Before Independent Hearing Commissioner's in Christchurch

In the matter of the Resource Management Act 1991

And

In the matter of the hearing of submissions on Plan Change 14

David Lawry responds to CCC Counsels IHP minute 39

Update on the status of the Greater Christchurch Spatial Plan.

22 April 2024

May it please the Independent Hearing Panel:

Thank you for the opportunity to address the issues that arise from Counsel for Christchurch City Council, reply to your minute 39.

As has already been advised in my evidence it is often not what CCC does in this type of hearing, but rather what it fails to do that provides evidence of the type of conflict of interests that exist. In this matter land owners living under the CIAL air noise contours and indeed the engine testing noise contours are having their land use rights adversely abused as CCC provides competitive land development, management and noise pollution advantages to their company CIAL.

There are many examples of what CCC fails to do. It fails to determine that on wing aircraft engine testing, usually carried out at night and the small hours of the morning following invoiced repairs is industrial noise. Thereby enabling the worst night time noise pollution in the region. Zero at source mitigation is required. This from the statutory body required to police excess noise. It fails to see the hypocrisy of allowing outline resource consenting processes, designed to reduce scrutiny, that accepted Marshall Day Ltd evidence at the design phase of the Novotel Hotel, which stated that a 50dBA noise level was acceptable inside the glass windows of the rooms of that hotel. How is it fine inside that hotel's bedrooms, but not fine for 100 of hectares surrounding the airport not exempted from all noise hurdles by the Special Airport Zone rules, but captured by the 50 dBA Ldn aircraft noise contour?

In this example CCC failed to advise you that The Greater Christchurch Spatial Plan had directed that "avoidance of residential development" is no longer the way forward and that a carefully managed residential planning process is the way forward. This plan has been agreed to by all the Greater Christchurch Councils, the Partners, at a cost of several millions, following extensive consultation with rate payers and others.

This plan is the Future Development Status (FDS) in accordance with Part 3 subpart 4 of the NPS-UD.

Once again, it has been left to submitters to raise this important matter to you. Just like it has been left to

submitters to bring expert acoustical evidence that exposes the gross worst case assumption processes CIAL experts have designed, that have resulted in significantly exaggerated air noise contours.

As you are correctly advised by CCC legal counsel you “must have regard” to the Spatial Plan directions when evaluating PC14 however having advised that at point 11 counsel then spends the rest of that point advising you of your entitlement to avoid the spatial plans directions. Not wrong in itself, but totally wrong in its failure to forcefully asserting that the Partners to the Spatial plan hold high expectations that the plans direction are to be followed.

Yet again, it is what CCC don’t do that is telling! Who at CCC signed off on this legal advice to you? Is this legal opinion presenting CCC’s, as opposed to the Spatial Plan collective Partners, position? Is it entirely fine and open for you to conclude that a matter is not of sufficient significance in itself, either alone or together to outweigh other considerations which you must take into account in order for you to ignore the Spatial Plan?

Is it, for example, fine for you to totally exclude residential development over hundreds of hectares of the safest remaining land thereby derailing the Spatial Plan intent and significantly reducing residential development options? What could possibly be of sufficient significance for you to so conclude?

CCC counsel is well aware of CIAL’s intent and that this matter has reached such importance as to have a dedicated section

of the PC14 process allocated to that issue. Yet fails to address its company's intent and the way in which they conflict with the Spatial plan's intent.

At point 17, under the heading Specific aspects of the Spatial Plan that are directly related to PC14 and whether they support councils' position, readers are directed to Appendix A. The final comment in point 17 is, "In all cases the specific aspects identified support the Councils PC14 position.

The problem is that on the first page of Appendix A is the following: "Areas to protect, and avoid/mitigate (page 44-45)"

In plain English does CCC advocate for avoidance of residential development under the air noise contours including the 50dBA Ldn air noise contour in direct conflict with the spatial plan? Or does it advocate for careful management of residential development as directed by the spatial Plan. Again, CCC avoids taking a stance.

Again, it's what CCC fails to do that is telling it totally fails to fight for the Spatial plan.

I submit that the Commissioner's need to seek less conflicted legal advice, further that it is unsafe to accept this advice especially around the weighting of evidence from just one party to the Spatial Agreement. It is very clear in the ongoing very similar Plan Change 10A process that Waimakariri Council have very different views of CIAL's evidence. That Council have engaged numerous expert witnesses to address their concerns and seeks that those Commissioners rejects most of CIAL's requests.

I suspect Parties separate to CCC would have differing views as to the weight of evidence needed to avoid the directions of the agreed Spatial Plan and may well feel that CCC's failure to support the plans directions in a stronger manner would raise concerns.

I remind the panel that early on in my submissions I sought guidance on the evidential threshold that you intended to apply to your decisions on what are and are not Qualifying Matters.

No such guidance as been forthcoming. I respectfully remind you that the evidence required to find that a matter is a Qualifying Matter is not just a high level of evidence but a very high level of evidence.

I will leave the acoustical experts to fight out acoustical issues but submit that the evidence of Professor John Paul Clarke supports the assertion of a high level of exaggeration and misleading evidence presented by CIAL in the Waimakariri 10A process that is also at play in this process.

I advise that I have made a formal complaint to CCHL board Chair in the hope that there is improvement in this process.

The assertion that CIAL needs the protections provided by the residential avoidance rules under the air noise contours, specifically the 50dBA Ldn air noise contours, in the absence of CIAL providing to you the processes that would have to occur in order for any of the alleged risk to business continuity sanctions to be imposed by CCC is misleading. There is zero possibility of any noise complaint arising from

persons under that contour generating any adverse business continuity sanction now nor into the future. Background noise for much of this air noise contour already exceeds 50dBA and will only increase over time. This fact makes a complete mockery of this policy. CIAL's concerns speak more to their business development and management aspirations than land owner's amenity noise impact health concerns and noise complaints.

The 50dBA Ldn air noise contour should not be deemed to be a qualifying matter. There is no evidence, let alone a very high level of evidence, indicating any quantifiable risk of sanctions arising from noise complaints. Indeed, given CCC past behaviours there is zero risk.

David Lawry