

Before an Independent Hearings Panel
appointed by Waimakariri District Council

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 12B: Rural Zones Rezoning Requests

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

Legal submissions on behalf of Christchurch International
Airport Limited

Dated: 31 May 2024

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**LEGAL SUBMISSIONS ON BEHALF OF CHRISTCHURCH
INTERNATIONAL AIRPORT LIMITED**

- 1 These legal submissions are filed on behalf of Christchurch International Airport Limited (*CIAL*). *CIAL* is a submitter and further submitter on the proposed Waimakariri District Plan (*Proposed Plan*), including in relation to rural rezoning requests.
- 2 *CIAL*'s submissions and further submissions opposed urban rezoning of land that is located within the Operative 50dB Ldn Air Noise Contour (Operative Contour) and/or the draft Remodelled 50dB Ldn Air Noise Contours (outer geographical extent) (*Draft Remodelled Contours*).
- 3 As explained at Hearing Stream 10A, the final Remodelled 50dB Ldn Air Noise Contours were subsequently agreed between *CIAL* and Canterbury Regional Council's (*ECan*) experts in June 2023 (*Remodelled Contours*). *CIAL*'s position is that urban rezoning of land must be avoided within the Remodelled Contours, this being the best available evidence of where aircraft noise of 50dB Ldn or greater will be felt.
- 4 *CIAL* is calling evidence from **Mr John Kyle** in relation to planning matters relevant to this Hearing Stream 12B. The key issues are:
 - 4.1 the appropriateness of rezoning rural land that will be subject to aircraft noise levels of 50dB Ldn or greater for urban residential purposes; and
 - 4.2 the appropriateness of rezoning rural land that is identified as highly productive.
- 5 There is only one rezoning request (128 Baynons Road) evaluated in the section 42A report that *CIAL* opposed by way of further submission. This land sits within the Operative Contour, Draft Remodelled Contours and Remodelled Contours.
- 6 Our legal analysis, and the planning analysis of **Mr Kyle**, applies to the specific rezoning request as well as more generally to all rural rezoning requests.
- 7 *CIAL*'s substantive hearing presentation for the Proposed Plan was during Hearing Stream 10A. *CIAL* therefore has only presented brief evidence and legal submissions for this Hearing Stream 12B and continues to rely upon the evidence and legal submissions provided in relation to Hearing Stream 10A.

RURAL REZONING REQUESTS TO BE AVOIDED WITHIN THE 50DB LDN AIR NOISE CONTOUR

- 8 We observe that the section 42A report for Hearing Stream 12B mentions CIAL's further submission in opposition to the rezoning request at 128 Baynons Road. However, the Council officer does not examine the merits of the rezoning request in the context of aircraft noise effects.
- 9 As explained in detail at Hearing Steam 10A, management of noise sensitive land use around Christchurch Airport is a core airport safeguarding matter. ECan and the three district councils have always used four noise contours for Christchurch Airport, with the 50dB Ldn Noise Contour (Outer Control Boundary) being most important for this hearing.
- 10 **Mr Kyle's** evidence outlines the reasons why, from an aircraft noise perspective, the rezoning request is inappropriate. In summary:
- 10.1 The Canterbury Regional Policy Statement (*CRPS*) could not be clearer. In particular, Policy 6.3.5(4) requires avoidance of new noise sensitive activities, which includes rezoning proposals, within the 50dB Ldn Noise Contour.
- 10.2 The Operative Waimakariri District Plan (*Operative Plan*) is aligned with the CRPS in terms of its direction to avoid land use that may impact the safe and efficient use and development of Christchurch Airport. The Operative Plan implements the 50dB Ldn Noise Contour.
- 10.3 The advice from CIAL's acoustic consultants is that intensification of noise sensitive activities within the 50dB Ldn Air Noise Contour is an undesirable outcome on the basis that it may give rise to effects such as compromised amenity, annoyance, sleep disturbance and other health related effects.
- 10.4 Enabling a greater number of people to be exposed to the effects of aircraft noise inevitably leads to an increase in reverse sensitivity concerns. **Mr Kyle, Mr Hawken** and **Ms Smith** elaborated on real world examples at Hearing Stream 10A.
- 11 Land use planning is the most effective way to minimise population exposure to noise around airports. The recommendations of the New Zealand Standard on Airport Noise and Land Use Planning is that, where land is available elsewhere for residential and other noise sensitive land uses, it is best to avoid allowing incompatible land use in areas that are affected by aircraft noise.

- 12 Density controls and avoiding noise sensitive activities in the first place are the core land use planning tools (as directed by the CRPS). The Courts have confirmed, on a number of occasions, that the appropriate planning response is to keep the numbers of people affected by airport noise to a minimum i.e. by limiting the number of people highly annoyed by airport noise. For example, in *Gargiulo v Christchurch CC*:¹

"[63] ... in any event on the facts of this case we find that the density of dwellings (which is controlled by subdivision size) is so important around the Christchurch International Airport that it is a dominating factor in terms of weight."

- 13 Accordingly, one of the main reasons why rezoning of 128 Baynons Road for urban purposes is not appropriate is due to the location of the land within the 50dB Ldn Noise Contour (including the Operative Contour, Draft Remodelled Contours and Remodelled Contours). The inappropriateness of such a rezoning was confirmed in a recent decision on a rezoning request in Selwyn. The Commissioner declined the portion of the rezoning request that sits within the Operative Contour, largely in recognition of the avoidance policies in the CRPS and in the Operative (and Proposed) Selwyn District Plan.
- 14 Rezoning rural land within the 50dB Ldn Air Noise Contour for urban purposes is inconsistent with the existing planning framework and the expert evidence that has been presented at previous hearings.

HIGHLY PRODUCTIVE LAND

- 15 As explained by Mr Kyle, 128 Baynons Road is also classified as highly productive land under the National Policy Statement for Highly Productive Land (*NPS HPL*).
- 16 The NPS HPL came into force on 17 October 2022 and contains strong national policy direction to avoid urban growth on highly productive land. The site is not subject to one of the NPS HPL exceptions, nor has the submitter filed any expert evidence as to its appropriateness for residential rezoning under clause 3.6 of the NPS HPL.
- 17 As a result, there are two constraints applying to 128 Baynons Road which mean that the rezoning request is not appropriate.

CONCLUSION

- 18 It is important that the Hearings Panel (and Council Officers) evaluate all constraints that are relevant to a particular rezoning

¹ *BD Gargiulo v Christchurch CC*, C 137/2000, 17 August, Jackson J (EnvC).

request. This includes submissions seeking urban rezoning of land that will be subject to aircraft noise levels of 50dB Ldn or greater.

Dated 31 May 2024

A handwritten signature in blue ink, appearing to read 'J Appleyard', is positioned above a horizontal line.

J Appleyard / A Lee
Counsel for Christchurch International Airport
Limited