

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
WAIMAKARIRI DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on the Proposed Waimakariri
District Plan (**PWDP** or **the Proposed Plan**)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Waimakariri District Plan by
Momentum Land Limited (MLL)

**MEMORANDUM OF COUNSEL FOR MOMENTUM LAND LIMITED AND
MIKE GREER HOMES NZ LIMITED IN RESPONSE TO MINUTE 42: REQUEST BY
CIAL TO SUBMIT LATE TECHNICAL EVIDENCE FOR HEARING STREAM 7/10A**

Dated: 16 October 2024

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MAY IT PLEASE THE COMMISSIONERS:**Introduction**

- 1 This memorandum is filed on behalf of Momentum Land Limited (**MLL**) and Mike Greer Homes NZ Limited (**MGH**) who have requested that land at Kaiapoi be rezoned from Rural Lifestyle Zone to Medium Density Residential Zone.
- 2 Minute 42 of the Hearings Panel, dated 2 October 2024, responds to a request by Christchurch International Airport Limited (**CIAL**) for late filing of evidence for Hearing Stream 10A.
- 3 In the Memorandum by CIAL dated 30 September 2024, CIAL seeks leave to provide additional material following the hearing of submissions and evidence on Hearing Stream 7A/B. The evidence sought to be admitted late would be from Professor Charlotte Clark, regarding the effects of aviation noise on a range of health outcomes.
- 4 The Stream 7A/B Hearing, although dealing with the Airport Noise Qualifying Matter on Variation 1, was not an opportunity to patch up the evidence which was adduced at Stream 10A.
- 5 In Minute 42, the Hearings Panel requests that submitters provide the Panel with their positions on whether CIAL's request for Professor C Clark's evidence to be admitted late should be accepted, for the Panel to consider and submitters to respond to, by no later than 4pm Wednesday 16 October 2024.
- 6 I submit that Professor C Clark's evidence should not be accepted, because:
 - (a) No grounds for late admission of the evidence have been established; and
 - (b) Even if such grounds had been established, Professor C Clark's evidence would be of no assistance in determining the Airport Noise or residential density issues before the Panel.

Grounds for Late Admission – Sections 37 and 37A

- 7 In order for the Panel to admit Professor C Clark's evidence, it would have to extend timeframes under section 37 and 37A, taking into account the factors in sections 37A(1)(a) to (c).

Section 37A(1)(a)

- 8 In terms of section 37A(1)(a), MLL and MGH are persons who would be directly and adversely affected by the extension or waiver. Hearing 10A took place in February 2024, with expert evidence (including that of Professor John-Paul Clarke for MLL and MGH) exchanged prior to the hearing. MLL and MGH went to the expense of bringing Professor J-P Clarke to New Zealand, from Texas USA, for the hearing and subsequent expert witness conferencing.
- 9 If any “meeting of the expert minds” could have taken place, it would have been at that time. CIAL did not bring the evidence of Professor C Clark at that time, and has given no explanation of why it did not. MLL and MGH should not be put to additional expense to re-engage Professor J-P Clarke at this time, nor to call additional evidence from a psychologist to rebut Professor C Clark’s evidence (although that objection is for additional reasons which I refer to later in this Memorandum.)
- 10 At the Stream 7A/B hearing, Ms Harte and Mr Allan referred to and relied upon the Stream 10A expert evidence regarding the effects (if any) of airport noise, in order to assess that that MDR standards do not need to be departed from within the L_{dn} 50 to 55 dBA airport noise contours, as sought by CIAL and the Council. They assessed that the relief sought in the Proposed Plan and Variation 1 submissions by MLL and MGH may be granted on the basis of expert noise evidence already adduced by those parties, and the further evidence of Mr Fairmaid and Mr Withy relating to the economic realities of residential development.
- 11 In contrast, CIAL’s planning expert Mr Kyle sought to rely upon further noise evidence (Professor Charlotte C Clark and Ms Laurel Smith) which had not been, but could have been adduced as part of CIAL’s Stream 10A case.
- 12 Although the decision of the Independent Hearing Panel on PC14 to the Christchurch City Plan criticised CIAL for not having expert health evidence to support its submission that residential development between the L_{dn} 50 to 55 dBA airport noise contours should be constrained, that criticism does not justify the extremely late admission of such evidence in the proposed Waimakariri District Plan hearing process, even if Professor C Clark was qualified to give such

evidence. She is not, and even if she was, her evidence does not address the issue before the Panel.

- 13 At any rate, this deficiency in the CIAL case had been previously pointed out by the Independent Hearing Panel on the Christchurch Replacement Plan 2015.

Section 37A(1)(b) and (c)

- 14 In relation to section 37A(1)(b), the interests of the community in achieving adequate assessment of the effects of the proposed plan and submissions have been appropriately canvassed through the prior exchange and hearing of evidence for Hearing 10A. Nothing further would be achieved, in terms of the interests of the community, by re-opening the hearing to admit Professor C Clark's evidence and any response to it. To the contrary, and in relation to section 37A(1)(c), dragging out the hearing process would be against the interests of the community in receiving decisions on submissions and getting on with implementing the reviewed plan in order to achieve the community's aspirations, particularly as regards the provision of adequate housing capacity and choice.
- 15 In relation to section 37A(1)(b), having regard to "achieving adequate assessment of the effects of... the proposed plan", I submit that, even if there were grounds to admit the evidence of Professor C Clark at this late stage, it would not be of material assistance to the Panel in determining the issues before it.
- 16 As has previously been observed by other decision-makers, in relation to other witnesses giving evidence for CIAL in other proceedings, the statement of Professor C Clark strays outside of her expertise. Professor C Clark is a psychologist, not a psychiatrist, nor any other type of medical doctor. She is not qualified to give medical evidence as to any physical health effects of noise.
- 17 Even if Professor C Clark was qualified to give evidence about physical health effects, her statement does not provide any evidence of adverse health effects (whether physical or mental) for people living between L_{dn} 50 and 55 dBA airport noise contours, distinguishable from those people living outside of L_{dn} 50 noise contours.
- 18 Professor C Clark's vague statements about health effects increasing with each 10 dB increment in noise does not relate such effects to any particular level of noise. She does not say whether she is talking about the difference between L_{dn}

30 and 40 dBA contours, or the difference between L_{dn} 50 and 60 dBA contours. The only specific noise contour evidence in her statement refers to an effect on children's learning in schools at the L_{dn} 57 dBA contour, which is irrelevant to the questions which are before the Panel.

- 19 That is, even if Professor C Clark's evidence was admitted, it would take the debate about residential development / density located between L_{dn} 50 and 55 dBA contours no further.
- 20 CIAL has not produced any evidence by an appropriately qualified expert (ie a medical doctor / psychiatrist) that living between the L_{dn} 50 and 55 dBA contours may result in actual physical health effects. Even in relation to psychological effects, Professor C Clark's evidence does not address whether living between the L_{dn} 50 and 55 dBA contours has created any observed effects. (I reiterate that the *AIAL v Kainga Ora* case related to residential development between L_{dn} **60** and **65** dBA contours, characterised in the Auckland Plan as the "Moderate Airport Noise Area" or "MANA", and whether or not resource consent applications for housing in the MANA should have been notified to AIAL.)
- 21 It is not the case, as asserted at paragraph 4 of the Memorandum of Counsel for CIAL dated 30 September 2024, that Ms Smith's evidence "covers the causal link between aviation noise and adverse health effects." No such causal link has been established, whether in the evidence of Ms Smith or elsewhere, and certainly not for people living between the L_{dn} 50 to 55 dBA airport noise contours. At any rate, Ms Smith's evidence suffers from the same deficiency as Mr Day's in previous hearings, in that it endeavours to give health and planning evidence which the witness is not qualified to give.
- 22 MLL and MGH do not accept that these deficiencies in the evidence and case of CIAL could be remedied by allowing other submitters to have an expert health practitioner respond to Professor Clark's evidence, as suggested at paragraph 7 of the CIAL Memorandum. CIAL has not produced evidence of an expert health practitioner regarding any health effects for people living between the L_{dn} 50 to 55 dBA airport noise contours, so there is nothing for other submitters to respond to by way of evidence. The response of MLL and MGH can be and is appropriately addressed in this Memorandum of Counsel.

23 Finally, and at the risk of being repetitive, I wish to respond to the comments made by Counsel for CIAL at the Stream 7 hearing, in relation to the Taylor Baines study.

24 As has been previously canvassed, the Taylor Baines study suffers from the same defect as does the statement of Professor C Clark, in not addressing the matters which need to be decided by the Panel. This is because it is not sufficiently specific about the noise levels which are giving rise to – or not giving rise to – the effects investigated.

25 To recap, the Taylor Baines survey respondents were divided into those living either:

- Between L_{dn} **45** and **50** dBA current airport noise levels at the time of survey (ie, not predictions of future noise levels, but actual current noise levels) and
- Between L_{dn} **50** and **65** dBA current airport noise levels at the time of survey.

That is, all of the people living between L_{dn} 50 and 65 dBA were lumped into one group. Because of that, the Taylor Baines study cannot assist a decision-maker to decide whether the effects on and of a person living between L_{dn} 50 and 55 dBA airport noise are any greater than those on and of a person living between L_{dn} 45 and 50 dBA airport noise, or for that matter, a person living between L_{dn} 60 and 65 dBA airport noise.

26 If the authors of the Taylor Baines study (and the commissioning agencies CIAL, Christchurch City Council and Environment Canterbury) had wished to address the question of any difference in effects on people living between L_{dn} 50 and 55 dBA airport noise compared to those living between L_{dn} 45 and 50, or 55 and 60, or 60 and 65 dBA airport noise, they could have separated the survey respondents into those groups. They did not, so the survey cannot be relied upon to address the question which is before the Panel.

Conclusion

27 In summary, MLL and MGH oppose the admission of Professor C Clark's evidence for CIAL, having regard to the matters listed in section 37A(1)(a) - (c) RMA, because:

- (a) No grounds for late admission of the evidence have been established; and

- (b) Even if such grounds had been established, Professor C Clark's evidence would be of no assistance in determining the Airport Noise or residential density issues before the Panel.

Dated: 16 October 2024



Margo Perpick
Counsel for Momentum Land Limited
and Mike Greer Homes NZ Limited