IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2016-409-606
[2017] NZHC 224

BETWEEN	EQUUS TRUST, DAVID WILSON, SARAH WILSON, TIRE MARTIN, JEREMY MARTIN, HSI-YING LAI AND HSI-CHANG LAI Appellants
AND	CHRISTCHURCH CITY COUNCIL Respondent
AND	CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED AND THE CROWN Associated Respondents

Hearing:	19 September 2016
Appearances:	M R G Christenson for appellants J G A Winchester and S J Scott for respondent J M Appleyard and A D W Brent for Associated Respondent, Christchurch International Airport Limited P J Radich QC and C O Carranceja for the Crown
Judgment:	21 February 2017

RESERVED JUDGMENT OF CULL J

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Introduction

[1] Following the Christchurch earthquakes, the appellants unsuccessfully sought rezoning of their land to be industrial. The appellants appeal the decision of the Independent Hearings Panel (the Panel), which declined the appellants' request that the land be zoned industrial. The decision is one of a series made under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (the Order) for the formulation of the Christchurch Replacement District Plan (Replacement District Plan). The decision in question concerns a second stage proposal for Chapters 15 (Commercial) and 16 (Industrial) of the Replacement District Plan.

[2] The appellants own approximately 14 hectares of land, located on Russley Road (State Highway 1) and Hawthornden Road, Avonhead, Christchurch. From September 2014, the Christchurch City Council (the Council) undertook staged notification of the provisions of the Replacement District Plan. Under Chapter 17 "Rural", the Greenfield Priority Areas, including the appellants' land, were identified as Rural Urban Fringe Zoning. This zoning does not allow development of the land for industrial or business use.

[3] The appellants made submissions to the Panel seeking different zoning treatment for their land from the Notified and Revised Versions of the Replacement District Plan. Specifically, they sought industrial zoning for sites in the Greenfield Priority Area – Business. Under the Notified and Revised Versions,[1] the relevant land was designated non-industrial. Their submission before the Panel was that the relevant regulatory framework determined that the land must now be zoned as industrial.

[4] The appeal, which is limited to questions of law, challenges the Panel's interpretation of the Land Use Recovery Plan (Recovery Plan) and the Canterbury Regional Policy Statement (Regional Policy Statement), both of which are relevant to the creation of the Replacement District Plan.

[5] The appeal is opposed by the Council, the Crown and Christchurch International Airport Limited (the Airport). The Airport was a submitter and is therefore entitled to be heard on this appeal.

The regulatory context

[6] The Panel's decision sits within the Resource Management Act 1991 (RMA) framework. Under the Canterbury Earthquake Recovery Act 2011 (CER Act),[2] the Minister has powers to prepare a Recovery Strategy and Recovery Plan.[3] Under the

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1 The revised version was the focus of the Panel's decision.

2 The CER Act has since been repealed by the Greater Christchurch Regeneration Act 2016 but is the Act relevant to this appeal.

3 Canterbury Earthquake Recovery Act 2011, ss 11 and 16.

CER Act, no RMA decision-making can occur in a manner inconsistent with the Strategy or Plans.[4]

[7] In 2012, the Recovery Strategy was approved. The Minister then directed the Canterbury Regional Council to prepare the Recovery Plan, which was approved in December 2013. The Recovery Plan included a direction that a new Chapter 6 be included in the Regional Policy Statement to provide a clear strategic planning framework for the recovery of Canterbury, through to 2028.[5]

[8] The Order was made in 2014, which established the Panel and gave it powers to determine the content of the Replacement District Plan. The Panel became the decision-maker on behalf of the Council. Under the Order, it is required to:

(1) be satisfied the Replacement District Plan will assist the Council to carry out its functions for the purpose of giving effect to the RMA;

(2) apply the RMA's statutory tests subject to some modifications under the Order;

(3) give effect to the Regional Policy Statement;

(4) not act inconsistently with the Recovery Plan or the Recovery Strategy; and

(5) have regard to management plans and strategies under other legislation, the Selwyn and Waimakariri Plans and the Mahaanui Iwi Management Plan, and have particular regard to the Ministers' statement of expectations.

[9] Of particular relevance to the appeal is the requirement that the Panel give effect to the Regional Policy Statement.

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4 Canterbury Earthquake Recovery Act 2011, ss 15 and 23.

5 *Land Use Recovery Plan* (Canterbury Earthquake Recovery Authority, December 2013) at [4.6.1].

[10] Ordinarily, a regional policy statement can be altered under the RMA. However, in Canterbury following the earthquakes the Minister for Canterbury Earthquake Recovery directed that Chapter 6 be inserted into the Regional Policy Statement, pursuant to s 27 of the CER Act. Chapter 6, entitled "Recovery and Rebuilding of Greater Christchurch", provides "a resource management framework for the recovery of Greater Christchurch, to enable and support earthquake recovery and rebuilding, including restoration and enhancement, for the area through to 2028." It includes a map of the Greenfield Priority Areas (Map A) with "Residential" and "Business" areas defined. Because of its importance to the issues in this case, Map A is annexed to this judgment for reference.

The relevant planning documents

[11] The starting point in interpreting the planning documents is s 75(3)(c) of the RMA, which provides:

> **75 Contents of District Plan**
>
> ...
>
> (3) A district plan must give effect to –
>
> (a) any national policy statement; and
>
> (b) any New Zealand coastal policy statement; and
>
> (c) any regional policy statement.
>
> (4) A district plan must not be inconsistent with –
>
> (a) a water conservation order; or
>
> (b) a regional plan for any matter specified in section 30(1).
>
> (5) A district plan may incorporate material by reference under Part 3 of Schedule 1.

[12] There are two statutory documents, which have significance to this appeal, as the Panel described.[6] They are:

(1) the Regional Policy Statement; and

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[6] Independent Hearings Panel "Decision 23: Chapter 15 Commercial (Part) and Chapter 16 Industrial (Part) – Stage 2 and the New Brighton Medium Density Overlay (and related changes to zoning maps)", 13 June 2016 at [16]. From here on this will be referred to as "Decision 23".

(2) the Recovery Plan.

[13] As s 75(3)(c) provides, the District Plan, here the Regional District Plan, must give effect to the Regional Policy Statement. The Regional Policy Statement contains both objectives and policies that are relevant to the issues to be determined on this appeal. They include:

(1) Objective 6.2.1 – Recovery Framework;

(2) Objective 6.2.2 – Urban Form and Settlement Pattern;

(3) Objective 6.2.6 – Business Land Development; and

(4) Policies 6.3.1, 6.3.3, 6.3.5 and 6.3.6 dealing with development, integration of land use and infrastructure as well as the re-building of business land and business activities.

These are dealt with more fully under the relevant grounds of appeal.

[14] The Regional District Plan must not be inconsistent with the Recovery Plan.[7] The Panel described the difference between the Regional Policy Statement and the Recovery Plan is that the Recovery Plan has a broader, multi-faceted purpose, which includes specifying actions for functionaries such as the Council, as well as making some direct changes to the Regional Policy Statement (and the existing Plan).

[15] Following the hearing and prior to the decision of the Panel, the Minister made changes to the Recovery Plan, in response to recommendations from the Canterbury Regional Council. Despite the changes to the Recovery Plan, including the amendments to Map A on Greenfield Priority Areas to make it "indicative only", the Panel found that the addition of "indicative only" to the Map was not of itself material. The amendments did not change the Regional Policy Statement, to which the Panel had to give effect, including the objectives and policies concerning Map A in the Regional Policy Statement. The Panel viewed the amendments to Map A as

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7 Pursuant to s 23 of the Canterbury Earthquake Recovery Act 2011.

having no bearing on the requirement that the Replacement District Plan must not be inconsistent with the Recovery Plan. No issue was taken by any party to the Panel's approach to those changes.

Relevant findings of the Panel

[16] The Panel carried out its evaluation of the appellants' proposal for its land to be rezoned as industrial under s 32AA of the RMA. In doing so, the Panel noted that it was guided by Chapters 15 and 16 concerning objectives and policies, as they were described in the Stage 1 decision. After addressing non-contentious matters, the Panel turned to the appellants' submissions.

[17] The Panel identified that the appellants' submissions were focussed on the interpretation of the Regional Policy Statement, specifically that it should be interpreted on the basis that the Recovery Plan is determinative of how much industrial land is needed.

[18] Various excerpts from the Recovery Plan arguably supported the appellants' view, that the Recovery Plan required certain land to be zoned as industrial. For example, 4.3.2 of the Recovery Plan provides that:

> The Recovery Plan identifies Greenfield priority areas for business ... To ensure there is sufficient and suitable industrial land for the recovery through to 2028, this land has been identified primarily for industrial use.

[19] The appellants' submission to the Panel was that because their land was part of the Greenfield Priority Area - Business, it needed to be zoned industrial. This submission relied on the requirement that the Panel should not act inconsistently with the Recovery Plan.

[20] However, while recognising the policy approach that makes generous provision for industrial areas, the Panel observed that the Regional Policy Statement does not direct that all such land be zoned industrial. Rather, the Panel found that the Regional Policy Statement allows for choice in determining the timing and sequencing of new development.

[21] The Panel's decision and the issues in this appeal turn on the correct interpretation of the relevant planning documents. The parties agreed about the meaning of the terms in s 75(3)(c) of the RMA, which provides that a district plan must give effect to any national policy statement and any regional policy statement. The Panel accepted the submission that the words "must give effect to" should not be interpreted as "not inconsistent with", as the Court of Appeal held in *Powell v Dunedin City Council*.[8] However, the Panel did not accept the appellants' submission that the Recovery Plan and the Regional Policy Statement required the Panel to zone their sites as industrial.

[22] Following the hearing and prior to the issue of the Panel's decision, the Ministry of Earthquake Recovery made changes to the Recovery Plan in response to recommendations by the Canterbury Regional Council. The changes were gazetted on 14 April 2016, and one of the changes included an amendment to Map A on Greenfield Priority Areas to make it indicative only.[9] While the Panel was satisfied that the Recovery Plan, as it was at the time of the hearing, did not oblige the Council or the Panel to notify industrial zoning of the appellants' land, the Panel observed that the subsequent Recovery Plan changes were consistent with the Panel's interpretation.

[23] As for the Regional Policy Statement, the Panel found that it did not impose a direction to zone the Greenfield Priority Area – Business as industrial at the present time. The Panel further noted that it would be unusual and potentially ultra vires for a regional policy statement to impose such a direction. The Panel found that the Regional Policy Statement, read properly, had the effect of requiring that the s 32AA RMA evaluation should properly consider all the evidence as to how rezoning would impact on issues of land use and infrastructure integration.

[24] The Panel went on to consider the appropriate zoning treatment of the land. This consideration led the Panel to reject the appellants' request for rezoning. In reaching that conclusion, the Panel considered:

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8 *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA).

9 The change included an amendment to Recovery Plan Figure 4, which is equivalent to Map A on Greenfield Priority Areas.

(1) whether the additional industrial land was needed; and

(2) whether an Outline Development Plan could be provided, particularly in regard to stormwater management and roading, including avoiding or mitigating effects on the strategic transport network.

[25] The Council submitted that rezoning would give rise to an oversupply of industrial zoned land. Increasing the supply of industrial land would likely increase the costs and could compromise the competitive business environment that the Replacement District Plan seeks to foster. On the other hand, an expert for the appellants gave evidence that the land would be of greater value as industrial land as opposed to rural land.

[26] In respect of the Outline Development Plan, the Council contended that if the land was rezoned industrial the entire block would need to have a single Outline Development Plan. The appellants submitted that an Outline Development Plan was not needed for the entire area or that it was not a prerequisite for rezoning.

[27] The Panel rejected the Council's argument as being overly-literal and inconsistent with their finding that not all of the Greenfield Priority Area needed to be zoned industrial. Instead, some, but not all, of the land in that area could be zoned industrial and be included in an Outline Development Plan.

[28] However, the Panel found that the Outline Development Plan proposed by the appellants did not fulfil the purpose intended by Policy 6.3.3 of the Regional Policy Statement and therefore did not give effect to it, or the related objectives of the Replacement District Plan. The Panel found "fundamental, irresolvable problems" with the Outline Development Plan for both stormwater management and integration with the strategic transport network.

Questions of law on appeal

[29] This appeal is confined to questions of law. The appellants initially posed the following questions of law in their notice of appeal:

(1) Whether in giving effect to the Regional Policy Statement under s 75(3)(c) of the RMA, did the Panel wrongly interpret the objectives and policies of Chapter 6 of the Regional Policy Statement as providing a discretion whether or not to rezone the appellants' land as industrial?

(2) Whether the Panel misinterpreted Policy 6.3.3 of the Regional Policy Statement regarding the level of detail and certainty required in respect of stormwater and the traffic service connections to be shown in the Outline Development Plan?

(3) Whether the Panel failed to take into account relevant evidence relating to stormwater and traffic service connections provided by the Appellant and other submitters?

(4) Whether the Panel took into account an irrelevant matter relating to road access, namely the power of the relevant road controlling authority to allow modifications to the Southern Airport Access?

[30] Regarding the third and fourth questions of law, the appellants sought leave to amend their questions to the following consolidated question:

> Whether on all the evidence available to it, the Panel's decision not to approve rezoning on the basis of "fundamental, irresolvable problems" with the Outline Development Plan and associated proposed rules was a decision which the Panel, acting reasonably, could have come to?

[31] Leave was granted to consolidate the third and fourth grounds as set out above, which is now question three of the appeal.

[32] The appellants seek relief that:

(1) the appeal be allowed and the Panel's decision set aside; and

(2) the Panel be directed to reconsider its decision by rezoning the appellants land as industrial, with appropriate zone provisions.

Court's approach on appeal

[33] The right of appeal from the Panel's decision is limited to questions of law only.[10]

[34] To determine whether there is an error of law, Lord Radcliffe's speech in *Edwards v Bairstow* enunciates the guiding principles on the two manifestations of an error of law.[11] The first is where a decision contains a wrong statement of principle or law, which bears upon the ultimate determination and the second is where there is no evidence to support the determination or where the true and only reasonable conclusion on the facts contradicts the determination, which is a "very high hurdle" for an appellant.[12] The Supreme Court in *Bryson v Three Foot Six Ltd* adopted Lord Radcliffe's formulation and said:[13]

> [24] Appealable questions of law may nevertheless arise from the reasoning of the Court on the way to its ultimate conclusion. If the Court were, for example, to misinterpret the requirements of [a statutory provision] – to misdirect itself on the section … that would certainly be an error of law which could be corrected on appeal …
>
> [25] An appeal cannot however be said to be on a question of law where the fact-finding court has merely applied law which it has correctly understood to the facts of an individual case… Provided that the court has not overlooked any relevant matter or taken account of some matter which is irrelevant to the proper application of the law, the conclusion is a matter for the fact-finding court, unless it is clearly insupportable.
>
> [26] An ultimate conclusion of a fact-finding body can sometimes be so insupportable - so clearly untenable - as to amount to an error of law; proper application of the law requires a different answer. That will be the position only in the rare case in which there has been, in the well-known words of Lord Radcliffe in *Edwards v Bairstow*, a state of affairs "in which there is no evidence to support the determination" or "one in which the evidence is inconsistent with and contradictory of the determination" or "one in which the true and only reasonable conclusion contradicts the determination".

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10 Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, cl 19.
11 *Edwards v Bairstow* [1956] AC 14 (HL).
12 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [27].
13 At [24] – [26].

[35] The issue of whether a decision-maker had misinterpreted the language of a statute in choosing one of two available interpretations was considered by the Supreme Court in *Vodafone NZ Ltd v Telecom NZ Ltd.*[14] In finding that the Commission had not misinterpreted the language of the statute in choosing one of the available options, Blanchard J for the majority expressed the two bases for a finding of error of law in the following way:[15]

> So there are two stages. First, whether the Commissioner has misinterpreted the language of the statute. This in part turns on its appreciation of the function of the word "unavoidable". And, secondly, whether, if its interpretation was correct, it has nonetheless exercised its judgment ... in a way that contradicts the true and only reasonable conclusion available on the facts and has thereby committed an error of law in terms of *Edwards v Bairstow*.

[36] The *Vodafone* decision reinforces the point that it is not an error of law to use and apply one of two or more possible constructions or interpretations of relevant language in an enactment or instrument. The Court also advised caution for an appeal court when assessing whether the decision-maker has reached an untenable conclusion on the facts. Blanchard J for the Supreme Court, referring to the observation of Lord Donaldson MR,[16] which was adopted by the Supreme Court in *Bryson*,[17] repeated that:[18]

> It does not matter whether, with whatever degree of certainty, the appellate court considers it would have reached a different conclusion. What matters is whether the decision under appeal was a permissible option.

[37] Those observations relate to the first manifestation of error of law.

[38] The nature of the second type of error of law, namely where there is no evidence to support the determination, is explained further in *Chorus v Commerce Commission*, where White J for the Court of Appeal said:[19]

> ... It is well established that unless the Commission's application of the statutory provisions is factually "unsupportable" it will not have erred in law.

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14 *Vodafone NZ Ltd v Telecom NZ Ltd* [2011] NZSC 138, [2012] 3 NZLR 153 at [58].
15 At [58].
16 *Piggott Brothers and Co Ltd v Jackson* [1992] IRC 85 (CA) at 92.
17 *Bryson*, above n 12, at [27] [referring to Lord Donaldson MR's speech in *Piggott Brothers and Co Ltd v Jackson*.]
18 *Vodafone v Telecom*, above n 14, at [53].
19 *Chorus v Commerce Commission* [2014] NZCA 440 at [111] and [112].

> It is for the Commission, as a specialist body, to exercise judgment in carrying out the requisite "bench marking" exercise and in weighing up the relevant facts in that context. It will therefore have erred only if there is no evidence to support the factual findings it made in reaching its determination.
>
> In the absence of a right of general appeal, it is not the role of the Court in an appeal on a question of law to undertake a broad reappraisal of the Commission's factual findings or the exercise of its evaluative judgments. Care should also be taken to avoid a technical and overly semantic analysis of the Commission's determination in an endeavour to create a question of law. In making factual findings it is for the Commission, and not the Court, to decide what weight should be given to the relevant evidence and what inferences, if any, should be drawn from the evidence. ...

[39] In respect of appeals under s 299 of the RMA specifically,[20] appellate intervention from the High Court has been confirmed as justified if the initial decision can be shown to have:[21]

(1) applied a wrong legal test; or,

(2) come to a conclusion without evidence or one to which on the evidence it could not reasonably have come; or,

(3) taken into account matters which it should not have taken into account; or,

(4) failed to take into account matters which it should have taken into account.

[40] In relation to such appeals, French J in *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* also stated that the question of the weight to be given to relevant considerations is not for reconsideration by the High Court as a point of law.[22] French J further stated that not only must there have been an error of

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20 The present appeal is made under cl 19 of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, which states under sub-cl (6) that except as otherwise provided, sections 299(2) and 300 to 307 of the RMA apply to an appeal made under this clause. The relevant authorities considering an appeal on a point of law only as under s 299 of the RMA are therefore applicable to this appeal also.

21 *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* [2012] NZHC 735 at [34]; *Hill Country Corp Ltd v Hastings District Council* [2010] NZRMA 539 at [9] – [10]; *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 153.

22 *Ayrburn Farm Estates Ltd*, above n 21, at [35].

law, but that error must have been a "material" error, in the sense that it "materially affected the result" of the decision.[23]

[41] In summary, therefore to find an error of law, one of the following must be present:

(1) A decision must contain a wrong statement of principle or law or have applied a wrong legal test.

(2) The determination is unsupportable on the evidence i.e. the decision contradicts the true and only reasonable conclusion on the facts.

(3) Relevant considerations have not been taken into account or irrelevant considerations have been taken into account, in the proper application of the law.

Question 1: Whether in giving effect to the Regional Policy Statement under s 75(3)(c) of the RMA, did the Panel wrongly interpret the objectives and policies of Chapter 6 of the Regional Policy Statement as providing a discretion whether or not to rezone the appellants' land as industrial?

Regional Policy Statement Provisions

[42] The appellants refer to a number of the provisions in Chapter 6 of the Regional Policy Statement, particulars of which are set out below. They submit that these provisions provide a clear direction, as opposed to a choice of direction, that Greenfield Priority Areas are to be re-zoned for urban development within the District Plans of the Territorial Authorities. Of those provisions, the appellants submit that Policies 6.3.1 and 6.3.6 are the two most important policies, to which the Panel was obliged to give effect.

[43] Because of their relevance to the question of law and the reliance placed on the respective provisions by the parties, the following provisions of Chapter 6 of the Regional Policy Statement, are set out as follows:[24]

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23 At [36].

24 *Canterbury Regional Policy Statement* (Environment Canterbury Regional Council, December 2013) at 47 — 64.

Issue 6.6.1 – Enabling Recovery, Rebuilding and Development

How to provide certainty to the community and businesses around how Greater Christchurch will accommodate expected population and household relocation and growth, housing needs and economic activity during the recovery period in an efficient and environmentally sustainable manner. This includes providing for a diverse community with a range of incomes, needs and business types.

Explanation

... The community requires certainty around where recovery development will take place during the recovery period to enable planning for delivery of infrastructure and protection of key resources such as strategic transport networks, water supply, and other significant natural and physical resources ...

Objective 6.2.1 –Recovery framework

Recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that:

(1) identifies priority areas for urban development within Greater Christchurch;

...

(9) integrates strategic and other infrastructure and services with land use development;

(10) achieves development that does not adversely affect the efficient operation, use, development, appropriate upgrade, and future planning of strategic infrastructure and freight hubs;

(11) optimises use of existing infrastructure; ...

Explanation

The purpose of this objective is to provide for an outcome where appropriate urban development is enabled within specified spatial areas around Greater Christchurch, so that resources can be focused on rebuilding, and delivering growth and recovery to those priority areas. This provides certainty to all resource users as to locations for development, enabling long-term planning and funding for strategic, network and social infrastructure ...

Objective 6.2.2 – Urban form and settlement pattern

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, by:

...

(4) providing for the development of greenfield priority areas on the periphery of Christchurch's urban area, and surrounding towns at a rate and in locations that meet anticipated demand and enables the efficient provision and use of network infrastructure; ...

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 ...

Objective 6.2.3 – Sustainability

Recovery and rebuilding is undertaken in Greater Christchurch that:

...

(5) is healthy, environmentally sustainable, functionally efficient, and prosperous.

Objective 6.2.4 – Integration of transport infrastructure and land use

Prioritise the planning of transport infrastructure so that it maximises integration with the priority areas and new settlement patterns and facilitates the movement of people and goods and provision of services in Greater Christchurch ...

Objective 6.2.6 – Business land development

Identify and provide for Greater Christchurch's land requirements for the recovery and growth of business activities in a manner that supports the settlement pattern brought about by Objective 6.2.2 ...

Explanation

The provision of adequate land for recovery and future business activities is important for long-term economic growth and the provision of both employment and services for the sub-region's existing and future communities ... The locations selected for industrial business land development are also key for rebuilding and the forward planning of the transportation network and associated freight hubs. While there is some capacity for the demand for future industrial business land to be met through the redevelopment of existing zoned land, particularly within Christchurch City, the greenfield priority areas for business provide for the accommodation of new, primarily industrial business activities.

Policy 6.3.1 – Development within the Greater Christchurch area

In relation to the recovery and rebuilding for Greater Christchurch:

(1) give effect to the urban form identified in Map A, which identifies the location and extent of urban development that will support recovery, rebuilding and planning for future growth and infrastructure delivery;

(2) give effect to the urban form identified in Map A ... by identifying the location and extent of the indicated Key Activity Centres;

(3) enable development of existing urban areas and greenfield priority areas, including intensification in appropriate locations, where it supports the recovery of Greater Christchurch;

(4) ensure new urban activities only occur within existing urban areas or identified greenfield priority areas as shown on Map A, unless they are otherwise expressly provided for in the CRPS [Regional Policy Statement]; ...

Explanation

Map A shows existing urban areas and priority areas for development for Greater Christchurch. These areas are identified as being required to provide sufficient land zoned for urban purposes to enable recovery and rebuilding through to 2028. The Policy and Map A provide a clear, co-ordinated land use and infrastructure framework for the recovery of Greater Christchurch

...

Policy 6.3.5 – Integration of land use and infrastructure

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

(1) Identifying priority areas for development to enable reliable forward planning for infrastructure development and delivery;

(2) Ensuring that the nature, timing and sequencing of new development are co-ordinated with the development, funding, implementation and operation of transport and other infrastructure in order to:

...

(d) ensure new development does not occur until provision for appropriate infrastructure is in place;

...

(4) Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure ...

(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.

Explanation

... The growth areas have been assessed as having the best potential to accommodate residential and business growth through to 2028 whilst achieving a consolidated urban form and an efficient and orderly provision of infrastructure. It is important that timing and sequencing of development are aligned with funding and implementation of infrastructure.

Policy 6.3.6 – Business land

To ensure that provision, recovery and rebuilding of business land in Greater Christchurch maximises business retention, attracts investment, and provides for healthy working environments, business activities are to be provided for in a manner which:

(1) Promotes the utilisation and redevelopment of existing business land, and provides sufficient additional greenfield priority area land for business land through to 2028 as provided for in Map A;

(2) Recognises demand arising from the relocation of business activities as a result of earthquake-damaged land and buildings;

...

(5) Recognises that new greenfield priority areas for business in Christchurch City are primarily for industrial activities, and that commercial use in these areas is restricted;

...

(7) Utilises existing infrastructure availability, capacity and quality;

...

Methods

Territorial Authorities:

Will

(1) Include in district plans objectives, policies and rules (if any) to give effect to Policy 6.3.6 ...

The Panel's decision

[44] In defining the issue for determination as to whether it **must** zone land industrial, if it is identified as a Greenfield Priority Area – Business in Map A, the Panel considered the provisions of the Regional Policy Statement. The Panel found that it did not direct that all identified business land in Map A be zoned industrial. The Panel said of the Regional Policy Statement:[25]

> Rather, it allows for choice, including in the determination (by zoning, for example) of the nature, timing and sequencing of new development particularly, so as to assist land use and infrastructure integration": see [Regional Policy Statement] Policy 6.3.5.

[45] The Panel upheld the submission from Council that the words "give effect to" in s 75(3) of the RMA do not automatically lead to the conclusion that land must be zoned industrial at the present time, stating:[26]

> ... First, we note that it would be highly unusual, and potentially ultra vires, for a regional policy statement to seek to impose any such direction, given it is a subordinate statutory instrument intended to achieve the purpose of the RMA: s 59. In any case, such an interpretation is plainly invalid on a reading of the [Regional Policy Statement] in the round, as the Council rightly notes is the proper approach (on which we refer to *Powell*).

[46] The Panel's decision is considered in more detail under each of the questions of law.

The appellants' position

[47] On appeal to this Court, the appellants challenge the Panel's interpretation of the Policies in the Regional Policy Statement and similarly worded provisions in the Recovery Plan, namely the words "enable" and "to provide for". The Panel found that the directive words of each action referred to, namely Action 19,[27] and Action 24,[28] were fulfilled by enabling submitters an opportunity, such as the appellants, to

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25 Decision 23, above n 6, at [85].

26 At [89].

27 Action 19 of the Recovery Plan provides: "Christchurch City Council to enable in the next review of its district plans, to provide for development of the greenfield priority areas" shown on Map A ... that are not already zoned for development in accordance with Chapter 6 of the Regional Policy Statement.

28 Action 24 of the Recovery Plan provides: "Christchurch City Council to enable in the next review of its district plans the following measures" including rebuilding of existing business

pursue industrial zoning for their land and to support that by the evidence necessary.[29]

[48] The appellants further challenge the Panel's failure to accept that the wording of Policy 6.3.1(1) to "give effect to the urban form identified in Map A" was one of the more directive provisions in the Regional Policy Statement and is not subject to any qualification within the Policy. The appellants note that Policy 6.3.1(1) was not included in the Panel's discussion of the Regional Policy Statement's direction to re-zone priority areas. The appellants contend this is the single policy which is the most directive about the zoning of Greenfields Business land.

[49] Although the Panel referred to Policy 6.3.1(3) and 6.3.6(1), the appellants submit that Policy 6.3.1(3) is descriptive rather than directive: it indicates that development should be enabled in areas which support recovery. This, it is submitted, is unlike Policy 6.3.1(1) and (2) that are directive, by giving effect to development that will support recovery. Policy 6.3.1 cannot, therefore, be read in isolation by references to clauses (1) and (2) only.

[50] The appellants argue (as they did before the Panel) that because their land was sited in the Greenfield Priority Area – Business for the purposes of the Recovery Plan and the Regional Policy Statement, this compelled the Panel to confer industrial zoning on their land. Specifically, the appellants' position is that the panel wrongly interpreted the relevant provisions of the Regional Policy Statement and, as a consequence, wrongly concluded that there was no support in the Recovery Plan and the Regional Policy Statement for the appellants' contention that the Panel was required to zone their sites industrial. Thus, the appellants submit the Panel made an error of law.

[51] The appellants further submit that the Panel's application of the Court of Appeal's decision in *Powell v Dunedin City Council*[30] was of limited assistance to this case, as it related to an interpretation of a single rule in a district plan, compared

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areas, revitalising centres and greenfield priority areas for business. Unlike Action 19, Action 24 does not use the words "to provide for", although they both use the word "enable".

29 Decision, 23, above n 6, at [87].

30 *Powell*, above n 8.

to the interpretation here, involving a number of the objectives and policies in the Regional Policy Statement, particularly those found in Chapter 6. Instead, they say, the Panel was obliged to "give effect to" the operative Regional Policy Statement, as required by s 75(3) of the RMA.[31] Specifically, the appellants rely on the Supreme Court's decision in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* (*King Salmon*)[32] and the Environment Court's decision in *Clevedon Cares Inc v Manukau City Council*.[33] The appellants submit that these cases support their position that a plan change must give effect to the operative Regional Policy Statement and that the test under s 75(3) requires positive implementation of the superior instrument, which is the Regional Policy Statement. Of relevance, they say, is that the authorities note that the 2005 amendment to s 75 allows less flexibility in the wording of s 75(3), compared to the previous statutory language of "not inconsistent with".[34]

[52] The appellants submit the context of Chapter 6 of the Regional Policy Statement is relevant. The policies were inserted at the direction of the Minister for Earthquake Recovery to provide a resource management framework for the recovery of Christchurch following the earthquake sequence. The appellants submit this makes the policies more directive than a "normal" planning process.

[53] The appellants finally refer to the Regional Policy Statement as making it clear that the identification of the "Greenfield Priority Area – Business" was for the period to 2028. The appellants note that a review of the Replacement Plan is not required for 10 years[35] and that the Council must not promote a change to the Plan in accordance with the process set out in the first schedule of the Resource Management Act until at least 30 June 2021.[36]

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31 Refer to [11] above, where s 75(3)(c) of the RMA is set out.
32 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593; hereafter referred to as *King Salmon*.
33 *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211.
34 *Auckland Regional Council v Rodney District Council* [2009] NZCA 99 at [15].
35 Resource Management Act 1991, s 79(1).
36 Christchurch Replacement District Plan Order in Council 2014, cl 4.

Analysis

[54] The parties have identified the relevant policies and canvassed the language used in them. The Panel also considered each of the relevant provisions in the Regional Policy Statement, noted that they were consistent with the Recovery Plan's "generous approach to supply" and that the Regional Policy Statement did not direct all land identified in Map A to be zoned industrial. The effect of the Panel's s 32AA evaluation was that, after considering all relevant evidence, the Panel should take into account evidence as to how such rezoning would impact on issues of land use and infrastructure integration.

Did the Panel wrongly interpret the policies?

[55] Turning first to the wording of the relevant policies and objectives in Chapter 6, the wording reinforces the Panel's finding that the Regional Policy Statement identifies land that is available for business use but nevertheless allows for choice in determining the timing, sequencing and the nature of new development. The wording consistently reinforces the need for integration of land use development with strategic and existing infrastructure, future and reliable planning of strategic infrastructure and that new development should not occur, until appropriate infrastructure is in place. The wording reinforces the need for timely development, so that integration and planning of future land use is efficient and effective. In summary the relevant wording of Chapter 6 is as follows:[37]

> **Objective 6.2.1**
>
> (9) **integrates strategic and other infrastructure** and services with land use development;
>
> (10) **achieves development that does not adversely affect** the efficient operation, use, development ... and **future planning of strategic infrastructure ...**
>
> (11) Optimises use of existing infrastructure ...
>
> **Objective 6.2.2(4)**
>
> Providing for the development of greenfield priority areas on the periphery of Christchurch's urban area, and surrounding towns **at a rate and in**

[37] *Regional Policy Statement*, above n 24, emphasis added.

locations that meet anticipated demand and enables the efficient provision and use of network infrastructure ...

Objective 6.2.6

... provide for Greater Christchurch's land requirements for the recovery and growth of business activities **in a manner** that supports the settlement pattern brought about by Objective 6.2.2 ...

Policy 6.3.3

Development in greenfield priority areas in rural residential development is to occur in accordance with the provisions set out in an outlined development plan or other rules for the area. **Sub-division must not proceed ahead of the incorporation of an outline development plan in a district plan.**

Policy 6.3.5

(1) Identifying priority areas for development to **enable reliable forward planning for infrastructure development and delivery.**

(2) Ensuring that the nature, timing and sequencing of new development are co-ordinated with the development, funding, implementation and operation of transport in other infrastructure in order to ...

(d) ensure new development does not occur until provision for appropriate infrastructure is in place.

Policy 6.3.6

(1) Promotes the utilisation and redevelopment of existing business land, and **provides sufficient additional greenfield priority area land for business land through to 2028** as provided for in Map A.

[56] In the Recovery Plan under the section on "Land Use Recovery Plan outcomes", under "Direction and Co-ordination", it states that a "clear planning framework directs **where** and **how new development should occur** so that **it integrates efficiently and effectively with infrastructure programmes** and avoids key hazards and constraints."[38]

[57] From a perusal of the provisions of the Regional Policy Statement and the Recovery Plan, it is clear that Map A contains Greenfield Priority Areas – Business. However, over a period of 10 years or more until 2028, any future development must be sequenced or timed to ensure that either existing infrastructure or future

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38 *Land Use Recovery Plan*, above n 5, at [3.3], emphasis added.

infrastructure can be properly integrated with an appropriate management of land use activities.

[58] Following its evaluation of the Recovery Plan and Regional Policy Statement provisions, the Panel determined that "give effect to" does not automatically lead to the conclusion that land must be zoned industrial "**at the present time**".[39] That is a conclusion that was open to the Panel, both on the evidence before it and the wording of the planning documents. In addition, in my respectful view, the following factors support the Panel's decision:

(1) There is nothing directive in the language of the Regional Policy Statement provisions that places an obligation on, or requires, the Panel to zone the business areas on Map A as industrial now.

(2) Section 24 of the CER Act enabled a Ministerial direction that the Greenfield Priority Areas – Business would be zoned industrial, but there was no such direction from the Minister. Zoning decisions were left to the Council and its decision-making process. Thus, contrary to the appellants' submission that the planning documents provided a direction that zoning was obligatory, the absence of a Ministerial direction indicates that the Council or its delegate has the discretion to re-zone at the appropriate time.

(3) The timing, nature and sequencing of developments is a Council decision.

(4) The Panel's decision is not inconsistent with the Recovery Plan or the Replacement District Plan.

(5) Policy 6.3.6 supports this. That Policy envisages that there is sufficient additional Greenfield Priority Area – Business land through to 2028, as provided for in Map A. Given that this covers the next 10 years, the Panel's decision in relation to appropriate timing is

[39] At [89], emphasis added.

consistent with the policy direction in the Regional Policy Statement. In particular, although the Council cannot conduct a preparation, change, and review of policy statements and plans until 2021, there is scope prior to 2028 to conduct any relevant changes on the Council's own accord.[40]

(6) I do not consider the context of Chapter 6, as alleged by the appellants, to be determinative of a more directive planning process. As the Panel considered, a regional policy statement is a subordinate statutory instrument intended to achieve the purpose of the RMA.[41] It is the nature of the terms and how they are expressed that is most relevant to its decision.

[59] On an examination of the wording of the Policy provisions, I am unable to uphold the appellants' submissions that the Panel wrongly interpreted the objectives and policies by refusing to re-zone the appellants land industrial "at the present time." To find otherwise means the Panel overlooked a directive in the provisions, which required the Panel to zone all Greenfield Priority Areas – Business for business use, regardless of any infrastructure considerations or timing.

[60] For completeness, I accept that Policy 6.3.1 cannot be read in isolation by reference to sub-cls 1 and 2 only, but I do not consider there is a tension among those sub-clauses as the appellants contend. For the reasons already outlined above, the urban form identified in Map A must be read in the context of the remaining clauses including sub-cls 3 and 4, as well as the other policies, requiring the integration of land use with infrastructure. I do not consider that the Panel erred in its interpretation.

[61] I turn now to consider whether the Panel erred in law, in its application of the relevant authorities.

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40 Resource Management Act 1991, s 79(4).
41 Resource Management Act 1991, s 59.

Did the Panel err in its application of relevant law?

[62] The Panel accepted the appellants' submissions on the interpretation of the words in s 75(3)(c) of the RMA: that "give effect to" was less flexible than its predecessor "not inconsistent with". However, the Panel disagreed with the appellants' submission that, on the approach of the Supreme Court in *King Salmon*,[42] "give effect to" in the Recovery Plan and the Regional Policy Statement required that the Panel re-zone the appellants' land to industrial.

[63] In dismissing the appellants' submission, the Panel applied its approach to the interpretation of subordinate statutory instruments that was consistent with the Court of Appeal's decision in *Powell v Dunedin City Council*.[43] The Panel found no support in either the Recovery Plan or the Regional Policy Statement for the appellants' position that it must zone their land as industrial.[44]

[64] The appellants submit the Court of Appeal's approach in *Powell* is of limited assistance, because *Powell* involved an interpretation of a single rule in a district plan, when this case concerns an interpretation of a number of the objectives and policies in Chapter 6 of the Regional Policy Statement. The Court of Appeal in *Powell* canvassed a number of authorities as to the approach to be taken to the interpretation of plans. In *J Rattray & Son Ltd v Christchurch City Council*,[45] the Court of Appeal considered the interpretation of predominant uses in a plan subject to the then Town and Country Planning Act 1977. The Court accepted that language used to describe predominant uses within a particular zone will have an immediate significance and must be given its intended effect when that is unmistakeable. The Court however cautioned:[46]

> But words take flavour and colour from their general context and can carry so many shades of meaning that it is frequently impossible to be dogmatic about any single normal or everyday meaning. ... assistance not only may but ought to be sought from the composite planning document taken as a whole whenever obscurities or ambiguities might seem to arise.

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42 *King Salmon*, above n 32.
43 *Powell*, above n 8.
44 Decision 23, above n 6, at [86].
45 *J Rattray & Son Ltd v Christchurch City Council* CA 29/84, 11 April 1984.
46 At 4 – 5.

[65] The Court in *Powell* observed that this approach was adopted by the High Court in relation to the interpretation of a plan under the RMA in *Beach Road Preservation Society Inc v Whangarei District Council*,[47] where an application for resource consent turned on whether a house and a boat shed came within the term "residential accommodation", such that it was a controlled activity. Chambers J rejected a submission that the term "residential accommodation" had to be interpreted in isolation. After considering *Rattray* and other authorities,[48] Chambers J concluded:[49]

> In light of those authorities, with all of which I respectively concur, it seems to me obvious that at the very least regard must be had to the zone statement, objective and policies and the rest of Part 14.4 when interpreting the words "Residential Accommodation". These cases provide authority for looking far beyond Part 14.4.

[66] Chambers J referred specifically to s 76 of the RMA and in particular s 76(2), which provides that rules appearing in district plans have the effect of regulations. Section 5(1) of the Interpretation Act 1999 applies to the interpretation of such rules, which requires that the meaning of an enactment must be ascertained from its text and in the light of its purpose. Chambers J held that it was mandatory to consider the objectives and policies of the relevant part of the District Plan.[50] "Purpose", therefore, in s 5 of the RMA, would be the "purpose" prescribed by s 76(1)(b) of the RMA, in the context of a district plan, namely through the objectives and policies of the relevant plan.

[67] Adopting Chambers J's purposive approach to interpretation, the Court of Appeal in *Powell*, reinforced the Court's finding in *Rattray*, and the supporting authorities, that the plain meaning of a rule, understood from the words themselves, cannot be exercised in a vacuum. Regard must be had to the immediate context, which included the objectives, policies and methods set out in the plan and, where any obscurity or ambiguity arises, it may be necessary to refer to the other sections

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47 *Beach Road Preservation Society Inc v Whangarei District Council* [2001] NZRMA 176 (HC).
48 *Foodtown Supermarkets Ltd v Auckland City Council* (1984) 10 NZTPA 262 (CA); *KB Furniture Ltd v Tauranga District Council* [1993] 3 NZLR 197 (HC).
49 *Beach Road Preservation Society*, above n 47, at [33].
50 At [34].

of the plan, as well as the objectives and policies of the plan itself. The Court summarised its approach by stating:[51]

> Interpreting a rule by a rigid adherence to the wording of the particular rule itself would not, in our view, be consistent with a judgment of this Court in *Rattray* or with the requirements of the Interpretation Act.

[68] On a review of the authorities, I am unable to accept the appellants' submission that *Powell* is of limited assistance in this case. The Court of Appeal in *Powell* was concerned with the interpretation of the access rule in the district plan. However, the approach to the interpretation of specific words or phrases in the context of the relevant planning documents draws on a principled approach, from a number of authorities, in relation to interpreting sections of a district plan and/or a relevant planning document, alongside the objectives and policies of the plan itself.

[69] If the appellants' view is upheld, the interpretation of the words "to give effect to" means that regardless of the policies, objectives and issues within the Regional Policy Statement and the Recovery Plan, the words must be rigidly applied. I respectively concur with the Panel's approach to its interpretation of subordinate statutory instruments and its reliance on *Powell*, in finding that there was no support in the Recovery Plan or the Regional Policy Statement that the Panel must zone the appellants' land as industrial.

[70] The appellants also rely on the Supreme Court's decision in *King Salmon*,[52] where the words "give effect to" were considered in relation to the New Zealand Coastal Policy Statement. The appellants contend that the approach in *King Salmon* should be adopted in this case, in determining what is required to "give effect to" the Regional Policy Statement, as stipulated by s 75(3)(c) of the RMA. The appellants' submission is that the Panel was required to positively implement the planning framework set out in Chapter 6 of the Regional Policy Statement and having identified those policies that are relevant, the manner in which the policies are expressed should have led the decision-maker to find that the more directive policies are to carry greater weight than the less directive ones.

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51 *Powell*, above n 8, at [35].
52 *King Salmon*, above n 32.

[71] It is accepted by the parties that the meaning of the words "give effect to" in s 75(3) of the RMA means "implement" as found by the Court in *King Salmon*; that those words create a firm obligation on the part of the decision-makers; and that such words are intended to constrain them.[53]

[72] The Supreme Court in *King Salmon*, however, gives guidance to decision-makers, when dealing with a plan change application, which is of relevance to this case. In summary, the Court has said:

(1) The decision-maker must first identify policies that are relevant, paying careful attention to the way in which they are expressed.[54]

(2) Those expressed in more direct terms will carry greater weight than those expressed in less directive terms. Where a policy is stated in such directive terms, the decision-maker may have no option but to implement it.[55]

(3) "Avoid" is a stronger direction than "taken account of".[56]

(4) Where policies "pull in different directions", close attention should be paid to the way in which the policies are expressed.[57]

(5) If the conflict remains after this analysis has been undertaken, only then is there a justification for reaching a determination which has one policy prevailing over another.[58]

(6) Although a policy in a New Zealand Coastal Policy Statement cannot be a "rule" within the special definition in the RMA, it may nevertheless have the effect of what in ordinary speech would be a rule.[59]

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53 *King* Salmon, above n 32, at [77] and [91].
54 At [129].
55 At [129].
56 At [129].
57 At [129].
58 At [129] and [130].
59 At [116].

(7) The scheme of the RMA does give subordinate decision-makers considerable flexibility and scope for choice. This is reflected in the New Zealand Coastal Policy Statement, which is formulated in a way that allows regional council's flexibility in implementing its objectives and policies in their regional coastal policy statements and plans.[60]

(8) Various objectives and policies are expressed in deliberately different ways, with some policies giving decision-makers more flexibility or are less prescriptive than others. These differences matter.[61]

[73] Although the policies in the Regional Policy Statement in this case are not rules, on the authority of *King Salmon*, the policies may have the effect of rules. I consider that the purposive approach, adopted by the Court of Appeal in *Powell*, was appropriate and applicable to the policies and objectives in this case, as the Panel found.

[74] The directions in the New Zealand Coastal Policy Statement, that were at issue in *King Salmon*, required the avoidance of effects. Thus, if adverse effects on the relevant environment were established, the way to "give effect to" the New Zealand Coastal Policy Statement was to ensure that no development should be provided or granted, which gives rise to those effects occurring. In *King Salmon*, therefore, the words in s 75 of the RMA "to give effect to" has to be seen in the context of the strong directive in the New Zealand Coastal Policy Statement of the word "avoid".

[75] By contrast with the policies and objectives in the New Zealand Coastal Policy Statement, the wording of the policies in this case are less directive, with the qualifications that development in greenfield priority areas must occur in accordance with outline development plans,[62] documenting the infrastructure required and

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60 At [91].
61 At [127] and [129].
62 *Regional Policy Statement*, above n 24, at Policy 6.3.3.

ensuring new development does not occur until provision for appropriate infrastructure is in place.[63]

[76] Adopting the *King Salmon* approach, the language in which particular policies are expressed does matter and here the Regional Policy Statement's policies provide careful direction, with qualification. The emphasis of those policies is that recovery, rebuilding and development must be integrated with existing and future strategic and other infrastructure.[64] In respect of the development of greenfield priority areas, provision for the development must be at a rate and in locations that meet anticipated demand and enables the efficient provision and use of network infrastructure. To regard specific words of the policies in isolation is counter to the approach of both the Supreme Court in *King Salmon*,[65] and the Court of Appeal in *Powell* and *Rattray*. For those reasons, I do not find that the Panel has erred in law.

[77] I observe also that the Minister refrained from using his powers under s 24 of the CER Act to direct that the subject land be zoned industrial. Instead, the Minister included Chapter 6 in the Regional Policy Statement, pursuant to s 24 of the CER Act, and amended the Regional Policy Statement, pursuant to s 27 of the CER Act only. In my view, this reinforces the Panel's understanding that it had a discretion, as to when rezoning might occur.

[78] I am unable to hold the appellants' submissions that the Panel wrongly interpreted the policies under the Regional Policy Statement or that the Panel erred in its application of the legal authorities. The answer to question one is no.

Question 2: Whether the Panel misinterpreted Policy 6.3.3 of the Regional Policy Statement regarding the level of detail and certainty required in respect of stormwater and the traffic service connections to be shown in the Outline Development Plan?

[79] The appellants' approach to the second question of law, follows from its contention that the Panel incorrectly interpreted Chapter 6 of the Regional Policy

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63 At Policy 6.3.5(2)(d).
64 *Regional Policy Statement*, above n 24, at Objective 6.2.1(9).
65 *King Salmon*, above n 32, at [129].

Statement. The appellants submit that the basis for the Panel's decision to decline to zone the appellants land industrial, was wrong in law.

The Panel's findings on Policy 6.3.3

[80] Policy 6.3.3 governs development in accordance with Outline Development Plans. Specifically, Policy 6.3.3 provides:[66]

> Development in greenfield priority areas and rural residential development is to occur in accordance with the provisions set out in an outline development plan or other rules for the area. Subdivision must not proceed ahead of the incorporation of an outline development plan in a district plan. Outline development plans and associated rules will:
>
> (1) Be prepared as:
>
> (a) a single plan for the whole of the priority area; or
>
> (b) where an integrated plan adopted by the territorial authority exists for the whole of the priority area and the outline development plan is consistent with the integrated plan, part of that integrated plan; or
>
> (c) a single plan for the whole of a rural residential area; and
>
> (2) Be prepared in accordance with the matters set out in Policy 6.3.2;
>
> (3) To the extent relevant show proposed land uses including:
>
> (a) Principal through roads, connections with surrounding road networks, relevant infrastructure services and areas for possible future development;
>
> ...
>
> (f) Land required for stormwater treatment, retention and drainage paths;
>
> ...
>
> (i) Pedestrian walkways, cycleways and public transport routes both within and adjourning the area to be developed;
>
> ...
>
> (6) Document the infrastructure required, when it will be required and how it will be funded;
>
> (7) Set out the staging and co-ordination of subdivision and development between landowners;
>
> ...
>
> (9) Show how other potential adverse effects on and/or from nearby existing or designated strategic infrastructure (including requirements for designations, or planned infrastructure) will be avoided, remedied or appropriately mitigated ...
>
> (12) Include any other information that is relevant to an understanding of the development and its proposed zoning.

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66 *Regional Policy Statement*, above n 24, at Policy 6.3.3.

[81] Under a section marked "Methods", the actions to be taken by the Regional Council and Territorial Authorities are set out. Importantly, it provides that Territorial Authorities will:[67]

> Require an outline development plan to be developed and incorporated into district plans, prior to, or at the same time as, rezoning land for urban use in greenfield priority areas.

[82] Under the heading of "Principle reasons and explanation", it states:[68]

> The use of outline development plans for residential and business greenfield development is necessary for the recovery of Greater Christchurch. They will assist with the efficient use of resources when planning land uses, provide for sustainable urban development ... Background information provided through the process provides the necessary background evaluation work before or at the same time as the land is rezoned.

[83] In interpreting Policy 6.3.3, the Panel acknowledged that Policy 6.3.3(7) refers to staging and coordination of development, but considered that it does not require all land in a Greenfield Priority Area – Business to be zoned industrial. It also upheld the submission that an Outline Development Plan must be in the Plan before land development and subdivision can proceed but that does not dictate that either the Outline Development Plan or the zoning must encompass the entire Greenfield Priority Area – Business as shown in the Regional Policy Statement.

[84] In considering the full context of Policy 6.3.3, the Panel found that the purpose of an Outline Development Plan is to ensure integration between land use and infrastructure within a particular area. Of relevance to this appeal is the Panel's observation that an Outline Development Plan must, to the extent relevant, show land required for stormwater treatment, retention and drainage paths.[69]

[85] The Outline Development Plan proposed by the appellants' planner, Ms Harte, was found by the Panel to not fulfil the purpose intended by Policy 6.3.3, in that it failed to give effect to the Regional Policy Statement. The Panel considered Ms Harte's Outline Development Plan was confined to the appellants' land, but also indicated possible future development beyond the land's boundaries. Although the

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67 At Policy 6.3.3.
68 At Policy 6.3.3.
69 Decision 23, above n 6, at [119], [121] and [122].

Panel acknowledged it gave an outline on proposed arrangements as to development staging, boundary buildings set back and landscape treatment, waste water, as well as stormwater and internal roading arrangements, the Panel found fundamental irresolvable problems with the Outline Development Plan as it lacked the level of certainty and detail required for both stormwater and integration with the strategic network.[70]

[86] The Panel then considered stormwater management and the transport network respectively. I will consider each of these issues in turn.

(i) Stormwater management

[87] The Panel noted that the Outline Development Plan does not depict any specific arrangement for secondary flow paths for stormwater, other than the notation on the Plan, which states, that these "will be required to be identified and protected when subdivision or development is proposed." The Panel accepted the evidence from both the Council's and the appellants' experts, that the land was suitable for a ground water treatment approach, with those matters able to be the subject of a regional resource consent to be secured in due course. Thus, the site would need on-site mitigation involving disposal of stormwater to the ground. The Panel accepted that those matters did not present an obstacle to industrial zoning.

[88] However, the Panel noted that Policy 6.3.3 specifies that to the extent relevant, an outline development plan should show land required for stormwater drainage paths. Both the stormwater experts agreed that there was a need to provide a secondary flow path for stormwater. The difference between the experts, however, was that Mr Norton, the Council's expert, considered that the land was not suited to industrial development unless an overland flow path could be established, either by easement or vesting of road or reserve across neighbouring properties eastward to Hawthornden Road. Mr Hall, the appellants' expert, gave evidence that earthworks would be undertaken, to provide natural secondary flow paths for stormwater or an easement could be secured over adjacent land to connect to Hawthornden Road. He considered that the easement could be vested in gross in the Council.

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[70] At [126].

[89] The Panel was unhappy that Mr Hall's evidence did not give any assurance that the necessary legal arrangements would be able to be negotiated with relevant landowners outside the Outline Development Plan boundaries.[71]

[90] The Panel found that such uncertainty was a fundamental problem, when the purposes of an outline development plan, as described in Policy 6.3.3, was examined. The Panel relied on sub-clause (3)(f), which specified that to the extent relevant, an outline development plan and associated rules must show proposed land uses including land "required for stormwater treatment, retention and drainage paths". In the absence of any associated arrangements with landowners, with whom legal arrangements would be required, the Panel found that the Outline Development Plan made no meaningful provision for stormwater treatment and contrary to the specific purposes of an outline development plan, the matter is left to future chance. On that basis, the Panel found that Ms Harte's proposed Outline Development Plan failed to give effect to the Regional Policy Statement on stormwater management and the Panel could find no resolution to this on the evidence before it.

The appellants' position

[91] The appellants contend that the Panel failed to take into account the evidence that there were no stormwater management impediments associated with the development of the appellants' land and overlooked the concessions made by the Council's expert, Mr Norton, in cross-examination.

[92] Secondly, the appellants submit the Panel misinterpreted Policy 6.3.3, in finding the absence of any legal arrangements with overland flow paths did not give effect to the Regional Policy Statement. The appellants refer to a residential zoning decision by way of comparison, where the Panel determined that the absence of a legal arrangement with an affected landowner was not an impediment to re-zone the particular greenfield priority area.[72]

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71 Decision 23, above n 6, at [131].

72 Independent Hearings Panel "Decision 17: Residential (Part)", 11 March 2016.

[93] The appellants, through their counsel, concede that because the first question of law is fundamental, if it fails, the burden on the appellants is very high to show that the Panel erred in its consideration of, and findings on, the evidence.

Analysis

[94] Although this question of law challenges the interpretation and application of Policy 6.3.3 of the Regional Policy Statement, it is a challenge to the Panel's assessment of the evidence. As the appellants properly concede, the threshold is very high to demonstrate that the Panel erred in its findings on the evidence it heard from the parties' witnesses. For this Court to interfere at an appellate level, I must be satisfied that the Court has not overlooked any relevant matter or reached an ultimate conclusion which is so insupportable or so clearly untenable as to amount to an error of law.[73] In addressing the expert evidence on stormwater, the Panel was satisfied that the onsite mitigation involving disposal of stormwater to the ground did not present any obstacle to industrial zoning. Specific reference was made by the Panel to both the Council's expert, Mr Norton and the appellants' expert, Mr Hall.

[95] However, the issue which concerned the Panel was the omission in the appellants' planner's Outline Development Plan, which did not depict any specific arrangement for secondary flow paths. It was of particular concern to Mr Norton, that there were no protected overland flow paths, which would not affect other private properties. The Panel recorded his concern and Mr Norton's view that the Hawthornden Block was not suited to industrial development, unless an overland flow path could be established either by easement or vesting of road or reserve across neighbouring properties eastward to Hawthornden Road.[74]

[96] Under cross-examination, in answer to a question whether the protection of an overland flow path is the obligation of the developer at the time of subdivision, Mr Norton said this:

> My opinion is that an overland flow path is necessary for development and that I am generally opposing new zoning of land for development which does not have a legal overland flow path.

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73 *Edwards v Bairstow*, above n 11; *Bryson*, above n 12.
74 Decision 23, above n 6, at [130].

[97] Mr Norton was further cross-examined on whether he would agree that the applicant for the discharge consent will need to come along and satisfy the Regional Council that the overland flow path is in place. Mr Norton agreed, but said that if the flow path is not able to be achieved then the land cannot be subdivided.

[98] He agreed that it was the obligation of the developer at the time of subdivision and discharge consent to obtain consent of the landowners. There might have to be negotiations with adjacent land owners to establish an overland flow path and that, he said, was essentially a matter of commercial negotiation between land owners.

[99] Following his cross-examination, the Panel specifically asked Mr Norton whether an Outline Development Plan that covers the whole of the Greenfields Development Areas should include stormwater disposal and the land required for such disposal. Mr Norton answered affirmatively and told the Panel that he believed "servicing of new development" is a requirement in the Regional Policy Statement and should be covered in the Outline Development Plan.

[100] After referring to the evidence of Mr Hall, who "envisaged that the easement could be vested in gross in the Council", the Panel stated that the evidence did not give any assurance that necessary legal arrangements would be able to be negotiated with relevant land owners outside the Outline Development Plan boundaries. The Panel said further that the uncertainty over securing the necessary legal arrangements is a fundamental problem, when the purpose of an outline development plan, as described in Policy 6.3.3, specifies that an outline development plan must show proposed land uses including land "required for stormwater treatment, retention and drainage paths."[75] It was on that basis, that the Panel then concluded that the Outline Development Plan from Ms Harte made no meaningful provision for such land, in the absence of any associated arrangements with landowners, with whom legal arrangements would be required.

[101] I am unable to uphold the appellants' challenge that the Panel failed to take into account the evidence that there were no stormwater management impediments

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75 *Regional Policy Statement*, above n 24, at Policy 6.3.3(3)(f).

associated with the development of the appellants' land and the concessions of Mr Norton. It is clear from the Panel's decision and the transcript, that the Panel accepted some of the land in the greenfield priority area, namely the Hawthornden Block, did not present an obstacle to industrial zoning because of stormwater disposal issues. However, the Panel clearly accepted the evidence of Mr Norton that there were no protected overland flow paths that would not affect other private properties. For that reason, the Panel upheld his concerns that the Hawthorndon Block was not suited to industrial development until the overland flow paths could be established by legal means. The Panel specifically questioned Mr Norton following his cross-examination and I am satisfied that the conclusion the Panel reached, that the proposed Outline Development Plan made no meaningful provision for stormwater treatment retention and drainage paths, was a conclusion that was available to it on the evidence it heard.

[102] I cannot uphold the further submission from the appellants, that the Panel misinterpreted Policy 6.3.3, in finding the absence of any legal arrangements in relation to overland flow paths did not give effect to the Regional Policy Statement. Although the appellants refer to the Panel's "Decision 17: Residential",[76] to support their proposition that not all legal arrangements to establish drainage paths must be in place at the time an outline development plan is first developed, I note that in Decision 17, the Panel was dealing with a residential subdivision with one affected landowner only.

[103] By contrast, in this case the Outline Development Plan did not show land required for stormwater drainage paths in relation to landowners outside the plans boundaries. Mr Norton, the Council expert, gave evidence that he believed the Hawthorndon Block was **not suited to industrial development**, because the site naturally drains away from Russley Road, which means there are no protected overland flow paths, which would not affect other private properties.[77] I consider that Decision 17 is distinguishable on its facts.

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76 Decision 17, above n 72.

77 Evidence in chief of Brian Norton, 2 September 2015 at [10.6] and Decision 23, above n 6, at [130].

[104] Further, Policy 6.3.3 anticipates that Territorial Authorities will require an outline development plan to be developed and incorporated into district plans, prior to, or at the same time, as rezoning land for urban use in greenfield priority areas.[78]

[105] While I accept that rezoning could take place, subject to the provision for the deferral of development until necessary infrastructure is available, the Panel had a discretion to decline rezoning. This discretion could be exercised where it was not satisfied that an outline development plan failed to provide for future infrastructure, in accordance with the provisions of the Regional Policy Statement. The requirement to have an outline development plan developed and incorporated into district plans at the same time as rezoning land for urban use in greenfield priority areas, illustrates the importance of an outline development plan including the matters set out in Policy 6.3.3, which recognises the need for well-integrated infrastructure.

Conclusion

[106] The Outline Development Plan produced by the appellants did not designate land required for stormwater treatment retention and drainage paths. There was no certainty that legal arrangements with the relevant landowners, outside the Outline Development Plan boundaries, would be obtained. The Panel had ample reason to find that the Outline Development Plan was inadequate, because it left necessary legal arrangements with adjoining land owners to "future" chance.

(ii) Roading and transport network

[107] The appellants challenge the Panel's determination on the critical transport question, concerning the impact of zoning on the immediately adjacent loop road, which is known as the "Southern Airport Access", abutting the appellants' land and including the Hawthorndon Block. The issue was whether it is possible to achieve access from the loop road in a manner which meets appropriate guidelines and standards. This articulation derives from the Expert Conferencing Statement of 24 September 2015, in which it was agreed that:[79]

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78 *Regional Policy Statement*, above n 24, at Policy 6.3.3 – Methods "Require an Outline Development Plan using greenfield priority areas".

79 Independent Hearings Panel "Expert Conferencing Statement; Submission 2278: Transport Issues", 6 October 2015 at 3.

> Any access to serve the submitters' land must incorporate both a right-turn lane and a left-turn auxiliary lane. These are to ensure that turning vehicles are physically separated from the through traffic on the loop road, and are required to ensure that the intersection will operate safely.

[108] The Panel concluded, after hearing the experts' evidence, that it had no evidential basis for drawing any conclusions on whether or not the relevant roading control authority would allow the modifications that the appellants' expert had proposed to the roading, such that rezoning of the appellants' land could be accommodated without significant effects arising on the efficiency or safety of the road network. The Panel found it could not safely draw anything from the fact that the existing loop road makes provision for minor access, as it served a few existing rural properties only. The Panel considered that the appropriate authority may or may not regard the design as appropriate.[80] In addition, the Panel stated that Policy 6.3.3(9) requires that an outline development plan and/or the associated rules must show how potential effects on nearby existing or designated infrastructure will be avoided, remedied or appropriately mitigated.

[109] The evidence satisfied the Panel that it is necessary for potential effects to be shown in any outline development plan, for the industrial zoning of the appellants' land. As before, the Panel reiterated that the Outline Development Plan proposed by Ms Harte did not do so and given that the identified potential effects are not, by nature, temporary, the suggested non-complying rules proposed by the appellants would also be inappropriate.[81]

The appellants' position

[110] The appellants contend that the Panel misconstrued Policy 6.3.3(9), which does not require that the prior approval of a Road Controlling Authority must be forthcoming for a rezoning of rural land, where access to the zone is from a road managed by such an Authority. In addition, the appellants contend that the Panel misinterpreted a submission made by the appellants' Counsel in closing submissions. He stated that his clients accepted the need for the loop road to be constructed and that it would be appropriate that the Panel incorporate rules to the effect that

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80 Decision 23, above n 6, at [148].
81 At [154].

development would be a non-complying activity, until the loop road was established. The appellants submit that the Panel misunderstood their Counsel's submission on a suggested rule, which made construction of the intersection on the loop road, an appropriate trigger point for the development of the appellants' land to commence.

Analysis

[111] Dealing first with the appellants' submission that the Panel misinterpreted Policy 6.3.3 of the Regional Policy Statement, regarding whether the prior approval of a Road Controlling Authority must be obtained before making a rezoning decision, it is clear the Panel considered and weighed the evidence on the traffic service connections and infrastructure, as proposed in the Outline Development Plan. As I have found above, the Panel was entitled to consider whether a proposed outline development plan contained adequate detail and/or certainty in respect of the requirements of Policy 6.3.3, including whether the documents detail the infrastructure required, when it will be required and how it will be funded.

[112] The Panel found that the traffic evidence "overwhelmingly" satisfied it that modification of the loop road on a basis satisfactory to the Road Controlling Authority is a necessary prerequisite for industrial rezoning of the appellants' land including the entire Hawthorndon Block. In rejecting the appellants' Counsel's submissions that the loop road issues were "temporary", the Panel found that such a submission was not consistent with the evidence. The Panel then summarised the evidence as follows:[82]

(1) The consensus of the traffic witnesses was that the current loop road design is unsuitable.

(2) The loop road needs significant modification.

(3) There is insufficient evidence to draw any conclusions as to whether any modification to it would be forthcoming.

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82 Decision 23, above n 6, at [152] and [154].

(4) The constraint in relation to the loop road issues is not "temporary", in the sense that the word implied a solution would be forthcoming.

(5) It is necessary for the Outline Development Plan and associated rules for industrial rezoning of the appellants land to show how potential effects on nearby existing or designated strategic infrastructure will be avoided, remedied or appropriately mitigated.

Conclusion

[113] I consider it was open to the Panel to conclude that Policy 6.3.3 required the Outline Development Plan to have sufficient detail about the roading and transport network, in the same way that the Panel required more detail on the stormwater issues and infrastructure.

[114] I am unable to uphold the appellants' submission that the Panel misinterpreted the rules proposed by appellants' Counsel in closing submissions. The Panel made it clear that neither appellants' Counsel nor the appellants' planning expert had provided any drafting of rules for the purposes proposed. For that reason, the Panel made no definitive decision or finding on the submission. It was open to the Panel to reject the appellants' submission, which simply suggested that the Panel could incorporate rules to reflect temporary constraints, in relation to access to their land for development through the proposed intersection. Whether the Panel understood the submission in its entirety or not, there was no concrete rule or proposal that the Panel was able to consider in detail. The answer to question two is no.

Question 3: Whether on all the evidence available to it, the Panel's decision not to approve rezoning on the basis of "fundamental, irresolvable problems" with the Outline Development Plan and associated proposed rules was a decision which the Panel, acting reasonably, could have come to?

[115] The third question of law is a consolidation of the two previous grounds of appeal. The appellants challenge the Panel's decision not to approve rezoning on the basis of "fundamental, irresolvable problems" with the Outline Development Plan and the associated proposed rules. The appellants say that the Panel's findings in

relation to the strategic road network and on the stormwater issues were unreasonable, namely, that its finding of "fundamental, irresolvable problems" is directly linked to matters that it did not take into account.

[116] The appellants detail the specific evidence which the Panel did not take into account. In relation to stormwater management and the absence of legal arrangements for overland flow paths, the appellants point to:

(1) Mr Norton's rebuttal evidence (which is dealt with under Ground 2 above) that the majority of the appellants' land has existing legal rights to an overland flow path for stormwater and stormwater issues can be properly dealt with at the time of subdivision and/or discharge consent;

(2) Mr Hall's answers to questions from the Council's lawyer and from members of the Panel to the effect that there were a number of options available to deal with stormwater which were not beyond the bounds of possibility;

(3) Exhibit 1, identifying stormwater flow paths in respect of the balance of the appellants land, was overlooked;

(4) The property owned by Equus Trust (one of the appellants) has frontage to Hawthornden Road, part of which is available for a secondary stormwater flow path for other areas within the Greenfields Priority Business Area.

[117] On the stormwater issue, the appellants' claim that had the Panel taken the above matters into account, it would have demonstrated that stormwater was not an impediment to rezoning the majority of the land. Secondary stormwater flow paths were available and could have been identified on the Outline Development Plan, in respect of the balance of the land.

[118] In relation to the critical issue of access in the roading network and the intersection proposed by Mr Carr, the appellant alleges the Panel made a number of findings that were not supportable on the evidence. They are:

(1) The finding that no mitigation was proposed for the effects on the strategic road network of using the loop road access as a single means of access was unreasonable, when Mr Carr (the appellants' witness) produced the intersection designs, the precise purpose of which were to identify how potential safety effects on using the loop road could be mitigated. The appellants claim there was no evidence before the Panel that access could not be safely provided.

(2) The Panel found there was no evidence on whether or not the relevant Road Controlling Authority would allow the modifications that Mr Carr proposed, when the division of control over the loop road was not finalised at the time of the hearing. There was no evidence before the Panel to the effect that the New Zealand Transport Agency (NZTA) would decline consent as Controlling Authority if the intersection design complied with the necessary standards and guidelines in the independent safety audit requirements, as outlined by Mr Carr at the hearing.[83]

(3) If the Road Controlling Authority was the City Council, which has subsequently been confirmed as the case, then access to the loop road was not an obstacle to rezoning as the Council's traffic engineer, Mr Milne, concurred with Mr Carr.[84]

[119] The appellants also refer to the Panel's reference[85] to the lack of evidence as to how the significant costs of the modifications to the loop road would be met. Yet, Mr Carr gave evidence that the access road would be vested in the Council by the

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83 Decision 23, above n 6, at [148].

84 At [144]. The appellants' claim that the Panel's finding at [148] is in direct contrast to that at [144].

85 At [149].

submitters and the costs would therefore fall on the developers of the land. The Panel did not take this into account.

[120] Finally, the appellants criticised the Panel's view that there were differences between experts on wider issues but in the final analysis these were considered matters of judgment and degree. Yet, the appellants say, the Panel failed to make any finding whatsoever on potential effects or safety effects associated with the proposed intersection in the roading network and stopped well short of deciding whether or not the conceptual designs for the intersection proposed by their witness Mr Carr, if implemented, would result in effects that would not be appropriately avoided, remedied or mitigated.

[121] Ultimately, the plaintiffs contend that it was unreasonable for Panel to find that the potential effects were such that the rezoning would not give effect to the relevant provisions of the Regional Policy Statement. This, they say, was in direct contrast to the Panel's acknowledgement that, in terms of the Regional Policy Statement, it agreed with the traffic experts that the more critical question concerns the impacts of zoning on the immediately adjacent loop road.[86]

Analysis

[122] The basis of the legal issue in Question 3 arises from the Panel's conclusion on the Outline Development Plan, which was produced by the appellants' witness, Ms Harte. Before dealing with the specific issues of stormwater and integration with the strategic road network, the Panel expressed its view about the problems it encountered with the Outline Development Plan. The Panel said:[87]

> Ms Harte's ODP is confirmed to the Wilson and others land, but indicates possible future development beyond those boundaries. It comprises a plan and associated narrative giving an outline on proposed arrangements as to development staging, boundary building set back and landscape treatment, wastewater, stormwater and internal roading arrangements. As we now discuss, we find **fundamental**, **irresolvable** problems with the ODP (and associated proposed rules) for both stormwater and integration with the strategic network.

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86 Decision 23, above n 6, at [141].

87 At [126], emphasis added.

[123] The way in which the Panel then approached the evidence on stormwater management and road network issues has been canvassed above under Question 2. From the Panel's analysis of the evidence, it then reached its conclusion on those issues as follows:[88]

> Therefore, the evidence as to the matters of stormwater management and potential effects on the strategic road network leads us to find that rezoning the Hawthornden Block industrial at this time is inappropriate. Specifically, it would fail to give effect to the [Regional Policy Statement] and, given the community significance of the infrastructure matters in issue, it would be contrary to Part 2, RMA. Therefore, although not given mention in our reasoning above, we accept the evidence of the planning witnesses for the Council and the Crown (Mr Stevenson and Ms Whyte) and those parties' related submissions on the most appropriate zoning choice. We find that industrial zoning is inappropriate, and RUF [Rural Urban Fringe] zoning the most appropriate for giving effect to the [Regional Policy Statement], and achieving related [Replacement District Plan] objectives.

[124] In reaching its conclusion, the Panel not only examined the evidence, but acknowledged that there were differences between experts on the wider issues. Of those differences, the Panel described them as follows:[89]

> There were differences between experts on wider issues, such as cumulative effects (of concern to Messrs Clark and Penney but not to Messrs Carr and Milne) and wider transportation network and related amenity impacts (with the experts similarly divided). We acknowledge that cumulative effects are relevant. However, in the final analysis these are matters of judgment and degree. In terms of the [Regional Policy Statement], we agree with the traffic experts that the more critical question concerns the impacts of zoning on the immediately adjacent loop road.

[125] The Panel specifically dealt with the preliminary designs of loop road modifications by Mr Carr and considered each of the experts' evidence, concluding that:[90]

> The traffic evidence overwhelmingly satisfies us that modification of the loop road on a basis satisfactory to the road controlling authority is a necessary pre-requisite for industrial rezoning of the Wilson and others land and the entire Hawthornden Block (assuming a single point of access approach remains necessary).

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88 At [155].
89 At [141].
90 At [150].

[126] The appellants have criticised a number of aspects of the Panel's reasoning and discussion of the evidence and I note, that much of the criticism is directed towards the Panel's conclusions, with which the appellants disagree.

[127] I am unable to find that the Panel's overall findings and its views of the evidence were "clearly insupportable" or "clearly untenable" or were not open to the Panel to so conclude.

Conclusion

[128] The Panel has given the evidence careful consideration, but in the final analysis did not uphold the appellants' experts' views on roading or stormwater issues. Ultimately, the Panel found that the proposed Outline Development Plan, produced by the appellants, had fundamental and irresolvable problems for both stormwater and integration with the strategic traffic network. That was a conclusion which the Panel could reach on the evidence before it and there is no error of law, such that this Court should interfere. The answer to Question 3 is yes. The Panel's decision not to approve rezoning on the basis of "fundamental, irresolvable problems" was a decision which the Panel, acting reasonably, could have reached.

Conclusion on Appeal

[129] The answers to the three questions of law are as follows:

Question 1 – Whether in giving effect to the Regional Policy Statement under s 75(3)(c) of the RMA, did the Panel wrongly interpret the objectives and policies of Chapter 6 of the Regional Policy Statement as providing a discretion whether or not to rezone the appellants' land as industrial?

No. The Panel did not err in its interpretation of Policy 6.3.1 or in its application of the legal authorities on interpreting the wording of the policies in the Regional Policy Statement.

Question 2 – Whether the Panel misinterpreted Policy 6.3.3 of the Regional Policy Statement regarding the level of detail and certainty required in respect of

stormwater and the traffic service connections to be shown in the Outline Development Plan?

No. The Panel concluded that the appellants' Outline Development Plan was inadequate because it did not have sufficient details about the roading and transport network nor certainty over the land that was required for stormwater treatment, retention and drainage paths, which was contrary to the requirements of Policy 6.3.3.

Question 3 – Whether on all the evidence available to it, the Panel's decision not to approve rezoning on the basis of "fundamental, irresolvable problems" with the Outline Development Plan and associated proposed rules was a decision which the Panel, acting reasonably, could have come to?

Yes. The Panel's decision not to approve rezoning on the basis of "fundamental, irresolvable problems" was a decision which the Panel, acting reasonably, could have reached.

[130] The appeal is dismissed.

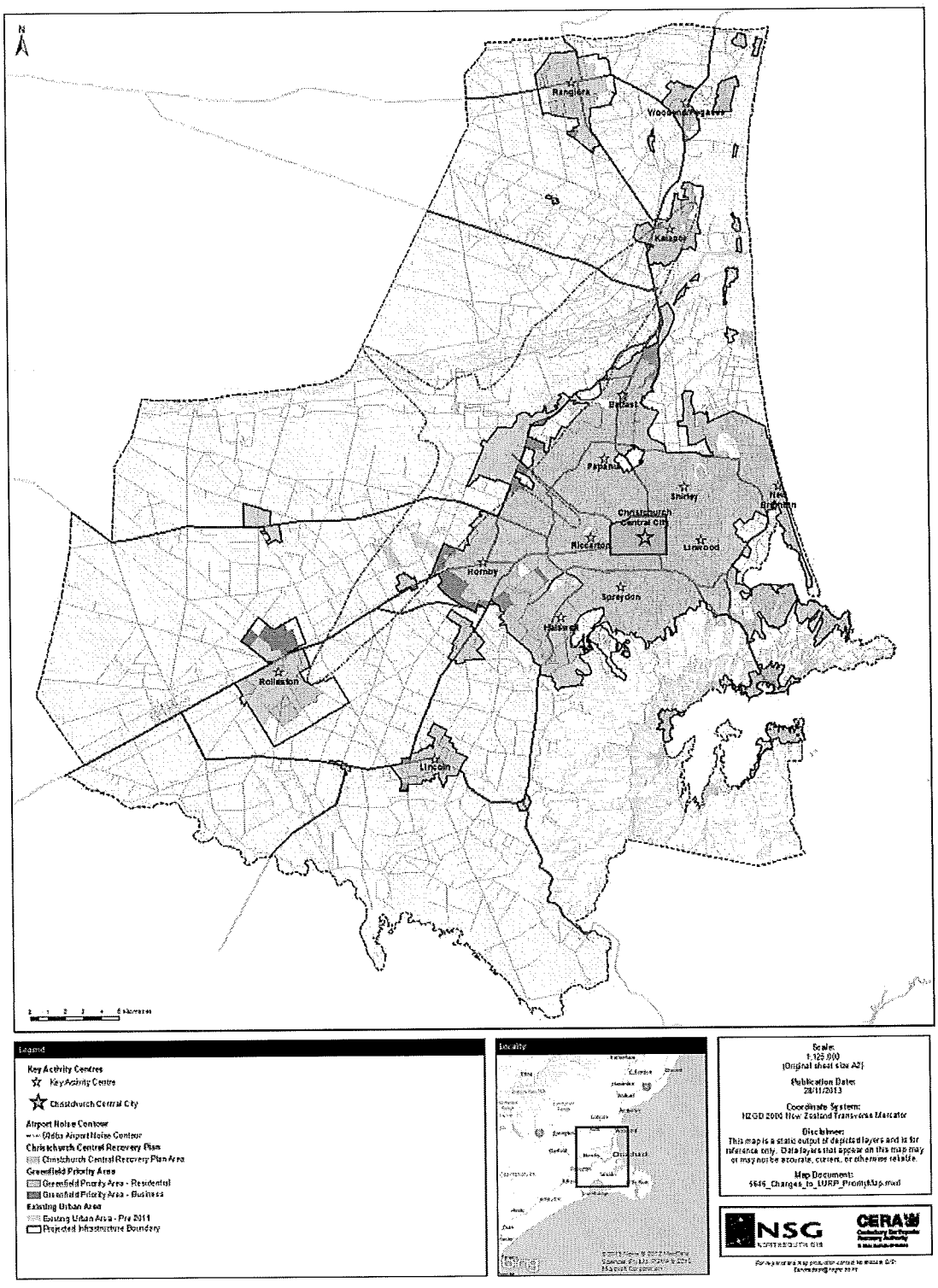
Costs

[131] Counsel are to file memoranda on costs, with particular regard to apportioning costs among the respondents in relation to the respective aspects of the issues argued on appeal.

Cull J

Solicitors:
Natural Resources Law
Simpson Grierson
Chapman Tripp
Buddle Findlay

APPENDIX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