

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,
Lyttelton Port Company Limited and Orion New
Zealand Limited**

Memorandum of counsel on behalf of Strategic Infrastructure
Submitters

Dated: 1 August 2023

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MEMORANDUM OF COUNSEL ON BEHALF OF SUBMITTERS

1 This memorandum of counsel is filed on behalf of the following submitters on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan (*PC14*):

1.1 Christchurch International Airport Limited (*CIAL*)
(submitter #852);

1.2 Lyttelton Port Company Limited (*LPC*) (submitter #853); and

1.3 Orion New Zealand Limited (*Orion*) (submitter #854).

(collectively the *Strategic Infrastructure Submitters*)

2 This memorandum addresses matters raised in Minute 3 of the Independent Hearings Panel (*IHP*). We also respond to the memorandum filed by Christchurch City Council (*CCC*) on 28 July 2023 (the *CCC Memo*).

Preliminary scope and legal issues

3 Counsel agree with *CCC*'s proposed approach to scope issues and will abide by the *IHP*'s preference. We note that there are a number of scope issues presented by the provisions proposed in *PC14* as notified, and by various submissions on *PC14*. Given the time available and the interrelated nature of scope and substance in many cases, we agree with *CCC*'s suggestion that scope issues be dealt with as part of the relevant topic hearing.

Draft hearing procedures

4 The Strategic Infrastructure Submitters generally support the *IHP*'s draft hearing procedures. There are several matters set out below which are proposed to be addressed at the pre-hearing conference.

15 September evidence deadline

5 Counsel acknowledge the *IHP*'s comments at paragraph 9 of Minute 3 in response to our earlier suggestion of staging evidence deadlines to align with the sequencing of hearing topics. We appreciate the timing issues and the desire to enable submitters to attend only once to present to the *IHP*.

6 However, the interests of the Strategic Infrastructure Submitters cover almost all hearing topics and they are engaging a number of witnesses (as detailed below) who will be giving evidence across multiple topics (likely for multiple submitters). A single evidence deadline will place immense pressure on those witnesses, and may generate resourcing issues for submitters that engage them.

7 *CCC* itself acknowledges the internal resourcing issues it faced in preparing *PC14*. We echo that sentiment and note that witnesses

and submitters are also involved in other intensification plan change processes in other districts, for example, in Waimakariri where the timing is similar to PC14. We therefore respectfully seek that the hearings procedures accommodate capacity constraints as much as possible.

- 8 To that end, the following additions to the indicative timeline are suggested:
- 8.1 15 September 2023 – filing and service of submitter expert evidence in chief on *Strategic overview/whole of plan change* topic;
 - 8.2 29 September 2023 – filing and service of submitter expert evidence in chief on *Central City and Commercial Zones* topic;
 - 8.3 13 October 2023 – filing and service of submitter expert evidence in chief on *Residential Zones* topic;
 - 8.4 10 November 2023 – filing and service of submitter expert evidence in chief on *Other Zones and City-wide qualifying and other matters* topics.
- 9 Corresponding extensions to the due dates for Section 42A Reports may also be considered appropriate.
- Rebuttal evidence and expert conferencing*
- 10 Counsel support CCC’s proposal to implement a process for rebuttal evidence. We agree that, without the opportunity to respond, submitters and witnesses that present to the IHP earlier in a hearing topic may be disadvantaged.
- 11 Our tentative suggestion is that a due date for rebuttal evidence could be set five working days after primary evidence is filed (assuming staged filing of evidence as outlined above). There may also need to be corresponding extensions to the timing for expert witness conferencing.
- 12 We also suggest that there would be significant benefit in a requirement for CCC to prepare a proposed list and schedule of expert conferencing topics by a certain date. This could be sufficiently detailed so as to, for example, separate conferencing on transport noise and airport noise. Submitters could then indicate when filing their evidence which conferencing topics their experts would participate in.
- Requests for rezoning*
- 13 Section 77G(4) of the Resource Management Act (Enabling Housing and Other Matters) Amendment Act 2021 (*Enabling Housing Act*)

allows specified territorial authorities to amend existing residential zones *and* to create new residential zones.

- 14 Counsel note that CCC's proposed list of sub-topics does not appear to indicate when requests for new residential land (for example, a request to rezone industrial or rural land to residential) will be heard. Such requests are particularly relevant for the Strategic Infrastructure Submitters in terms of both the protection of existing infrastructure and the provision of new infrastructure. We suggest that these requests are most appropriately grouped and heard either as a separate topic, or that they are heard as part of the Other Zones topic (and there is more time allowed). This matter is addressed in more detail in a separate memorandum filed on behalf of Chapman Tripp's other clients.

Proposed topics and sub-topics

- 15 Aside from the rezoning matter discussed above, the Strategic Infrastructure Submitters otherwise agree with CCC's proposed topic structure and the breakdown of sub-topics.
- 16 To assist the IHP and CCC, the Strategic Infrastructure Submitters signal that, based on the proposed topics/sub-topics and the relief sought in their submissions, they expect to need to participate in almost all of the topic hearings.
- 17 Counsel note the IHP's desire to enable submitters to attend only once to present to the IHP. It is assumed that this is for the benefit of submitters and that, if they wish, submitters (such as the Strategic Infrastructure Submitters) will be able to present at multiple hearing topics.
- 18 If, instead, it is the IHP's desire to streamline the hearing process and limit submitters' presentations to only one hearing topic, the Strategic Infrastructure Submitters seek to present at both the *Strategic Overview* and *City-wide qualifying and other matters* hearings. The reasons for this request are:
- 18.1 As indicated in the CCC Memo, the *Strategic Overview* hearing is where CCC will present the 'big picture' for PC14, including key matters that will inform subsequent topic hearings. It will be equally important for the Strategic Infrastructure Submitters to outline how their respective infrastructure assets contribute to the 'big picture' in advance of the more specific PC14 topic hearings.
- 18.2 The Strategic Infrastructure Submitters all operate strategic infrastructure assets that contribute a multitude of benefits for Christchurch City and beyond. It is critical that these assets are protected from incompatible activities (including

inappropriate intensification).¹ The safe and efficient operation of nationally and regionally significant infrastructure is clearly a matter at the forefront of PC14. This is explicitly recognised in the qualifying matter provisions of the Enabling Housing Act.²

- 18.3 At a high level, the Strategic Infrastructure Submitters support PC14 and CCC's proposed mechanisms to protect strategic infrastructure from inappropriate residential activity, including intensification. Given the tight legislative timeframes under the Enabling Housing Act,³ the Strategic Infrastructure Submitters understand the importance of evidence that supports the changes proposed in PC14 and/or in their respective submissions. The Strategic Infrastructure Submitters therefore intend to file evidence and legal submissions to support (but not duplicate) CCC's opening.
- 18.4 The proposed hearing timetable places the *City-wide qualifying and other matters* topic at the end, after submissions and hearings in relation to each of the relevant zones. However, the Strategic Infrastructure Submitters' relief is highly relevant to provisions within each of those zones. By presenting evidence and legal submissions at the *Strategic Overview* hearing, this will enable consideration of strategic infrastructure matters throughout the process and resolve any potential natural justice issues for submitters that appear at a zone hearing but are subsequently impacted by the Strategic Infrastructure Submitters' evidence for the *City-wide qualifying and other matters* hearing in week 9. This applies particularly to the CIAL submission which seeks a broader airport noise qualifying matter than that notified by CCC.
- 18.5 To be clear, the Strategic Infrastructure Submitters do not intend to address their respective relief on PC14 in any great detail at the *Strategic Overview* hearing. Rather they will address high-level matters to support CCC's opening, which will be important for the IHP and submitters to bear in mind throughout the hearings process.
- 18.6 Detailed evidence addressing the changes sought to the relevant PC14 provisions would then be presented at the *City-wide Qualifying and Other Matters* hearing. To the extent necessary, that evidence would need to address any related relief sought to other zone hearing topics if the Strategic

¹ This is recognised plainly in Strategic Objective 3.3.12 in the Christchurch District Plan, Subsections (b)(i) – (iii).

² Sections 77I and 77O.

³ Signalled in CCC memo at [39].

Infrastructure Submitters are only able to appear at one subsequent hearing topic.

- 19 Alternatively, if the Panel does not agree with the approach proposed, the Submitters suggest that the City-wide qualifying and other matters topic be progressed immediately following the *Strategic Overview* topic; it would be a natural progression to other matters that are important across Christchurch City and influence multiple aspects of PC14. This would, however, require considerable amendment to the proposed timetable.

Witnesses

- 20 The Strategic Infrastructure Submitters are engaging a number of witnesses to present evidence in support of their submissions on PC14, and to support CCC's opening in relation to their strategic infrastructure assets. Consistent with the approach for evidence and legal submissions to be taken as read, the Strategic Infrastructure Submitters will appear before the IHP in relation to significant matters and to answer any questions.
- 21 CIAL's witnesses will address the following disciplines:
- 21.1 Airport operations;
 - 21.2 Noise;
 - 21.3 Airport noise contours;
 - 21.4 Contour remodelling;
 - 21.5 Transport;
 - 21.6 Economics;
 - 21.7 Housing capacity; and
 - 21.8 Planning.
- 22 LPC's witnesses will address the following disciplines:
- 22.1 Port operations;
 - 22.2 Noise; and
 - 22.3 Planning.
- 23 Orion's witnesses will address the following disciplines:
- 23.1 Distribution network operations; and

23.2 Planning.

- 24 The above lists are subject to confirmation, including of the relevant personnel involved, and may be added to once the section 42A reports are received.

Dated: 1 August 2023

A handwritten signature in blue ink, appearing to read 'Jo Appleyard', is centered on the page.

Jo Appleyard / Annabel Hawkins / Annabelle Lee
Counsel for the Strategic Infrastructure Submitters