

Before an Independent Hearings Panel
appointed by the 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 7: Residential, Large Lot Residential, Ecosystems and Indigenous Biodiversity, Variation 1 and Variation 2

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

Legal submissions for Christchurch International Airport Limited
(Stream 7)

Dated: 6 September 2024

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MAY IT PLEASE THE HEARINGS PANEL

INTRODUCTION

- 1 These legal submissions are presented on behalf of Christchurch International Airport Limited (*CIAL*). *CIAL* is a submitter and further submitter on the proposed Waimakariri District Plan (*Proposed Plan*) and Variation 1 to the Proposed Plan (*Variation*).
- 2 These submissions primarily address the Variation and the qualifying matter that *CIAL*, based on expert advice, seeks to be applied to land that is subject to aircraft noise of 50dB Ldn or greater (the *Airport QM*). The *Airport QM* relates to residential density controls and is required for the purposes of ensuring the safe and efficient operation of nationally important infrastructure, namely Christchurch Airport, and protecting community health and amenity.
- 3 *CIAL*'s substantive presentation on the Proposed Plan and the Variation (i.e. the *Airport QM*) occurred during Hearing Stream 10A.
- 4 As explained at Hearing Stream 10A, *CIAL*'s overall position is that Council's section 42A officers for the Proposed Plan and the Variation have not adequately identified or assessed the plethora of evidence and case law made available through many hearings over the past two decades that confirms the importance of Christchurch Airport and the need for provisions in the Proposed Plan that protect it from reverse sensitivity effects. Nor have they applied this evidence in order to protect the health and amenity of residents within the Waimakariri District, because they have drafted provisions that allow people to live in areas where they will be exposed to the adverse effects of aircraft noise.
- 5 *CIAL* seeks that the Hearings Panel accept the relief contained in Annexure B of **Mr Kyle's** Hearing Stream 10A evidence, including insofar as it relates to this hearing stream.
- 6 Given *CIAL*'s substantive presentation at Hearing Stream 10A has needed the Panel's wish to avoid any repetition, *CIAL* only calls expert evidence from **Mr John Kyle, Ms Laurel Smith** and **Professor Charlotte Clark** in relation to this Hearing Stream 7:
 - 6.1 The evidence of **Mr Kyle** and **Ms Smith** briefly summarises the evidence presented at other hearing streams and provides additional clarification on the relief sought as it relates to this hearing stream. Their evidence also provides further studies relevant to this Hearing Stream 7 has not previously been presented to the Panel, as well as addressing the position taken in the Council's section 42A reports.

- 6.2 The evidence of **Professor Clark** addresses the evidence base for the effects of aviation noise on health. Professor Clark has not yet presented evidence on behalf of CIAL in the Proposed Plan process. Her evidence is particularly important in the context of intensification but also applies generally to the exposure of more people to aircraft noise.
- 7 For completeness, we confirm that CIAL continues to rely upon the evidence and legal submissions presented at earlier hearing streams, including in particular the evidence presented at Hearing Stream 10A.

CIAL'S RELIEF ON VARIATION 1

- 8 As explained in Hearing Stream 10A, CIAL seeks that within the Airport QM (based on the geographic extent of the May 2023 50dB Ldn Remodelled Air Noise Contour (*Remodelled Contour*), density standards are limited to those currently provided in the Operative Waimakariri District Plan (*Operative Plan*).
- 9 We do not repeat the content of our previous submissions but highlight:
- 9.1 As 'nationally significant infrastructure'¹ the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the *Amendment Act*) requires the Panel to implement the Airport QM to prevent intensification or the creation of new residential land in area that will be subject to future aircraft noise levels of 50dB Ldn or greater.
- 9.2 The Remodelled Contour is the "best available evidence" for inclusion in the Proposed Plan and to inform where intensification should be avoided. In our submission, the Remodelled Contour can appropriately be included in the Proposed Plan without frustrating the CRPS and would be consistent with the policy when based on up to date evidence about where noise level of 50dB Ldn or greater will be experienced.²
- 9.3 The "Kaiapoi exemption" within Policy 6.3.5(4) of the CRPS cannot be relied on to justify residential intensification within the Remodelled Contour. Policy 6.3.5(4) must be interpreted with regard to the context in which it was created. As explained in the evidence of **Mr Kyle**, the exemptions in that policy were founded on an assumed existing state and would not necessarily been provided if it was known that a different

¹ As defined in the National Policy Statement on Urban Development and ss 771 and 770 of the Resource Management Act 1991.

² Hearing Stream 10A legal submissions at [52]-[74].

development density in the existing zones would be a feasible option in the future. The 'existing residentially zoned exemption' in that policy therefore cannot be relied on because the assumed existing state "would be changed if density controls within residentially zoned urban areas were to be significantly altered".³

- 9.4 The decision of the Independent Hearings Panel determining the Replacement Christchurch District Plan in 2015 provides further support for **Mr Kyle's** interpretation of Policy 6.3.5. That Panel considered that although there is no absolute direction in the CRPS to avoid any further noise sensitive activities in existing residentially zoned land within the Air Noise Contour, there is still a need to evaluate whether such activities should be avoided or restricted so as to give proper effect to Policy 6.3.5 and related CRPS objectives and policies.⁴
- 9.5 That Panel recognised the need for an ongoing capacity to assess relevant reverse sensitivity and noise mitigation matters for residential intensification above a certain scale.⁵ The Panel ultimately considered that residential zones in the Christchurch District that sit within the 50dB Ldn Air Noise Contour, residential activities which do not meet the then permitted zone standards should have restricted discretionary activity status.⁶ This demonstrates that density (amongst other things) was a key matter for decision makers to control in order to give effect to the CRPS. To further enable intensification or new residential rezonings in the Proposed Plan beyond that allowed under the Operative Plan provisions would be at odds with this approach.
- 10 Overall, in our submission, the Operative Plan densities are the most effective to ensure appropriate amenity outcomes for residents, and to ensure the effective and efficient operation of Christchurch Airport. CIAL's relief enables a level of development of land that has historically been zoned for residential use, but ensures that residential density is not increased any further.

³ Statement of evidence of **Mr Kyle** Hearing Stream 7 at [27]-[43].

⁴ Decision 10 Residential (Part), Independent Hearings Panel, 10 December 2015, at [57].

⁵ Decision 10 Residential (Part), Independent Hearings Panel, 10 December 2015, at [235].

⁶ Decision 10 Residential (Part), Independent Hearings Panel, 10 December 2015, at [237].

PC14 RECOMMENDATIONS

- 11 Since Hearing Stream 10A, the Christchurch City Council Independent Hearings Panel (*IHP*) provided its "Recommendations Report" on Plan Change 14 to the Christchurch District Plan (*PC14*), the Christchurch City Council Intensification Planning Instrument, to the Christchurch City Council on 29 July 2024 and this was made publicly available on 30 July 2024 (the *PC14 Recommendations*).
- 12 While the PC14 Recommendations are just that (in other words, recommendations) and have not yet been considered by the Councillors or subject to any scrutiny as to whether they give rise to any errors of law and have no precedent effect on this Hearings Panel's process, we nevertheless consider it useful to outline what the IHP's recommendations were for context and for the benefit of this Hearings Panel.
- 13 The PC14 IHP on the evidence it had (which is not the evidence this Panel now has) recommended a targeted position, somewhere in the middle of the pre-PC14 planning framework and the full extent of implementation of the MDRS. This included enablement of a level of intensification together with:
 - 13.1 the use of insulation/ventilation requirements, albeit it was accepted that such requirements do not address effects in outdoor spaces; and
 - 13.2 continuation of the existing requirement to manage adverse reverse sensitivity effects on Christchurch Airport (and likely notify CIAL) for 4+ unit developments.
- 14 While it might seem that CIAL's relief was not accepted in the PC14 context, the PC14 Recommendations are certainly a hybrid outcome of existing protection for Christchurch Airport but some enablement of intensification. In our submission, the Panel should not rely on the PC14 Recommendations to fully inform the implementation of the Amendment Act in the Waimakariri District context because:
 - 14.1 The PC14 Recommendations are not the final decision on PC14 as the Council still has to decide whether to adopt the recommendations, and legislative change is likely before the PC14 Recommendations are even decided on.
 - 14.2 Fundamentally, the PC14 Recommendations do not sufficiently address:
 - (a) outdoor noise effects and the limitations of acoustic insulation; and

- (b) the causal link between aviation noise and health effects (accepting that the Panel observed no evidence was called on this topic).

15 Outdoor noise and health effects is discussed in more detail below.

Outdoor Noise and Acoustic Insulation

- 16 In our submission, the PC14 Recommendations do not give sufficient consideration to noise effects in the outdoor/external environment and are inconsistent with Policy 6.3.5 of the CRPS which requires reverse sensitivity effects to be considered beyond ensuring compliance with internal acoustic standards for development.⁷
- 17 The PC14 IHP considered the evidence relating to the effects of noise in outdoor areas to be “purely speculative”. However, the evidence of **Ms Smith** and **Professor Clark** that this Panel now has clearly demonstrates the link between outdoor noise and health and reverse sensitivity effects and explains why compliance with internal acoustic standards in itself is not sufficient to prevent annoyance and reverse sensitivity effects. The outdoor noise environment is also a relevant consideration that must be taken into account. We note that the evidence of **Professor Clark** was not available to the PC14 IHP.
- 18 The limitations of acoustic insulation were previously raised by **Ms Smith** at Hearing Stream 10A. Ms Smith’s opinions have not changed. However, in this Hearing Stream 7 she now refers to other guidance documents and planning tools that offer further support for her conclusions. For example, **Ms Smith** refers to:
- 18.1 the 1999 WHO noise guidelines which include target values for environmental noise in residential outdoor living areas and balconies;
 - 18.2 the Ministry of Education’s performance standard for certifying new pre-schools;
 - 18.3 the ICAO Airport Planning Manual which recognises that “the major drawback to noise insulation is that it does nothing to mitigate noise outdoors”. Aircraft noise received in residential outdoor living areas is problematic because:

In single-family dwellings in temperate and warm climates, families live outside during many of the daylight hours, especially in the summer months [...] It is this outdoor activity that creates the real noise compatibility

⁷ As previously set out in our legal submissions for Hearing Stream 12E at [24]-[37].

problem for residential property in the vicinity of the airport.

- 18.4 NZS 6805 which recognises that new residential development in areas exposed to 55 – 65 dB Ldn are prohibited as a preference but provides a fall-back option of requiring acoustic insulation.
- 19 Based on the above, and the evidence presented at other hearing streams, **Ms Smith** concludes that a noise mitigation by insulation approach (such as the approach recommended by the PC14 IHP and the Reporting Officer for Hearing Stream 12E) would result in an inferior outcome for residents and would introduce compromised living conditions and a potential source of complaints effecting airport operations.⁸ In her opinion, land use control is a more desirable option for avoiding effects of aircraft noise.
- 20 From a planning perspective, **Mr Kyle** agrees with this conclusion.⁹
- 21 This Hearings Panel also has the benefit of the recent High Court decision in *Auckland International Airport Limited v Auckland Council* (the *Auckland Decision*) which was not available at the time of the PC14 hearings or Hearing Stream 10A. We discussed the Auckland Decision in detail at Hearing Steam 12E.¹⁰ In our submission, the findings of the High Court in that case are highly relevant and applicable to the extent that they highlight that reverse sensitivity effects must be considered beyond ensuring compliance with applicable acoustic standards for development and, in particular, that adverse effects on the outdoor environment must also be considered.

The causal link between aviation noise and health effects

- 22 As we have stated at previous hearings, the purpose of Policy 6.3.5 and the relief sought by CIAL is twofold. It protects both:¹¹
- 22.1 the safe and efficient operation, use, future growth and development of CIAL; and
- 22.2 the **health**, wellbeing and amenity of people though avoiding noise sensitive activities within the Remodelled Contour.
- 23 In the PC14 IHP Recommendations Report it was noted that there was a lack of expert evidence as to the actual health impacts associated with airport noise. Although CIAL maintains its position

⁸ Statement of Evidence of **Laurel Smith**, Hearing Stream 7 at [71].

⁹ Statement of Evidence of **John Kyle**, Hearing Stream 7 at [63].

¹⁰ Hearing Stream 12E legal submissions at [30]-[36].

¹¹ See *Canterbury Regional Council v Independent Fisheries Ltd* [2012] NZCA 601 at [34].

that the evidence of **Ms Smith** demonstrates the link between aviation noise annoyance and health effects, it is acknowledged that unlike this Hearings Panel, the PC14 IHP did not have the benefit of hearing the direct evidence of a health professional, **Professor Clark**.

- 24 CIAL engaged Professor Clark as part of the CRPS consultation process to prepare a report on the evidence-base for the effects of aviation noise on health. Her report comments on the application of the evidence-base in the Christchurch context to assist with making future land use decision for areas impacted by aircraft noise from Christchurch.
- 25 Unfortunately, Professor Clark's evidence has not been available until this hearing stream and was not available during the PC14 hearing process. However, now, **Professor Clark's** evidence adds substantial weight and credibility to the evidence provided in support CIAL's submission points relevant to Hearing Stream 7.
- 26 In summary, **Professor Clark's** evidence:
 - 26.1 sets out the evidence linking exposure aviation noise to a range of health outcomes including annoyance, sleep disturbance, cardiometabolic disease, mental health and children's learning;¹²
 - 26.2 discusses different methods uses to identify thresholds for effects and the effectiveness of mitigation measures. Professor Clark considers that "*mitigation should be a last resort and relied upon within the planning process sparingly*";¹³ and
 - 26.3 in terms of the Christchurch (and Waimakariri) context, notes that urban planning has played a critical role and Christchurch Airport is in an "*enviable and unusual position in that it has protected areas defined by planning that protect community health.*" In her opinion, this should be maintained.
- 27 Overall, her evidence demonstrates that environmental noise is a public health issue which has significant impacts on physical health, mental health and wellbeing.¹⁴

¹² **Professor Charlotte Clark** *Airport noise exposure and health effects* (July 2024) at [5]-[6].

¹³ At [46].

¹⁴ At [2].

CONCLUSION

- 28 The Amendment Act contains a mandatory direction from Central Government to allow intensification to the full extent of the MDRS in existing residential areas, and this can only be limited to the extent necessary to accommodate qualifying matters. In our submission, restricting development within the 50dB Ldn Contour is the “extent necessary” to both the continued operation of Christchurch Airport and the health and wellbeing of the community that sufficient regard is had to the effects of outdoor noise, and the impact of aviation noise to health.
- 29 If the PC14 IHP had access to the evidence this Panel now has as to outdoor noise effects and the link between aircraft noise and health outcomes it is probable that a different outcome would have been reached. Therefore, in our submission very little (if any) weight can be placed on the PC14 Recommendations in the context of this Proposed Plan review.

Dated: 6 September 2024

Jo Appleyard/Meg Davidson
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