

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

MEMORANDUM OF COUNSEL FOR CHRISTCHURCH CITY COUNCIL

4 August 2023

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:

Introduction

1. At the pre-hearing meeting on 1 August 2023, the Panel sought clarification from Christchurch City Council (the **Council**) in relation to the 'airport noise influence area' qualifying matter (**Airport Noise QM**) provided for in Plan Change 14 (**PC14**).
2. That clarification was sought in the context of two submitters, Kāinga Ora (submitter #834) and Summerset Group (submitter #433), signalling that legal issues may require early determination by the Panel in respect of the Airport Noise QM.¹
3. Further relevant context is that noise associated with Christchurch Airport has recently been remodelled to inform Environment Canterbury's review of the Canterbury Regional Policy Statement (**CRPS**), which is expected to be notified in December 2024. In the meantime, that technical modelling information has informed the development of PC14.
4. Specifically, the Panel asked:
 - (a) whether the Airport Noise QM has been identified as an "*existing qualifying matter*", and therefore assessed under section 77K of the Resource Management Act 1991 (**RMA**), or a new qualifying matter assessed under section 77J; and
 - (b) whether, absent PC14, a plan change would be required to change the airport noise contours shown in the maps that form part of the operative Christchurch District Plan.
5. These questions are addressed briefly in turn below.

Existing or new qualifying matter?

6. By way of background, the Airport Noise QM seeks to limit intensification in areas subject to levels of aircraft noise of 50dB Ldn or greater, in order to manage noise-sensitive activities and protect the long-term operation of Christchurch Airport, a nationally important infrastructure asset.

¹ The relevant memoranda of counsel for the submitters (respectively) are dated 28 July 2023.

7. The Airport Noise QM is thus *"a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure"*, in terms of section 77I(e) of the RMA.²
8. The Airport Noise QM has been evaluated in the section 32 report (including the relevant appendices) as an *"existing qualifying matter"*. That term is defined in section 77K(3) of the RMA as *"a qualifying matter referred to in section 77I(a) to (i) that is operative in the relevant district plan when the IPI is notified"*.
9. As with a number of the intensification-related provisions in the RMA, the meaning of section 77K(3) is not entirely clear and its words are capable of supporting more than one reasonable interpretation. *"Qualifying matter"* is defined in section 2 of the RMA to mean *"a matter referred to in section 77I or 77O"*. As noted above, section 77I(e) is *"a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure"*.
10. On one interpretation, protecting the long-term operation of Christchurch Airport by managing noise-sensitive activities in areas where aircraft noise is at and above 50dB Ldn is indeed a qualifying matter that is *"operative"* in the Christchurch District Plan (**Operative Plan**). That is because the Operative Plan contains a regime for managing land uses in areas that experience levels of aircraft noise of 50dB Ldn, as mandated in the Canterbury Regional Policy Statement, in order to protect Christchurch Airport. The airport itself is, of course, situated on land designated for that purpose in the Operative Plan.
11. That said, the area to which the Airport Noise QM is proposed to apply does not match exactly the area mapped in the Operative Plan and described as the *"50dB Ldn Air Noise Contour"*. PC14 (as notified) proposes that the Airport Noise QM apply over a larger area of land, within a recently reevaluated 'Annual Average 50dB Ldn contour'. Christchurch International Airport Limited (submitter #852, **CIAL**) seeks that the Airport Noise QM apply over a different (and larger) area again, referred to as the '2023 Outer Envelope 50dB Ldn contour'.

² Counsel note the suggestion, at paragraph 6 of the memorandum of counsel for Kāinga Ora dated 28 July 2023, that section 77L may apply to the Airport Noise QM. The Council considers that this is not the case, because section 77I(e) applies (rather than section 77I(j)), which applies to *"any other matter that makes higher density (...)* inappropriate".

12. As such, to the Panel's question, it could be argued that part of the Airport Noise QM is a "*new qualifying matter*", to the extent that it applies to land that is not within the "*50dB Ldn Air Noise Contour*" mapped in the Operative Plan.
13. In case that is the Panel's interpretation, it is open to the Council and submitters to adduce evidence in respect of the Airport Noise QM that is sufficient to meet all potentially relevant statutory tests, including sections 77K, 77J, and 32AA of the RMA.

Is a plan change required to alter the air noise contours in the Operative Plan?

14. As an initial point, PC14 does not seek to change the area mapped in the Operative Plan as relating to the "*50dB Ldn Air Noise Contour*", or the applicable controls.
15. Rather, the Airport Noise QM is directed at restricting the intensification otherwise enabled through PC14, in respect of the introduction of Medium Density Residential Standards and the intensification mandated by Policy 3 of the National Policy Statement on Urban Development 2020. It primarily does so by retaining existing, lower density zoning – such as Residential Suburban – within the spatial extent of the Airport Noise QM area, rather than rezoning that land as Medium Density Residential or High Density Residential.
16. As noted above, the spatial extent of the Airport Noise QM area reflected in PC14 (as notified) has been identified using the updated 'Annual Average 50dB Ldn contour'. That spatial extent differs somewhat from the area delimited by the "*50dB Ldn Air Noise Contour*" in the Operative Plan.
17. As noted in the section 32 evaluation:

"The 50dBA Annual Average Contour has therefore been applied to define the spatial extent of what is proposed as a qualifying matter titled the "Airport Noise Influence Area" where the lesser enablement from MDRS and Policy 3 is to apply. However, it is arguable as to the extent of scope to remove or change the operative 50dBA contour through PC14, as it relates to other provisions within the Plan that are not directly addressed through PC14. As such, the Council intends to progress a separate plan change in future to resolve differences between the currently operative 50dBA contour and that introduced as a qualifying matter through PC14."

18. As such, a plan change will indeed be required to change the "50dB Ldn Air Noise Contour" in the Operative Plan, likely informed by the outcome of the CRPS process.

Conclusion

19. Counsel trust that these explanations assist the Panel and submitters.
20. The Council's position remains that no preliminary issue requires determination in respect of the Airport Noise QM (or otherwise). In short, that is because:
- (a) the query initiated by Kāinga Ora regarding whether it is an existing or new qualifying matter comes down to a question of evidence, which can be evaluated by the Panel in due course; and
 - (b) while Summerset Group asserts that the relief sought by CIAL is outside scope, the Council considers that:
 - (i) CIAL's submission clearly falls within the ambit of PC14 by addressing the extent to which that instrument changes the pre-existing *status quo*, because CIAL effectively seeks no change to the *status quo* (ie by extending the Airport Noise QM to retain *status quo* development rights within the '2023 Outer Envelope 50dB Ldn contour');
 - (ii) no issue arises as to public participation, in terms of the second limb of the orthodox scope test; and
 - (iii) in any event, issues of scope should not be the subject of preliminary determinations by the Panel, for the reasons given in counsel's memorandum dated 28 July 2023.

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