

MAY IT PLEASE THE COMMISSIONERS:**Introduction**

1. This memorandum is filed by counsel for Kāinga Ora – Homes and Communities (“**Kāinga Ora**”) in response to Minute #3 of the Independent Hearing Panel (“**IHP**”) hearing submissions on Plan Change 14 (“**PC14**”) to the Operative Christchurch District Plan (“**Plan**”).
2. Kāinga Ora will be represented by separate counsel in relation to noise-related aspects, including airport noise (Mr Whittington); and the balance of its submission points (Mr Matheson). Counsel have conferred and agreed that the following issues ought to be considered at the pre-hearing meeting on 1 August 2023.
3. For the sake of efficiency, and due to Mr Whittington having a prior commitment before the Wellington PDP Independent Hearings Panel, Mr Matheson will attend the pre-hearing meeting and will address the Panel on all of the matters raised below, despite the division of function referred to above.

Evidence

4. Kāinga Ora will be calling evidence from the following witnesses:
 - (a) Brendon Liggett – Corporate;
 - (b) Tim Joll – Planning;
 - (c) Fraser Colegrave – Economics;
 - (d) Jonathan Clease – Urban Design;
 - (e) Landscape Architect – TBC;
 - (f) John Brown – Heritage;
 - (g) Jon Styles – Noise (Acoustics);
 - (h) Lance Jimmieson – Noise (Mechanical Engineering); and
 - (i) Matt Lindenberg – Planning (Noise).

Preliminary legal issue – whether new airport noise contours produced by Canterbury Regional Council are an existing (or new) qualifying matter

5. Kāinga Ora understands that the Council has used recently updated airport noise contours as the basis for the airport noise-related qualifying matter. Despite the contours being new, and not being reflected in the current district plan, the Council's s 32 analysis relies on and adopts a report completed on behalf of Christchurch International Airport Limited, which expressly addresses the qualifying matter in terms of s 77K. Section 77K only provides for existing qualifying matters, being those that are operative in the relevant district plan when the IPI is notified (see s 77K(3)).
6. Kāinga Ora considers that the report is for that reason inadequate to establish the noise contour as a qualifying matter. The more fulsome s 77J, and depending on which paragraph of s 77I is relied on, s 77L assessment is required.
7. The position of Kāinga Ora appears to be consistent with Environment Canterbury's position. On its website, Environment Canterbury records that "at this stage, the new contours are considered to be technical information only. The noise contour considered to be appropriate for land use planning purposes will continue to be that in Map A of the operative Canterbury Regional Policy Statement."¹
8. The Council may, on reflection, accept this analysis, and in that event will have to substantially bolster its position through evidence. If not, then it appears to Kāinga Ora that this issue may be one that requires determination by the Panel as a preliminary legal issue.

Feedback on the draft hearing procedures and schedule

9. Counsel have considered the draft hearing procedures and draft hearing schedule, in addition to the updated indicative timeline in Appendix 2 of Minute #3.

Staging of evidence

¹ <https://www.ecan.govt.nz/get-involved/news-and-events/2021/council-reviews-airport-noise-contours/>

10. The Panel has already indicated it does not favour an option whereby dates for s 42A reports and evidence are staged to align with the sequencing of topics, on the basis that it wishes to receive that material up front, and have submitters consider this in preparing for hearings.
11. However, it is also the case that allowing for the staging of some evidence, particularly the later topics, will allow subsequent statements to be refined as the process develops. An obvious candidate for a more limited form of staging would be the City-wide qualifying and other matters, which are not due to be heard until late January 2024.² The release of s 42A reports on those matters could be deferred until mid-October 2023, with evidence due in mid-November 2023.
12. This would allow the evidence on those matters to be refined, following earlier hearings on the strategic overview, whole-of-plan submissions, and the relevant zone hearings (the bulk of which will be completed by mid-November).
13. Amendments to the proposed schedule to accommodate this proposed staging are **attached** as an appendix. to this memorandum.
14. Alternatively, it is likely that Kāinga Ora witnesses will seek to provide summary and/or updating statement at the hearing of later topics, including in relation to City-wide qualifying and other matters.

Making provision for rebuttal evidence

15. In addition, and as a general comment, the draft hearing procedures and indicative timeline currently do not make any provision for rebuttal evidence. Minute #3 expressly states that “Only the Council will have a Right of Reply as the proponent of the plan change.”
16. Counsel respectfully submit that in many plan change processes, and particularly this one, the positions being advanced are not as simple as “Council as proponent of the plan change on ‘one-side’, and all other parties on the other side”. Rather, many of the submitters are not only taking issue with (or supporting) the Council, but are also putting forward their own proposed relief. As the Hearing Panel will appreciate, cl 99 of the First Schedule gives this Hearing Panel scope to make

² Based on past experience, and given the potential for slippage, it may be that this date is extended further into 2024.

changes even outside of the scope of the original submissions, so long as they are identified through the hearing process.

17. Consistent with the principles of natural justice, parties must have the opportunity to respond to matters raised in the evidence filed by other submitters, particularly where other submitters' evidence relates to relief sought by the rebutting party.
18. While one response might be to allow submitters to respond to other evidence "on the hoof" at a hearing, that approach is procedurally messy and can itself cause unfairness because the last submitter presenting on a topic receives an advantage over those presenting earlier. A procedural solution that avoids any unfairness is to make provision for all submitters to exchange any rebuttal evidence prior to commencement of the hearings. This will ensure that everyone's positions are clearly stated and understood by all parties prior to the hearing commencing.
19. This is particularly important, given the potential for cross-examination and the need for applications to cross-examine to be filed 10 working days prior to the scheduled appearance of a witness at a hearing. The need for and/or scope of any cross-examination will necessarily be informed by any responses in a party's rebuttal evidence. Accordingly, we would propose that all rebuttal evidence should be filed at the same time as any brief opening submissions are filed.
20. An amendment to the proposed timetable is included in the appendix to this memorandum, to allow for any rebuttal evidence to be filed and served by 9 October 2023.

Conclusion

21. Counsel seek the amendments to the proposed timetable as shown in the appendix to this memorandum.

Dated 28 July 2023



Bal Matheson | Nick Whittington
Counsel for Kāinga Ora

APPENDIX

| Dates | Action/Duration |
|-----------------------------------|--|
| 30 June 2023 | Council to provide IHP with Plan Change Documentation required by Schedule 1, clause 97 (excluding 97(f), (g) and (h) relating to the further submission process) |
| 19 July and 20 July 2023 | IHP preliminary site visits/general location orientation |
| 24 July 2023 | Council to provide IHP with further submissions |
| 1 August 2023 | Pre-hearing meeting (procedural matters) |
| 4 August 2023 | Council to provide IHP with updated summary of submissions document |
| 11 August 2023 | Filing and service of s42A reports and Council evidence in chief <u>for all topics (excluding City-wide qualifying and other matters)</u> |
| 15 September 2023 | Filing and service of submitter expert evidence in chief <u>for all topics (excluding City-wide qualifying and other matters)</u> |
| 18 September to 29 September 2023 | Expert conferencing Specific directions to follow pre-hearing meeting |
| 3 October 2023 | Filing of expert joint statements |
| 9 October 2023 | <u>Filing and service of expert rebuttal evidence for all topics (excluding City-wide qualifying and other matters)</u> Filing and service of brief opening legal submissions by all parties (10 page limit) |
| 10 October –30 November 2023 | Independent Hearings Panel Hearings IHP to generally sit Tuesdays, Wednesdays and Thursdays, Mondays and Fridays with prior notice. <i>Note Panel will sit Friday 13 October but not Tuesday 17 October</i> Venue: Crowne Plaza, 764 Colombo Street, Christchurch |
| <u>20 October 2023</u> | <u>Filing and service of s 42A reports and Council evidence in chief for City-wide qualifying and other matters</u> |
| <u>17 November 2023</u> | <u>Filing and service of submitter expert evidence in chief on City-wide qualifying and other matters</u> |
| <u>15 December 2023</u> | <u>Filing and service of expert rebuttal evidence for City-wide qualifying and other matters</u> |

| | |
|--|--|
| 30 and 31 January and 1 February 2024 13, 14 and 15 February 2024 | Independent Hearings Panel Hearings - continuation and conclusion Venue: to be confirmed |
| 29 February 2023 | Filing of Council closing legal submissions, updated agreed provisions and s42A report officer recommendations |
| 16 February – 29 April 2024 | IHP deliberations and preparation of IHP Recommendations Report |
| By 30 April 2024 | IHP Recommendations Report delivered to Council in accordance with Schedule 1, clause 99. |