

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

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

UNDER the Resource Management Act 1991 (RMA)
IN THE MATTER of the hearing of submissions on Plan Change 14
(Housing and Business Choice) to the Christchurch
District Plan

AND

IN THE MATTER of Canterbury Regional Council (submitter 689)

**LEGAL SUBMISSIONS FOR CANTERBURY REGIONAL COUNCIL IN
RELATION TO QUALIFYING MATTERS (VARIOUS)**

HEARING WEEK 10

17 April 2024

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MAY IT PLEASE THE PANEL

Introduction

- 1 These legal submissions are filed on behalf of the Canterbury Regional Council (**Regional Council** or **CRC**) on proposed Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan (**PC14**).
- 2 The Regional Council lodged a submission on PC14 (#689), together with further submissions (#2034). CRC generally supports PC14 and seeks some amendments. The amendments sought primarily relate to the application of qualifying matters to Medium Density Residential Standards (**MDRS**) within relevant residential zones.
- 3 These legal submissions address:
 - (a) The key parts of the legal framework for an intensification planning instrument (**IPI**) as it relates to amendments sought by the Regional Council;
 - (b) A new Port Hills stormwater constraints qualifying matter (**QM**);
 - (c) A new Halswell/Huritini river catchment QM;
 - (d) The low public transport accessibility area (**LPTAA**) QM;
 - (e) The Christchurch International Airport Noise Influence Area QM (**Airport Noise QM**), in particular:
 - (i) Whether the contour used for the QM should be the 50 dBA Ldn airport noise contour shown on Map A in Chapter 6 of the Canterbury Regional Policy Statement (**CRPS**); and
 - (ii) Whether the airport noise QM is a new or existing QM.

Legal framework

- 4 The legal framework for an IPI has been well traversed by other counsel and through questions by the Hearing Panel. I do not propose to repeat this. Rather, I address some key aspects in the context of the new QMs sought by the Regional Council below.

New Port Hills stormwater constraints QM

- 5 The Regional Council's original submission raised concerns about intensification on the Port Hills, because of lack of stormwater

attenuation capacity and sediment loss into the City's waterways. Ms Newlands has addressed these issues in her evidence.

Stormwater quality

- 6 The intensification of housing enabled by PC14 will increase the disturbance of fine highly erodible and dispersive (loess) soils present in the Port Hills residential suburbs during site preparation works and building construction.¹ The sediment laden construction phase stormwater generated from this disturbance is difficult to control on steep hill sites.²
- 7 The intensification of housing enabled by PC14 will increase the quantity of stormwater discharged (either controlled or uncontrolled) to highly erodible hill land after construction has finished, as it not always possible to capture all stormwater generated within a site and direct it to the stormwater network, where that network can carry the stormwater to the base of the hill to discharge into a receiving waterway.³
- 8 The increase in the discharge of sediment laden stormwater both during and after construction is likely to result in an increase in sedimentation in receiving waterways. This will contribute to an ecological decline of natural waterways and coastal estuary systems.⁴ Ms Newlands has also addressed the practical constraints on stormwater quality management on the Port Hills.
- 9 The infrastructure experts reached an agreed position at conferencing regarding stormwater water quality (sediment).⁵ The experts agreed that there are difficulties with mitigation of sediment discharge both during and after construction. The agreed position of the experts is set out in **Appendix 1**. The experts agreed that most existing CCC stormwater facilities are upstream of much of the residential Port Hills areas and therefore there is limited opportunity for mitigation of these

¹ Statement of Evidence of Jessica Newlands on behalf of Canterbury Regional Council, Stormwater (Port Hills) dated 20 September 2023 at [15].

² Statement of Evidence of Jessica Newlands on behalf of Canterbury Regional Council, Stormwater (Port Hills) dated 20 September 2023 at [15].

³ Statement of Evidence of Jessica Newlands on behalf of Canterbury Regional Council, Stormwater (Port Hills) dated 20 September 2023 at [15].

⁴ Statement of Evidence of Jessica Newlands on behalf of Canterbury Regional Council, Stormwater (Port Hills) dated 20 September 2023 at [16].

⁵ Joint Statement of Infrastructure Experts dated 27 September 2023, p 4-6.

effects (volume and quality) in an integrated manner.⁶ They also agreed that CCC compliance with the Comprehensive Stormwater Network Discharge Consent (**CSNDC**) is likely to be negatively affected due to increase in discharges and quality of discharges.⁷

Stormwater quantity

- 10 The intensification of housing enabled by PC14 will increase the imperviousness of residential land on the Port Hills, which will in turn generate higher stormwater flows and increased stormwater volumes.⁸ As set out in Ms Newlands' evidence, an increase in stormwater quantity can be partially mitigated by onsite storage. However, there are physical and topographical limitations as to the range of storm events that can be effectively captured and mitigated. These systems also require ongoing maintenance.
- 11 These higher stormwater flows, and increased volumes, will exacerbate localised nuisance flooding and contribute to flood hazards in the Opawaho/Heathcote River corridor. As set out in Ms Newlands' evidence, and acknowledged by the infrastructure experts, this may compromise the ability of the CCC to meet its obligations under the CSNDC.
- 12 The infrastructure experts reached an agreed position at conferencing regarding on-site stormwater mitigation and the challenges associated with this. The agreed position of the experts is set out in **Appendix 1**.

Level of development enabled by the MDRS inappropriate in Port Hills Residential Hill Zoned suburbs (s 77I)

- 13 The Regional Council's position is that the following characteristics make the level of development enabled by the MDRS in the Port Hills inappropriate⁹:
- (a) The highly erodible and dispersive (loess) soils present;
 - (b) The sloped nature of the Residential Hills Zoned land;

⁶ Joint Statement of Infrastructure Experts dated 27 September 2023, p 6.

⁷ Joint Statement of Infrastructure Experts dated 27 September 2023, p 6.

⁸ Statement of Evidence of Jessica Newlands on behalf of Canterbury Regional Council, Stormwater (Port Hills) dated 20 September 2023 at [11].

⁹ RMA, s 77L(a).

- (c) The physical and topographical limitations as to the range of storm events that can be effectively captured and managed, especially for onsite stormwater management;
 - (d) The suburbs proposed for intensification are primarily located downstream of CCC owned stormwater management facilities.
- 14 The expert planners all agreed that there is an issue regarding loess soils and associated sedimentation/erosion.¹⁰ The outstanding question was the appropriate means to respond to the issue.¹¹ Ms Aston and Ms Jackson noted the need to distinguish between greenfield development and intensification. The planning response to this issue is still the subject of expert conferencing of the planning witnesses. I understand that further conferencing is taking place on Friday, 19 April 2024. Ms Buddle can speak to the outcome of that conferencing at the hearing on Wednesday, 24 April 2024.

'Other' QM under section 771(j)

- 15 The Regional Council's position is that the Port Hills stormwater constraints be included as an 'other' QM under section 771(j).
- 16 It is submitted that the relevant tests for this QM can be met. I refer to 'can' rather than 'have' in this context, acknowledging that at the time of preparing these submissions the planning response to this issue had not yet been confirmed through expert conferencing and therefore the requisite section 32AA analysis of the outcome of that conferencing has not been able to be undertaken.
- 17 Ms Buddle's evidence sets out why this characteristic makes this level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD.¹² The area where these characteristics apply can be easily identified and mapped using:
- (a) The Residential Hills Zone (**RHZ**) boundary, which is based on slope;

¹⁰ Joint Statement of Planning Experts on Port Hills Stormwater Qualifying Matter dated 11 December 2023, p6.

¹¹ Joint Statement of Planning Experts on Port Hills Stormwater Qualifying Matter dated 11 December 2023.

¹² RMA, s 77L(b).

(b) The map included in Attachment A of Mr Kleynbos' rebuttal evidence, showing areas where loess soils are located.¹³

18 These characteristics can be evaluated on a site-specific basis to determine the geographic area where intensification needs to be compatible with this specific matter.¹⁴ The site-specific analysis required for an 'other' QM under section 77L(c) relates to the specific characteristic identified. The specific characteristic identified will determine the scale at which the site-specific analysis is required to be undertaken. For example, where a specific characteristic that makes a level of development inappropriate is identified as applying across an area, the analysis can be undertaken on broader scale than a characteristic that may be property specific. In my submission, the purpose of the analysis is to avoid a blanket approach without consideration of where the specific characteristic applies such that any restriction on development is only to the extent necessary.

19 Ms Buddle's evidence also addresses the necessary requirements under section 77J of the RMA in respect of the section 32 evaluation.¹⁵ This evaluation would be revisited following the outcome of the planners expert conferencing as part of a section 32AA evaluation.

QM as a matter required in order to give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM)

20 The Regional Council has considered whether the Port Hills stormwater constraints could be addressed through a QM under section 77I as a matter required in order to give effect to the NPS-FM. This was also considered by the expert planners in conferencing.¹⁶

21 The Regional Council considers that its inclusion as a QM would give effect to the NPS-FM (which PC14 as an instrument is still required to do). Examples of relevant policies are included in **Appendix 2**.

¹³ Statement of Rebuttal Evidence of Ike Kleynbos on behalf of Christchurch City Council, Residential Chapter, Low public transport accessibility qualifying matter, Riccarton bush interface area qualifying matter, dated 16 October 2023.

¹⁴ RMA, s 77L(c)(ii).

¹⁵ Statement of Evidence of Meg Buddle on behalf of the Canterbury Regional Council dated 20 September 2023, Table 2.

¹⁶ Joint Statement of Planning Experts on Port Hills Stormwater Qualifying Matter dated 11 December 2023, p5.

- 22 The NPS-FM does anticipate that district plans give effect to the NPS-FM as well as regional plans.
- 23 However, it is not clear whether the inclusion of the QM is 'required' to give effect to the NPS-FM. This is because the long-term visions and environmental outcomes for the FMU have not yet been identified or the limits required to be met to achieve those environmental outcomes. Therefore, it is not yet known what is required for these to be met.
- 24 As set out above, the Regional Council's position is that the QM can be included as an 'other' QM under section 77I(j) and therefore further consideration of an NPS-FM QM is not required.

Related provision under section 80E(2)

- 25 The expert planners also explored the use of section 80E to include related provisions to address the Port Hills stormwater constraints issues.
- 26 Related provisions may be included in PC14 if they support or are consequential on the MDRS or policies 3 and 4 of the NPS-UD. Counsel agrees with legal submissions for Counsel for the CCC that a provision would:¹⁷
- (a) "support" if it assists or enables the MDRS to be incorporated, or assists or enables policies 3 or 4 to be given effect to; and
 - (b) be "consequential on" if it follows or is required because of the Council's obligation to incorporate the MDR and give effect to policy 3.
- 27 Section 80E(1)(b)(iii) does not confer an ability to introduce a QM. Rather, it enables the inclusion of provisions that are necessary due to the application of a QM.
- 28 The Environment Court decision of *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga*¹⁸, which considered the application of section 80E(1)(b), has been addressed in depth by other counsel. In my submission, provisions may only be included to constrain

¹⁷ Opening Legal Submissions for Christchurch City Council, Strategic Overview Hearing dated 3 October 2023 at [2.54].

¹⁸ *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056.

existing development rights (i.e. change the status quo) where those amendments are required as a result of the intensification being enabled. Amendments cannot be made to further restrict existing development rights where no intensification is being enabled.

New Halswell/Huritini river catchment QM

29 In its original submission the Regional Council raised concerns about the intensification in the Halswell catchment residential areas because of downstream flooding impacts.

Level of development enabled by the MDRS inappropriate in Halswell/Huritini catchment (s 77I)

30 Mr Surman has addressed the particular sensitivities of the Halswell/Huritini catchment and the difficulties of these effects being effectively mitigated.

31 The Halswell/Huritini catchment is very sensitive to additional flow, including both peak flows in the catchment and the overall volume of discharge over a longer period of time.¹⁹ The areas most sensitive to an increased volume of runoff and groundwater flow are within the Selwyn District and are therefore in areas where CCC development contributions cannot be applied.

32 The particular vulnerability of this catchment is recognised in the Canterbury Land and Water Regional Plan (**CLWRP**). The Christchurch District Plan (including PC14) must not be inconsistent with the objectives, policies and method included in the CLWRP to achieve integrated management of the natural and physical resources of the region.²⁰

33 Stormwater discharges in the Christchurch City areas of the Halswell/Huritini catchment are primarily managed under the CSNDC. The conditions of the CSNDC limit peak flood levels but do not limit the volume of discharge. A volume limit was expected to be set through the Huritini-Halswell Stormwater Management Plan (**SMP**). The SMP has not yet been certified and there is currently no volume limit in place. Mr

¹⁹ Statement of Evidence of Matthew Surman on behalf of the Canterbury Regional Council, Planning, dated 20 September 2023 at [10] and [12].

²⁰ RMA, s75(4)(b).

Surman will also address the Panel regarding the existence of a volume limit in the most recent draft SMP.

- 34 Mr Surman considers that without mitigation, the additional runoff and/or groundwater flow caused by the proposed intensification under PC14 would likely increase both:
- (a) The peak flows, which would marginally increase the area subject to flooding and its depth.
 - (b) The overall volume, further prolonging drainage times in areas of the lower Halswell/Huritini catchment. This will have a cumulative effect when added to the existing approved increases (current residential zoning and the consented Central Plains Water Enhancement Scheme).
- 35 Mr Surman acknowledges that increase to peak levels can generally be avoided by adding to stormwater attenuation or discharging stormwater to ground (similar to other parts of the City).²¹ However, the mitigation for “volume” effects such as prolonged drainage times and increased groundwater flow is more difficult in such a flat catchment.²² Even with good attenuation of peak flows, there is still a practically unavoidable increase in the total volume of surface and groundwater flow in a catchment following a rainfall event.²³
- 36 Halswell stormwater was addressed in expert conferencing of the infrastructure experts.²⁴ An agreed position was reached regarding the sensitivity of the Halswell catchment, available mitigation and adverse effects resulting from intensification in Halswell. The relevant extract from the Joint Witness Statement is set out in **Appendix 3** of these submissions.
- 37 Mr Norton however, identified that the effects are not dissimilar to other areas within the city (e.g.; low lying rural land in Lower Styx basin and

²¹ Statement of Evidence of Matthew Surman on behalf of the Canterbury Regional Council, Planning, dated 20 September 2023 at [16].

²² Statement of Evidence of Matthew Surman on behalf of the Canterbury Regional Council, Planning, dated 20 September 2023 at [17].

²³ Statement of Evidence of Matthew Surman on behalf of the Canterbury Regional Council, Planning, dated 20 September 2023 at [17].

²⁴ Joint Statement of Infrastructure Experts dated 27 September 2023, p 6.

Marshlands). He considered that the significance of this in Halswell will have to be considered holistically.

- 38 Mr Norton has also addressed this matter in his subsequent rebuttal evidence.²⁵ He concludes that other than his disagreement with the meaning of the term 'hydraulic neutrality', he either agrees with or is not in a position to dispute any portion of Mr Surman's evidence.²⁶ However, he does not consider that PC14-enabled development within Christchurch City will have a disproportionate effect on the Halswell/Huritini catchment over other river catchments.²⁷ It is on that basis, that recommends that the relief sought by the Regional Council on this matter be rejected.²⁸ In my submission, whether there is a disproportionate effect, is not the appropriate test for the inclusion of QM. This is addressed further below.

'Other' QM under section 771(j)

- 39 In response to the issues identified with intensification in the Halswell catchment, Ms Buddle proposed that the Suburban Density Precinct be extended to cover all relevant residentially zoned land in the Upper Halswell Catchment that is subject to PC14. Figures 2 and 3 in Appendix 1 of Ms Buddle's evidence show residential areas in the Upper Halswell Catchment.
- 40 The effect of this change is to make residential medium density development within these areas a restricted discretionary activity, and subject to the Density Precinct provisions, which reference water supply, wastewater and stormwater discharge serviceability. This extension of the Suburban Density Precinct to address flooding issues associated with intensification enabled by the MDRS would fall to be considered as an 'other' QM under section 771(j).

²⁵ Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and Flooding dated 9 October 2023.

²⁶ Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and Flooding dated 9 October 2023 at [25].

²⁷ Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and Flooding dated 9 October 2023 at [25]. Mr Norton identifies those catchments at paragraph 15 of his evidence as 'low-lying rural land in both the Avon/Ōtākaro and Styx/Pūharakekenui River catchments (notably parts of Marshlands – approximately 47ha, Ouruhia – approximately 90ha and Spencerville/Brooklands – approximately 110ha).

²⁸ Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and Flooding dated 9 October 2023 at [25].

- 41 Ms Buddle is considering a further option whereby an increase in density may be enabled in circumstances where impervious surfaces are kept at an appropriate level. Ms Buddle will address this in her summary statement and at the hearing.
- 42 Ms Buddle has also recommended amendments to the relevant matters of discretion for development in Density Precincts to make it more clear that stormwater discharge issues should be considered during the resource consent process.²⁹ If the Hearing Panel does not accept the inclusion of a specific QM for the Halswell catchment, the Regional Council still seeks these amendments to the matters of discretion in so far as they apply within the existing Density Precincts and the LPTAA.
- 43 The specific characteristics that make the density enabled by the MDRS inappropriate for the relevant residentially zoned land in the Upper Halswell Catchment are the physical characteristics and vulnerability of the Halswell/Huritini Catchment to changes in volume including:
- (i) The very low gradient of the Halswell/Huritini River and drainage system; and
 - (ii) The existence of low-lying basins in the catchment.
- 44 As Mr Norton has acknowledged, there is very little that can be done to reduce the total volume of stormwater generated by development.³⁰
- 45 Mr Norton's basis for recommending that the relief sought by the Regional Council be rejected is that the PC14-enabled development within Christchurch City will not have a disproportionate effect on the Halswell/Huritini catchment over other river catchments.³¹ Although he does acknowledge that the scale of land (gross area and/or number of

²⁹ Statement of Evidence of Meg Buddle on behalf of the Canterbury Regional Council, Planning, dated 20 September 2023, Appendix 1.

³⁰ Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and flooding, dated 9 October 2023.

³¹ Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and Flooding dated 9 October 2023 at [25]. Mr Norton identifies those catchments at paragraph 15 of his evidence as 'low-lying rural land in both the Avon/Ōtākaro and Styx/Pūharakekenui River catchments (notably parts of Marshlands – approximately 47ha, Ouruhia – approximately 90ha and Spencerville/Brooklands – approximately 110ha).

property owners) affected may be larger in the Halswell/Huruiti than other river catchments.³²

- 46 In my submission this is not the appropriate test for inclusion of a qualifying matter. What is relevant for a qualifying matter under section 77L(j) is whether there is a specific characteristic that makes the level of development provided by the MDRS inappropriate in the area.
- 47 PC14 may only be less enabling of development within the area to the extent necessary to accommodate the qualifying matter. If there is evidence that the level of development provided by the MDRS is inappropriate within due to a specific characteristic of that area, and the further requirements in section 77L are met, then a QM may be included. Whether there is a disproportionate effect over other river catchments is, in my submission, irrelevant.
- 48 Mr Surman has identified specific characteristics of the Halswell/Huritini catchment that render the level of development provided by the MDRS inappropriate. Whilst not required, he has also identified characteristics that are unique to the Halswell catchment.

Low Public Transport Accessibility Area (LPTAA) QM

- 49 In its original submission, the Regional Council raised concerns with the use of the phrase “Low Public Transport Accessibility Area” as a QM and sought either that it be renamed to something that better reflects the reason development is restricted or that it better reflect the area where there is low access to public transport. The submission identified that there were some areas covered by the LPTAA QM that actually have high levels of public transport frequency and there were concerns about the impression given to the public around labelling areas as having low access to public transport.
- 50 The recommendation of Mr Kleynbos to replace the LPTAA with a “Suburban Hill Density Precinct” and “Suburban Density Precinct” addresses the concerns raised in the Regional Council’s submission.

³² Statement of Rebuttal Evidence of Robert Brian Norton on behalf of Christchurch City Council, Stormwater and Flooding dated 9 October 2023 at [16].

Airport Noise QM

Which contour should apply?

- 51 The Regional Council supports the application of an airport noise QM to the MDRS in PC14 in accordance with section 77I(e) and 77(O)(e) as a matter required for the purpose of ensuring the safe or efficient operation of Christchurch Airport as nationally significant infrastructure. However, the relevant airport noise contour to be applied is at issue.
- 52 Ms Oliver proposes that the Updated (2023) 50dBA Ldn Outer Envelope noise contour (**Updated Noise Contour**) be used as a basis for a Provisional Airport Noise QM.³³ This approach would retain the Operative District Plan zoning for the impacted area, until after the CRPS review process has been completed.
- 53 The Regional Council seeks that the 50 dBA Ldn contour shown on Map A of the CRPS be applied.³⁴ Until the CRPS is reviewed (currently scheduled for notification in December 2024), it is submitted that the 50 dBA Ldn contour shown on Map A is the most appropriate contour as an outer control boundary for land use planning purposes.
- 54 The airport noise contours have been remodelled and have been through an independent peer review process (as provided for by Policy 6.3.11(3) and Method 4 of the CRPS). The resulting remodelled contours represent the most up to date technical information of the geographical extent of projected aircraft noise exposure within the Greater Christchurch. The remodelled contours will be a key input to the review of the CRPS. However, currently the contours have no statutory weight and are technical information only.
- 55 It is also important to note that the remodelling and peer review process did not produce a single contour option to be used as an outer control boundary. Multiple outer control boundary options were produced as part of the modelling and peer review exercise.³⁵ Neither CIAL's experts nor the Independent Expert Panel recommended one outer control

³³ Rebuttal evidence of Sarah Oliver dated 9 October 2023 at [21]; Legal submissions for the Christchurch City Council on Proposed Plan Change 14: City-wide qualifying matters, financial contributions dated 8 April 2024 at [6.7].

³⁴ The Regional Council clarified its position regarding the appropriate airport noise contour to be applied in its further submission (2034) on CIAL's submission (852.1)

³⁵ Statement of Evidence of Meg Buddle on behalf of the Canterbury Regional Council dated 20 September 2023 at [37].

boundary option over another. That would have gone beyond the scope of the Independent Expert Panel's task which was to peer review the inputs, assumptions and outcomes of the remodelling.

- 56 It is submitted that the appropriate process to determine which of the remodelled contours (if any) should be used as an outer control boundary for land use planning is the review of the CRPS, not PC14. Once the new CRPS becomes operative, Christchurch City Council (together with Waimakariri and Selwyn District Councils) will be required to give effect to the revised contours and associated policy framework, through their district plans.
- 57 The airport noise contours are a cross-boundary issue for Christchurch, Waimakariri and Selwyn District councils and the extent to which PC14 needs to be consistent with the plans or proposed plans of Waimakariri and Selwyn districts is a matter that this Panel must have regard to under section 74(2)(c) of the RMA. It is submitted that it would be inappropriate to apply the Updated Noise Contour in Christchurch City through PC14 in circumstances when the CRPS Map A contour is applied in Waimakariri and Selwyn districts.
- 58 The review of the CRPS is the appropriate forum to make these determinations as it would enable Greater Christchurch residents the opportunity to effectively engage on the appropriate contour and its use in land use planning. This same opportunity has not been provided as part of PC14.
- 59 The CCC has proposed that the Updated Noise Contour be used as a Provisional Airport Noise QM. It is acknowledged that the operative zoning would remain until after the CRPS process is completed. However, even as a provisional QM there remains a risk that including the Updated Noise Contour in PC14 now could predetermine the issue for Christchurch City ahead of the review of the CRPS. This is because there is no certainty around what amendments would be required to the Christchurch District Plan to give effect to the CRPS.
- 60 For example, if it is determined through the review of the CRPS that, a different smaller contour be used as an outer control boundary, the Updated Noise Contour in PC14 would not necessarily (depending on the associated planning framework) need to be amended in the Christchurch District Plan to give effect to the CRPS. The purpose of

the airport noise contour currently in the CRPS is to protect the efficient operation, use, development, appropriate upgrading and safety of Christchurch International Airport. A larger contour in the Christchurch District Plan would still achieve that purpose and would therefore (depending on the associated planning framework) still give effect to the CRPS and would not need to be amended.

- 61 It is submitted that the most appropriate process to determine which of the 2023 Updated Noise Contours should be used is the review of the CRPS.

Greater Christchurch Spatial Plan

- 62 The Regional Council's position regarding the application of the 50 dBA Ldn contour shown on Map A of the CRPS is also supported by the Greater Christchurch Spatial Plan (**GCSP**).
- 63 In March 2024 the Greater Christchurch Partner Councils adopted the GCSP as their Future Development Strategy (**FDS**). Christchurch City Council must have regard to the FDS when changing the Christchurch District Plan through PC14.³⁶ The Council must also have regard to the GCSP as a strategy prepared under the Local Government Act 2002.³⁷
- 64 Relevant extracts from the GCSP and the Hearing Panel's recommendation report relating to the airport noise contour are set out in Appendix 4 to these submissions for the Panel's reference.

50 dBA Ldn contour shown on Map A or any 50 dBA Ldn contour

- 65 Ms Oliver has suggested that the reference to the 50 dBA Ldn airport noise contour within the relevant policies in the CRPS could include an updated contour and not the contour shown on Map A.³⁸ The Regional Council disagrees with this interpretation, and I refer to the reasons set out in Ms Buddle's evidence at paragraph 42.³⁹ The reference to the 50dBA Ldn airport noise contour in clause (4) of Policy 6.3.5 is the 50dBA airport noise contour identified on Map A.

³⁶ NPS-UD, clause 3.17.

³⁷ RMA, s 74(2)(b)(i).

³⁸ Section 42A Report, Sarah Oliver, p 82, [12.13]-[12.18].

³⁹ Statement of Evidence of Meg Buddle on behalf of the Canterbury Regional Council dated 20 September 2023 at [42].

- 66 Ms Oliver’s interpretation would mean that the location of the 50dBA airport noise contour set out in Map A would be redundant (it would be illustrative only) and its location could be relitigated as part of any planning process. This would provide no certainty for users of the CRPS. It would also render the remodelling exercise directed by Policy 6.3.11(3) and Method 4 redundant.

Meaning of “existing residentially zoned urban area” in Policy 6.3.5(4)

- 67 Policy 6.3.5(4) directs that noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport are avoided, unless (relevantly for Christchurch City) the activity is within an existing residentially zoned urban area or residential greenfield priority area identified in Map A. What is meant by ‘existing’ is at issue in this hearing. Counsel for CCC has referred to the decision of the IHP for the Replacement Christchurch District Plan and submitted that any new development beyond intensification enabled under existing residential zones as at 6 December 2013 must still be considered under CRPS policy 6.3.5(4).⁴⁰ The Regional Council disagrees with this interpretation of Policy 6.3.5(4). It agrees that the reference to “existing” is that land that was residentially zoned as at 6 December 2013. However, the policy does not go so far as to freeze in time the intensification that was allowed in those zoned areas as at that date. If the land was residentially zoned as at 6 December 2013, then any new development is not subject to the avoidance direction in Policy 6.3.5(4). Instead, the effects of new development in these areas on the Christchurch International Airport must be “managed” in accordance with Policy 6.3.5(5).

New or existing qualifying matter

- 68 The Regional Council agrees with Counsel for CCC that the Airport Noise QM is a section 77I(e) existing matter in respect of the area to which the 50dBA Ldn Air Noise Contour currently applies in the District Plan.⁴¹ However, it does not consider that a new spatial extent could also be classified as an ‘existing QM’. Section 77K(2) of the RMA provides that existing qualifying matters included in the IPI do not have

⁴⁰ Legal submissions for the Christchurch City Council on Proposed Plan Change 14: City-wide qualifying matters, financial contributions dated 8 April 2024 at [6.2].

⁴¹ Legal submissions for the Christchurch City Council on Proposed Plan Change 14: City-wide qualifying matters, financial contributions dated 8 April 2024 at [6.8].

immediate legal effect on notification of the IPI but continue to have effect as part of the operative plan. In my submission, this means that an existing qualifying matter (including its spatial extent) must already be identified in the operative plan so that it can continue to have effect as part of the operative plan.

- 69 However, as identified by Counsel for CCC this is a moot point as the entire QM (including the new spatial extent) has been assessed in accordance with section 77J.⁴²

Evidence for the Regional Council

- 70 The Regional Council is calling evidence from the following experts in support of its submission:

- (a) Jessica Newlands (Resource Management Technical Lead, CRC)
- Port Hills stormwater constraints;
- (b) Matthew Surman (Senior River Engineer, CRC) - flooding in the Halswell/Huritini river catchment;
- (c) Meg Buddle (Senior Planner, CRC) – planning



M A Mehlhopt

Counsel for the Canterbury Regional Council

⁴² Legal submissions for the Christchurch City Council on Proposed Plan Change 14: City-wide qualifying matters, financial contributions dated 8 April 2024 at [6.8].

APPENDIX 1

Extract from Joint Statement of Infrastructure Experts dated 27 September 2023 in relation to stormwater water quality (sediment)

Issue	Agreed Position	Disagreements or reservations, with reasons
On-site stormwater mitigation	<p>More on-site attenuation may be required but this becomes a private responsibility and not easily managed in the long-term. Controls available may not be sufficient for certain rain events. Critical storm duration changes from catchment to catchment. In some cases, on-site attenuation does not mitigate all effects.</p> <p>On-site mitigation is not effective at managing peak flow rates for all areas and all rainfall events. Hill catchments with receiving environments with shorter critical duration may be more readily mitigated using on-site storage. It also has to be well maintained by individual property owners.</p>	
Stormwater water quality (sediment)	<p><u>The Port Hills are overlain by loess soil which is fine grained, dispersive and highly erodible.</u></p> <p><u>Discharge during construction:</u> Not possible to mitigate all sediment discharge from construction resulting from development in hill areas, especially infill development, due to steep slopes and soil types that increase the risk when compared to flat Christchurch sites.</p> <p>Difficult to also manage this on the flats. In general risks are higher on hills because of topography and soil types.</p> <p><u>Discharge after construction:</u> Stormwater runoff from increased impervious surface area on hill suburbs is difficult to collect and manage due to topographical constraints. Runoff may enter into neighbouring sites and therefore cause increased sediment discharge.</p> <p>Increased run-off from hills result in increased flows/higher peak flows into hill side outfalls and into waterways that increase the risk of erosion and scour.</p>	

	<p>Most existing CCC stormwater facilities are upstream of much of the residential Port Hills areas and therefore there is limited opportunity for mitigation of these effects (volume and quantity) in an integrated manner.</p> <p>CCC compliance with comprehensive stormwater network consent is likely to be negatively affected due to increase in discharges and quality of discharges.</p>	
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APPENDIX 2

NPS-FM 2020 POLICIES RELEVANT TO CONSIDERATION OF PORT HILLS STORMWATER CONSTRAINTS MATTER

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai

Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

Policy 5: Freshwater is managed (including through National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 12: The national target for water quality improvement is achieved.

APPENDIX 3

Extract from Joint Statement of Infrastructure Experts dated 27 September 2023 in relation to Halswell stormwater

Issue	Agreed Position	Disagreements or reservations, with reasons
Halswell stormwater	<p>Particularly sensitive because very flat and difficult to mitigate. Much of the Halswell River catchment is outside of the CCC district. Available mitigation is therefore largely external to Council jurisdiction area. Cumulative effects of increased stormwater and groundwater discharge volumes already impacting Halswell area and further intensification here will add to these effects.</p> <p>Stormwater management plan will need to put volume limits on Halswell, but this is yet to be finalised. It is simply not feasible to mitigate for large scale volume increases from developed areas without measures to increase soakage/evapotranspiration/water reuse.</p> <p>Intensification in Halswell area will result in adverse effects on ponding, flooding and base flow which cannot be adequately mitigated or avoided. Anything that reduces evaporation will add to the issues in this particular catchment. Solutions likely not practicable or cost-effective.</p>	<p>(BN) [Brian Norton] Effects are not dissimilar to other areas within the city (e.g.; low lying rural land in Lower Styx basin and Marshlands. Significance of this in Halswell will have to be considered holistically.</p>

APPENDIX 4

Relevant extracts from the Greater Christchurch Spatial Plan (GCSP) and Greater Christchurch Spatial Plan Hearing Panel Recommendation Report⁴³

1 The GCSP provides that:⁴⁴

Urban development should be carefully managed around strategic infrastructure to ensure the safety and wellbeing of residents, and to safeguard the effective operation, maintenance and potential for upgrades of this infrastructure. Key strategic infrastructure in Greater Christchurch includes Christchurch Airport...

2 Key strategic infrastructure is identified on Map 9 in the GCSP which includes noise control zones around Christchurch Airport. The 50dBA contour identified around Christchurch Airport is the operative 50dBA contour from Map A in Chapter 6 of the CRPS.

3 The GCSP notes that:⁴⁵

The noise contours relating to Christchurch International Airport as shown on Map 9 represent the contours operative in the Canterbury Regional Policy Statement 2013. As part of the review of the Canterbury Regional Policy Statement, an update of the airport noise contours was completed by Christchurch International Airport Limited and independently peer reviewed by a panel of experts appointed by the Regional Council. In June 2023 a final set of remodelled air noise contours was made publicly available in a report published by Christchurch International Airport Limited. The updated noise contours will be a key input to the review of the Regional Policy Statement, and this is the process by which changes to the spatial extent of the operative contours and the associated policy framework will be considered.

⁴³ Draft Greater Christchurch Spatial Plan Hearing Panel Recommendation Report dated 17 January 2024.

⁴⁴ Recommended version of the Draft Greater Christchurch Spatial Plan, as attached as Appendix 3 to the Draft Greater Christchurch Spatial Plan Hearing Panel Recommendation Report dated 17 January 2024, p 49.

⁴⁵ Recommended version of the Draft Greater Christchurch Spatial Plan, as attached as Appendix 3 to the Draft Greater Christchurch Spatial Plan Hearing Panel Recommendation Report dated 17 January 2024, p 50.

- 4 CIAL sought that the new updated noise contours be included in the GCSP. The Hearing Panel in its recommendations on the GCSP agreed with officers that the:⁴⁶

Appropriate planning process to determine any changes to these contours, given their critical importance for future land use planning in the Greater Christchurch area is through the review of the CRPS, where its geographic extent and what that extent is based on, can be tested through the formal Schedule 1 process under the RMA, including via submissions, further submissions, and technical information and evidence from a wider range of parties than just Professor Clark.

- 5 The panel considered it important to note that the:⁴⁷

dGCSP represents a point in time, based on the current constraints which have been identified in statutory plans. The dGCSP provides direction around how constraints are responded to in planning for growth, and will equally apply in future to new or updated constraints which are identified in future statutory planning processes. In future, when the noise contours are updated, the direction in the dGCSP will apply to those contours. We do however agree with the recommendations to add explanations relating to the review to the relevant parts of the dGCSP to provide greater clarity.

- 6 The review of the noise contours relating to Christchurch International Airport is referred to in the 'Related planning processes currently underway' section of the GCSP:⁴⁸

Canterbury Regional Council is reviewing the regional planning framework for Canterbury. A new Regional Policy Statement is expected to be notified at the end of 2024. This process seeks to align the regional planning framework with national direction such as the National Policy Statement for Freshwater Management 2020, including Te Mana o te Wai. It also includes a review of noise contours relating to Christchurch International Airport, mapping of highly productive land, and development of significance criteria for new greenfield areas. This review will also

⁴⁶ Draft Greater Christchurch Spatial Plan Hearing Panel Recommendation Report dated 17 January 2024, p 54.

⁴⁷ Draft Greater Christchurch Spatial Plan Hearing Panel Recommendation Report dated 17 January 2024, p 54.

⁴⁸ Recommended version of the Draft Greater Christchurch Spatial Plan, as attached as Appendix 3 to the Draft Greater Christchurch Spatial Plan Hearing Panel Recommendation Report dated 17 January 2024, p 17.

continue to consider, and direct, how to manage urban growth in balance with activities that occur in the rural environment.