

Before an Independent Hearings Panel  
appointed by the Waimakariri District Council

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*under:* the Resource Management Act 1991

*in the matter of:* Submissions and further submissions in relation to the  
proposed Waimakariri District Plan, Variation 1 and  
Variation 2

*and:* Hearing Stream 12E: Rangiora, Kaiapoi, Woodend,  
Variation 1

*and:* **Christchurch International Airport Limited**  
Submitter 254

Evidence of John Kyle (planning)

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Dated: 2 August 2024

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## **EVIDENCE OF JOHN KYLE**

### **INTRODUCTION**

- 1 My full name is John Clifford Kyle. I hold an honours degree in Regional Planning from Massey University, obtained in 1987. I am a founding director of the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand.
- 2 I have been engaged in the field of resource and environmental management for more than 35 years. My experience includes a mix of local authority and consultancy resource management work. For the past 28 years, this experience has retained a particular emphasis on providing consultancy advice with respect to regional and district plans, designations, resource consents, environmental management, and environmental effects assessment. This includes extensive experience with large-scale, and often nationally significant projects involving inputs from a multidisciplinary team. My work regularly takes me all over New Zealand. A summary of my experience was attached to my evidence relating to Hearing Stream 10A dated 1 February 2024.
- 3 I have been authorised by Christchurch International Airport Limited (*CIAL*) to provide evidence in relation to its submissions and further submissions on the proposed Waimakariri District Plan (*PDP*) and Variations 1 and 2 to the PDP under the Intensification Streamline Planning Process (*IPI*).
- 4 I previously prepared briefs of evidence for CIAL in relation to:
  - 4.1 Hearing Stream 10A, dated 1 February 2024, and appeared at the hearing on 21 February 2024; and
  - 4.2 Hearing Stream 12B, dated 22 May 2024.
- 5 I refer to my evidence in Hearing Streams 10A and 12B, which is relevant to CIAL's submissions on residential rezoning requests. The issues discussed in these streams are similar to those in Hearing Stream 12E. My previous views apply here, and I continue to rely upon evidence and legal submissions provided in relation to those hearings.
- 6 In preparing this brief of evidence, I have reviewed:
  - 6.1 The Operative Waimakariri District Plan, the PDP and the IPI insofar as relevant to CIAL's submissions and further submissions;

- 6.2 CIAL's primary submissions and further submissions on the PDP and IPI;
- 6.3 Provisions of the Environment Canterbury Regional Policy Statement (*CRPS*) (insofar as relevant to CIAL's submissions and further submissions);
- 6.4 The following section 42A reports:
  - (a) Proposed Waimakariri District Plan: Residential Rezoning, prepared by Peter Wilson and dated 22 July 2024; and
  - (b) Proposed Waimakariri District Plan: Variation 1 Rezoning, prepared by Peter Wilson and dated 22 July 2024.

### **CODE OF CONDUCT**

- 7 Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I have complied with it in preparing my evidence on technical matters. I confirm that the technical matters on which I gave evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed.

### **SCOPE OF EVIDENCE**

- 8 This hearing (Hearing Stream 12E) considers rezoning requests in relation to Rangiora, Kaiapoi and Woodend.
- 9 My evidence:
  - 9.1 summarises the overarching policy framework insofar as relevant to CIAL's submission;
  - 9.2 provides a brief overview of "best practice" land use planning within an airport's aircraft noise boundaries; and
  - 9.3 addresses and evaluates the rezoning requests for land located within the 50dB Ldn Air Noise Contour within the Kaiapoi Development Area and South Kaiapoi Development Area.

## **OVERVIEW OF THE RELEVANT POLICY FRAMEWORK**

- 10 The evidence I provided to Hearing Stream 10A, dated 1 February 2024, sets out the overarching policy framework in detail. Rather than repeating it at length, I summarise the points that are most relevant to the Kaiapoi residential rezoning matters below.

### **Resource Management Act 1991<sup>1</sup>**

- 11 CIAL operates the regionally and nationally significant Christchurch International Airport (*the Airport*). The Airport comprises regionally and nationally significant infrastructure, a fact that is pertinent to a number of relevant Policy Statements and Plans in the region.

### **National Policy Statement on Urban Development<sup>2</sup>**

- 12 The NPSUD identifies "Tier 1" Urban Environments, for which minimum residential density requirements are set. These requirements are also detailed in sections 77F to 77R of the RMA. The Waimakariri District is identified as a Tier 1 Urban Environment.

### **Canterbury Regional Policy Statement<sup>3</sup>**

- 13 As set out in my previous evidence, the policies of the CRPS are quite clear and directive about the need to protect regionally significant infrastructure such as Christchurch Airport, from incompatible land uses and activities. The 50dB Ldn Air Noise Contour is a key measure that has been adopted in the Canterbury region for identifying where reverse sensitivity effects are most likely to arise. Policy 6.3.5(4) of the CRPS is particularly directive. It seeks to ensure that new noise sensitive activities are avoided within the 50dB Ldn Air Noise Contour. For this reason, great care needs to be exercised when evaluating proposals to rezone or upzone land to enable the establishment of activities sensitive to the effects of aircraft noise within the 50dB Ldn Air Noise Contour.
- 14 The CRPS is currently under review, and it is possible that the 50dB Ldn Air Noise Contour may change once the proposed CRPS is notified.

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<sup>1</sup> Set out in detail in paragraphs 11-12 of my Hearing Stream 10A evidence.

<sup>2</sup> Set out in detail in paragraphs 13-16 of my Hearing Stream 10A evidence.

<sup>3</sup> Set out in detail in paragraphs 17-24 of my Hearing Stream 10A evidence.

#### **Operative Waimakariri District Plan<sup>4</sup>**

- 15 The planning maps with the Operative Waimakariri District Plan (the *Operative Plan*) depict both a 55dB Ldn Air Noise Contour and a 50dB Ldn Air Noise Contour. Within the 50dB Ldn Air Noise Contour (which also encapsulates the 55dB Ldn Air Noise Contour – the two are overlapping),<sup>5</sup> the Operative Plan is aligned with the CRPS and establishes a clear policy directive to avoid patterns of land use development which may affect the operation and efficient use and development of Christchurch Airport.<sup>6</sup>

#### **OVERVIEW OF AIRCRAFT NOISE MANAGEMENT AND LAND USE PLANNING**

- 16 I covered the important role of land use planning in managing airport noise in my previous evidence.<sup>7</sup> Below is a brief overview of the evidence that I presented in Hearing Stream 10A for the Panel's convenience.
- 17 As set out by Ms Smith in her evidence to Hearing Stream 10A, the New Zealand Standard for Airport Noise Management and Land Use Planning (NZS6805:1992) is considered "best practice" for guiding land use management surrounding airports in New Zealand. It promotes an approach whereby new noise sensitive activities within an airport's Air Noise Boundary and Outer Control Boundary be prohibited, where this can be practicably achieved. Put simply, if new development of activities sensitive to aircraft noise can be avoided within the Outer Control Boundary, then they should be.
- 18 Ms Smith explained why, from an acoustics perspective, intensification of noise sensitive activities within aircraft noise boundaries is an undesirable outcome. This includes the potential for aircraft noise exposure to give rise to effects such as compromised amenity, annoyance, sleep disturbance and other health related effects.
- 19 In my experience of working with airports around New Zealand, allowing the intensification of noise sensitive activities within the aircraft noise contours has the effect of ultimately increasing the number of people exposed to the effects of aircraft noise over time. Such activity also inevitably leads to an increase in reverse sensitivity concerns which can bring very strong pressures to bear on airport

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<sup>4</sup> Set out in detail in paragraphs 25-27 of my Hearing Stream 10A evidence.

<sup>5</sup> As explained in paragraph 50 of my Hearing Stream 10A evidence.

<sup>6</sup> Policy 11.1.1.8 and 12.1.1.12 of the Operative Plan.

<sup>7</sup> Set out in detail in paragraphs 28-39 of my Hearing Stream 10A evidence.

operators and regulators alike to constrain or curtail operations. The panel will recall the examples I gave at Hearing Stream 10A with respect to such matters.

**KAIAPOI DEVELOPMENT AREA REZONING REQUESTS WITHIN THE 50DB LDN AIR NOISE CONTOUR FOR CHRISTCHURCH INTERNATIONAL AIRPORT**

20 The section 42A report officer has recommended rejecting CIAL's further submissions opposing rezoning of land in the Kaiapoi Development Area within the operative 50db Ldn Noise Contour, and recommends accepting the submissions of Momentum Land Limited, Suburban Estates Limited and Survus Consultants Limited. The section 42A report officer's rationale for these recommendations is generally based on:

20.1 The application of the "Kaiapoi exemption" in Policy 6.3.5(4) of the CRPS.

20.2 "Weighing" the provisions in 6.3.5(4) that prohibit development underneath the 50dB Ldn Noise Contour against the NPSUD, resulting in a recommendation to allow new development within the 50dBA Noise Contour provided that noise effects in buildings are managed using acoustic insulation.

20.3 Alignment of the PDP approach with the draft CRPS that was recently released for targeted stakeholder consultation.

21 I address each of these matters in turn below.

**Application of the "Kaiapoi exemption" in Policy 6.3.5(4) of the CRPS**

22 The section 42A report officer relies on the "Kaiapoi exemption" within Policy 6.3.5(4) of the CRPS to justify his recommendation to reject CIAL's further submissions.

23 I discussed the "Kaiapoi exemption" at length during Hearing Stream 10A,<sup>8</sup> and my opinion remains unchanged. I summarise my opinion below.

24 Policy 6.3.5 seeks to assist the recovery of Greater Christchurch through integration of land use development and infrastructure by:

- 1. Identifying priority areas for development and Future Development Areas to enable reliable forward planning for infrastructure development and delivery;*

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<sup>8</sup> Set out at paragraphs 62–73 of my Hearing Stream 10A evidence.

25 Subparagraph 1 of this policy relates to the identification of priority areas for development and Future Development Areas to enable forward planning for infrastructure development and delivery. The use of separate terms to identify “priority areas for development” and “Future Development Areas” suggests that these are different constructs, both of which are intended to inform infrastructure development delivery.

26 This distinction must be considered in the interpretation of sub-paragraph 4:

*4. 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 6-28) and enabling commercial film or video production activities within the noise contours as a compatible use of this land; and*

27 There are three distinct parts to sub-paragraph 4 which I have highlighted in green, blue and yellow.

28 The green highlight is the chapeau. That is, the overall outcome is to only provide for new development that does not affect the efficient operation, use, development, upgrading and safety of existing infrastructure. While that includes all new development, insofar as CIAL submissions of concerned, developments that could potentially affect the efficient operation, use, development, upgrading and safety of the Airport includes the establishment of noise sensitive activities within the 50dB Ldn Noise Contour.

29 The blue highlight provides further guidance around how to achieve the outcome being sought insofar as it relates to the 50dB Ldn airport noise contour for Christchurch Airport. That is, it provides a clear directive to avoid noise sensitive activities within the 50dB Ldn airport noise contour.

30 The yellow highlight provides a qualifier, which in my view, applies to the preceding sentence (i.e. the blue highlighted text). That is, the avoidance directive within the blue highlighted text does not apply within the listed areas – existing residentially zoned urban areas, residential greenfield areas in Kaiapoi or residential greenfield priority area identified in Map A.

- 31 As I stated at Hearing Stream 10A, a careful distinction needs to be made between the three terms used in the yellow highlighted text - "existing residentially zoned urban area", "residential greenfield area" and "residential greenfield priority area". Notably this part of the policy does not include "Future Development Areas". If it were the intention to capture such areas, it is my view that these too would have been expressly identified in the policy. The fact that it does not is intentional in my view, with Future Development Areas distinctly mapped in Map A of the CRPS and being subject to its own policy framework.<sup>9</sup> The term is also separately used within 6.3.5.
- 32 With respect to the Kaiapoi Development Area, this is not the same as "*an existing residentially zoned urban area*", "*a residential greenfield area identified for Kaiapoi*" or "*a residential greenfield priority area*". It is a distinct and different construct and, based on my interpretation, does not find any support for conversion to residential use or intensification via Policy 6.3.5 (4).
- 33 This interpretation is in conflict with the position of the 42A report officer,<sup>10</sup> which is that the term "greenfields" collectively includes greenfields priority areas and Future Development Areas, and consequently, land within the Kaiapoi Future Development Area is exempt from consideration of the 50dB Ldn noise contour.
- 34 In my view, it is clear that the Future Development Area is not subject to the exemptions set out in the yellow highlighted text above, and therefore, Policy 6.3.5 (4) strongly dissuades the residential rezoning of the Kaiapoi Development Area within the 50dB Ldn Noise Contour.
- 35 However, I agree with the 42A report officer's statement<sup>11</sup> that the southern portion of the area that Momentum Land Limited wish to rezone,<sup>12</sup> which is identified on Map A as a greenfield priority area meets the greenfield priority area exemption in the policy, and that there is no policy dissuasion to development within this area.
- 36 In summary, I do not agree with the section 42A report officer that the "Kaiapoi exemption" applies to the Kaiapoi Development Area. Therefore, in my opinion, this argument does not support the rezoning requests for land within the 50dB Ldn

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<sup>9</sup> Policy 6.3.12 of the CRPS.

<sup>10</sup> Paragraph 990 of the residential rezoning s42A report.

<sup>11</sup> Paragraph 991 of the residential rezoning s42A report.

<sup>12</sup> As shown in Figure 78 of the residential rezoning s42A report.



Noise Contour by Momentum Land Limited, Suburban Estates Limited and Survus Consultants Limited in the Kaiapoi Development Area.

**The role of acoustic insulation in managing noise effects within the 50dB Ldn Noise Contour**

- 37 The section 42A report officer also states that Policy 6.3.5(4) can be reconsidered as to weight against the NPSUD, with the result that he considers that new developments can occur within the 50dBA contour with appropriate acoustic insulation requirements.
- 38 On this point, I draw the Panel's attention to Ms Smith's Hearing Stream 10A evidence regarding the limitations of acoustic insulation.<sup>13</sup> Ms Smith clearly states that sound insulation alone is not sufficient to prevent annoyance and reverse sensitivity effects. In her view, a noise mitigation approach results in an inferior outcome for residents, that does not mitigate all the effects of airport noise and introduces compromised living conditions.
- 39 I concur with Ms Smith's conclusion that sound insulation is a less desirable option compared to avoiding the effects of airport noise through appropriate land use controls.
- 40 Ms Smith's evidence is supported by the recent *Auckland International Airport Limited* decision,<sup>14</sup> in which the High Court accepted that when it comes to airport noise, compliance with indoor acoustic standards is insufficient in itself and consideration must be given to the effects of aircraft noise on external spaces and in situations where residents prefer to reside with open windows. I understand that Ms Appleyard will say more about this decision in her submissions.
- 41 In summary, I do not agree with the section 42A report officer that when the requirements of the NPSUD are weighed against Policy 6.3.5(4), that acoustic insulation alone is sufficient to achieve a positive outcome for residents and a well-functioning urban environment. That is not the case and in my opinion this part of the officers' argument does not support the rezoning requests for land within the 50dB Ldn Noise Contour by Momentum Land Limited, Suburban Estates Limited and Survus Consultants Limited.

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<sup>13</sup> Statement of Evidence of Laurel Smith for Hearing Stream 10A, dated 2 February 2024, paragraphs 93–98.

<sup>14</sup> *Auckland International Airport Ltd v Auckland Council* [2024] NZHC 2058.

### **Alignment with the draft CRPS**

- 42 The section 42A report officer states that the approach that he has taken is consistent with the approach in the draft CRPS.<sup>15</sup> It is unclear to me why the draft CRPS is in any way relevant to this matter, given that as yet, it has no statutory weight, and was released only for consultative purposes. The Panel will not be surprised to learn that CIAL has made extensive comments on the draft CRPS, particularly relating to matters relating to the effects of aircraft noise. I have assisted the airport company during that process. One notable matter which I have found to be quite unorthodox is that to date it does not appear that Environment Canterbury has prepared a section 32 analysis to inform their drafting. Perhaps that is because they wish to hear what people have to say before they complete this important function. Nonetheless it indicates that the draft CPRS is exactly that and at this juncture no weight can and should be ascribed to it.
- 43 Therefore, I am of the opinion that the draft CRPS has no bearing on the residential rezoning requests of Momentum Land Limited, Suburban Estates Limited and Survus Consultants Limited within the 50dB Ldn Noise Contour.

### **SOUTH KAIAPOI DEVELOPMENT AREA REZONING REQUESTS WITHIN THE 50DB LDN AIR NOISE CONTOUR FOR CHRISTCHURCH INTERNATIONAL AIRPORT**

- 44 The section 42A report officer has recommended accepting CIAL's further submission and has not recommended zoning the new South Kaiapoi Development Area thus rejecting the submissions of Mike Greer Homes Limited and WJ Winter And Sons Limited. However, the recommendation is based only on flood related matters affecting the land, rather than airport noise.<sup>16</sup> In my view, the case against the residential rezoning requests within the 50dBA Noise Contour in the Kaiapoi Redevelopment Area apply equally within the South Kaiapoi Development Area, which is also within the 50dBA Noise Contour.

### **CONCLUSION**

- 45 I have carefully considered the relevant policy framework, best practice land use planning and Mr Wilson's recommendations in the section 42A report. Based on these considerations, I remain firmly of the opinion that rezoning land within the

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<sup>15</sup> Paragraph 996 of the residential rezoning s42A report.

<sup>16</sup> Paragraphs 1031-1039 of the residential rezoning s42A report.

Kaiapoi Development Area and South Kaiapoi Development Area that is within the operative 50dB Ldn Air Noise Contour, is inherently undesirable.

- 46 Given the CRPS review process is currently underway, it is my opinion that the best course of action is to defer any decision on rezoning requests within the 50dB Ldn Air Noise Contour until the new CRPS has been subjected to the process that is available under Schedule 1 of the Act.

**Dated:** 2 August 2024

**John Kyle**