

Before an Independent Hearings Panel  
appointed by Christchurch City Council

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*under:* the Resource Management Act 1991

*in the matter of:* the hearing of submissions on Plan Change 14 (Housing  
and Business Choice) to the Christchurch District Plan

*and:* **Christchurch International Airport Limited**  
Submitter 852

Legal speaking notes

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## MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

### INTRODUCTION

- 1 This document provides a legal response to matters raised in the legal submissions of other submitters.

#### **Airport Noise QM applies to relevant residential land that will be subject to 50dB Ldn or greater**

- 2 CIAL's evidence and legal submissions explain why density controls are appropriate in relevant residential areas which will be subject to levels of 50dB Ldn or greater of aircraft noise.
- 3 It is correct that no other airport in New Zealand utilise 50dB Ldn as the point that land use controls commence. However, as Mr Day and Mr Kyle explain and as decision makers have previously accepted, the provisions relating to land 50dB Ldn in Canterbury are relatively liberal. For example in Robinsons Bay Trust:

*[46] ... We have concluded that the Proposed Plan is relatively liberal in presently allowing a level of development down to four hectares within the Rural 5 zone, even within the 50 and 55 dBA Ldn contours. Thus, not all residential development within the area is discouraged, only certain urban peripheral growth. Furthermore, during the course of the hearing it became clear that Policy 6.3.7 sought to deal only with certain types of noise sensitive activities or residential activities but was not intended to include non-sensitive activities, for example industrial or commercial activities.*

- 4 While that comment was in the context of rural zones, the planning provisions in the residential zones similarly enable a certain level of a development already.
- 5 Furthermore, in Canterbury we have policy direction to guide us at the regional level (policy 6.3.5 CRPS) and a decision from the Independent Hearing Panel (*IHP*) deciding the operative Christchurch District Plan as to the interpretation of the policies and the need to evaluate the evidence to decide whether to avoid or restrict activities to give proper effect to policy 6.3.5 and related objectives and policies.
- 6 The outcome in the IHP process was more enabling of intensification than the version of the district plan existing at the date of the CRPS policy 6.3.5 and was not the relief that CIAL sought.
- 7 Having had the bounds of the level of intensification that ought to be allowed under the exception in policy 6.3.5 tested by that plan review process, CIAL's position is that there is no new evidence that would justify further enablement as:

- 7.1 the evidence is that effects on community health and amenity and the risk of reverse sensitivity effects on airports are likely increasing;
- 7.2 we are not at a point in Christchurch City where any sort of compromise in terms of risk is justified from an economics / housing capacity perspective.
- 8 Kāinga Ora asserts that the effect of imposing land use controls has the effect of transferring the economic cost of Christchurch Airport operations onto relevant landowners.<sup>1</sup> Mr Osborne for the Council and Ms Hampson do not agree.
- 9 Ms Hayman’s evidence explains all of the work that CIAL does to manage the impact of its operations on the community. CIAL does all that it can but must stop at the point where to continue to do so would mean safe and efficient operations are compromised. The suggestion that CIAL ought to internalise its adverse environmental effects is an example of reverse sensitivity at work.<sup>2</sup>

**The Airport Noise QM is spatially defined by the Remodelled OE Contour**

***The assertion that the Remodelled Contours have “no statutory weight”***

- 10 ECan is correct that the “...remodelled contours represent the most up-to-date technical information of the geographical extent of projected aircraft noise exposure within the Greater Christchurch”.<sup>3</sup>
- 11 The remodelled contours were peer reviewed by ECan’s independent review panel who considers both the Remodelled (annual average and outer envelope (OE)) contours are accurate.
- 12 It is also important to understand that the Remodelled OE Contour represents the busiest three months which, for Christchurch City, is particularly important as it relates to the cross-wind runway which is used significantly more often in the Spring/Summer months. It is consistent with how the operative contour is modelled over Christchurch City and is the averaging period provided for in NZS:6805. That is why CIAL seeks that the Airport Noise QM applies to the Remodelled OE Contour.
- 13 It is unclear why ECan asserts that the remodelled contours “*have no statutory weight and are technical information only*”.<sup>4</sup> Decision

<sup>1</sup> *Legal submissions for Kāinga Ora – Homes and Communities*, dated 16 April 2024 at [3.1].

<sup>2</sup> at [3.2].

<sup>3</sup> *Legal submissions for the Canterbury Regional Council in Relation to Qualifying Matters (various)*, dated 17 April 2024 at [54].

<sup>4</sup> at [54].

makers must consider whether a qualifying matter applies under section 77 of the Amendment Act by reference to not only policy but also the evidence it receives. The remodelled contours, which ECan has produced itself through its peer review process, are highly relevant information informing the package of evidence as to where adverse effects as a result of exposure to aircraft noise will be felt. There is no legal basis on which the Panel can disregard highly relevant and up to date evidence simply because of a future and different impending plan review process which goes considerably beyond deciding whether a qualifying matter should apply to only part of the region and only part of Christchurch at the present time.

- 14 We refer to the legal advice from Buddle Findlay in relation to the Waimakariri District Plan review and Variation process.<sup>5</sup> In summary CIAL's position is consistent with Buddle Findlay's:
- 14.1 A local authority must make decisions on the provisions and matters raised in submissions and any submitter may speak and call evidence in support of its submission. A local authority is expected to consider argument and evidence presented, and to weigh the matters raised accordingly. It must give reasons for rejecting submissions.
- 14.2 Airport noise contour issues are addressed at a regional and district level and there is no statutory restriction preventing submissions being lodged in relation to one planning document (i.e. PC14) if the same subject matter could also be considered later in relation to the other (i.e. the CRPS).
- 14.3 In short, CIAL's submission seeking that the Remodelled OE Contour form the basis for the Airport Noise QM in PC14 must be evaluated on its merits the same way as any other submission supported with evidence.

***We do not have to wait for the CRPS review***

- 15 Clearly this is not the CRPS review. The purpose of this hearing is to determine the extent of a qualifying matter and this only relates to some areas of the Christchurch District.
- 16 CIAL is not asking for engagement on the appropriate contour and its use in land use planning for Canterbury across the whole region or even outside existing residential areas (noting that for Christchurch as a whole there are now areas not impacted by Remodelled OE that fell within the operative contour). The only exception for this is in relation to the decision that the Panel is being

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<sup>5</sup> Waimakariri District Plan review - *Stream 10A Buddle Findlay legal advice*, dated 14 February 2024 at [17] – [23].

asked to make in respect of the Miles and Equus sites which are not existing residential zones.

- 17 There is no issue of predetermination ahead of the CRPS review. It is important to distinguish between:

17.1 The existing policy position which refers to land use controls at 50dB Ldn; and

17.2 The evidence about where 50dB Ldn is expected to be experienced.

The latter has been updated, but the former has not. It is the same policy that the IHP had to consider for the replacement district plan.

- 18 Each of the three district plans will need to be amended regardless of the outcome of the CRPS review. What is very clear on everyone's view of the world (and particularly ECan's as the peer reviewer) is that the existing operative contour 2008 is wrong insofar as it implies airport noise effects will be experienced. The district plans will all need to be amended to give effect to the CRPS. Providing for a qualifying matter in the meantime on the basis of the Remodelled OE Contour doesn't change that.

- 19 Counsel is not clear what is meant by ECan's submission at paragraph 60. It is agreed that, should a smaller noise contour be established through the CRPS review, the Airport Noise QM would not necessarily need to be amended to give effect to the new CRPS. On the flip side however, if the spatial extent of the Airport Noise QM is limited to the operative 50dB Ldn contour and the CRPS review then establishes that a bigger contour is appropriate, the district plan will then also be inconsistent with the regional planning framework.

- 20 In relation to ECan's submission that it would be inappropriate to apply the remodelled contours in Christchurch City when the operative 50dB Ldn contour applies in Waimakariri in Selwyn:

20.1 The Remodelled OE Contour is not relevant in Selwyn – it had not been prepared when the Proposed Plan and Variation 1 submissions were lodged, but in any event it would not have reached any relevant residential zones (i.e. Rolleston). In the interim the position is preserved as land under the remodelled contours is rurally zoned.

20.2 The only exception to this is a site which was zoned rural and is partly within the Operative 50dB Ldn contour. This land has been through PC71, a Proposed Plan rezoning and Variation 1 and has parallels with the Miles and Equus land as the various decision makers have not rezoned that part within that

contour because of the policy 6.3.5 in the CRPS despite the NPS-UD. The remodelled contours were available just before the Variation 1 hearing and the Panel observed that if the remodelled contours did impinge on the land " then it would clearly be an appropriate qualifying matter under RMA s77L(e)" but they declined to recommend use of the remodelled contours as there was no Council s32 assessment.

- 20.3 The Waimakariri District Plan review and Variation is subject to the same timing issue as PC14. CIAL's approach in Waimakariri is the same as PC14 – that is presenting the best available technical evidence. Decisions have not yet been made by the Panel who is still involved in hearings. The Waimakariri situation is slightly different to Christchurch as it primarily involves around the interpretation of the specific Kaiapoi exception.
- 21 ECan also points to the Greater Christchurch Spatial Plan and says that it supports its position that the operative 50dB Ldn noise contour that is shown in Map A remains the most appropriate for the purposes of planning. However, the Spatial Plan is a high-level document and does not engage with the practical problem associated with PC14 (i.e. rules that enable intensification of noise sensitive activities). It also does not review the evidence of where noise effects will be experienced. All that the Spatial Plan tell us is that there will be a review of the CRPS.
- 22 Finally, the natural justice issue raised by Kāinga Ora is incorrect. Just like any other RMA process, CIAL's submission and further submissions included the remodelled contours. Submitters were not precluded from opposing CIAL's relief nor from taking part in this hearing.
- CIAL's relief is not inconsistent with the CRPS***
- 23 Kāinga Ora consider that "any reliance on an "updated" contour will necessarily amount to a failure to give effect to the 50dB contour contained in the CRPS."
- 24 We refer to Mr Millar's evidence which explains why the relevant CRPS direction is not tied to the contour depicted on Map A of the CRPS. The district plan must give effect to the CRPS read as a whole and not a line on a map.
- 25 In any event ,at a practical level the Remodelled OE is outside the Map A contour and so restricting intensification within it also avoids noise sensitive activities within the Map A area.
- The Remodelled Annual Average Contour is not supported***
- 26 Professor Clarke for Miles Premises considers that the Remodelled Annual Average 55dB Ldn contour is to be preferred. He criticises

CIAL's modelling as taking unreasonable worst-case assumptions that will not eventuate in practice. Regardless, Mr Hawken, Ms Smith and Mr Day's evidence justifies the technical basis for those inputs and assumptions. For example, as will be explained by Mr Day, it is incorrect to suggest that there will be improvement in aircraft noise over the next 60 years on the basis of quieter fleet.

**Pre-PC14 state for residential intensification is the appropriate planning response**

- 27 Interpretation of the CRPS which includes Policy 6.3.5(4) is obviously a key issue for the Panel. ECan considers that the phrase "existing residentially zoned urban area" does not go so far as to freeze in time the intensification that was allowed in those zoned areas as at 6 December 2013.
- 28 CIAL agrees. It attempted to argue before the IHP for the replacement district plan that intensification was required to be interpreted as relating to residential rules as they existed at 6 December 2013 and that argument was rejected. The IHP allowed intensification well beyond the levels CIAL sought in its submission. CIAL's position now is that the IHP decision took permitted and controlled intensification to the appropriate limits in light of the policy direction and the evidence and that nothing in this hearing justifies a different approach.
- 29 Kāinga Ora is critical of Council and CIAL witnesses as to whether the provisions relating to the Airport Noise QM are only those necessary to accommodate the QM. By way of response:
- 29.1 We reiterate that the Airport Noise QM relates to reverse sensitivity and community health and amenity.
- 29.2 The limits of intensification required to address the effects have already been tested and decided most recently in 2015. The existing provisions relating to the Airport Noise QM (i.e. status quo) are still necessary to ensure the safe and efficient operation of Christchurch Airport and to protect the health wellbeing and amenity of Christchurch residents.
- 29.3 Insulation does not resolve all of the issues associated with aircraft noise:
- (a) NZS:6805 supports the use of density controls, including those that apply in relevant residential zones within the Airport Noise QM area.
- (b) International standards recognise density controls as an appropriate tool.

- (c) Case law in the Christchurch-specific context has confirmed that density controls are important.

**NPS UD considerations**

- 30 The Miles and Equus submissions seek rezoning of land that is not a relevant residential zone. They cannot rely on the “existing residential zone” exception to the 6.3.5 avoid policy.
- 31 Miles Premises assert that their relief better enables housing capacity and gives effect to the NPS UD. However, as outlined in our legal submissions, the NPS UD require that planning decisions contribute to well-functioning urban environments. It cannot be that a well-functioning environment creates health and amenity effects on its residents and reverse sensitivity effects on strategic infrastructure that serves it.
- 32 Ms Aston refers to the planning history of the Miles site under previous processes. There have been a number of unsuccessful attempts to have the land rezoned for residential purposes (the then owners participated in a number of previous cases including Robinsons Bay Trust and National Investment Trust).
- 33 As the CRPS and district plan tell us, avoiding noise sensitive activities is a matter required for the purpose of ensuring the safe or efficient operation of Christchurch Airport as nationally significant infrastructure. We would add that it is also required in order to protect the health and amenity of the community (i.e. it could be considered in the “any other matter” category). The NPS UD therefore requires councils to account for the requirement to avoid development of new noise sensitive activities within the contour when implementing the NPS UD and identifying areas for urban development.<sup>6</sup>
- 34 Policy 8 requires councils to “be responsive” to plan changes for unanticipated or out of sequence development that will provide significant development capacity and contribute to well-functioning urban environments. Policy 8 does not require councils to grant a plan change but does provide an avenue for plan changes which are out of sequence or unanticipated to be granted if they meet the requisite criteria. Councils are not able to dismiss such plan changes purely because they propose out of sequence or unplanned development.

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<sup>6</sup> See clauses 3.31 and 3.33. If the territorial authority considers that it is necessary to modify the building height or densities in order to provide for a qualifying matter (as permitted under Policy 4), it must identify where the qualifying matter applies and specify the alternate building heights and densities proposed for those areas. If a qualifying matter applies, the s32 report prepared in relation to the amendments to a plan must assess the importance of the qualifying matter and impact that limiting development capacity, building height, or density would have on the provision of development capacity.



- 35 Policy 8 must also, however, as a matter of interpretation, be read in the context of the other policies in the NPS UD (such as policy 4 and the requirement to accommodate qualifying matters).
- 36 Miles argue that “more weight” should be given to the NPS-UD than the CRPS.
- 37 While the NPS UD was prepared later in time, it does not trump all other planning documents. The policies of the NPS UD, including the responsiveness provisions can, and must, be read *together* with the CRPS policies. It is a well-established principle of statutory interpretation that where there is any apparent inconsistency or tension between or within statutory instruments, the approach is to read both together and prefer an interpretation which reconciles any apparent inconsistency, allowing the two to stand together.<sup>7</sup>
- 38 When considering the submission to rezone a particular area of land, a territorial authority is required to ensure it will give effect to both the NPSUD and the CRPS.<sup>8</sup> Policy 6.3.5(4) CRPS is plainly highly relevant to land falling within the 50dB Ldn noise contour.
- 39 As noted above, CIAL submits that a plan change which proposed urban development or intensification in an area within the 50dB Ldn noise contour would not contribute to a well-functioning urban environment.
- 40 This is the same conclusion reached by three different decision makers on the PC71 land in Selwyn District.
- 41 Lastly we acknowledge that there is a Waikanae scope consideration relating to CIAL’s relief for relevant residential zones between the operative 50dB Ldn contour and the Remodelled OE Contour which Ms Oliver touches on in her evidence. This is confined to the notification requirement that is sought to be added to the restricted discretionary status and depends on whether the Panel decides the qualifying matter is existing or new. If required this can be addressed this in our overall scope memorandum that is due to be filed by 30 April 2024.

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<sup>7</sup> *Burrows and Carter Statute Law in New Zealand* (6ed 2021), online edition, chapter 14.

<sup>8</sup> Resource Management Act 1991, s75.