

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT CHRISTCHURCH**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI ŌTAUTAHI**

**IN THE MATTER
AND**

of the Resource Management Act 1991

IN THE MATTER

**of the hearing of submissions and further
submissions on Plan Change 14 to the
Operative Christchurch District Plan**

**LEGAL SUBMISSIONS FOR KĀINGA ORA – HOMES AND
COMMUNITIES**

16 APRIL 2024

Instructing solicitor:
C E Kirman
Special Counsel
Kāinga Ora - Homes and Communities
PO Box 14594
Central Auckland 1051
E: claire.kirman@kaingaora.govt.nz

Counsel instructed:
N M H Whittington
Hawkestone Chambers
32 Hawkestone Street
Wellington 6012
E: nick.whittington@hawkestone.co.nz

1. POSITION OF KĀINGA ORA

- 1.1. Kāinga Ora opposes the attempt by the Council and CIAL to impose restrictions and costs on urban development in existing residential areas within the 50 dB contour. As well, it considers that it is inappropriate for the Council to use a draft and untested new contour as the means by which these restrictions are applied.
- 1.2. Substantially limiting housing intensification in existing residential suburbs would be a remarkable outcome in a process intended to expedite the application of planning provisions enabling greater housing intensification in New Zealand's major cities. In no other New Zealand city are there land use restrictions beyond a 55 dB contour.
- 1.3. Restricting density in existing residential areas is an unnecessarily blunt approach and the evidence does not justify the restrictions. There is no evidence before the IHP that Christchurch residents are more highly annoyed by airport noise or otherwise affected to a greater degree than other New Zealanders. Yet on the Council and CIAL's approach Christchurch will become a national, and international, outlier.
- 1.4. Kāinga Ora considers that the most appropriate way to manage airport noise in existing residential areas to give effect to the NPS-UD and the operative Canterbury Regional Policy Statement is as recommended in the evidence of Matthew Lindenberg.
- 1.5. In addition to Mr Lindenberg's evidence, Kāinga Ora has filed evidence by:
 - (a) Jon Styles (Noise);
 - (b) Jonathan Selkirk (Ventilation).

2. APPROACH TO QUALIFYING MATTERS

- 2.1. Kāinga Ora has previously outlined the correct approach to the application of qualifying matters in legal submissions presented by

Mr Matheson dated 6 October 2023 (supplementary submissions 11 October 2023 – which contain helpful flow diagrams), and 4 December 2023. The 6 October submissions also set out the Kāinga Ora corporate position and mandate.¹

2.2. Sections 77J provides additional requirements over and above those required by s 32. In particular:

- (a) The evaluation report must demonstrate that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and
- (b) The evaluation report must include a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters.

2.3. The argument for incompatibility rests on reverse sensitivity, which is discussed in more detail below. But the Council and CIAL planning witnesses have not apparently given any thought to the requirement that the eventual provisions must reflect modifications limited only to those necessary to accommodate the qualifying matter. The witnesses who consider that there is such incompatibility as to justify modification to the MDRS on account of the Airport Noise qualifying matter have improperly leapt from that proposition to a conclusion that the existing planning framework is appropriate, without considering other means of modifying the planning framework that start from the MDRS. This is particularly clear in the acknowledgement by Mr Kyle that the purpose of CIAL's submission is to preserve the "pre-PC14 state".² Qualifying matters are not intended to be used as a means to preserve the status quo but to moderate the default imposition of the MDRS or other intensification requirements (ie, policy 3).

¹ See also the Evidence of Brendon Liggett dated 22 September 2023 and 29 November 2023.

² Statement of John Kyle, 8 April 2024 at [7]-[8].

- 2.4. By contrast, the witnesses on behalf of Kāinga Ora recognise that airport noise is an effect that justifies imposing land use controls, but that other modifications can be made to manage the issue, rather than simply limiting density, which is a blunt and unnecessary constraint.

3. REVERSE SENSITIVITY

- 3.1. Underlying the Kāinga Ora position is a request that the evidence put forward in support of there being a reverse sensitivity effect within the 50dB L_{dn} Noise Contour is properly interrogated. That is because the effect of imposing greater regulation of land use within the 50 dB contour has the effect of transferring an economic cost of operation from the Airport onto those landowners, increasing the cost of urban development, reducing the pace at which that urban development will occur, and its likelihood.
- 3.2. Effectively, those landowners end up subsidising CIAL's operating costs, instead of CIAL internalising its adverse environmental effects as s 16 of the RMA requires.
- 3.3. Kāinga Ora accepts that it is necessary to balance the interests of landowners and CIAL. There may be good social reasons for ensuring that CIAL is not unduly restricted in its operation as a result of incompatible land uses. But there are also good social reasons to ensure that existing residential areas may be developed without imposing an undue cost burden on those landowners. CIAL's economic evidence does not bring into the assessment the social benefits of housing to the economy. CIAL also relies on surveys undertaken relating to annoyance from aircraft noise which, as Mr Barrington Clarke highlights, do not support the conclusions that CIAL seeks to draw from them. Mr Barrington Clarke also highlights that CIAL's position involves a series of worst-case assumptions which mean that many more Canterbury landowners have to subsidise the Airport's operation than ought to be the case if more realistic assumptions were made. Of course, these sorts of matters are best tested through the review process of the Canterbury Regional Policy Statement, proposed for later this year.

- 3.4. The outcome proposed by the Council and CIAL would result in Christchurch being a significant outlier.³ All other major airports in New Zealand address the issue by managing urban development within 55 dB contours and greater. Reverse sensitivity is not seen in these other locations as justifying restrictions within a 50 dB contour. This reflects NZS6805:1992.
- 3.5. Indeed, Mr Barrington Clarke confirms that international best practice involves managing development only within a circa 55 dB contour.⁴ Kāinga Ora maintains that existing noise rule requirements in the operative district plan that apply at 55 dB and above, are an available end-point to manage effects, though they must be consistent with the requirements of s 77J. With appropriate acoustic and ventilation standards,⁵ the issue can be managed as recommended by Mr Lindenberg.
- 3.6. The Council and CIAL's approach sets up a stark contrast with all other major New Zealand airports and cities. The Canterbury Regional Policy Statement is to be discussed next, but it cannot even be suggested this provides a reason to distinguish the Canterbury framework from the rest of the country. That is because the Waimakariri District Council, which is also bound by the CRPS, has not taken the same approach as the Council.⁶
- 3.7. The Council and CIAL's position is an extraordinary and unjustifiable overreach.

4. CANTERBURY REGIONAL POLICY STATEMENT

- 4.1. Under s 75(3)(c) of the RMA a district plan must give effect to a regional policy statement. That, here, means the operative Canterbury Regional Policy Statement.
- 4.2. The CRPS does not seek to disenable new residential activity in existing residentially zoned urban areas. Indeed, policy 6.3.5(4) could not be clearer that its direction to only provide for new

³ Evidence of Jon Styles at [11.5].

⁴ Evidence of John-Paul Barrington Clarke at [96]-[101].

⁵ See Evidence of Jonathan Selkirk.

⁶ Evidence of Matthew Lindenberg at [7.4].

development that does not affect the efficient operation etc of the airport within the 50 dB contour does not apply to existing residentially zoned urban land. This is simply ignored in Mr Kyle's evidence. He quotes it at paragraph 10 of his statement, but then ignores it in the very next paragraph when he describes the "clear and coherent" direction to avoid sensitive activities within the 50dB contour.

- 4.3. At the very least, even if there were not the "unless" proviso to policy 6.3.5(4), some reconciliation between the "only provide for" policy and the conflicting NPS-UD directives would be necessary.
- 4.4. Kāinga Ora considers that Mr Lindenberg's analysis of the relevant CRPS objectives and policies in Part 4 of his evidence should be preferred. In particular, I repeat paragraph 4.6 of his evidence, which contains the following policy reconciliation:

4.6 I consider that the key policy framework for preparing and shaping any response through the PDP in relation to the management of sensitive activities in proximity to the Airport can be summarised as follows:

- (a) Development is provided for:
- (i) Which enables people and communities, including future generations, to provide for the social, economic and cultural well-being and health and safety – including the provision of sufficient housing choice to meet the Region's housing needs;
 - (i) which avoids adverse effects on significant natural and physical resources including regionally significant infrastructure, **and where avoidance is impracticable, remedies or mitigates those effects** on those resources and infrastructure;
 - (iii) which **avoids or mitigates** reverse sensitivity effects

and conflicts between incompatible activities;

- (b) Specifically in relation to the Airport, and the use of airport noise contours as a method to manage land use and development:
 - (i) 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 92 of the CRPS).

5. WHICH CONTOUR?

- 5.1. The requirement to give effect to the CRPS is also significant for the question about which 50 dB contour is relevant and appropriate. The operative CRPS contains a 50 dB contour. The Council, backed by CIAL, has sought to update the location of the contour based on recent development work which is yet to be properly tested through the CRPS review process.
- 5.2. Ms Oliver suggests that because policy 6.3.5(4) does not specify the 50 dB contour *in Map A* of the CRPS, it is available to be updated.⁷ Interpreting the CRPS as a whole, as orthodox plan interpretation requires, it is an easy conclusion that when policy 6.3.5(4) refers to “the 50 dBA Ldn airport noise contour for Christchurch International Airport”, it means that contour depicted in the map attached to the same document.
- 5.3. Kāinga Ora does not accept the arguments put forward by witnesses such as Ms Hampson as to why this is appropriate. There are

⁷ Section 42A Report at [12.13]-[12.14].

significant flaws with taking a more conservative approach now in reliance on an allegedly low opportunity cost, including natural justice and that doing so is directly contrary to s 77G and the NPS-UD. But, more significantly, the requirement for PC14 to give effect to the CRPS is a major jurisdictional impediment. Any reliance on an “updated” contour will necessarily amount to a failure to give effect to the 50 dB contour contained in the CRPS. It is necessarily contrary to the CRPS for restrictive provisions to be applied within a new, untested 50 dB contour, instead of the 50 dB contour in the operative CRPS.

- 5.4. There are also natural justice problems. Ms Oliver’s s 42A report recognises further extensions or expansions from the notified version of the 50dB contour.⁸ If counsel understands the rather opaque process that has been followed, those expansions relate to further information provided by CIAL other than through this process with the availability of updated modelling. A number of submitters simply will not have been able to anticipate the extent of the contour now being proposed.

Date: 16 April 2024



Nick Whittington
Counsel for Kāinga Ora-Homes and Communities