

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

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

Speaking notes – legal

Dated: 17 September 2024

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MAY IT PLEASE THE HEARINGS PANEL

INTRODUCTION

- 1 CIAL's participation in Hearing Stream 7 is intended to only address relevant matters, namely the intensification component and, specifically, the implications (if any) of the Independent Hearings Panel's (*IHP*) Recommendations Report on Plan Change 14 (*PC14*) to the Christchurch District Plan.
- 2 In these speaking notes, we therefore provide a focused summary addressing:
 - 2.1 The relevance of the PC14 Recommendations.
 - 2.2 Certain matters addressed in the PC14 Recommendations, including:
 - (a) outdoor noise;
 - (b) acoustic insulation; and
 - (c) the causal link between aircraft noise and adverse health effects.
 - 2.3 Relevant matters raised in the joint legal submissions for Momentum Land Limited and Mike Greer Homes NZ Limited (referred to as the *Momentum legal submissions*), including:
 - (a) the nature of reverse sensitivity effects; and
 - (b) the "extent necessary" for the Airport Noise Qualifying Matter (*QM*) to restrict MDRS development, both in terms of density and spatial extent.

RELEVANCE OF PC14 RECOMMENDATIONS

- 3 As outlined in our legal submissions, the PC14 Recommendations Report was released to the public on 30 July 2024.
- 4 The PC14 Recommendations have not yet been considered and decided upon by the Christchurch City Council (*CCC*) Councillors as to whether they will be accepted, nor subjected to any scrutiny as to whether they give rise to any errors of law. They have no legal or evidential precedent effect on this Panel's process.
- 5 Further, there is currently ongoing dialogue (and much associated uncertainty) between CCC and the Government as to when CCC's decisions on PC14 need to be made and what those decisions must cover. At this stage, it is looking unlikely that any decisions on the Airport Noise QM component will be made before September 2025.

- 6 The Momentum legal submissions suggest that the PC14 Recommendations are relevant and persuasive and that because the *"evidence before this Panel on the PWDP and Variation 1 is the same as the evidence as was heard by the PC14 Panel,"* this *"direct[s] the same conclusion as was reached in that case."*¹
- 7 We fundamentally disagree, as per our legal submissions and as summarised above. In addition, **Ms Smith's** evidence addresses the PC14 Panel's comments regarding insulation, outdoor noise effects and the link between exposure to aircraft noise and health effects. Further, **Mr Kyle's** evidence addresses reverse sensitivity and addresses the shortcomings of the PC14 Recommendations in this respect.
- 8 Ultimately, in our submission very little (if any) weight can be placed on the PC14 Recommendations in the context of this Proposed Plan review and variation.

OUTDOOR NOISE AND ACOUSTIC INSULATION

- 9 The PC14 Recommendations do not properly address adverse outdoor noise effects and the limitations of acoustic insulation. This is an issue that this Hearings Panel is able to avoid in this process given the evidence it has. Outdoor noise effects and acoustic insulation are addressed in the evidence of **Ms Smith** and **Mr Kyle**.
- 10 Their evidence explains the fundamental issue that acoustic insulation cannot address outdoor noise effects, and that outdoor noise effects therefore must necessarily be managed by land use planning controls.
- 11 Their evidence also outlines the limitations of acoustic insulation for indoor environments, given the reliance on closed windows and doors for the effectiveness of the approach, and the resulting inferior living outcomes.
- 12 In our submission, this evidence is squarely in front of this Panel and must be taken into account when the Panel is considering the appropriateness of intensification of existing residential areas and the application of the Airport Noise QM.

AIRCRAFT NOISE AND HEALTH EFFECTS

- 13 The PC14 Recommendations similarly do not recognise, or properly recognise, the causal link between aircraft noise and adverse health effects.
- 14 This Panel has the evidence of **Ms Smith** before it which outlines this link, with reference to various international studies and

¹ Legal submissions of Momentum Land Limited and Mike Greer Homes NZ Limited for Hearing Stream 7B, dated 6 September 2024 at [30].

benchmarks. This Panel has more case studies and more relevant up-to-date information than the PC14 Panel.

- 15 It is acknowledged that this Hearings Panel is not considering the evidence of Professor Clark on health effects at this time. Professor Clark's evidence was intended to supplement **Ms Smith's** evidence and was called by CIAL in response to the PC14 Panel's assertion that it did not hear evidence of health effects (which is disputed albeit Ms Smith is not a health practitioner). However, **Ms Smith's** evidence adequately and appropriately covers health effects and, in our submission, provides a firm basis for this Panel's recommendations regarding the Airport Noise QM.

REVERSE SENSITIVITY EFFECTS

- 16 As outlined by **Mr Kyle**, the PC14 Recommendations take a narrow and, in our submission, incorrect approach to the concept of reverse sensitivity.
- 17 **Mr Kyle** addresses this point in detail, with respect to both the ability of Christchurch Airport to generate more operational noise than is currently experienced under the operative contours, and the need for Christchurch Airport to adapt operations to meet future demands over long time periods.
- 18 The PC14 Recommendations only address the present time. Equally, the Momentum legal submissions (in reliance on their planning evidence) refer to the concept of reverse sensitivity arising only as a result of whether there have been complaints. From our legal perspective, and **Mr Kyle's** planning perspective, this is an incorrect notion of reverse sensitivity effects, which relate to an incompatible activity establishing near or adjacent to an established lawful activity (i.e. new or intensified residential activity establishing within the Christchurch airport noise contours which are a prediction of future noise).
- 19 In this respect, the Momentum legal submissions appear to have misinterpreted the findings of the High Court in the *Auckland International Airport Limited v Auckland Council (the AIAL Decision)*.² The relevance of the AIAL Decision (in terms of acoustic insulation and outdoor amenity) was addressed in detail in our legal submissions for Hearing Stream 12E³ and we do not repeat that discussion here.
- 20 Momentum now seems to be suggesting that the AIAL Decision supports the PC14 IHP's findings in respect of reverse sensitivity. This seems to be on the basis that the relief sought by CIAL on the Airport Noise QM is seeking to protect some unanticipated future

² *Auckland International Airport Limited v Auckland Council* [2024] NZHC 2058.

³ Legal submissions of Christchurch International Airport for Hearing Stream 10A, dated 9 August 2024 at [56]-[74].

activity at Christchurch Airport. In our submission, the same mistake is being made as identified by **Mr Kyle** in that there is a lack of recognition of existing (but as yet unused) authorisation of noise effects at Christchurch Airport, as well future planned capacity under the remodelled contours. This is not a speculative effect – it is exactly what level of noise effects will be experienced under the remodelled contours and exactly what this Proposed Plan should recognise and provide for.

AIRPORT NOISE QUALIFYING MATTER

- 21 The Momentum legal submissions appear to say that the Airport Noise QM as sought by CIAL is not “necessary” to protect Christchurch Airport operations or community health and amenity.
- 22 The suggestion appears to be that there is a lack of evidence justifying the Airport Noise QM as sought by CIAL. In summary, in our submission, there is a full suite of evidence addressing the relevant statutory matters on which this Panel is required to make its recommendations.
- 23 We have already addressed the pertinent sections of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the *Amendment Act*) at Hearing Stream 10A hearing and specifically do not address those matters again here, except in the limited respects below.

Section 77I(e)

- 24 The Momentum legal submissions assert that the requirements of section 77I(e) are not met because the Airport QM is not “*a matter required for the purpose of ensuring the safe or efficient operation of the Airport*”.⁴ That statement overlooks CIAL’s evidence to the contrary which demonstrates a clear and direct link between exposure to aircraft noise of 50dB Ldn or greater and reverse sensitivity, as well as adverse amenity and health effects:
- 24.1 *Reverse sensitivity* - adverse effects on the community may lead to an increase in the incidence of complaints about noise and/or indirect pressure for CIAL to take steps to curb, curtail or amend its operations. This is a very real concern which has and is being experienced at various airports internationally, as demonstrated in the case studies appended to **Mr Hawken’s** evidence for Hearing Stream 10A⁵.
- 24.2 *Amenity* – the effect of noise from aircraft operations on the community. **Ms Smith** has advised that we can expect 18 -

⁴ Legal submissions of Momentum Land Limited and Mike Greer Homes NZ Limited for Hearing Stream 7B, dated 6 September 2024 at [14].

⁵ Statement of evidence of **Mr Sebastian Hawken** for Hearing Stream 10A, dated 2 February 2024.

27% of people to be highly annoyed by aircraft noise exposure of between 50dB and 55dB Ldn.⁶

24.3 *Health* – **Ms Smith** sets out the evidence linking exposure to aviation noise to a range of adverse health outcomes beyond amenity effects.

25 In our submission, any suggestion that such effects are merely “speculative” must be dismissed. **Ms Smith, Mr Kyle, Mr Hawken,** have all spoken to national and international real-world examples where airport operations have been restricted as a result of exposure to aircraft noise and **Ms Smith** has directly addressed health and amenity effects.

26 Therefore, in our submission, the Airport Noise QM meets the requirements of section 77I(e) and (j) as there is clear and compelling evidence which demonstrates that it is necessary to protect both:

26.1 the safe and efficient operation, use, future growth and development of CIAL; and

26.2 the health, wellbeing and amenity of people through avoiding noise sensitive activities within the Remodelled Contour

Remodelled Contour

27 The Momentum legal submissions assert that there is insufficient evidence to support the application of the Airport Noise QM to the May 2023 Remodelled 50 dB Ldn Outer Envelope Air Noise Contour (*Remodelled Contour*).

28 As explained in Hearing Stream 10A, the sequencing issue in relation to the CRPS review should not be determinative when considering the evidential merits of including the Remodelled Contour when making decisions about the appropriate locations for intensification. In our submission, the Remodelled Contour is the “best available evidence” to inform where intensification and new residential rezonings should be avoided because they show where the effects of 50 dB Ldn or greater aircraft noise will be experienced and therefore where 18-27% of the population will be highly annoyed.⁷

29 The advice from CIAL’s experts is that the Remodelled Contour is the best up-to-date technical information to identify where aircraft noise effects are likely to be felt. The Remodelled Contour is

⁶ Statement of evidence of **Ms Laurel Smith** for Hearing Stream 10A, dated 2 February 2024 at [58].

⁷ Legal submissions of Christchurch International Airport for Hearing Stream 10A, dated 11 February 2024 at [56]-[74].

therefore the best information to base land use planning provisions off, including under the Variation.

The “extent necessary” to limit the MDRS

- 30 The Momentum legal submissions query whether continuing the existing density enablement qualifies as the “extent necessary” to limit the application of the MDRS to existing (and new) residential areas).
- 31 CIAL’s firm position is that there should be no change to the operative density standards for existing relevant residential zones subject to levels of aircraft noise of 50 dB Ldn.
- 32 As explained by **Mr Kyle**, the Operative Plan density standards already enable a reasonable level of development on sites which have historically been zoned for residential land use but which will be subject to aircraft noise levels of 50dB Ldn. As the provisions of the CRPS are based on an “existing state” it would not be appropriate to increase the existing residential density standards in these locations. This is also supported from a technical perspective by **Ms Smith’s** evidence.
- 33 The MDRS are designed to encourage new and additional households to establish in relevant residential zones. If more households (and therefore more people) occupy land that is subject to aircraft noise levels of 50dB Ldn or greater, this increases the number of people subjected to noise levels from airport operations and increases the likelihood that those occupants will then suffer adverse amenity and health effects with the result that limitations could be placed on Christchurch Airport operations. This has occurred at other airports in New Zealand where residential development has been allowed to establish (or was already established) in close proximity – such as Wellington and Queenstown, both of which are now subject to a night-time curfew in order to manage noise impacts on residential communities near the airport.
- 34 The case law, existing planning framework and evidence (discussed in detail at previous hearing streams) all anticipate both types of related effects and justify density controls such as what is sought by CIAL in this process.
- 35 In summary, the evidence for CIAL confirms that the current evidence continues to support the use of the 50dB Ldn Noise Contour as the point at which new residential activity ought to be avoided because:
- 35.1 The standards in NZS6805 are a ‘minimum’ and NZS6805 recommends that existing noise controls should not be downgraded.

- 35.2 Community annoyance from aircraft noise world-wide has increased since the controls were first introduced in Canterbury and since NZS6805 was written.
- 35.3 The evidence shows adverse amenity and health effects at exposure to levels above 50 dB Ldn.
- 35.4 Insulation does not solve annoyance issues that result from exposure to aircraft noise.
- 35.5 Outdoor noise is also a relevant consideration that must be taken into account.⁸
- 35.6 Reverse sensitivity is a very real effect for airports worldwide and can lead to a range of operational constraints.
- 36 Therefore, based on **Ms Smith's** acoustics advice, there is no evidential basis to alter the current planning approach in the Waimakariri District for the purposes of Variation 1. Intensification of noise sensitive activities on land subject to levels of 50dB Ldn or greater ought to be avoided in order to comply with the Amendment Act requirements and CIAL's relief delivers this outcome.

Clarification of Momentum position

- 37 There are two final matters requiring clarification in the Momentum legal submissions. Firstly, the submissions refer throughout to the annual average contour as being the "status quo". However, this is incorrect. As the Marshall Day Acoustics report appended to the evidence of **Ms Smith** for Hearing Stream 10A explains, the 2008 CRPS Operative Contour is a hybrid but is largely based on the outer envelope methodology, not the annual average methodology.⁹
- 38 Secondly, the Momentum legal submissions omit to acknowledge that the Momentum Land and Mike Greer land falls partially within the CRPS Operative Contour meaning there is no removal of pre-existing development rights at least in these locations.
- 39 In any event, Variation 1 is about intensification and there are no pre-existing (pre-IPI) intensification rights that CIAL is seeking to take away. CIAL's position is that existing development rights (i.e. those that existed "pre-MDRS") will not be undone by virtue of land use planning controls within the 50dB Ldn contour. It is further intensification or new noise sensitive activities beyond existing development rights that should not be enabled.
- 40 The specific density standards within the Airport Noise QM area (shown as the area within the Remodelled Contour) should be those

⁸ *Auckland International Airport Limited v Auckland Council* [2024] NZHC 2058.

⁹ Statement of evidence of **Ms Laurel Smith** for Hearing Stream 10A, dated 2 February 2024, Appendix 1.

in the Operative Plan. There is therefore no scope concern with this position in a *Waikanae* sense.

Dated: 17 September 2024

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