

Before an Independent Hearings Panel
appointed by Christchurch City Council

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 Submissions on behalf of Christchurch International
Airport Limited

Dated: 16 April 2024

Counsel: J M Appleyard (jo.appleyard@chapmantripp.com)
A M Lee (annabelle.lee@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 4 472 7111

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

INTRODUCTION

- 1 These legal submissions are presented on behalf of Christchurch International Airport Limited (*CIAL*). *CIAL* is a submitter and further submitter on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan (*PC14*) (submitter 852).
- 2 These legal submissions relate to the Airport Noise Qualifying Matter (*Airport Noise QM*) topic. We have previously filed opening legal submissions on behalf of *CIAL*, Lyttelton Port Company Limited and Orion New Zealand Limited (together the *Infrastructure Submitters*) for the Strategic Overview topic.¹ Those submissions are also relevant to *CIAL*'s position on the Airport Noise QM topic.
- 3 *CIAL* is calling evidence from:
 - 3.1 **Ms Felicity Hayman** – in relation to Christchurch Airport operations and *CIAL*'s approach to planning processes such as *PC14*;
 - 3.2 **Mr Sebastian Hawken** – in relation to airport safeguarding;
 - 3.3 **Mr Christopher Day** – in relation to acoustics;
 - 3.4 **Mr Gary Sellars** – in relation to housing capacity; and
 - 3.5 **Ms Natalie Hampson** – in relation to economics.
- 4 **Mr Day, Mr Sellars** and **Ms Hampson** filed evidence in chief and rebuttal evidence. **Mr David Compton-Moen** also provided rebuttal in relation to urban design matters raised in the Joint Witness Statement of Airport Noise Experts.
- 5 *CIAL* also filed evidence in chief and rebuttal from **Ms Laurel Smith** (acoustics) and **Mr Darryl Millar** (planning) but at a time when the subsequent pause and disruption to the *PC14* hearing timetable could not have been foreseen. As Ms Smith and Mr Millar are currently overseas without an ability to attend the hearing virtually, counsel proposed an alternative approach to the presentation of its case to ensure it was not prejudiced and that the hearing stayed within the Panel's proposed schedule. In accordance with the

¹ *Opening Legal Submissions for the Infrastructure Submitters*, dated 11 October 2023.

memorandum of counsel filed on behalf of CIAL² and the Hearings Panel Minute:³

- 5.1 **Mr Day** is appearing as CIAL's sole acoustics expert and adopts Ms Smith's evidence including her rebuttal. Mr Day is available to answer any questions from the Hearings Panel and through cross examination to the extent that he remains compliant with Code of Conduct for Expert Witnesses.⁴ Should there be any questions relating to the air noise contour remodelling process, Mr Hawken is available to answer questions.
- 5.2 **Mr John Kyle** is now appearing as CIAL's planning witness. Mr Kyle has recently prepared evidence and appeared at the proposed Waimakariri District Plan and Variation 1 hearings on behalf of CIAL (because of Mr Miller's unavailability) and has in that forum become familiar with CIAL's case for a qualifying matter to maintain the "pre-Variation 1" status quo in relation to residential intensification at Kaiapoi.
- 6 Mr Kyle has prepared a statement for the Airport QM hearing.⁵ That statement records Mr Kyle's agreement with Mr Millar's planning evidence that maintaining "pre-PC14" development potential within the Airport Noise QM area sought by CIAL in its submission is both appropriate and necessary. Mr Kyle's view is informed by his experience with other New Zealand airports, particularly Wellington and Queenstown. We do not consider that there are any fairness issues arising from Mr Kyle's statement; it does not introduce new evidence that is material to other submitters involved in the Airport QM hearing, no party has applied to provide further rebuttal and Mr Kyle is able to be cross examined by those submitters who have been granted leave.

Summary of CIAL's position on PC14

- 7 CIAL's overall position on PC14, supported by the collective evidence of its witnesses, is that the Airport Noise QM ought to:
- 7.1 apply to the area of relevant residential land which will be subject to projected levels of airport noise of 50dB Ldn or greater; and

² *Memorandum of counsel on behalf of Christchurch International Airport Limited*, dated 14 March 2024.

³ *IHP Minute 35: Directions in response to CIAL request to substitute witnesses*, dated 21 March 2024

⁴ In accordance with Minute 35 at [9].

⁵ In accordance with Minute 35 at [7].

- 7.2 that area is spatially defined as being within the remodelled 50dB Ldn Outer Envelope Air Noise Contour (*Remodelled OE Noise Contour*); and
- 7.3 within the Remodelled OE Contour the potential for residential intensification should be limited to a “pre-PC14” state.
- 8 CIAL generally agrees with Council’s Section 42A Officer in relation to the Airport Noise QM, noting that Ms Oliver’s current position is to include a “Provisional Airport Noise Qualifying Matter” based on the Remodelled OE Contour at this time.⁶
- 9 For completeness CIAL does not agree with Ms Oliver’s recommendation of allowing intensification in locations north and south of Riccarton Rd. It is understood that this recommendation is to enable the numbers of people in those areas to increase so as to justify a business case for a mass rapid transport (*MRT*) system. At this stage there are no firm plans for a MRT system and no analysis has been done on the trade-offs between the risks to Christchurch Airport and impact on people’s health, wellbeing and amenity versus the benefits of a future MRT system.
- 10 It is also important to note that, due to the “*recent change in Government, and its policy direction recently outlined in the draft Government Policy Statement on Land Transport 2024-2034*”⁷ Waka Kotahi have withdrawn their submission in opposition to the Airport QM topic. This means that the evidence (relating to the Airport QM topic) of Mr Chiles and Ms Heppelthwaite, Mr Falconer and Mr Osbourne are no longer before the Panel and the joint witness statement on airport noise⁸ must be redacted to exclude the input of Mr Chiles.
- 11 The withdrawal is significant as the reason for Waka Kotahi’s previous opposition to the Airport Noise QM, as explained in Mr Falconer’s evidence, was because of the need to have higher densities of people living in Riccarton to support a business case for a future MRT system.

Overview and structure of these submissions

- 12 The legal submissions filed for the Infrastructure Submitters at the Strategic Overview hearing briefly addressed the legislative framework established by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

⁶ *Statement of rebuttal evidence of Sarah-Jane Oliver on behalf of Christchurch City Council* dated 9 October 2023, at [21].

⁷ *Memorandum of counsel for Waka Kotahi NZ Transport Agency on PC14 – Airport Noise Qualifying Matter* dated 14 March 2024 at paragraph 4

⁸ Joint Expert Witness Conferencing of Airport Noise Experts dated 7 November 2023.

(Amendment Act).⁹ That content does not need to be repeated; the Hearings Panel are well in the detail of the Amendment Act.

- 13 The structure of these legal submissions follows the statutory test in section 77K of the Amendment Act as it is submitted that the Airport Noise QM is an “existing qualifying matter”. This will be expanded on below. These submissions refer to evidence in support of each of the limbs of that 77K test throughout and address the issue of scope, including consideration of the *Waikanae*¹⁰ case where relevant. As a general proposition however CIAL’s case is that it seeks “pre PC14” status quo in areas subject to the Airport Noise QM.
- 14 The most obvious qualifying matter (QM) which applies in the Airport context is 77K(e) being a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure but also 77(j) should not be overlooked as an “other matter which makes higher density inappropriate” in an area. CIAL’s evidence is that enabling higher numbers of people to live in locations where there will be adverse effects on health, wellbeing and amenity is inappropriate.
- 15 When evaluating QMs, the relevant sections of the Amendment Act require a merits assessment based on the evidence available and it is important that the Airport Noise QM is properly described in that context:
 - 15.1 CIAL’s submission is that, when the Canterbury Regional Policy Statement (CRPS) and Christchurch District Plan (District Plan) are analysed, the Airport Noise QM applies to relevant residential land that is subject to levels of 50dB Ldn or greater of aircraft noise.
 - 15.2 On the basis of CIAL’s evidence that describes the outcome of the remodelling exercise,¹¹ the “qualifying area” that correctly describes the geographical extent of the Airport Noise QM is that land which falls within the Remodelled OE Contour.
 - 15.3 The Airport Noise QM area is not limited to the 50dB Ldn contour line that is depicted on Map A of the CRPS which was modelled in 2008. Mr Millar explains CIAL’s position from a

⁹ *Opening Legal Submissions for the Infrastructure Submitters*, dated 11 October 2023 from [24] to [28].

¹⁰ *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga* [2023] NZEnvC 56.

¹¹ *Statement of evidence of Sebastian Hawken*, dated 20 September 2023, at [75] - [89]; *Statement of evidence of Laurel Smith*, dated 20 September, at [59] - [60].

planning perspective and in particular that the policy direction is not tied to the line on Map A.

- 16 Kāinga Ora Homes and Communities (*Kāinga Ora*) suggest that the Airport Noise QM ought to be assessed as a “new QM”. We assume that this submission relates only to the area of land between the 2008 50dB Ldn contour that is depicted on Map A and included in the Operative Plan and the Remodelled OE Contour. It is noted that in most (but not all) areas the Remodelled OE contour sits outside the 2008 50dB Ldn contour.
- 17 Related to the above, CIAL says that the proper characterisation of the Airport Noise QM is that it applies to relevant residential land that is subject to airport noise levels of 50dB Ldn or greater of aircraft noise. Where that qualifying area is can be informed by new and updated evidence available to the Panel. It is submitted that, while the location of the Airport Noise QM is different to the line that is depicted in the CRPS and the District Plan, the Airport Noise QM itself has not changed. It is still the same matter which is required to protect nationally important infrastructure.
- 18 Nevertheless, as was foreshadowed at the Strategic Overview hearing, while CIAL’s position is that the existing QM considerations apply to its submission on the Airport Noise QM, its evidence is also sufficiently detailed to satisfy the new QM test. In the interests of the Hearings Panel having all potentially relevant analyses available to them, **Appendix 1** of these legal submissions also steps through the statutory test for new QMs in section 77J of the Amendment Act.

EXISTING PLANNING LANDSCAPE

- 19 Before delving into the specifics of the Amendment Act and the statutory tests for QMs, it is worth stepping back and looking at the existing national, regional and district planning landscape. The proper interpretation of that landscape is supported by a number of Council and Court cases which decide or interpret key policy direction. In summary:
- 19.1 Christchurch Airport is recognised as infrastructure of local, regional and national importance in the National Policy Statement on Urban Development 2020 (*NPS UD*), the CRPS and in the Objectives and Policies chapter of District Plan.
- 19.2 The CRPS and District Plan recognise that residential activities in areas exposed to levels of 50 Ldn have the potential to limit the efficient and effective provision, operation and maintenance or upgrade of Christchurch Airport and must be avoided.

- 19.3 The CRPS and District Plan also recognise that exposing residential activity to levels of 50Ldn has adverse effects on health, wellbeing and amenity.
- 19.4 Controls on density in areas subject to 50dB Ldn Air Noise Contour or greater are the established mechanism to deliver the protection for Christchurch Airport that the CRPS directs and also to protect people from adverse effects on health, wellbeing and amenity.
- 20 The following section of these submissions examines those planning documents and refers to some of the key case law commentary on the history of the Airport Noise QM to date.

Canterbury Regional Policy Statement

- 21 The efficient use and development of Christchurch Airport as a significant physical regional infrastructure resource is dealt with in the CRPS in a highly directive way.
- 22 **Mr Millar's** evidence outlines the CRPS provisions in detail. Importantly:
- 22.1 Objective 5.2.1(f) CRPS requires that "*development is located so that it functions in a way that ... is compatible with, and will result in the continued safe, efficient and effective use of regionally significant infrastructure*".
- 22.2 The 'Principal reasons and explanation' for Policy 6.3.5 states:

Strategic infrastructure represents an important regional and sometimes national asset that should not be compromised by urban growth and intensification... The operation of strategic infrastructure can affect the liveability of residential developments in their vicinity, despite the application of practicable mitigation measures to address effects... It is better to instead select development options where such reverse sensitivity constraints do not exist.

- 22.3 Policy 6.3.5 in the CRPS provides strong and clear direction regarding protection of infrastructure (emphasis added):

...

*3. Providing that the efficient and effective functioning of infrastructure, including transport corridors, is maintained, and the **ability to maintain and upgrade that infrastructure is retained**;*

4. Only providing for new development that does not affect the efficient operation, use development, appropriate upgrading and

safety of existing strategic infrastructure, **including by avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport**, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 6-28) and enabling commercial film or video production activities within the noise contours as a compatible use of this land; and

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.**

22.4 Policy 6.3.9(5) requires that:

The location and design of any proposed rural residential development shall:

- a. **avoid noise sensitive activities occurring within the 50 dBA Ldn air noise contour surrounding Christchurch International Airport so as not to compromise the future efficient operation of Christchurch International Airport or the health, well-being and amenity of people.**

17 To head off an argument that has been raised in previous plan level hearings we draw the Panel’s attention to the reference in Policy 6.3.5(4) to the words “*unless the activity existing residentially zoned urban area*”. Again we refer to the evidence of Mr Millar¹² who refers to the Replacement District Plan Independent Hearings Panel (*IHP*) commentary that, while there is no absolute direction to avoid intensification of existing residentially zoned land within the 50dB Ldn Air Noise Contour, there is still a need to evaluate whether such activities should be avoided or restricted so as to give proper effect to the CRPS provisions.

18 In paragraph 24 below we set out that the IHP considered, after proper evaluation of the evidence and the CRPS, that density should be restricted in residential zones. It is that “pre-PC14” status quo that the IHP determined met the CRPS policy direction that CIAL is now seeking to preserve to continue to give effect to the CRPS.

National Policy Statement on Urban Development

19 The National Policy Statement on Urban Development (*NPS UD*) defines Christchurch Airport as “nationally significant infrastructure” and directs that local authority decisions on urban development are

¹² *Statement of evidence of Darryl Millar*, dated 20 September 2023, from [41].

integrated with infrastructure planning decisions,¹³ and that planning decisions contribute to well-functioning urban environments.¹⁴

- 20 It is submitted that a well-functioning urban environment is one in which:¹⁵
- 20.1 infrastructure – particularly strategic infrastructure such as Christchurch Airport – is not adversely affected by incompatible activities; and
- 20.2 urban growth is planned with infrastructure provisions in mind.
- 21 The NPS UD requires a balance between the need to intensify¹⁶ and other important countervailing issues such as protection of significant infrastructure.
- 22 While the NPS UD was prepared later in time, it does not trump all other planning documents. The policies of the NPS UD can, and must, be read together with the CRPS policies.¹⁷ 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.¹⁸
- 23 When making decisions on PC14, it is necessary to give effect to both the NPS UD and the CRPS.¹⁹ Policy 6.3.5(4) CRPS is plainly highly relevant to relevant residential land falling within the 50dB Ldn Noise Contour.
- Christchurch District Plan**
- 24 As signalled above the issue of whether the CRPS includes a policy directive against intensification in “existing residential areas” was considered by the IHP when it set out to write the Objectives and Policies in the District Plan:
- 24.1 Overall the IHP considered that, although there is no absolute direction in the CRPS to avoid any further noise sensitive

¹³ Objective 6.

¹⁴ Policy 1.

¹⁵ Noting that the definition provided in Policy 1 is expressed as a ‘minimum’.

¹⁶ Policies 3 and 4 in particular.

¹⁷ Also see *Statement of evidence of Darryl Millar*, dated 20 September at [31].

¹⁸ *Burrows and Carter Statute Law in New Zealand* (6ed 2021), online edition, chapter 14.

¹⁹ Section 75 of the RMA.

activities in existing residentially zoned land within the 50 dB Ldn Noise Contour, there is still a need to evaluate whether we should avoid or restrict such activities so as to give proper effect to Policy 6.3.5 and related CRPS objectives and policies.²⁰

- 24.2 The IHP recognised the need for an ongoing capacity to assess relevant reverse sensitivity and noise mitigation matters for residential intensification above a certain scale.²¹
- 24.3 The IHP ultimately determined that, for residential zones in the Christchurch District that sit within the 50dB Ldn Air Noise Contour, residential activities which do not meet permitted zone standards should have restricted discretionary activity status.²² Applications would be limited notified to CIAL, in recognition of the fact that it is the Christchurch Airport owner and may have relevant information for the purposes of the assessment.²³
- 25 This demonstrates that density (amongst other things) was a key matter for decision makers to control in order to give effect to the CRPS. CIAL submits that further intensification beyond that allowed under the District Plan provisions would be at odds with this approach.
- 26 Accordingly, the District Plan contains a suite of provisions which aim to strike a balance between facilitating residential development and protecting the operations of Christchurch Airport as nationally significant infrastructure. Mr Millar’s evidence outlines these provisions in detail, but we highlight:
- 26.1 Objective 3.3.12 which mirrors the CRPS and directs that strategic infrastructure should be protected from incompatible development and activities by avoiding adverse effects, including reverse sensitivity effects. The Objective specifically references avoiding new noise sensitive activities within the 50dB Ldn Air Noise Contour for Christchurch Airport except in certain limited circumstances (which on the basis of the IHP’s reasoning set out above does not include further intensification in existing residential areas).
- 26.2 Policy 14.2.2.2 (relating to housing recovery and higher density development) directs that higher density comprehensive development should be avoided in areas that

²⁰ Decision 10 Residential (Part), Independent Hearings Panel, 10 December 2015.

²¹ At [235].

²² Decision 10 Residential (Part), Independent Hearings Panel, 10 December 2015 at [237].

²³ At [239].

are not suitable for intensification for reasons of reverse sensitivity effects on Christchurch Airport.

26.3 Objective 14.2.3 and associated Policy 14.2.3.1 also generally direct that development of sensitive activities should not adversely affect the efficient operation, use and development of Christchurch Airport and that, accordingly, reverse sensitivity effects in particular are to be avoided.

26.4 There are then rules that apply to control the extent to which residential activity can intensify.

THE AIRPORT NOISE QM IS AN EXISTING QUALIFYING MATTER

27 Section 77K of the Amendment Act establishes the process for evaluating "existing QMs". Subsection 3 states:

In this section, an existing qualifying matter is a qualifying matter referred to in section 77I(a) to (i) that is operative in the relevant district plan when the IPI is notified.

28 Section 77I(e) provides for QMs that are required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure. As outlined above, the District Plan objectives, policies and rules together define density controls within areas subject to airport noise of 50dB Ldn or greater as the existing QM with the express purpose of ensuring the safe and efficient operation of Christchurch Airport.

29 Accordingly, it is submitted that the Airport Noise QM is an existing qualifying matter subject to the test in Section 77K. The four limbs to the Section 77K test are addressed in turn below.

Identify by location where an existing qualifying matter applies (s 77K(1)(a))

30 It is submitted that the existing QM (being the protection of Christchurch Airport operations from adverse reverse sensitivity effects and providing for people's health, wellbeing and amenity) applies to existing residentially zoned land within the Remodelled OE Contour. There are two aspects to this limb in terms of CIAL's relief;

30.1 the Airport Noise QM ought to apply to relevant residential land that is subject to aircraft noise levels of 50dB Ldn or greater; and

30.2 the best available and up to date evidence from the remodelling exercise shows us where noise levels of 50dB Ldn or greater will be felt i.e. within the Remodelled OE Noise Contour.

50dB Ldn as the point at which density controls ought to commence

- 31 Land in Christchurch City that is subject to projected airport noise levels of 50dB Ldn or greater is depicted by the production of a 50dB Ldn Noise Contour. As explained in **Ms Smith and Mr Day's** evidence:
- 31.1 The New Zealand Standard NZS 6805 (*the Standard*) was introduced to promote a consistent approach to noise planning around New Zealand airports.²⁴
- 31.2 The Standard recommends minimum standards to manage land use planning and airport noise. A local authority may determine that a higher level of protection is appropriate in a particular locality.²⁵
- 31.3 It also introduced the 'Noise Boundary' concept which utilises noise contours to project future aircraft movements and determine where noise effects from aircraft operations will be felt. The noise contours are then used to inform decisions on land use planning and airport noise compliance.²⁶
- 31.4 Canterbury Regional Council (*ECan*) and Christchurch, Waimakariri and Selwyn District Councils have always used four contours for Christchurch Airport. This approach pre-dated implementation of the Standard and has been maintained ever since. As a result, the Councils and CIAL have effectively maintained a green-belt of low density or non-sensitive land use around Christchurch Airport. Other airports in New Zealand have not been as fortunate.²⁷
- 31.5 The 50dB Ldn Contour, described as the Outer Control Boundary (*OCB*) to implement land use controls across Canterbury, is relevant to PC14.
- 32 It is important to emphasise how the Standard as a whole has been implemented in the planning framework for Canterbury. It has often been pointed out in previous cases that the 50dB Ldn Noise Contour used as the OCB is more conservative than the Standard's minimum recommendation. However:

²⁴ *Statement of evidence of Laurel Smith*, dated 20 September 2023 at [16].

²⁵ *Statement of evidence of Chris Day*, dated 20 September 2023, from [33].

²⁶ *Statement of evidence of Laurel Smith*, dated 20 September 2023, from [19] – [28].

²⁷ *Statement of evidence of Chris Day*, dated 20 September 2023, from [21] – [31]; *Statement of evidence of Laurel Smith*, dated 20 September 2023, from [36] – [46].

- 32.1 Territorial authorities have the discretion to go further than the minimum, and so the 50dB Ldn Noise Contour is entirely consistent with the Standard.²⁸
- 32.2 There is a specific reference in the Standard²⁹ to it not being used as the basis for downgrading existing land use controls.
- 32.3 The land use controls that apply within the 50 dB Ldn OCB in Canterbury are more liberal than the Standard recommends. As was stated in *Robinson's Bay Trust*³⁰ (which we address further below):

[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.

[57] We are unable to see that there is any particular cost imposed upon landowners from the adoption of the 50 dBA Ldn contour as opposed to the 55 dBA Ldn contour. The land is still available for a range of permitted uses, including, as we have already discussed, limited residential subdivision and development of one dwelling to four hectares in the Rural 5 zone and one to 20 hectares in the Rural 2 zone. The land is still available for a wide range of rural uses. Policy 6.3.7 itself it would not, on its face, affect applications for non-noise sensitive activities or subdivisions for commercial or industrial use.

- 33 The justification for the density controls that are set at 50dB Ldn in Canterbury is contained in the analysis under the discussion on subsection (1)(c) below.

Why the Remodelled OE Contour?

- 34 Policy 6.3.11(3) in the CRPS requires certain processes with respect to remodelling the Air Noise Contours. CIAL's submission and the

²⁸ Clause 1.4.3.8 states that the local authority may show "the contours in a position further from, or closer to the airport, if it considers it more reasonable to do so in the special circumstances of the case."

²⁹ Clause 1.1.4.

³⁰ *Robinsons Bay Trust & Ors v Christchurch CC*, C 60/2004, 13 May 2004, Smith J (EnvC) (*Interim decision*)

evidence of **Mr Hawken** and **Ms Smith** outlines the process that has been undertaken.

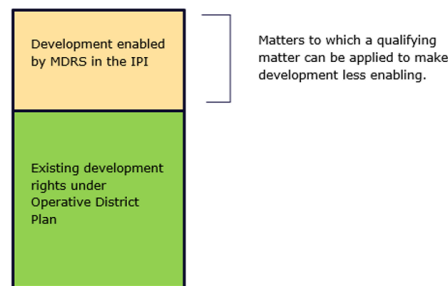
- 35 At the time PC14 was notified, only draft remodelled contours that were prepared by CIAL's expert team and submitted to ECan for peer review (*Draft Remodelled Noise Contours*) were available. That is why the notified version of PC14 includes an Airport Noise QM that is based on the Draft Remodelled Noise Contours.
- 36 Subsequently, Ecan's detailed peer review process resulted in final remodelled contours being prepared between CIAL and ECan's experts in May 2023 and confirmed in June 2023 (*Remodelled Noise Contours*). CIAL's submissions, further submissions and evidence for PC14 contain the Remodelled Noise Contours and seek that the Remodelled OE Contour be used as the basis for the Airport Noise QM.
- 37 A timeline of the remodelling process in relation to the PC14 process is included at **Appendix B** to these legal submissions. The justification for CIAL's relief in relation to the Remodelled OE Contour is explained below in relation to subsection (1)(c).

Specify the alternative density standards proposed for those areas (s 77K(1)(b))

- 38 It is submitted that there should be no change to the "pre-PC14" District Plan density standards for existing relevant residential zones subject to levels of aircraft noise of 50dB Ldn (including the retention of the current notification requirement for proposals that exceed the permitted and controlled activity standards).
- 39 As a result of the IHP findings the District Plan density standards already enable a reasonable level of development on sites which have historically been zoned for residential land use but which are subject to aircraft noise levels of 50dB Ldn. It would not be appropriate to increase the "pre-PC14" residential density standards in these locations.
- 40 Mr Millar's evidence elaborates on the density standards sought by CIAL for each of the relevant zones within the Airport Noise QM. Mr Millar observes that there are subtle differences, in relation to the Residential Suburban and Residential Suburban Density Transition zones, recommended in the Section 42A report for areas within the Operative 50dB Ldn Noise Contour (Map A CRPS) versus the Remodelled OE Contour. This appears to be due to a scope concern in light of the *Waikanae* case.
- 41 Notwithstanding Ms Oliver's current recommendation to apply a "Provisional Airport Noise QM" to all relevant residential land within the Remodelled OE Contour, within which operative District Plan

densities apply until the CRPS review is complete, we clarify CIAL's position on the scope issue below.

- 42 We refer to our memorandum dated 21 December 2023³¹ which explains that the RMA only allows the Council to make the MDRS less enabling of development where a QM exists. The following diagram illustrates this:



- 43 CIAL's position is that existing development rights (i.e. those that existed "pre-PC14") will not be undone by virtue of land use planning controls within the 50dB Ldn contour. It is further intensification or new noise sensitive activities beyond existing development rights that should not be enabled.
- 44 The specific density standards within the Airport Noise QM area (shown as the area within the Remodelled OE Contour) should be those in the operative District Plan. There is therefore no scope concern with this position in a *Waikanae* sense.

Identify why the existing qualifying matter applies to the areas identified in (a) (s 77K(1)(c))

- 45 The evidence filed for CIAL demonstrates why an existing QM applies to relevant residential zones within the Remodelled OE Contour justifying adjustment of the MDRS in those areas to operative District Plan standards.

Why does it apply within the 50dB Ldn Noise Contour?

- 46 The MDRS are designed to encourage new and additional households to establish in relevant residential zones. As explained by Ms Smith, if more households (and therefore more people) occupy land that is subject to aircraft noise levels of 50dB Ldn or greater, this increases the number of people subjected to noise levels from airport operations and increases the likelihood that those occupants will then suffer adverse amenity effects with the result that limitations could be placed on Christchurch Airport operations. This has occurred at other airports in New Zealand where residential development has been allowed to establish (or was already

³¹ *Memorandum of counsel on behalf of LMM Investments 2012 Limited (and various other clients) regarding scope of Plan Change 14, dated 21 December 2023, from [29].*

established) in close proximity – such as Wellington and Queenstown, both of which are now subject to a night-time curfew in order to manage noise impacts on residential communities near the airport.

- 47 There are two key types of airport-related effects that land use controls within the 50dB Ldn Noise Contour are designed to address which are related to each other:

47.1 *Health, Wellbeing and Amenity* – the effect of noise from aircraft operations on community health and amenity.

Mr Day confirms that recent overseas studies have shown that, between 50dB and 55dB Ldn, 18% to 33% of people were found to be highly annoyed by aircraft noise.

47.2 *Reverse sensitivity* – adverse effects on community health and amenity may lead to an increase in the incidence of complaints about noise and/or indirect pressure for CIAL to take steps to curb, curtail or amend its operations. This is a very real concern which has and is being experienced at various airports internationally.

- 48 The case law, existing planning framework and evidence all anticipate both types of related effects and justify density controls such as what is sought by CIAL in this process.

- 49 It is acknowledged that there is a level of residential development that has already occurred within the 50dB Ldn Noise Contour and that cannot be 'wound back'. But CIAL's position is that further intensification can, and should, be prevented and directed to locations outside the Remodelled OE Contour.

The existing planning framework

- 50 As explained earlier in these legal submissions, the 50dB Ldn Noise Contour is used consistently in planning documents across Canterbury to mark the starting point for controls on land use, including density controls.

- 51 The CRPS provisions are clear on what they seek and highly directive – new noise sensitive activities must be avoided within the 50dB Ldn Noise Contour. As Mr Millar has explained, PC14 must give effect to the CRPS and intensification of residential activity within the 50dB Noise Contour is inconsistent with the outcomes clearly directed by the CRPS.

- 52 In particular, the direction to "*avoid noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport...*" is authoritative. The meaning of the word "avoid" is particularly important in the context of the Panel's interpretation of the relevant CRPS provisions.

- 53 In the Supreme Court case of *King Salmon*,³² in the context of the New Zealand Coastal Policy Statement, the following statement was made:

[96] In that context, we consider "avoid" has its ordinary meaning of "not allow" or "prevent the occurrence of". In the sequence, "avoiding, remedying, or mitigating any adverse effects of activities on the environment" in s 5(2)(c) for example, it is difficult to see that "avoid" could sensibly bear any other meaning.

- 54 As the Panel will be aware, the meaning of the word "avoid" has recently been re-examined in the Supreme Court case of *Port Otago*.³³ After reviewing the case law, the Court concluded:

[68] All of the above means that the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

- 55 It is submitted that the *Port Otago* decision does not redefine the word "avoid" in the context of planning documents. In fact, the Supreme Court reaffirmed the definition from *King Salmon*:

[64] It is clear from this Court's decision in King Salmon that the NZCPS avoidance policies have a directive character. This Court said that the term "avoid", as used in the NZCPS, has its ordinary meaning of "not allow" or "prevent the occurrence of", meaning that the policies at issue in that appeal provided "something in the nature of a bottom line". The Court noted, however, that what was to be avoided with regard to those policies was, in that case, the adverse effects on natural character and that prohibition of minor or transitory effects would not likely be necessary to preserve the natural character of coastal environments.

- 56 Rather the Supreme Court in *Port Otago* found that, in interpreting an avoidance policy, it is important to look at the words which follow the word "avoid" to determine what it is that is to be "not allowed" or "prevented". As the Court said:

[61] The language in which the policies are expressed will nevertheless be significant, particularly in determining how directive they are intended to be and thus how much or how little flexibility a subordinate decision-maker might have. As this Court said in King Salmon, the various objectives and policies in the NZCPS have been expressed in different ways deliberately. Some give decision-makers more flexibility or are less

³² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

³³ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112.

prescriptive than others. Others are expressed in more specific and directive terms. These differences in expression matter.

[62] A policy might be expressed in such directive terms, for example, that a decision-maker has no choice but to follow it, assuming no other conflicting directive policy. As this Court said in King Salmon:

... 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.

[63] Conflicts between policies are likely to be rare if those policies are properly construed, even where they appear to be pulling in different directions. Any apparent conflict between policies may dissolve if "close attention is paid to the way in which the policies are expressed". Those policies expressed in more directive terms will have greater weight than those allowing more flexibility. Where conflict between policies does exist the area of conflict should be kept as narrow as possible.

- 57 Policy 6.3.5(4) of the CRPS states "*including by avoiding noise sensitive activities within...*". The policy could not be any more directive; it is noise sensitive activities themselves which are to be avoided. Noise sensitive activities are defined by the CRPS,³⁴ leaving no doubt as to exactly what the policy applies to.
- 58 We observe that other provisions in the CRPS use different phrases such as "*avoid adverse effects*"³⁵ and "*avoid development that adversely affects...*"³⁶ (among others).
- 59 For those provisions, the *Port Otago* rationale in relation to avoiding material harm is relevant, as the language following the word "avoid" is of a similar nature. However, Policy 6.3.5(4) of the CRPS is worded differently and the Supreme Court has told us that these differences must be regarded as deliberate and that they "matter" in an interpretation exercise.
- 60 Even if the Panel were to consider that "avoid" in the context of Policy 6.3.5(4) of the CRPS requires a consideration material harm in light of *Port Otago*, it is submitted that the way the policy is

³⁴ Noise sensitive activities means "*Residential activities other than those in conjunction with rural activities that comply with the rules in the relevant district plan as at 23 August 2008; Education activities including pre-school places or premises, but not including flight training, trade training or other industry related training facilities located within the Special Purpose (Airport) Zone in the Christchurch District Plan; Travellers' accommodation except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants; Hospitals, healthcare facilities and any elderly persons housing or complex. But does not include: Commercial film or video production activity.*"

³⁵ Objective 5.2.1.

³⁶ Policy 6.3.1.

drafted implies that the decision maker has already determined that harm will occur if noise sensitive activities are not avoided. That is why the policy is so directive.

The History of (some of) the Case Law

- 61 As long ago as 2000 the Environment Court in *BD Gargiulo v Christchurch CC*³⁷ (in the context of a resource consent on land subject to airport noise) said:

[31] ... We draw two conclusions from this uncontroverted evidence:

(a) There is a 10% chance that whoever lives on Lot 1 of Mr Gargiulo's subdivision will be highly annoyed by noise of aircraft movements (quite apart from other noise from the airport); and

(b) Moving the house on Lot 1 to the back will not change (a); nor will it mitigate the annoyance outside the house.

...

[51] ... All we can say here is that different objectives and policies in a district plan should be given different weights. Some should, under some plans, be given so much weight that they come close to prohibited activities (while always leaving it open for exceptional cases). We find that is the position here: the cumulative effect of the objectives and policies we have quoted show that the density provisions of the proposed plan should be given considerable weight.

...

[63]... In any event on the facts of this case we find that the density of dwellings (which is controlled by subdivision size) is so important around the Christchurch International Airport that it is a dominating factor in terms of weight.

- 62 The findings of the Environment Court were largely evidential as at that time the District Plan and CRPS contained no explicit policy reference to avoidance within the 50dB Ldn Noise Contour. The Court also found:

[39] However, these issues do not have to be resolved just on their own facts on a case-by-case basis without further help: there is guidance in the RPS and in the district plans). The CCC (and on appeal this Court) does not have to guess whether the effects of subdivision and a new house will be adverse, the RPS and the proposed district plan both imply (as we shall see when we consider them shortly) that subdivision within

³⁷ *BD Gargiulo v Christchurch CC*, C 137/2000, 17 August 2000, Jackson J (EnvC).

the 50 Ldn contour at a density greater than one lot per 4 hectares does have adverse effects...

- 63 This statement demonstrates the relevance of the existing planning framework. The Hearings Panel making decisions on PC14 does not have to guess whether the effects of intensification within the 50dB Ldn Noise Contour will be adverse; that is already implied in the CRPS and the District Plan.
- 64 We note that the High Court later agreed, stating "*Frankly, having read the documents, that is an inevitable and necessary implication.*"³⁸
- 65 During the Environment Court hearing, Judge Jackson was critical of the fact that evidence would have to be adduced at every future hearing to show the chance of a person being highly annoyed and airport operations being put at risk. Judge Jackson encouraged both CCC and ECan to make their policies more directive about where adverse effects on people and Christchurch Airport would arise, rather than leaving it to implication that locating on land subject to levels of noise of 50dB Ldn or greater implied the existence of adverse health, wellbeing and amenity and reverse sensitivity effects.
- 66 There were then proposed changes to the District Plan policies to add in a specific reference to 50dB Ldn as the point at which land use controls should commence, and this came before the Environment Court in *Robinsons Bay Trust v Christchurch City Council*.³⁹ The Court was faced with the decision of whether 50dB or 55dB Ldn should be used for deciding where the density of new noise sensitive activities should be controlled; the simple question being which contour line better provides for the purpose of the RMA, the CRPS and the provisions of the proposed District Plan at the time. The Court found:

[20] There are many points of agreement between the parties including:

(1) The parties agree that the Noise Standard is generally appropriate for use at the Christchurch Airport. This includes an acceptance that it is appropriate to address controls over the airport and over land development by means of an air noise boundary and an outer control boundary. The major distinction between the parties is whether the outer control boundary should be at the 55 dBA Ldn specified in the Noise Standard

³⁸ *Gargiulo v Christchurch City Council* HC Christchurch AP32/00, 6 March 2001.

³⁹ *Robinsons Bay Trust & Ors v Christchurch CC*, C 60/2004, 13 May 2004, Smith J (EnvC) (*Interim decision*).

(clause 1.4.2.2) or should be at the 50 dBA Ldn contour line shown in the the Proposed Plan.

(2) Having assessed the evidence of all the witnesses, we conclude it is common ground of the parties that the standard is a guide rather than a mandatory requirement and that it has been utilised in various ways throughout New Zealand. The Noise Standard does not recommend using the 50 dBA Ldn contour line, nor has it been used elsewhere in New Zealand.

(3) The purpose of the outer control boundary is set out in Noise Standard at clause 1.1.5:

(b) The Standard establishes a second, and outer, control boundary for the protection of amenity values, and prescribes the maximum sound exposure from aircraft noise at this boundary.

The level of disagreement therefore relates not to the applicability of the standard but whether, in fact, a lower level than 55 dBA Ldn is appropriate to the circumstances of this case.

Both the Council and the Regional Council advocated the adoption of the 50 dBA contour line as the contour which better supported the purpose of the Act.

- 67 Importantly, the Court analysed the evidence of effects in terms of effects of Christchurch Airport on people i.e. annoyance and the need to protect the Airport. The Court said:

[49] ... We accept the clear evidence given to us that noise can create impacts on amenity and some people will become highly annoyed. We also accept that there would be some benefit to the airport in future proofing its operation. That benefit is one that has local, regional and national significance.

[58] ... We do accept that there are likely to be a percentage of persons highly annoyed even below the 50dBA Ldn noise contour. Although that percentage is significantly less than at the 55dBA Ldn contour, we accept this may lead to an increased level of complaints.

- 68 The evidence filed on behalf of CIAL for PC14 demonstrates that the Environment Court's commentary is still applicable today; land subject to 50dB Ldn or greater of aircraft noise is not a desirable noise environment in which to locate new residential development (for reasons of reverse sensitivity and health and amenity), and we are not at a stage where economics or housing capacity considerations require a compromise. This is discussed further below.

The evidence justifies it

69 The evidence of Mr Day, Ms Smith and Mr Hawken confirms that the current evidence continues to support the use of the 50dB Ldn Noise Contour as the point at which new residential activity ought to be avoided because:

69.1 The standards in NZS6805 are a 'minimum' and NZS6805 recommends that existing noise controls should not be downgraded.

69.2 Community annoyance from aircraft noise world-wide has increased since the controls were first introduced in Canterbury and since NZS6805 was written.

69.3 Airports generally experience significant complaint from residents located outside 55dB Ldn.

69.4 Insulation does not solve all annoyance issues that result from exposure to aircraft noise.

69.5 Reverse sensitivity is a very real effect for airports worldwide and can lead to a range of operational constraints.

70 As stated by Mr Day:⁴⁰

... There is no doubt there are adverse effects from aircraft noise at 50dB Ldn. While the adverse effects are less than, for example, they are at 65dB Ldn, they are nevertheless real. If land is available elsewhere in the Christchurch region for new residential development (or intensification), I would not recommend from an acoustics perspective, to allow new noise sensitive activities inside the 50dB Ldn Air Noise Contour if it can be avoided...

71 The evidence of Mr Sellars⁴¹ and Ms Hampson⁴² demonstrates that there are other places in Christchurch where intensification can occur and the objectives of the NPS UD achieved.

72 Therefore, based on Mr Day's acoustics advice, there is no evidential basis to alter the current planning approach in Christchurch for the purposes of PC14. Intensification of noise sensitive activities on land subject to levels of 50dB Ldn or greater ought to be avoided and CIAL's relief delivers this outcome.

⁴⁰ *Statement of evidence of Chris Day*, dated 20 September 2023, at [10].

⁴¹ Mr Sellars concludes that the impact of the Remodelled OE Contour on Christchurch City is relatively minor.

⁴² Ms Hampson concludes that applying the Airport QM as proposed by CIAL does not come close to constraining demand for additional housing over the long term; the feasible capacity enabled by PC14 is substantial.

Why does the Airport Noise QM apply within relevant residential zones inside the Remodelled OE Contour?

Best available evidence

- 73 The Remodelled Contours are the “best available evidence” to inform where intensification should be avoided; they show spatially where the effects of 50dB Ldn will be experienced and therefore where a specific percentage of the population will be highly annoyed and the Airport’s safe and efficient operation put at risk.
- 74 The advice from CIAL’s technical experts is that the Remodelled OE Contour is the best up-to-date technical information to identify where adverse aircraft noise effects are likely to be felt. The Remodelled OE Contour is therefore the best information to base land use planning provisions off.
- 75 Furthermore, it is clear from Ms Hampson and Mr Sellars that the negative effects, from an economics and housing capacity perspective, associated with applying CIAL’s relief to land within the Remodelled OE Contour are minimal.
- 76 In answer to ECan’s submission it is submitted that the Panel is obliged to consider the evidence in front of it including the Remodelled Contours; it is not entitled to ignore the up-to-date evidence of where effects will be experienced simply because of some future CRPS review process. The CRPS is not an expert witness as to the extent of adverse effects and we know that it does not depict up to date scientific information. The 2008 50dB Ldn Noise Contour included in Map A of the CRPS is now out of date when compared to the Remodelled OE Contour.
- 77 It would obviously have been preferable for the CRPS review to take place first and the updated policy direction to be clear before decisions are made on areas that are appropriate for intensification or residential rezoning. But the issue of the timing of the PC14 process is out of everyone’s control; CIAL has to present the most up-to-date evidence as it comes to hand about where the impacts of Christchurch Airport’s operations will be felt. That is, of course, the duty of CIAL’s expert witnesses.
- 78 It is submitted that the sequencing issue should not be determinative when considering the evidential merits of including the Remodelled OE Contour when making decisions about the appropriate locations for intensification after considering and assessing that evidence as well as the supporting policy direction in the NPS UD, the CRPS and the District Plan.
- 79 There is a risk of adverse outcomes if PC14 does not incorporate the Remodelled OE Contour at this time. It will create landowner expectations of intensification proposals, will enable the obtaining of

certificates of compliance which would allow the horse to bolt on intensification until the CRPS review is complete. A cautious approach is warranted given that any inappropriate development in the meantime would be very difficult, if not impossible, to undo later if the CRPS maintains its current policy settings of avoidance within land exposed to levels of 50 dB Ldn.

- 80 Furthermore, it would be a perverse outcome for the Panel to base its decisions on PC14 on outdated information about where adverse effects will be experienced by a proportion those who come to live in new residential activity. It is the evidence before you which represents the best available information of where the adverse effects of aircraft noise are going to be experienced and by what percentage of the population.
- 81 When viewed in the round, there is little to lose by utilising the Remodelled OE Contour as the geographical extent of the Airport Noise QM in PC14 now. At worst, if the policy position were to change during the upcoming CRPS review, land would then be able to be released for residential intensification and there would simply have been a delay of a few years in that occurring. In the context of the intensification that will be able to occur in areas of Christchurch outside the Remodelled OE Contour in the meantime, that short delay is of no consequence.
- 82 On the other hand, there is the potential for adverse consequences if the evidence of the Remodelled Contours is ignored, and decisions made based on what is known to be out of date information from a modelling process that occurred in 2008. This approach would enable the horse to bolt on intensification in areas that the CRPS review would then deem to be inappropriate if the current policy settings remain.
- 83 Ms Hampson considers that the reduction in dwelling and commercial capacity is a minor opportunity cost in the context of PC14 providing at least sufficient capacity to meet long term demand (and beyond).⁴³ The additional loss of capacity based on the spatial extent of the Airport Noise QM proposed by CIAL (i.e. the Remodelled OE Contour) does not materially change that.
- 84 There is no compelling evidence to demonstrate why intensification must be allowed to occur within the Remodelled OE Contour now, before the CRPS review.

Consistency with the CRPS

- 85 ECan's position is that it is only the 50dB Ldn Noise Contour that is depicted on Map A of the CRPS that is appropriate for land use planning decisions until any updates are made following the CRPS

⁴³ *Statement of evidence of Natalie Hampson*, dated 20 September 2023, at [25].

review.⁴⁴ Ms Buddle interprets the CRPS provisions to mean that the direction to avoid new noise sensitive activities only applies to areas within the 50dB Ldn Noise Contour on Map A.

- 86 However, Mr Millar's evidence explains that relevant provisions of the CRPS do not refer to "the 50dB Ldn Noise Contour on Map A". It is correct that "50dB Ldn Noise Contour" and "Map A" are both used within the same CRPS policies, but they are not qualified by each other. Importantly, the direction to avoid noise sensitive activities, relates to the "50dB Ldn Noise Contour" only.
- 87 Accordingly, it is submitted that the Remodelled Contours can appropriately be included in the PC14 without undermining the CRPS. On the basis of the proper interpretation of policy 6.3.5(4) of the CRPS, combined with the best available and most up to date evidence, intensification in areas subject to future aircraft noise of 50dB Ldn or greater must be avoided.
- 88 We refer the Panel to legal advice on this issue which was obtained by Waimakariri District Council in relation to its proposed plan and variation.⁴⁵ The Hearings Panel in that process asked "*Can the hearings Panel reject a submission on the grounds that a review of a statutory document has not yet taken place?*".
- 89 The legal advice notes the planning efficiencies that would be achieved if the CRPS were reviewed first; obviously that would be the preferred outcome. However, the crux of the legal advice is that the RMA anticipates that the Hearings Panel undertake a merits assessment of relief sought in a submission regardless of whether that matter will also be later considered as part of another planning process. The advice concludes at paragraph 23:

In our view, the above factors suggest that a high degree of caution should be exercised in rejecting a submission outright on the grounds that a review of a statutory document has not yet taken place. At the very least, we suggest it should not be a determinative or sole reason for rejecting a submission such that it is not considered on its merits. Rather, we would recommend that the merits of the submission is still considered as part of a substantive assessment, including in terms of section 32.

⁴⁴ Statement of evidence of Meg Buddle on behalf of the Canterbury Regional Council, dated 20 September 2023, at [10] – [12].

⁴⁵ Buddle Findlay legal advice to Waimakariri District Council dated 14 February 2024 – "*Consideration of airport noise contours*" available at https://www.waimakariri.govt.nz/_data/assets/pdf_file/0023/159314/STREAM-10A-BUDDLE-FINDLAY-LEGAL-ADVICE-14-FEB-2024.pdf

- 90 That advice is highly relevant to PC14. The Hearings Panel cannot ignore the merits of CIAL’s evidence and default to a line in a plan as some form of quasi expert witness as to where adverse effects will be experienced, particularly when CIAL’s evidence demonstrates that the line is out of date and unreliable as a basis on which to assess the spatial extent of where adverse effects will occur.

Describe in in general terms for a typical site in those areas identified the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by MDRS and policy 3 (s77K(1)(d))

- 91 For completeness, we note that it is not realistic to assume for the purposes of this assessment that every (relevant) residentially zoned site within the 50dB Ldn Noise Contour would take up the opportunity to develop to the extent enabled through the MDRS. Many sites in residential zones have been recently re-developed and contain newly built dwellings that are unlikely to be further modified or re-built in line with MDRS. Some sites may also contain additional practical constraints, such as other QMs, which limit the ability to take up MDRS.
- 92 Viewed as a proportion of the whole area of residentially zoned land in Christchurch City, the area covered by the 50dB Ldn Noise Contour is comparatively small. It is appropriate to maintain reduced density standards for this limited area in order to protect Christchurch Airport operations.

CONCLUSION

- 93 In summary CIAL seeks that PC14 limit the potential for residential intensification to a “pre-PC14” state in areas which will be subject to projected levels of airport noise of 50dB Ldn or greater. The most up to date evidence tells us that these areas are within the Remodelled OE Contour.
- 94 The evidence shows that we do not need to enable intensification of land within the Remodelled OE Contour from an economics and housing capacity perspective, nor is it appropriate to do so from an effects perspective.

95 CIAL's evidence clearly establishes the requirements in section 77K for "existing QMs" and CIAL agrees with the approach proposed by Ms Oliver to implement a "Provisional Airport Noise QM" based on the Remodelled OE Contour in PC14 at this time.

16 April 2024

A handwritten signature in blue ink, appearing to read 'J M Appleyard'.

J M Appleyard / A M Lee
Counsel for Christchurch International Airport Limited

APPENDIX A – ANALYSIS OF AIRPORT QM UNDER SECTION 77J OF THE AMENDMENT ACT

- 1 Kāinga Ora Homes and Communities (*Kāinga Ora*) suggest that Airport Noise QM ought to be assessed as a “new qualifying matter” under section 77J of the Amendment Act. For reasons explained in the body of these legal submissions, we presume this relates to areas of relevant residential land that sit somewhere between the operative 50dB Ldn Noise Contour shown on Map A of the CRPS and the Remodelled OE Contour (*Remodelled Contour Area*).
- 2 The table below identifies which aspects of CIAL’s evidence and legal submissions satisfy the various requirements in Section 77J of the Amendment Act. This is provided for completeness, but we emphasise that CIAL considers the correct analysis is that required by Section 77K.

Requirement in Section 77J(3)	Explanation and evidence applicable
<p><i>Section 77J(3)(a) - Demonstrate why the area is subject to a qualifying matter and why the qualifying matter is incompatible with the level of development permitted by the MDRS</i></p>	<p>We refer to the evidence of Ms Smith, Mr Day, Mr Hawken and Mr Millar.</p> <p>The Remodelled Contour Area is subject to a QM that is required in order to protect:</p> <ul style="list-style-type: none"> • community health and amenity from the effects of aircraft noise; and • Christchurch Airport operations from reverse sensitivity effects. <p>Controls on density in areas subject to 50dB Ldn Air Noise Contour or greater are the established mechanism to deliver the protection for Christchurch Airport that is directed by the higher order planning framework.</p> <p>The Remodelled OE Contour represents the best available information about where those effects will be felt and, therefore, the areas where development to full MDRS is inappropriate.</p>
<p><i>Section 77J(3)(b) – Assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development</i></p>	<p>We refer to the evidence of Mr Sellars and Ms Hampson.</p> <p>The impact of the Remodelled OE Contour on Christchurch City in terms of housing capacity is relatively minor.</p> <p>Furthermore, as explained in the body of these legal submissions, it is not realistic to assume for the purposes of this assessment that every (relevant) residentially zoned</p>

Requirement in Section 77J(3)	Explanation and evidence applicable
	<p>site within the Remodelled OE Contour would take up the opportunity to develop to the extent enabled through the MDRS.</p> <p>Viewed as a proportion of the whole area of residentially zoned land in Christchurch City, and when taking into account the significant overlap between the operative 50dB Ldn contour and the Remodelled OE Contour, the area covered by the Remodelled Contour Area is comparatively small.</p>
<p><i>Section 77J(3)(c) – Assess the costs and broader impacts of imposing those limits</i></p>	<p>We refer to the evidence of Mr Sellars and Ms Hampson.</p> <p>Mr Sellars has assessed the impact of CIAL’s relief from a housing capacity perspective, concluding that it is relatively minor.</p> <p>Furthermore, Ms Hampson explains the economic costs and benefits of the relief sought by CIAL. She concludes that the economic benefits of applying the Airport QM as sought by CIAL outweighs the economic costs of reduced development capacity in parts of the Christchurch urban area.</p>
<p><i>Section 77J(4)(b) – how modifications to the MDRS as applied to relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas</i></p>	<p>CIAL’s submission seeks retention of status quo development conditions within the Remodelled Contour Area. Intensification beyond that has the potential for reverse sensitivity effects that could impact on the amenity of the community and on the safe, efficient and effective operation of Christchurch Airport.</p> <p>The relief sought by CIAL in relation to the Remodelled Contour Area is consistent with the planning framework that is already in place in terms of limits on density.</p>

APPENDIX B - TIMELINE OF PC14 AND CONTOUR REMODELLING

Below is a brief summary timeline of the Christchurch Airport noise contour remodelling processes and its interaction with PC14

Date	Process
2008	Christchurch Airport's Air Noise Contours, as currently depicted on Map A of the CRPS, were finalised (<i>Operative Noise Contours</i>).
2018	CIAL began the process of commissioning experts to remodel Christchurch Airport's Air Noise Contours.
2021	Remodelling project recommenced after being interrupted by Covid-19.
November 2021	CIAL expert team published and provided Environment Canterbury (<i>ECan</i>) with the report "2021 Christchurch International Airport Expert Update of the Operative Plan Noise Contours: For Review by Environment Canterbury's Independent Expert Panel" (<i>Draft Updated Noise Contours</i>).
April 2022	ECan engaged Independent Expert Panel to review the Draft Update Noise Contours.
July 2022	CIAL expert team received initial peer review findings from Independent Expert Panel.
11 July 2022	Darryl Millar provided a Section 77K analysis to CCC ahead of the notification of PC14. The analysis was based on the draft Remodelled Annual Average 50dB Ldn contour. The Annual Average was used due to the immediate legal effect of MDRS upon notification unless a QM was applied. CIAL sought to ensure that a version of the Remodelled Contours was included in the notified version of PC14.
September 2023	Council voted against notification of the draft version of PC14.
July 2022 – April 2023	Continuing dialogue between the CIAL expert team and the Independent Expert Panel.
17 March 2023	PC14 formally notified.
May 2023	Final Updated Contours agreed between the Independent Expert Panel and CIAL's experts.
12 May 2023	CIAL's submission on PC14 lodged
June 2023	Final Updated Contours confirmed and final reports published. CIAL publish final "2023 Updated Christchurch International Airport Noise Contours" (Updated Noise Contours) on 30 June.
17 July 2023	CIAL's further submissions on PC14 lodged