

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

Lyttelton Port Company Limited
Submitter 853

Orion New Zealand Limited
Submitter 854

Opening Legal Submissions for the Infrastructure Submitters

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Counsel: J M Appleyard (jo.appleyard@chapmantripp.com)
A R C Hawkins (annabel.hawkins@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 AND SUMMARY

- 1 These legal submissions are presented on behalf of:
 - 1.1 Lyttelton Port Company Limited (*LPC*);¹
 - 1.2 Orion New Zealand Limited (*Orion*);² and
 - 1.3 Christchurch International Airport Limited (*CIAL*).³

(together, the *Infrastructure Submitters*)
- 2 The intention of these submissions is to provide a high-level introduction to the Infrastructure Submitters and an overview of their position on proposed Plan Change 14 (*PC14*) to the Christchurch District Plan (*District Plan*).
- 3 The Infrastructure Submitters will make their main presentations during Hearing Weeks 9/10, where detailed legal submissions will be presented and their various witnesses called.
- 4 The Infrastructure Submitters are Christchurch City's major infrastructure providers. Their electricity, airport and port operations and assets are critical to the functioning of Christchurch City on a day-to-day basis and during and after emergencies.⁴
- 5 In basic terms, the intensification proposed, or required, through PC14 is not opposed in principle by the Infrastructure Submitters. Their fundamental concern is that the safety and efficiency of their operations, both current and future, are sufficiently protected in the PC14 framework. The key mechanism for achieving this is through qualifying matters that limit the level of development, or intensification, that would otherwise be enabled.
- 6 Qualifying matters, and more specifically, the extent to which they can and should limit development, are therefore the focus of the case for the Infrastructure Submitters. Their submissions and evidence set out, in essence, how to accommodate the intensification mandated by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

¹ Submitter 853 / FS 2054.

² Submitter 854 / FS 2056.

³ Submitter 852 / FS 2052.

⁴ Civil Defence Emergency Management Act 2002.

(*Amendment Act*) in a way that protects and enables the operation, maintenance and development of their infrastructure.

- 7 These brief legal submissions are presented jointly for the Infrastructure Submitters in the interests of efficiency for the Independent Hearings Panel (*the Panel*). We acknowledge the interests declared by Commissioners McMahon and Matheson in relation to Orion’s and CIAL’s submissions. At this stage of the hearing process, these submissions do not address matters of detail for Orion and CIAL such that a separate approach is considered necessary.

STRUCTURE OF SUBMISSIONS

- 8 These submissions:
- 8.1 Provide a brief introduction to the Infrastructure Submitters;
 - 8.2 Identify the key aspects of the Infrastructure Submitters’ submissions to be addressed in greater detail during Hearing Weeks 9/10;
 - 8.3 Identify the key aspects of the relevant statutory framework, to be addressed in greater detail during Hearing Weeks 9/10; and
 - 8.4 Set out some matters of housekeeping in relation to the PC14 process.

THE INFRASTRUCTURE SUBMITTERS

Lyttelton Port Company Limited

- 9 LPC owns and operates Lyttelton Port and two inland ports at Woolston (CityDepot) and Rolleston (Midland Port). LPC is a subsidiary of Christchurch City Holdings Limited (*CCHL*), the investment arm of Christchurch City Council (*Council*).
- 10 LPC’s submission and the evidence of **Ms Crystal Lenky** describe LPC’s operations and assets in detail.
- 11 In summary, Lyttelton Port is the South Island’s major deep-water port and an international freight gateway for the South Island. The inland ports contain the road and rail interchanges and are an integral and integrated component of LPC’s port infrastructure.⁵

⁵ Evidence of Crystal Lenky, 20 September 2023,

- 12 Evidence has been provided for LPC from the following witnesses, who will appear during Hearing Weeks 9/10:
- 12.1 **Ms Crystal Lenky** – Corporate (Head of Environment and Sustainability);
 - 12.2 **Mr Neville Hegley** – Acoustics;⁶ and
 - 12.3 **Mr Andrew Purves** – Planning.
- Orion New Zealand Limited**
- 13 Orion owns and operates the electricity distribution network for Christchurch City and broader central Canterbury. Orion is owned by CCHL (89%) and Selwyn District Council (11%).
- 14 Orion’s submission and the evidence of **Mr Anthony O’Donnell** describe Orion’s operations and assets in detail. That information is not repeated here, except to emphasise that:
- 14.1 Orion delivers electricity to approximately 220,000 homes and businesses throughout the Christchurch City and Selwyn Districts; and
 - 14.2 Orion’s network covers around 8,000 square kilometres and includes 11,500 kilometres of overhead lines and underground cables, 51 zone substations, 396 steel sub-transmission towers, 90,000 power poles and 11,900 distribution substations.
- 15 Evidence has been provided for Orion from the following witnesses, who will appear during Hearing Weeks 9/10:
- 15.1 **Mr Anthony O’Donnell** – Corporate (Head of Network Delivery); and
 - 15.2 **Ms Melanie Foote** – Planning.
- Christchurch International Airport Limited**
- 16 CIAL owns and operates Christchurch International Airport (*Christchurch Airport*) at Harewood. CIAL is owned by CCHL (75%) and the Government (25%).
- 17 CIAL’s submission describes CIAL’s operations and assets in detail. Corporate evidence will also be provided for CIAL by **Ms Felicity Hayman** (Environment and Planning Manager) in advance of CIAL’s next hearing appearance.

⁶ Mr Hegley participated in acoustics expert witness conferencing.

- 18 In summary, Christchurch Airport is the largest airport in the South Island and a major contributor to the social and economic wellbeing of the communities and economies of Christchurch City, Canterbury, the South Island and New Zealand.
- 19 Evidence has been provided for CIAL from the following witnesses, who, together with **Ms Hayman**, will appear during Hearing Weeks 9/10:
- 19.1 **Mr Sebastian Hawken** – Aviation;
- 19.2 **Mr Christopher Day** – Acoustics;⁷
- 19.3 **Ms Laurel Smith** – Acoustics;⁸
- 19.4 **Ms Natalie Hampson** – Economics;⁹
- 19.5 **Mr Gary Sellars** – Housing Capacity;¹⁰ and
- 19.6 **Mr Darryl Millar** – Planning.¹¹

THE SUBMISSIONS

- 20 The Infrastructure Submitters made detailed submissions and further submissions on PC14. Their key points are briefly summarised below.

Lyttelton Port Company Limited

- 21 The focus of LPC's submission and further submission was to achieve a planning framework that continues to protect and appropriately manage its operations at Lyttelton Port and its Inland Port, CityDepot in Woolston. In summary, along with general proposed amendments to the provisions to reflect its position:
- 21.1 LPC supported the Lyttelton Port Influences Overlay qualifying matter, including the underlying density controls, as a means of protecting its operations at Lyttelton Port;
- 21.2 LPC sought similar protection of its operations at CityDepot through an Inland Port Influences Overlay qualifying matter,

⁷ Mr Day may also provide rebuttal evidence after the expert conferencing on airport noise on 24 October 2023.

⁸ Ms Smith may also provide rebuttal evidence after the expert conferencing on airport noise on 24 October 2023.

⁹ Primary and rebuttal evidence. Ms Hampson participated in economics/housing capacity expert witness conferencing.

¹⁰ Primary and rebuttal evidence. Mr Sellars participated in economics/housing capacity expert witness conferencing.

¹¹ Primary and rebuttal evidence.

albeit without the associated density controls (instead focusing on acoustic treatment of new and extended dwellings); and

- 21.3 LPC sought the removal of the Tsunami Management Area qualifying matter from the CityDepot site.

Orion New Zealand Limited

- 22 Orion's submission and further submission focused on the ability of PC14 as notified to enable the continued safe and efficient operation, maintenance, use and development of the electricity network. In summary, along with general proposed amendments to the provisions to reflect its position:

- 22.1 Orion supported the recognition of its significant electricity distribution lines (*SEDL*) as a qualifying matter, in order to protect the SEDLs from reverse sensitivity effects;
- 22.2 Orion sought protection of its lower voltage lines within the network, similarly by way of a qualifying matter, on the basis that residential intensification will cause the same issues for these lines; and
- 22.3 Orion also sought that PC14 include an electricity servicing standard to ensure that infrastructure capacity requirements can be met on-site and are considered at the outset of a development process (rather than when development is too far progressed).

Christchurch International Airport Limited

- 23 CIAL's submission and further submission outlined that land use activities in Christchurch City affect, and may be affected by, airport operations and, in particular, noise from aircraft taking off and landing. In summary, along with general proposed amendments to the provisions to reflect its position:

- 23.1 CIAL supported the recognition of land exposed to aircraft noise of 50dBA Ldn or greater as a qualifying matter in PC14 as notified, insofar as the qualifying matter would not allow residential intensification to take place on such land;
- 23.2 However, CIAL sought that the spatial extent of the area related to the qualifying matter reflect all land areas potentially subject to aircraft noise of 50dBA Ldn or greater, based on the most recent and best available technical information as to where such noise levels will be felt.
- 23.3 The evidence of where land would be exposed to noise of 50dBA Ldn or greater, and where the status quo ought to be

preserved is in the evidence of Ms Smith, Mr Day and Mr Hawken for CIAL.

STATUTORY FRAMEWORK

- 24 The IHP will be familiar with the relevant statutory framework which has already been traversed in the opening legal submissions for the Council and Kāinga Ora – Homes and Communities (*Kāinga Ora*) for this hearing. That framework is not repeated or addressed in detail here, except to emphasise some of the key aspects which will be addressed in subsequent legal submissions for the Infrastructure Submitters.
- 25 It goes without saying that the premise of PC14 is to implement the Amendment Act, specifically the Council’s duty to incorporate the medium density residential standards (*MDRS*) into relevant residential zones and to give effect to Policies 3 and 4 of the National Policy Statement on Urban Development 2020 (*NPS-UD*).¹²
- 26 Importantly, the Council may make the *MDRS* and the relevant building height or density requirements under Policy 3 of the *NPS-UD* less enabling of development in relation to an area within a relevant residential zone to the extent necessary to accommodate qualifying matters.¹³
- 27 Section 77I provides that development may be made less enabling “*only to the extent necessary*” to accommodate one or more qualifying matters. However, there is clear recognition that where a qualifying matter is present, a limitation on development is appropriate.
- 28 Qualifying matters relevant to the interests of the Infrastructure Submitters include:¹⁴
- (e) *a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:*
- ...
- (j) *any other matter that makes higher density, as provided for by the *MDRS* or policy 3, inappropriate in an area, but only if section 77L is satisfied.*
- 29 The evidence filed for the Infrastructure Submitters clearly establishes whether, and the extent to which, development in areas subject to the relevant qualifying matters, which would otherwise be

¹² Resource Management Act 1991, section 80E.

¹³ Resource Management Act 1991, section 77I.

¹⁴ Resource Management Act 1991, section 77I.

enabled by the MDRS and Policy 3 of the NPS-UD, should be limited in order protect their current and future infrastructure operations.

- 30 The submissions and evidence filed for the Infrastructure Submitters also address the relevant statutory tests, that is:
- 30.1 The usual framework under the Resource Management Act 1991 (*RMA*); and
- 30.2 The additional matters introduced by the Amendment Act in sections 77J, 77K and 77L (for residential zones) of the RMA.
- 31 The Panel will hear from the Infrastructure Submitters (and other submitters) as to the differences in approach, and legal implications, of whether a qualifying matter is an existing qualifying matter, a new qualifying matter, or an other qualifying matter. This will necessarily involve consideration of scope and the *Waikanae* case.¹⁵
- 32 The position of the Infrastructure Submitters is primarily based on technical evidence as to the effects of intensification on their operations. As part of the picture, and as required by the Amendment Act,¹⁶ the evidence for the Infrastructure Submitters considers the impact of limiting development to accommodate the relevant qualifying matters, as it relates to housing capacity for Christchurch City. The planning evidence for the Infrastructure Submitters then translates the various parts of the puzzle into a coherent regime to appropriately protect each infrastructure operation.
- 33 In our submission, upon hearing the evidence for the Infrastructure Submitters, the Panel will consider that the relief they have requested achieves the most appropriate outcomes for PC14.

HOUSEKEEPING MATTERS

- 34 This final section of our submission briefly raises two administrative matters for the Panel's consideration.
- 35 The Infrastructure Submitters have indicated through their hearing attendance forms and in these submissions the subsequent hearing weeks they intend to present at, together with the witnesses that will appear.
- 36 It would greatly assist counsel if information could be made available of which hearing weeks all other submitters intend to appear at, as well as the various Council officers and witnesses.

¹⁵ *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga* [2023] NZEnvC 56.

¹⁶ For example, Resource Management Act 1991, section 77K(1)(d).

The reason for this request is so counsel can consider and advise the Infrastructure Submitters (and other clients) when other relevant submitters will be presenting their cases and, in particular, when any cross-examination applications would need to be made (and cross-examination occur).

- 37 The Panel indicated in Minute 10 that planning expert witness conferencing may be directed and is encouraged informally. Counsel consider, based on previous experience, that there would be significant benefit in specific planning conferencing sessions. This is particularly in relation to proposed amendments to certain chapters of the District Plan, and for certain site specific issues. We would support further directions from the Panel in this regard.

CONCLUSION

- 38 The Infrastructure Submitters play a critical role in maintaining and enhancing the social and economic prosperity of Christchurch City.
- 39 Their submissions on PC14 and the evidence and legal submissions presented in support of their position focus on ensuring that the intensification promoted by PC14 does not compromise their ability to continue to serve the infrastructure needs of Christchurch City.

Dated 11 October 2023



J Appleyard / A Hawkins / A Lee
Counsel for Christchurch International Airport
Limited / Lyttelton Port Company Limited / Orion
New Zealand Limited