

UNDER THE

Resource Management Act 1991 ("Act")

IN THE MATTER OF

An appeal under Clauses 14(1) & 29(6) of the First Schedule
to the Act

BETWEEN

**GOULD DEVELOPMENTS LTD & FOUR STARS
DEVELOPMENTS LIMITED**

Appellants

AND

SELWYN DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL
14 OCTOBER 2022**

Christchurch

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**TO: The Registrar
 Environment Court
 Christchurch**

Notice of Appeal

- 1 This is an appeal against **part** of a decision made by the Respondent on Private Plan Change 71 to the Operative District Plan (PC71).
- 2 The Appellants are the promoters of PC71.

No prohibited trade competition purposes

- 3 The Appellants are not trade competitors for the purposes of s.308D of the Act.

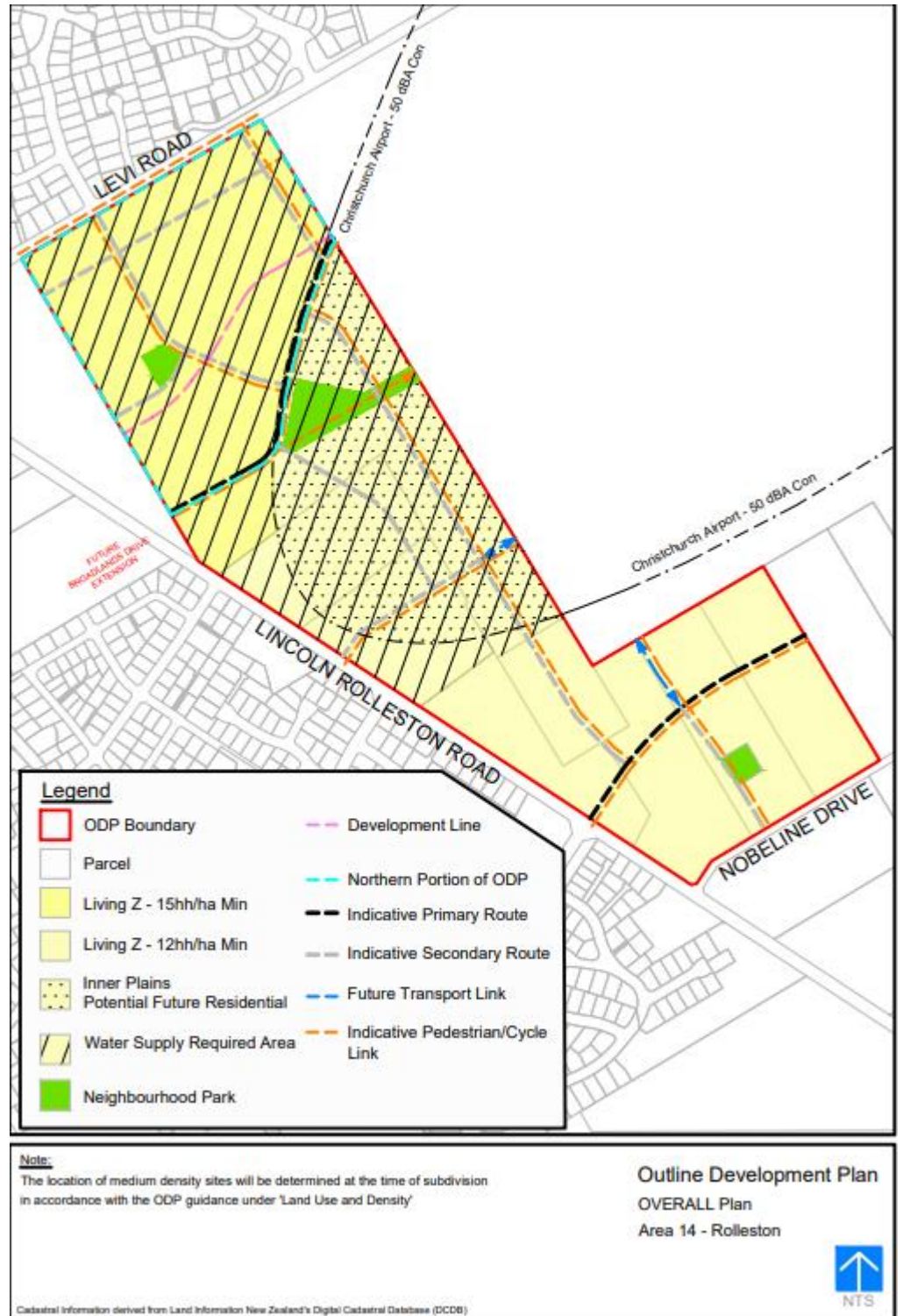
Decision

- 4 The Decision on PC71 was made by the Selwyn District Council on 10 August 2022.
- 5 In making its decision, the Respondent relied on the Interim and Final Recommendations of an independent commissioner appointed to hear submissions on PC71. The Interim Recommendation is dated 07 June 2022 and the Final Recommendation dated 29 July 2022.
- 6 The Appellants received notice of the Decision on 30 August 2022.

Part of Decision being appealed.

- 7 PC 71 sought the rezoning of approximately 53ha of land at Rolleston bounded by Levi and Lincoln Rolleston Roads and Nobeline Drive.
- 8 This appeal is limited to that part of the Decision which declined to rezone land falling within the Christchurch Airport - 50 dB Ldn Noise Contour (the Contour Land) from its current Rural Inner Plains Zoning to Living Z.
- 9 The Contour Land is within the central portion of the land subject to the overall PC71 request, and is identified as Inner Plains- Potential Future Residential in the approved Outline Development Plan for Area 14: Rolleston, reproduced in Figure 1 below:

Figure 1: Outline Development Plan: Area 14 - Rolleston



- 10 The narrative to the ODP for Area 14 describes the Contour Land in the following terms:

INTRODUCTION

ODP Area 14 comprises approximately 53 ha of land at the eastern edge of Rolleston. The Area is split into three portions. The northern portion is bound by Levi Road to the north west and ODP Area 4 to the west. The southern portion is bound by Lincoln Rolleston Road to the south west and Nobeline Drive to the south. The north and south portions and the Lincoln Rolleston Road 'end' of the mid portion (outside the Christchurch International Airport 50 dBA Ldn noise contour – the CIAL noise contour) are zoned Living Z. The balance of the middle portion is within the CIAL noise contour and is zoned Rural Inner Plains. It is notated 'Potential Future Residential' on the ODP to indicate development potential should the CIAL noise contour be removed from the planning maps, and to illustrate potential connectivity. This recognises that if the CIAL noise contour constraint is removed from the planning maps, and subject to further assessment, that land is suited for residential development. [Emphasis Added]

- 11 The question of whether the Contour Land should be rezoned to Living Z is substantively addressed at paragraphs 352-357 of the Interim Recommendation. In summary, the Commissioner was clear in the view [356] that, but for the noise contour, the rezoning of the Contour Land as Living Z: " would have real benefits, including the strategic benefits related to the connection through to the proposed district park and to the overall site's contribution to a compact urban form".
- 12 Despite these findings, the Commissioner found that retention of a Rural Inner Plains Zoning of the Contour Land would be more appropriate.
- 13 In the Final Recommendation, the Commissioner stated in respect of the Contour Land:

14. My Recommendation maintains the protection of Christchurch Airport in accordance with the relevant objectives and policies. It recognises that the air noise contours are currently being reviewed but that there is no finality of outcome. The identification of the land within the contour as Potential Future Residential does not in any way purport to predetermine the outcomes of the separate review process. On the evidence and information available to me, I consider that if the CIAL noise contour is removed from the planning maps, and subject to further assessment, the land identified as Potential Future Residential is suitable for residential development.

Reasons for the appeal

14 The general and specific reasons for the appeal include:

14.1 The rationale for declining to rezone the Contour Land is based on a stated requirement to give effect to policy provisions in the Canterbury Regional Policy Statement (CRPS) and Operative Selwyn District Plan (SDP) which seek to protect the ongoing operation of the Christchurch International Airport. These policy provisions apply to land located within the 50 dBA Contour, with the identification of affected land based on outdated and inaccurate technical analysis and modelling assumptions. More, specifically:

- (a) The lines on the Planning Maps which illustrate the location of the 50 dBA Ldn Contour are derived from modelling undertaken in 2007, and subsequently incorporated into the CRPS from 2008.
- (b) The location of the contours on the relevant planning maps is based on a range of assumptions including fleet mix and growth projections for commercial aircraft at Christchurch Airport. These assumptions have been subject to significant change since 2008, as have the flight paths for arriving and departing aircraft.
- (c) The location of the contours has been the subject of a re-modelling exercise by Christchurch International Airport Limited (CIAL) as part of a process stipulated by the CRPS (Policy 6.3.11). This updated re-modelling is based on the ultimate capacity of Christchurch Airport as well as updated assumptions on predicted fleet mix and the amended flight paths.
- (d) Under CIAL's re-modelling exercise with the Airport operating at maximum capacity, the Contour Land is no longer affected by a 50 dB Ldn Contour i.e., the Land is not predicted to be subject to future noise from commercial aircraft which exceeds this metric.
- (e) CIAL has relied on this re-modelling exercise in recent planning processes. Reliance is stated to be on the basis that the re-modelling results are the most relevant and up to date information.
- (f) CIAL's remodelling is currently subject to a peer review process by a panel of experts appointed by the Canterbury Regional Council in early 2022. The Panel of Experts have provided interim advice to CIAL, with a final report due in early December 2022. It is practically inevitable that the final report by the Panel of Experts will confirm that the Contour Land is no longer affected by the 50 DB Ldn Contour.

- 14.2 Preventing residential development of the Contour Land on the basis of outdated and inaccurate analysis does not give effect to the National Policy Statement on Urban Development 2020, is inefficient and fails to serve any resource management purpose.
- 14.3 The Commissioner erred in failing to have any regard whatsoever to the most up to date technical information on the location of the air noise contours, rather he simply chose to state [112 of Interim Recommendation] that the hearing of PC71 was not the correct forum for assessing the merits or otherwise of the contour and associated planning provisions.
- 14.4 This failure to have regard to the most up to date information led to a misunderstanding on the Commissioner's behalf of the purely technical nature of the peer review process, as illustrated by the finding that the Peer Review Panel process would result in contentious planning recommendations [357 of Interim Recommendation].
- 14.5 While the Commissioner ultimately found that the Contour Land was entirely suitable for residential development, the air noise contour issue aside, he failed to incorporate an appropriate and certain trigger point in the District Plan for when residential development will be enabled.
- 14.6 In addition, the Commissioner included a description of the Contour Land as "Potential Future Residential" and incorporated a vague and uncertain requirement in the narration to the ODP that future residential development of the Contour Land would be: "*subject to further assessment*". Such a requirement is unnecessary given the Commissioner's findings as to the suitability and benefits of the Contour Land for residential development, findings that must inevitably have been based on the comprehensive assessment of the merits of the Contour Land undertaken on behalf of the requestors.
- 14.7 The failure to grant the alternative relief sought of making development of the Contour Land a restricted discretionary activity was based on an incorrect conclusion by the Commissioner that any potential cumulative effects on the operation of Christchurch Airport could not be assessed.

Limits of Appeal

- 15 For the avoidance of doubt, this appeal does not challenge the Commissioner's findings as to either the appropriateness of rezoning the balance of the PC71 Land as Living Z, or the suite of provisions approved which control the development of the balance land.
- 16 In addition, the Appellants do not challenge the Commissioner's findings that the Contour Land should be included within the ODP for Area 14 and that, noise

contour issues aside, the Contour land is ideally suited for residential development.

Relief sought

- 17 The Appellants seek:
- 17.1 That the land affected by the 50 dBA Ldn contour be rezoned by the Court as Living Z; or
- 17.2 A deferred zoning for the Contour Land be included in the Selwyn District Plan, either in the narration to the ODP or otherwise, with the deferral to be removed once the Expert Panel Peer Review Report confirms that the Contour Land sits outside the 50 dBA Contour line; and
- 17.3 Removal of the requirement in the narration to the ODP that residential development be subject to further assessment once the deferred zoning is lifted; or
- 17.4 Such other alternative relief which would enable residential development of the Contour Land; and
- 17.5 Costs.

Alternative dispute resolution

- 18 The Appellants are open to mediation or other alternative dispute resolution of the proceeding.

Attachments

- 19 The following documents are attached to this notice:
- (a) Appendix A - a copy of the Interim Recommendation
 - (b) Appendix B – a copy of the Final Recommendation; and
 - (c) Appendix C- a list of names and addresses of persons to be served with a copy of this notice.
- 20 This Notice of Appeal is issued by **GERARD JOSEPH CLEARY**, Solicitor for the above-named Appellants of the firm of Anthony Harper.
- 21 The address for service of the above-named Appellants is:

Anthony Harper Lawyers,

62 Worcester Boulevard,

PO Box 2646,

Christchurch

Attention: Gerard Cleary: gerard.cleary@ah.co.nz

ADVICE TO RECIPIENTS OF NOTICE

How to become party to proceedings

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see Form 38).

How to obtain copies of documents relating to appeal or inquiry

The copy of this notice served on you does not attach a copy of the relevant application. This document may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department of Courts in Christchurch.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Christchurch address of the Environment Court is:

Justice and Emergency Precinct

20 Lichfield Street

Christchurch

8013

Telephone: (03) 3650905 or 03 3534434

Facsimile: (03) 365 1740