with the equestrian riders.
>
> When people come to Jacks Point (or decide to reside within JPZ), they have an expectation that they are coming to an area of spectacular scenery with high amenity. This is true not only in terms of the championship golf course, but also the network of recreational elements and trails within the JPZ. From a master planning perspective, the large green backyard, with recreation, golf, and limited outside noise influences is part of the attraction for people visiting the area.
>
> I have significant concerns that an increase in the number of daily flights will degrade the quality of this experience.

However, Mr Darby was not purporting to speak as an independent expert so we can give little weight to that.

[133] Mr Darby also wrote that[172]:

> The presence of the skydive operation was known at the time of the Jacks Point plan change. However, there was never any anticipation that the operators would seek to increase the number of flights or the noise generated from the skydive operations. It was anticipated that, at the very least, that the runway would be realigned so that planes would have a different take-off and landing flight path, so that they would not fly over the lodge and golf course sites.

He was cross-examined on this by Mr Bartlett on the theme that there was no justification for that assertion. The results of the cross-examination were inconclusive on their face. However, we note that there is some independent evidence for Mr Darby's statement. The council's decision on the 1997 consent expressly records[173]:

> Mr Williams[174] confirmed that [the consent holder] ... did not envisage any problem with the number of flights being restricted to 35 per day.

[134] As to the impacts of the proposal on club membership and patronage, Mr Darby considered it would have an impact but could not quantify that[175]. In Mr Tod's opinion[176]:

> In my view, an increase in flight numbers from that which currently exists will hugely degrade the initial part of the journey around the Jacks Point golf course, to the degree that it will become a significant and detracting feature in "Clubhouse" conversation back at the travelling golfers home course.

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170 C W Day, evidence-in-chief Table 2 [Environment Court document 9].
171 J G Darby, evidence-in-chief paras 7.9 to 7.11 [Environment Court document 12].
172 J G Darby, evidence-in-chief para 7.2 [Environment Court document 12].
173 QLDC RM 960447 (dated 7 February 1997) at p 2.
174 Then a director of Parachute Adventures Queenstown Ltd and now a director of Skydive — see L Williams, evidence-in-chief [Environment Court document 8].
175 Transcript p 366.
176 A J Tod, evidence-in-chief paras 9.7 and 9.8 [Environment Court document 16].

> Jacks Point is a remarkable world class course in an outstanding setting. It is an important part of the golf tourism market in Queenstown and New Zealand. I have concerns that an increase in flight numbers by Skydive Queenstown, and the corresponding increase in noise will be detrimental to the experience at the course, and ultimately golf tourism in Queenstown.

[135] He was cross-examined on that by Mr Bartlett[177] as follows:

> Q. So it's not very upfront marketing is it, describing Jacks Point in what is to be one of the biggest suburbs of Queenstown, as being, having the remoteness or naturalness of Kauri Cliffs or Cape Kidnappers, is it?
>
> A. Well I certainly, I disagree, I can make comparisons to the quality of the golf course, and this is just purely the quality of the golf course, this is the playing environment as being very similar to Cape Kidnappers and Kauri Cliffs. They are, they are both, and also Kinloch, Kinloch has got a residential element to it and I have absolutely no issue with expressing that Jacks Point is a course of the same stature as these courses and it is because the course is away from the residential at Jacks Point, that you don't feel like you are in a residential community. There is not, there is some of those houses in the middle of the course. However, there is not an element of real estate or residential that impacts on the game of golf that you have at Jacks.

Despite some initial concessions, we consider the last part of Mr Tod's answer is correct and so his evidence was not weakened to the point where we should put little weight on it. Further, to cross-examine Mr Tod on advertising he is not responsible for, is not helpful to the court. We give some weight to Mr Tod's evidence that increasing flight numbers may have an adverse effect on patronage of the golf course.

[136] Mr Tataurangi gave evidence[178] that the proposed increase in flights would be detrimental to the golfing experience at Jacks Point. In an attempt to undermine Mr Tataurangi, Mr Bartlett followed his witness, Mr Day, in portraying this as a more-or-less routine "airport" case. For example, Mr Bartlett invited us to ignore or at least devalue Mr Tataurangi's evidence with his submission[179] that the witness "... may well be in the group of hyper-sensitive individuals whose responses are routinely put to one side by consent authorities deciding airport noise cases". We will return to the issue of whether this is a routine airport case later.

[137] In the meantime we accept that Mr Tataurangi has no expertise in NZS 6805 or the district plan requirements[180] but hold that, as a golf professional and consultant, he is entitled to express an opinion about the effects of aircraft and their noise on him and on other users of golf courses. While the latter point is arguably outside the traditional scope of opinion evidence, the court is not bound by the rules of evidence[181] and Mr Tataurangi's is the best evidence the court heard on that issue. No golf professional was

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177 Transcript pp 468-470.
178 P M Tataurangi, evidence-in-chief paras 19 *et ff* [Environment Court document 15].
179 Closing submission for the applicant para 58.
180 Not that he claimed any.
181 Section 276 RMA.

called for Skydive, and its expert recreational witness, Mr Greenaway, who could have given a more objective and authoritative opinion, did not express one in his evidence.

[138] Consequently we are prepared to put some weight on Mr Tataurangi's evidence[182] that an increase in flights is likely to reduce patronage of the club. We find it realistic that an increased number of flights by Skydive could do so, and that the long-term reputation of the golf course might suffer.

[139] Mr Dent, the planner for the Jacks Point Interests, considered the issue in rather more detail. In his opinion the effects of the Skydive operation went beyond the brief period when speech (or golf shots) would be interrupted. He wrote[183]:

> 4.97 While noise associated with an aircraft arrival or departure may affect the participants in a golf game from playing a shot or cause speech interruption between their companions for a short period during each flight event, the overall amenity of playing on a championship golf course with constant aircraft activity overhead and alongside will have a negative adverse effect on the participants overall experience. Mr Tataurangi attests to this at paragraph 16 of his evidence.

Mr Dent was not weakened on that in cross-examination[184].

[140] Mr Tod was of a similar opinion[185]. In relation to other recreationalists, Mr Tod added[186]:

> 4.100 I consider that users of the various walking and biking trails provided within and adjacent to the Jacks Point Resort Zone will also potentially be subject to increased numbers of noise events which will have an adverse effect on the users amenity.
>
> 4.101 In addition to the activities mentioned above, Jacks Point plays host to a range of recreational community activities and events that utilise the public spaces within the Jacks Point Zone ...
>
> 4.102 In my opinion, the persistent and more frequent aircraft activity that will be required to realise the applicants proposed increased daily flight numbers will detract from the experience of participants in these activities (particularly the more passive events) as well as those who are spectators to these activities.
>
> 4.103 In my opinion, one of the attractions of residential living and short term accommodation within the Jacks Point Resort Zone is the recreational activities/facilities and opportunities available on "the doorstep". Any increase in the adverse effects on the amenity of these recreational resources will have a significant adverse effect on the amenity of the Jacks Point Resort zone as a whole.

182 P M Tataurangi, evidence-in-chief para 27 [Environment Court document 15].
183 S J Dent, evidence-in-chief paras 4.97 [Environment Court document 20].
184 Transcript p 567.
185 Transcript p 468 (lines 9-14).
186 S J Dent, evidence-in-chief paras 4.100 to 4.103 [Environment Court document 20].

[141] Dr Trevathan introduced his evidence on this issue by stating[187]:

> Effects on the golf course of an increase in [Skydive] activity are difficult to quantify using traditional acoustic measures. Unlike a residential situation those exposed to the noise are only in the area for a limited period of time (so parameters such as the L_{dn} level are not particularly relevant); however they are in the area for the purpose of undertaking a specific outdoor activity which involves periods of concentration, and they may have chosen to undertake this activity in this area due to a perception that the location embodies a certain set of values, and aircraft noise in that context is surprising and disruptive. This differs from a residential situation where a variety of activities are undertaken both indoors and out, and the nature of the surrounding environment is known and understood.

[142] He continued[188]:

> What is clear is that the situation on the golf course would change with the advent of more [Skydive] flights, as follows:
>
> - Currently if there were 35 flight in a day the average gap between aircraft over flights is 8 minutes.
> - If 75 flights took place, the gaps between over flying aircraft would be reduced to 4 minutes.
>
> Based on the time taken to play holes 2 and 5 of the golf course, this change considerably increases the likelihood that a player will experience multiple aircraft flyovers during their round.

[143] He then produced[189] an "approximation of noise levels of hole 2 Jacks Point Golf Course for 75 flight peak day", and contrasted that with his measurements and noise levels of hole 2 on 28 September 2012. His evidence shows that over the golf course, disturbance events on days with flights at the (theoretical) maxima would increase from one each 10.3 minutes for 35 flights/day to one every 7.2 minutes for 50 flights/day and one every 4.9 minutes for 75 flights/day assuming a 12 hour day. For the three golf holes primarily affected, assuming each takes 15 minutes to play, on a peak day golfers would be disturbed nine times (three times on each of the three most affected holes) roughly two to three times the current most intense experience.

[144] We accept that a doubling of the number of Supervan Flights would not double the noise. Rather it increases the noise bucket by at most 3 dBA[190]. Similarly the 7-day averaging proposed by Mr Day and Dr Chiles would only lead to a 2 to 3 dB increase in the total noise which is barely perceptible (at 3 dB)[191].

[145] However, the effect on recreationalists is not so much about the calculated noise bucket, but about the numbers of flights and the overall physical experience, especially because few recreationalists would experience the noise of the aircraft for the full day (unlike some residents). It also needs to be borne in mind that the aircraft are passing

187 J W Trevathan, evidence-in-chief para 5.38 [Environment Course document 11].
188 J W Trevathan, evidence-in-chief para 5.39 [Environment Course document 11].
189 J W Trevathan, Attachment 3 [Environment Course document 11].
190 Transcript p 162.
191 C W Day, rebuttal evidence para 3.11 [Environment Court document 9A].

overhead relatively close to the ground (i.e. below 150 metres agl) sometimes only a single figure multiple of the aircraft's wingspan (nearly 15 metres).

[146] Dr Chiles, for the council, simply accepted[192] Dr Trevathan's figures about existing high sound levels at holes 2 and 5, then continued:

> ... I consider that increasing the number of flights from 35 to 50 or even to 75 on occasion would not fundamentally alter the amenity. The amenity on the golf course is already compromised by the existing consented skydiving operation, meaning that this is not a remote location free from such anthropogenic sounds. On 29 January 2013 there were regular flights throughout the day and, while increasing the frequency of flights would have increased the number of times players were disturbed, in my opinion it would not have significantly altered the overall amenity.

[147] Dr Trevathan's response was[193]:

> I ... note that Dr Chiles description of the proposed change incorrectly understates the significance of the change. [Thirty-five] flights is the current 'peak day' limit. The current average is in the order of 15 to 20 flights. So the change being considered in from an average of 15 to 20 to an average of 50, and from a peak day of 35 to a peak day of 75 (that is, typically more than a doubling of flight numbers).
>
> With regard to the effects of this increase in activity, it seems to me that the expert evidence of Mr Tataurangi[194] is relevant, as is the material outlined in the evidence in reply of Mr Dent including the references in the District Plan to consideration of the "frequency and type of aircraft activity" in the vicinity of airports, and the "preservation and enhancement" of recreational facilities.

[148] At this point it is convenient to refer to Mr Bartlett's submission[195] that "[t]here was no evidence before the Court as to the response of golf club members to the existing airport activity" [our underlining]. He did not explain the significance that any such evidence would have had. He then asked[196] ... the Court to reconsider its comments in relation to cross-examination the lack of survey evidence from Jacks Point. The court's statements complained of were[197]:

> ... its relevance I suspect is very marginal indeed, as to whether he's interviewed golf club members ...
>
> [and]
>
> ... I must say you'll have to make a submission on that later — because if he had, if he had done what experts lovingly call a qualitative analysis of views, you'd be getting into him for the subjectivity of that.

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192 S Chiles, evidence-in-chief para 30 [Environment Court document 10].
193 J W Trevathan, evidence-in-reply paras 3.7 and 3.8 [Environment Court document 11A].
194 Not considered by Dr Chiles: S Chiles, evidence-in-chief para 6 [Environment Court document 10].
195 Skydive's Final submissions para 56 [Environment Court document 25].
196 Skydive's Final submissions para 57 [Environment Court document 25].
197 Transcript p 284, line 3.

In fact those comments (by the Judge) were made in the opposite order, and about the cross-examination of Dr Trevathan on the effects on golfers, rather than on the evidence for Jacks Point generally.

[149] In any event the court was not being critical of Mr Bartlett at that time. If the witness had "surveyed" the golf club members, the court would have encouraged cross-examination on the techniques and on any subjectivity involved[198]. In any event the situation was more complex than Mr Bartlett's cross-examination suggested in that the witness claimed no expertise in surveying the public or a sector of it

[150] We do not see how Dr Trevathan's omission to speak to golf club members affects the credibility or objectivity of his evidence. Rather it might have affected his credibility adversely if he had.

[151] In his rebuttal evidence, Mr Day drew our attention to the fact[199] there are golf courses close to airports in a number of locations around New Zealand:

> Nelson Airport and Whakatane Airport have a golf course at the end of the runway and Invercargill has golf courses at both ends of the runway. Queenstown Airport has a golf course immediately [beside] the runway and Wellington Airport has a golf course 400m side on to the runway. Christchurch Airport has three golf courses in close proximity.

He then produced a figure showing Harewood Golf Course 300 metres to the northwest of the NW-SE runway and Russley Golf Course 1,500 metres southeast of, and Clearwater Golf Course 4 kms northeast of the main runway.

[152] The Clearwater Golf Course has been the venue for the New Zealand Open for the last two years[200]. Mr Day wrote that[201]:

> Aircraft on arrival to Christchurch are overhead Clearwater holes 3, 4 and 5 at an altitude of approximately 200 metres. Noise levels experienced on these holes from individual events would be in the order of 100 dB L_{AE} from a Boeing 747 and approximately 92 dB L_{AE} from a Boeing 737-300. The B737 noise level is the same as the noise level of the Supervan measured by Dr Trevathan on the 2nd hole at Jacks Point – 92 dB L_{AE}.
>
> Clearly the administrators and professional golfers in New Zealand do not think these noise levels are a significant adverse effect by choosing this golf course over many other high quality golf courses available in New Zealand for the New Zealand Open.

[153] Mr Day then referred to the Sydney Airport which has a number of golf courses east of runway 25/07 (the east/west runway). He wrote that[202]:

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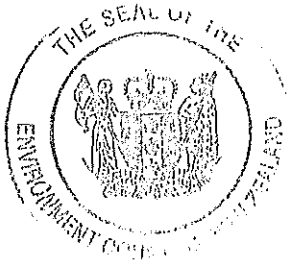
198 On the basis of *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at (137) *et ff.*

199 C W Day, rebuttal evidence para 2.7 [Environment Court document 9A].

200 C W Day, rebuttal evidence para 2.8 [Environment Court document 9A].

201 C W Day, rebuttal evidence para 2.9 [Environment Court document 9A].

202 C W Day, rebuttal evidence para 2.12 [Environment Court document 9A].



> ... the Lakes Golf Club, one of Australia's premier golf courses, is located approximately 1500 metres from the east end of runway 25/07. Over most of this golf course, golfers would experience noise levels in the order of 110 dB L_{AE} from a Boeing 747 and 100 dB L_{AE} from a Boeing 737-300 on approach. These noise levels are 10 to 20 dB higher than that experienced at Jack's Point.

[154] We accept that the noise experienced by golfers at Jacks Point would be similar to those situations. However the experience is different: the aircraft are likely to be lower at Jacks Point, there may be fewer movements and of course the setting is very different.

[155] Turning to the evidence of the Jacks Point Interests about adverse affects on outdoor recreation[203] Mr Day responded to Dr Trevathan's conclusion[204] that "a peak day limit of 50 flights may be appropriate":

> In my opinion the difference between 75 flights and 50 flights per day would not be a noticeable effect on golfers. At worst, each golfer might experience four departures for their round rather than three while playing holes 2, 3 and 5. As discussed previously, it does not appear that this type of event significantly affects professional and amateur golfers using high quality golf courses such as The Lakes and Clearwater.

Mr Day may be correct about that. However he did not refer to the fact that Dr Trevathan's conclusion was expressly based on the premise[205] that the court might consider it appropriate to (further) compromise the amenities on the Jacks Point land. It is not clear to us at this stage that we should do so.

[156] Mr Day continued[206]:

> Overall, it is my opinion that the proposed activity (50/75 Supervan flights) will have a significantly lower impact on the golf course [than] 35 flights of the Cessna piston aircraft for the following reasons:
>
> - Firstly, the noise level of the Supervan aircraft in flight is significantly lower than the Cessna piston (more than 10 dB). Dr Trevathan measured the Supervan at 92 dB L_{AE} on the 2nd hole and I previously measured the Cessna piston at 104 dB L_{AE} beside the 2nd tee.
> - Secondly, the Supervan has a much higher climb rate than the piston aircraft and gets away from the golf course more quickly resulting in shorter duration events over the golf course (1500ft per min vs 600ft per min).
> - Thirdly, due to the lower climb rate of the Cessna piston, these aircraft when fully laden, could not climb directly over Jack's Hill and had to fly north over Jack's Point [land] as shown in Figure 3 below. This track over flies holes 1, 17 and 18 and then back along the ridge over holes 13, 14, 15, 16, 4 and 5.
> - The proposed activity thus affects three golf holes for a total duration of 30 seconds and the previous Cessna piston activity affected nine holes for a total duration of 130 seconds.

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203 C W Day, rebuttal evidence paras 3.2 to 3.4 [Environment Court document 9A].
204 J W Trevathan, evidence-in-reply para 3.11 [Environment Court document 11A].
205 As Mr Day conceded in cross-examination: Transcript p 160.
206 C W Day, rebuttal evidence paras 3.3 and 3.4 [Environment Court document 9A].

> In summary, the proposed activity creates noise over the golf course that is quieter and shorter duration than the previous piston aircraft — less golfers will be affected. Higher levels of aircraft noise are experienced at the Australian Open Lakes Golf Course and these are regarded as reasonable by professional golfers and the club members.

We accept those points, but all of Mr Day's evidence proceeds on the assumption that the volume of noise and the total sound bucket are the key factors in relation to adverse effects of airport noise. We prefer the more considered evidence of Dr Trevathan that for this unique "airport" it is more likely that it is the number of plane movements which is the crucial factor. In addition, the question of what is perceived as reasonable is very context driven. The environment in this Wakatipu Basin proceeding is very different from Sydney or Christchurch. In the larger cities other factors may come into play as to the choice of championship venues: for example demographics and advertising coverage.

Financial effects on the golf club

[157] Mr Darby, Mr Tataurangi and Mr Tod referred particularly to the effects on the players on the Jacks Point Golf Course. In particular they were concerned about the potential reduction in international golf tourists and subsequent financial consequences if the enjoyment of playing the course is reduced by low flying aircraft.

[158] Mr Bartlett cross-examined Mr Tataurangi on the loss of income (using loss of patronage as a proxy) that might be caused to the golf club. The exchange went[207]:

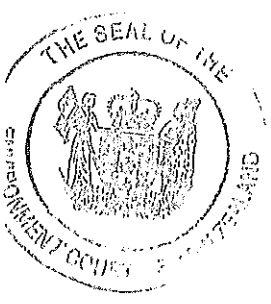
> Q. ... will the granting of this consent or something like it on conditions by the Court likely result in the reduction or a loss, a loss of patronage, loss of future patronage if that's clearer to you, for Jacks Point Golf Club?
>
> A. It's my belief that the experience at Jacks Point will be tremendously compromised by the number of flights of which the applicant is seeking and in compromising that golf experience and in the environment of which the golf course sits, that I do have the view that patronage over the long haul would be affected, yes.
>
> Q. By what degree?
>
> A. I have no cause to give you a figure of whether that would be one percent, 10 percent, 50 percent.

We cannot quantify the predicted effect on the basis of the evidence given to us, but we accept the evidence for the Jacks Point Interests that such an adverse effect is likely.

4.5 Lot 14 The Preserve and the Lodge site

[159] Neither Lot 14 nor the Lodge site has yet been built on.

[160] Lot 14 is directly underneath the principal flight path over the tableland. Dr Trevathan described it as the "closest residential site to the aircraft flight path by some



207 Transcript p 449.

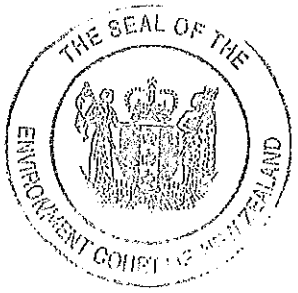
margin"[208]. The amenities are, of course, reduced by potentially up to 26 flights per day over the property. The proposed consent would increase the average number of daily flights from a possible 26 to 50 on the 265 days of the average year on which parachute drops are possible, and the daily maximum from 35 to 75. While the effects of the noise on residents of any future house on Lot 14 might be acceptably managed with a 55 dBA L_{dn} total noise limit, we consider the issue is more complex than that. Lot 14 is a residential allotment on the crest of the tableland, with views west over the lakes, north up the lake, past Queenstown, and east to the Remarkables. It is exposed to the weather but on fine calm days its outdoors' amenities would be very fine. To nearly double the average maximum number of flights from 26 to 50 would have a major adverse effect on the outdoor amenities of Lot 14.

[161] Mr Darby was also concerned with the impact of the increase in flights (and noise) on the proposed lodge site (see Attachment 1 to this decision). A resource consent has been granted for the construction and use of this lodge. Mr Darby described the concept as follows[209]:

> There is an area adjacent to the golf course which is zoned for a lodge development ... . It has always been anticipated that the lodge site would be developed for a luxury 5-star facility, catering for the high end international and domestic market.
>
> The site for the lodge was specifically chosen, adjacent to the golf course, away from the commercial and residential areas of the zone. The location provides a sense of exclusivity while enabling guests to appreciating the spectacular scenery of Lake Wakatipu, the Remarkables and the adjacent championship golf course. The construction of the 5-star facility, in conjunction with the championship golf course, has always been a key component of the vision for the zone.
>
> The success of a 5-star lodge is reliant on the golf course and the quality of the golfing experience. An increase in plane noise and flight activities, from take-off and landing, will significantly impact on the amenity in this area. It is anticipated that the increase in the number of flights to the maximum of 75 in any one day would likely occur on a calm day. This increase of 40 flights (over the 35 flights per day allowed under the existing consent) would result in a higher level of noise and annoyance to those enjoying the lodge facilities as well as those playing on the golf course.
>
> The proposed increase in flights will alter the vision for the area to a point that the establishment of a 5-star lodge in this location would be severely prejudiced.

[162] He acknowledged that the resource consent for the lodge (which he contributed to the design of) expressly recognises the 1997 consent held by Skydive. From the cross-examination by Mr Bartlett it was unclear whether a lodge would proceed given the existing flights by Skydive over the lodge site.

[163] Similar (but lesser) extra adverse effects are likely to be imposed on the Lodge site, in addition to those already experienced.



208 J W Trevathan, evidence-in-chief para 4.14 [Environment Court document 11].
209 J G Darby, evidence-in-chief paras 7.4 to 7.7 [Environment Court document 12].

5. Evaluation

5.1 Having regard to the relevant matters under s 104(1)

[164] We have held that, overall, the application by Skydive should be treated as a discretionary activity[210]. The court may grant or refuse the application[211]. We turn to the two compulsory matters we must have regard to under section 104 of the Act:

(a) the actual and potential effects of allowing the activity on the environment;
(b) the relevant statutory instruments.

There are no 'other matters' under section 104(1)(c) of the Act which are reasonably necessary to be had regard to.

[165] It is important to understand the setting — the environment — of this case. Mr Bartlett, counsel for Skydive, in his cross-examination of some of the witnesses[212] portrayed the Jacks Point Golf Course as a standard golf course beside suburbs with a general aviation airport's landing and take-off flight paths over it. We have major difficulties with that picture. We accept Mr Bartlett's submission that the Jacks Point Golf Course is not remote and pristine in the way that the Kauri Cliffs and Cape Kidnappers courses in the North Island may be. However, on the balance of probabilities (to the extent these are factual issues) we find that he is wrong on a number of matters.

[166] First, the "suburbs" Mr Bartlett refers to are quite well separated from the airstrip and golf course (see Attachment 1). At present the only part of the urban area abutting the golf course is Jacks Point village which comes close to the large pond between the low density urban activities and the golf course. It may be, in future, that part of Henley Downs residential development (for whom Mr Holm acted) may share the boundary with the golf course. We accept also that there are houses on the rise (the Preserve) which are surrounded by the golf course. However, they barely constitute a suburb, more a small residential enclave.

[167] Second, while we find that the Skydive operation is quite different to the operation of a normal farm airstrip, it is also very different to a commercial airport or a general aviation aerodrome supporting local and club flying. It is an intensive flying operation of, currently, 70 take-off and landing events maximum per day undertaken alongside residential and accommodation land uses and immediately over the rising ground of a distinguished golf course and other outdoor recreation facilities. It is also unusual in that both the take-off flight path and one landing flight path pass over the same ground. That causes more than the disturbance of a more conventional airport operation for the same number of takeoffs and landings. We accept that effect is

210 See part 1.4 of this decision.
211 Section 104B(a) RMA.
212 See, e.g. Transcript pp 468-470: cross-examination of Mr Tod quoted above.

lessened to the extent that the alternative landing flight path from the south is used. However there was no undertaking given as to the frequency of use of that southerly approach landing flight path. Nor could there be: the evidence was that under the Civil Aviation Act 1990 and its regulations, the choice of flight paths on final approach to landing is under the sole control of the pilot[213].

[168] The application seeks to authorise up to 150 events maximum per day — an increase from 70 (35 flights). From a current or possible average number of events per day of 20–52 the application seeks to increase that average to 100. Roughly that is a doubling of the present activity.

[169] Third, while we accept the evidence of Mr Garland and Mr Day for Skydive that golf courses are quite frequently to be found adjacent to airports, whether a proposal to increase the use of an airport achieves the purpose of the RMA is a question of context to which the principles of the RMA and the objectives and policies of the district plan have to be applied. We find that the Jacks Point Golf Course is not an average golf course. It has been designed[214] to be and we find, based on the evidence of Mr Tod and Mr Tataurangi, is of a very high standard even by international standards. The existing operations of Skydive, or the future possible operations under the 1997 consent do diminish that quality but not seriously.

[170] Fourth, Mr Bartlett's submissions ignored the other recreational use of the Jacks Point land: the walking and cycling tracks under the flight path and (to a lesser extent) users of the playground and their minders.

5.2 <u>The actual and potential effects on the environment</u>

[171] In what follows we consider all the potential (adverse) effects as subject to the conditions proposed by Skydive for remedying or mitigating those effects.

Positive effects

[172] We accept the evidence of Mr Greenaway[215], the expert on recreation, that Skydive plays an important part in the adventure tourism industry's contribution to the local economy. Further, increased flights and jumps would increase the "free destinational marketing through skydive freefall photography ... thus making [Skydive] one of New Zealand's most significant distributors of Queenstown imagery ..."[216].

[173] In addition to the positive effects for the economy of providing for more skydivers, there are additional (smaller, but accumulatively significant) positive effects. They are:

213 Subject to any provisions in the NZAIP.
214 J G Darby, evidence-in-chief paras 6.1 and 6.7 [Environment Court document 12].
215 R Greenaway, evidence-in-chief [Environment Court document 7].
216 L Williams, evidence-in-chief para 12 [Environment Court document 8].

- that the site is close[217] to the drop zone on the airstrip;
- the closest residential land in vicinity is undeveloped so that new owners can take account of and design around airstrip[218];
- in terms of New Zealand it is very small airport[219];
- there would be no night flying[220];
- there would be a single operator[221] (except possibly for occasional topdressing flights);
- the airport is on the southern side of Hackett Road so sound insulation on the southern side of dwellings would interfere little with outdoor living[222];
- the proposal makes efficient use[223] of the existing airstrip;
- the proposal would increase safety at Queenstown Airport.

Effects on residential activities

[174] To put this case in context, the noise which would be imposed on residents, recreationalists and other visitors to the Jacks Point Zone is greater than they would normally have to be subjected to in Rural Areas of the district. The district plan provisions give some guidance about the reasonable noise with its rules about outdoor activities[224] other than for airports. The relevant rule limits daytime noise to 50 dB $L_{eq\ 15min}$. Even with the current operation, of the three sensitive sites, only the Village site receives noise less than the district plan limit at 48 dB $L_{eq15min}$. At the Lodge the received noise is 56 dB $L_{eq15min}$ and at Hackett Road it is 62 dB $L_{eq15min}$. At the Hackett road site idling mitigation reduces the noise level by 3-5 dB. So received noise from the current operation at the Lodge and Hackett Road sites is in the mid 50s dB $L_{eq15min}$, a level noticeably higher than the level for Rural Areas generally.

[175] If the number of flights per day was increased to 50, the noise received at those sites would be:

- 51 dB $L_{eq15min}$ at the Village;
- 59 dB $L_{eq15min}$ at the Lodge; and
- 59 dB $L_{eq15min}$ at Hackett Road.

These levels would all be significantly higher than both the current operation and the District plan levels. On a peak day with 75 flights the levels would be higher again.

[176] However, in the District plan under the Rural Area rules the usual noise limits are not to apply to airport noise. Instead the Zone Standard requires that airport noise be

217 Transcript p 536 (Cross-examination of Mr Dent).
218 Transcript p 536 (Cross-examination of Mr Dent).
219 Transcript p 538 (Cross-examination of Mr Dent).
220 Transcript p 538 (Cross-examination of Mr Dent).
221 Transcript p 538 (Cross-examination of Mr Dent).
222 Transcript p 544 (Cross-examination of Mr Dent).
223 Excluding externality issues.
224 Rule 5.3.5.2 v [QLDP p 5-20].

assessed in accordance (and comply) with NZS 6805:1992[225]. However, as recorded earlier, the local authority has not established air noise boundaries for this airstrip so there are no applicable aircraft noise planning standards. The acoustic experts have extracted the 55 dB L_{dn} noise level from the Standard and adopted that as the criterion for an acceptable aircraft noise level for residential and accommodation activities. There are no guidelines given in the Standard or by the experts for acceptable aircraft noise levels for outdoor activities.

[177] The acoustic experts agree that a maximum noise level from aircraft at residential and accommodation sites should be 55 dB L_{dn}. We consider that, given the nature of the operation, that is generous to Skydive especially since the experts were not unanimous about the appropriate averaging period for noise.

[178] Further we consider on the balance of probabilities that with the number of flights currently carried out (16-20 average — not counting non-flying days and 26 potential average on the same basis) the limiting factor in respect of annoyance is not the overall sound exposure but the number of flights.

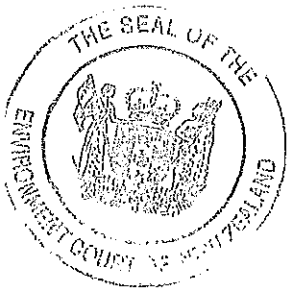
[179] While we accept that the 55 dBA L_{dn} level is a reasonable measure of noise for most of the neighbourhoods (suburbs) at Jacks Point we do not accept that is so for Lot 14 The Preserve or for the Lodge (see Attachment 1). The outdoor amenities of those properties would be best enjoyed on calm clear days which are also the best days for skydiving. We find that an increase in the average number of flights per day from (say) 26 to 50, and in the maximum from 35 to 75 is likely to impose unreasonable adverse effects on the occupiers of those properties.

Effects of noise on amenity and enjoyment of open space

[180] We have considered the evidence of the witnesses for the Jacks Point Interests and the responses from Skydive's witnesses about the adverse effects of the proposal on the amenities and enjoyment of the Jacks Point Zone specifically:

- the golf course, especially holes 2, 3 and 5;
- Lot 14, The Preserve outside amenities;
- the proposed Lodge;
- the walking and cycling (mountain-bike) tracks;
- the playing fields and playground.

[181] In relation to the golf course Mr Tataurangi concluded[226] that "any increase of flight activity by Skydive ... will, no doubt, impact the genuine world class golf experience that is currently enjoyed there". Mr Day responded:



225 Rule 5.3.5.2 (v) (d).

226 P M Tataurangi, evidence-in-chief para 27 [Environment Court document 15].

> Clearly this broad statement is not correct — for example, an increase of one flight per day of an aircraft that is 10 dB quieter than previous aircraft would reduce the impact on the golf course.

In fact the position is more complex than that, because it is not on the evidence simply a matter of brief noise — the operation of the aircraft causes anticipation, discomfort[227] and accumulative effects.

[182] In relation to amenity the planners' joint statement records[228]:

> New Zealand standard NZ6805 and amenity
>
> Mr Dent does not consider that the standard adequately safeguards amenity in respect of noise. Mr Garland and Ms Baker consider that the standard was drafted to protect residential amenity in relation to noise. They do not consider the residential locations surrounding the activity have any unique characteristics which anticipate a higher level of amenity than the standard anticipates.

[183] Despite that, the planners' joint statement concluded on the number of flights[229]:

> We all agree that a limit is appropriate. Mr Garland is not particularly concerned with the number of flights as long as the appropriate acoustic limits are met. Mr Garland does consider a limit should be set on flights. Ms Baker is equally of this view but understands the average maximum of 50 flights and daily maximum of 75 flights have been volunteered by the applicant. Any additional flights have not been assessed by her and she considers the consent should limit the flights to these numbers. Mr Dent remains concerned that any number of flights beyond the daily maximum of 35 flights allowed by resource consent RM960447 under which the applicant currently operates will result in unacceptable adverse effects.

[184] We found the evidence of Mr Garland and Ms Baker on the potential adverse effects on recreationists in the Jacks Point Zone to be skeletal and non-existent respectively. We prefer and accept the better-informed evidence of Mr Dent on the adverse effects of the Skydive proposal.

[185] Overall we find that the proposal is likely to lead to a serious reduction in the recreational amenities of Skydive's immediate neighbours compared with operations under the 1997 consent.

5.3 <u>The objectives, policies and rules of the district plan</u>

[186] There is one district-wide policy as to recreation which supports Skydive's application. It is[230] to encourage and support increased use of private recreational facilities to meet the recreational needs of residents and visitors. However, this policy is equally supportive of the recreational facilities at Jacks Point which rather cancels out any weight to be given to it for the proposal. That neutral position is vacated in favour of the Jacks Point Interests when the qualification to the policy is applied. That makes policy (4.4.3)3.3 "... subject to meeting policies relating to the environmental effects of recreational activities".

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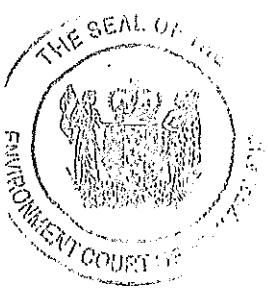
227 P M Tataurangi, evidence-in-chief para 16 [Environment Court document 15].
228 Joint Statement of Planning Experts para 18 [Environment Court document 13B].
229 Joint Statement of Planning Experts para 16 [Environment Court document 13B].
230 Policy (4.4.3) 3.3 [QLDP p 4-26].



[187] The latter policies[231] require the consent authority to avoid, remedy and mitigate the adverse effects of (commercial) recreational activities on the natural character, peace and tranquillity of the district, and to avoid, remedy or mitigate conflicts between recreational activities.

[188] There is a clear conflict between several sets of recreational activities here. The ultimate question for us under the district plan is how to appropriately avoid, remedy or mitigate that conflict[232].

[189] As for the application of the Zone Standard: in this case the minimum standard of 55 dBA L_{dn} set in the NZ Standard is inadequate for two reasons. First, the context requires a lower noise bucket (sound exposure level) to maintain the quality of the surrounding environment. Secondly, and more importantly, there are so few flights at present that it is not the sound exposure level but the number of flights per day (frequency) which is the important factor when considering their annoyance value.

[190] The most experienced planner /resource manager to give evidence, Mr Garland, stated[233] that golf courses go with airports. The relatively junior planner, Mr S Dent, called by the Jacks Point Interests took a more nuanced view. In his (expert) opinion the co-existence of a golf course with an airport depends on the context[234]. We prefer his evidence that in the Jacks Point context the adverse effects of the proposal outweigh the benefits, particularly since the airstrip is subject to the Rural General Rules. The district plan has no specific objectives and policies, that we were referred to, identifying the "airport" as being of public importance.

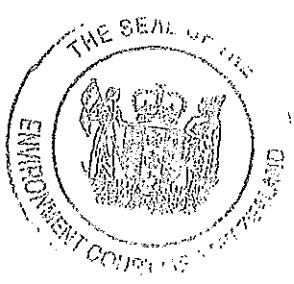
5.4 Part 2 of the Resource Management Act 1991

[191] Because the proposed airport activity would be likely to have both positive and negative effects on the environment[235], we need to have recourse to Part 2 of the Act to assess the weights to be given to the various factors.

[192] The ultimate question is whether the resource consent sought would manage the resources of the airstrip and the surrounding area so as to enable people and the Queenstown community to provide for their well-being, health and safety while meeting the (moveable) bottom lines in section 5(2)(a) to (c). In answering that question there was no evidence that any section 6 matters of national importance are relevant.

[193] We turn to section 7 of the RMA. There are three relevant matters which that section requires us to have particular regard to:

231 Policy (4.4.3) 2.1 and policy (4.4.3) 3.1[QLDP pp4-25 and 4-26].
232 Policy (4.4.3)3.1 [QLDP p 4-26].
233 M J G Garland, rebuttal evidence para 11 [Environment Court document 13A].
234 Transcript p 544.
235 Section 104(1)(a) RMA.



(b) the efficient use and development of natural and physical resources;

(ba) ...

(c) the maintenance and enhancement of amenity values;

...

(e) maintenance and enhancement of the quality of the environment;

...

We consider paragraphs (c) and (e) together, since in the context of this case there seems to be no difference in their meanings.

[194] Section 8 of the RMA is not relevant in this case.

Efficient use of resources (section 7(b))

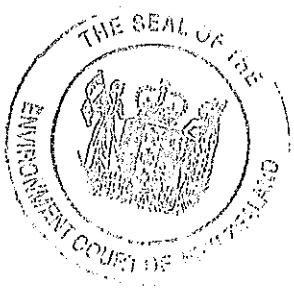
[195] We accept that the increased use of the airstrip would be efficient in a fundamental and important sense in that it removes the aircraft from the commercial and general aviation traffic at Queenstown Airport. The use of the approved drop zone is also clearly desirable for any increase in the number of tandem skydivers. We also find that an increased use of the airstrip for flights and for parachutists' landings is an efficient (unquantified) contribution to the local tourism economy.

[196] Just as Mr R G Greenaway, the recreational expert for Skydive, emphasised the importance of that operation for the local economy, Mr Tod, the golf tourism expert for the Jacks Point Interests, did the same for the Jacks Point Golf Course. Similarly, the evidence of Mr Tod, Mr Darby and Mr Tataurangi suggested that increased flights might impact on the financial performance of the Jacks Point Golf Club. Mr Bartlett was critical of that evidence pointing out that it was not quantified in any way. He is correct about that, but then neither was the potential profit to Skydive nor, more relevantly, the potential net benefit or loss to the public. So we are unable to weigh those costs and benefits in any objective way.

[197] Of course there is no obligation on an applicant to carry out a cost benefit analysis of a rigorous kind — *Meridian Energy Ltd v Central Otago District Council*[236] — but if it wishes to establish that a certain use of natural and physical resources is more efficient than another, then it bears the burden of that (and a cost benefit analysis can be helpful in that regard).

The maintenance and enhancement of amenity values (Section 7(c) and (e))

[198] We have found that the amenities of recreationalists — golfers, walkers, and cyclists at Jacks Point would be diminished by granting the resource consent sought.



[236] *Meridian Energy Ltd v Central Otago District Council* [2010] NZRMA 477 at [116], [123] (FC).

The proposed increase in the maximum number of daily flights from a theoretical 35 (under the 1997 consent) to 75 would cause a substantial adverse effect on the amenities of an area which the district plan has recognised as special. So would increasing the daily maximum average from 28 to 50.

Conclusion

[199] Enabling Skydive to expand so more of its customers enjoy the environment of the Wakatipu Basin and the lake can only be achieved by imposing substantial extra adverse effects on the Jacks Point Zone. The principle in section 5(2)(c) of the RMA that externalities should at least be remedied or mitigated is inadequately applied by Skydive's proposed mitigation.

It should not really be necessary to say so, but in view of Mr Bartlett's submissions, we emphasise that we are not creating a new standard for airports in respect of noise. This case is decided on its own unique facts.

5.5 Result

Weighing the competing factors

[200] Mr Bartlett submitted[237]:

> In terms of the Court's exercise of judgment, the major issue involving balancing of competing interests is the opportunity for the applicant to be able to increase or to maximize utilization of its two aircraft, and the enjoyment of the Skydive patrons as opposed to the risk of interfering with the recreational experience of visitors to the golf course during the time they are on the 2nd, 3rd, 4th and 5th holes.

On the evidence we find that experiences on golfers on the Jacks Point course are likely to be significantly worse than that imposed by current operations.

[201] Further, Mr Bartlett's submission overlooks two other sets of adverse effects. First there are the likely effects of the proposed consent on other recreationalists in particular walkers and cyclists and also to a much lesser extent, children and their minders at the playground. Secondly, there are the likely effects of an increased number of flights on persons outdoors on Lot 14 of The Preserve and at the Lodge site. We accept that the increased number of flights will not unreasonably affect residents or guests when in the house or Lodge, but when they are outside on fine days, the procession of up to 80 extra movements[238] overhead will have a major adverse effect on their enjoyment of the respective properties.

[202] Probably the most useful comparison is between the potential maximum average number of flights (approximately 26) and the average of 50 under the proposal, assuming in both cases that landings would use the alternative flight path over Homestead Bay. Despite that mitigation, we have found that the proposal would cause

237 Applicant's summary of issues para 3 [Environment Court document 21].

238 75 – 35 = 40 (comparing theoretical maxima) flights x 2 = 80 (extra) movements.

serious extra adverse effects on Lot 14 The Preserve, the Lodge, on golfers, on walkers and cyclists, and on users of the playground.

[203] We have also considered Mr Bartlett's point that the Jacks Point Interests came to the noise, i.e. that Skydive was operating in the area first. We accept that the Jacks Point Interests came to the area with knowledge of the existing noise environment and other adverse effects. However, we consider it is not unreasonable of them to expect those effects to be maintained at the level allowed under the 1997 consent (subject to section 16 of the Act).

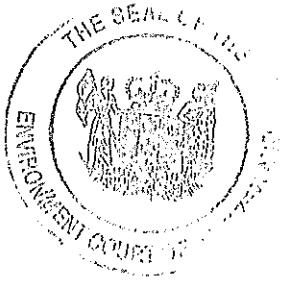
[204] We have considered whether we should grant an amended resource consent for substantially lesser average and maximum flights per day to incentivise Skydive to move from its 1997 consent. For the reasons stated earlier, we are insufficiently clear as to what the 1997 consent, with reasonable application of the section 16 duty, might allow so we have an inadequate grasp of what it is we were asked to replace. Further because we find that the witnesses for Skydive assessed the effects on the neighbours so inadequately, and in such an all-or-nothing way that means that compromise options have not been adequately assessed. It may be that if the Skydive application had gone to a council hearing, some of the issues now raised could have been explored more thoroughly. The applicant chose to forego that possibility, and we have inadequate evidence to satisfy us as to alternative operating conditions.

[205] We conclude that the objectives and policies of the district plan, especially the second district wide objective, would not be achieved because the proposal would have substantial extra adverse effects on the recreational opportunities in the Jacks Point Zone and on the amenities of Lot 14, The Preserve which are not outweighed by the potential benefits (producer and consumer surpluses) which granting consent would likely lead to. Nor would the proposal adequately mitigate conflicts between the skydiving activity and those other recreational and living opportunities. Weighing all the competing factors, we judge that the purpose of the RMA is better achieved by refusing rather than granting consent and will make orders accordingly.

Other matters

[206] During the hearing we raised an issue with the parties as to whether an effect of the High Court decision in *Dome Valley District Residents Society Inc v Rodney District Council*[239] is that a resource consent is needed for the manoeuvre of taking off and landing when under 500 feet and over the Jacks Point land. In the result we have not needed to determine that question.

[207] Towards the end of the hearing the section 274 parties suggested that a realignment and relocation of the grass airstrip might make it possible for an increased



239 *Dome Valley District Residents Society Inc v Rodney District Council* [2008] 3 NZLR 821; [2008] NZRMA 534.

Skydive operation to become acceptable. That involved aligning the airstrip to the southwest and extending it east closer to the highway. We were given few details about this possibility and so cannot make any comment on it other than to record the suggestion.

[208] Costs should be reserved.

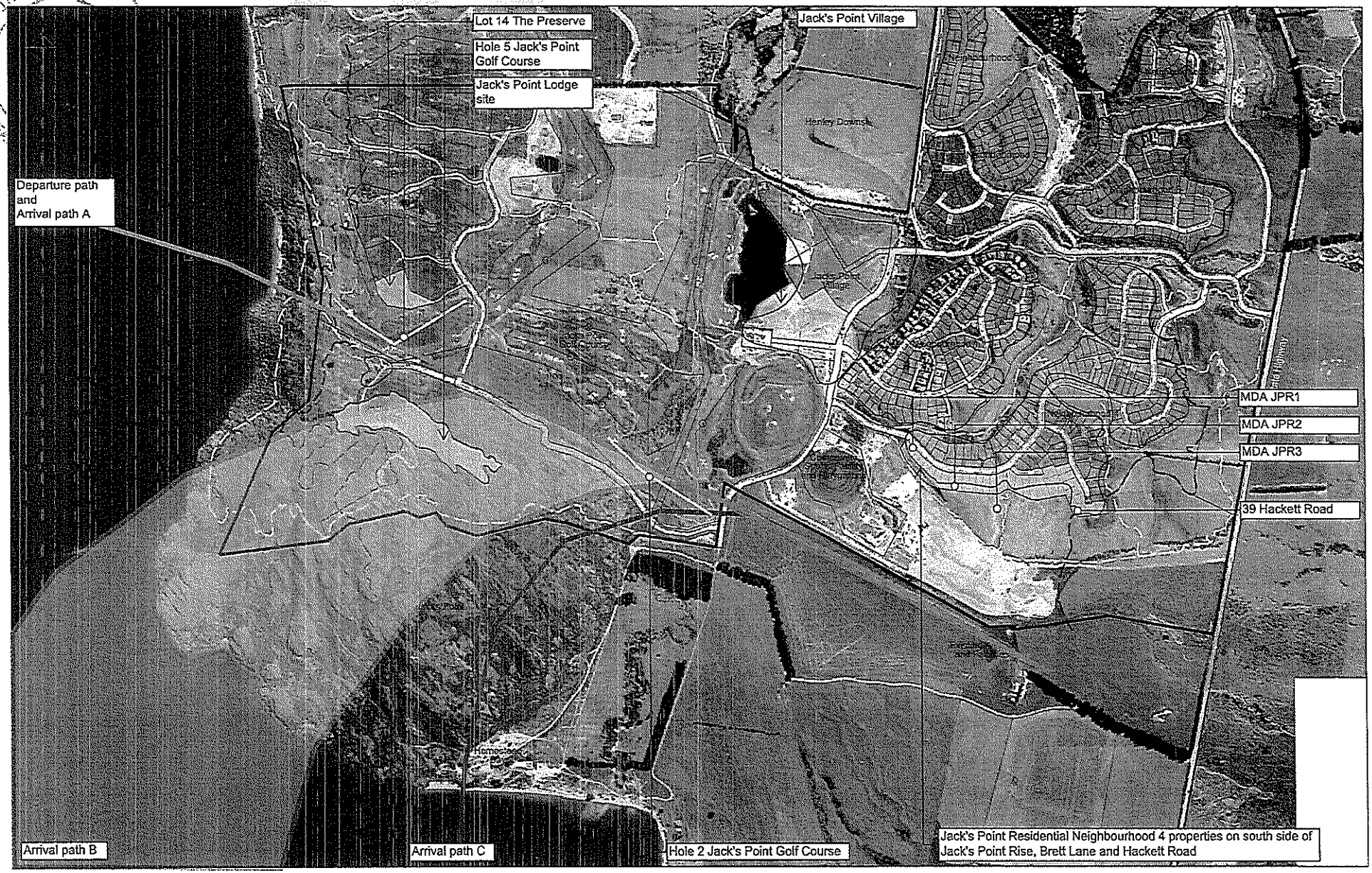
For the Court:

J R Jackson
Environment Judge

Attachments:

Attachment 1: Site Plan (From Dr J W Trevathan).
Attachment 2: Glossary of acoustic terminology.

JacksojJud_Rule\d\Skydive decision-DR.doc



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REVISION:

NO	DESCRIPTION	DATE	
-	First Issue	21.08.12	ZC

DATE: 21.08.12
DESIGNED/DRAWN: ZC
APPROVED: DT
FILE: [illegible]

DRAWING NO:
RC-100

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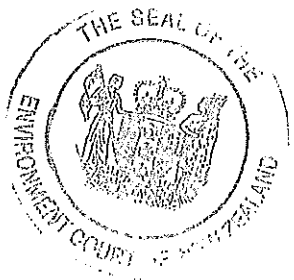
Attachment 2: Glossary of Acoustic Terminology

The experts used the following terminology[240]:

dBA	A measurement of sound level which has its frequency characteristics modified by a filter ("A-weighted") hence the "A" after "dB" so as to more closely approximate the frequency bias of the human ear.
L_{AE}	Sound exposure level (for single event noise)
L_{eq}	The time averaged sound level (on a logarithmic/energy basis) over the measurement period (normally A-weighted).
L_{dn}	The day-night sound level which is calculated from the 24 hour L_{eq} with a 10 dBA penalty applied to the night-time (2200-0700 hours) L_{eq} (normally A-weighted).
L_{95}	The sound level which is equalled or exceeded for 95% of the measurement period. L_{95} is an indicator of the mean minimum noise level and is used in New Zealand as the descriptor for background noise (normally A-weighted).
L_{10}	The sound level which is equalled or exceeded for 10% of the measurement period. L_{10} is an indicator of the mean maximum noise level and is used in New Zealand as the descriptor for intrusive noise (normally A-weighted).
L_{max}	The maximum sound level recorded during the measurement period (normally A-weighted — in which it is written as "L_{Amax}").
L_{peak}	The peak instantaneous pressure level recorded during the measurement period (normally not A-weighted).
Noise	A sound that is unwanted by, or distracting to, the receiver.



240 Derived from C W Day, Appendix A to evidence-in-chief and his para 5.1 [Environment Court document 9].