

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 1: Part 1 General Matters, Definitions,
Strategic Directions and Urban Form and Development.

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

Legal submissions on behalf of Christchurch International Airport
Limited

Dated: 5 May 2023

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LEGAL SUBMISSIONS ON BEHALF OF CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED

INTRODUCTION

- 1 These legal submissions are provided on behalf of Christchurch International Airport Limited (*CIAL*).
- 2 *CIAL* is a submitter (#254) and further submitter (#80) on chapters of the proposed Waimakariri District Plan (*proposed Plan*) that are the subject of Hearing Stream 1.
- 3 These submissions provide a high level overview of *CIAL*'s key submission points and requested relief with regards to plan structure and the Strategic Directions chapter.
- 4 In addition, *CIAL* is calling evidence from:
 - 4.1 **Ms Felicity Hayman** – in relation to *CIAL* operations;
 - 4.2 **Ms Natalie Hampson** – in relation to economics;
 - 4.3 **Mr Geoff Page** – in relation to aviation and airport safeguarding; and
 - 4.4 **Mr Darryl Millar** – in relation to planning.
- 5 We understand Council's Section 42A officers are of the view that *CIAL*'s specific submission points are best considered at the relevant chapter hearings. We agree in principle with the proposed approach and these submissions therefore focus on key issues which permeate the rest of the proposed Plan and which are important for the Panel to be cognisant of at the outset.

BACKGROUND TO *CIAL*'S INTERESTS IN THE WAIMAKARIRI DISTRICT PLAN

- 6 Christchurch International Airport (*Christchurch Airport*) is important infrastructure of regional and national significance, as demonstrated in the evidence of **Ms Hayman**, **Mr Page** and **Ms Hampson**.
- 7 Christchurch Airport is the second-largest airport in the country and it connects the South Island to the world. It is the key gateway for the community in Waimakariri to connect to destinations internationally, nationally and within the South Island. In brief summary:
 - 7.1 Christchurch Airport is a connectivity hub for passengers (both business and leisure) and is a key conduit for tourists and travellers to the South Island.

- 7.2 As explained by **Mr Page** and **Ms Hayman**, Christchurch Airport is the primary air freight hub for the South Island, playing a strategic role in New Zealand's international trade as well as the movement of goods domestically. A significant volume of freight cargo is transported to or from Christchurch Airport every year. The value of goods transported through Christchurch Airport makes it the second largest South Island import gateway and the third largest South Island export gateway.
- 7.3 There is no doubt that the Covid-19 pandemic has significantly impacted the aviation sector. Christchurch Airport has played a critical role in New Zealand's ability to respond to and recover from the economic impacts of Covid-19 through dedicated freight services arriving to and departing from Christchurch Airport. Furthermore, the tourism industry expects that New Zealand will be in high demand as a destination once Covid-19 restrictions are lifted.
- 7.4 Christchurch Airport provides essential resilience in the transport network – the importance of this resilience has been demonstrated repeatedly in recent years when floods and earthquakes have severely compromised the road and rail networks, requiring passengers and cargo to be diverted via air through Christchurch Airport. Most recently, Christchurch Airport accommodated 2,000 displaced passengers following the 2023 Auckland floods as a result of the closure of Auckland Airport operations.
- 7.5 CIAL is a lifeline utility and must be able to continue operating Christchurch Airport, to the fullest extent possible, during and after an emergency.¹
- 7.6 The Christchurch Airport campus is a significant employment hub and it generates substantial wider regional economic benefits as shown in **Ms Hampson's** evidence. Ms Hampson's evidence presents the preliminary results of new and therefore highly relevant modelling of the economic contributions of Christchurch Airport and the wider campus. These economic contributions are sensitive to constraints on core airport operations.
- 7.7 Christchurch Airport has a competitive advantage in that it operates uncurfewed and unrestricted as to the types of aircraft using it. This provides unique benefits to the Airport, and in turn the region, and is integral to the future economic and social well-being of people in Canterbury.

¹ Civil Defence Emergency Management Act 2002.

- 8 The significance of Christchurch Airport should be recognised explicitly in the overarching Strategic Directions chapter in the proposed Plan. The need to ensure protection and enable provision for this important infrastructure (including protection from reverse sensitivity effects) informs and directs all other parts of the proposed Plan and is a key strategic matter for the Waimakariri District.
- 9 While Christchurch Airport is not physically located in the Waimakariri District, land use activities in the District affect, and may be affected by, Airport operations. This is a “cross boundary” issue which requires a co-ordinated approach to planning provisions that apply in each affected district.
- 10 Section 74(2)(c) of the Resource Management Act 1991 (*RMA*) requires the Council to have regard to the extent to which the proposed Plan needs to be consistent with those of adjacent territorial authorities. In light of the cross-boundary issues and regional significance of Christchurch Airport, this is a highly relevant matter in this case. In our submission, there is a clear need for continuity and consistency with the higher-order Canterbury Regional Policy Statement (*CRPS*) framework and the planning frameworks in Christchurch and Selwyn districts.
- 11 It is critical that the proposed Plan protects against inappropriate development in the vicinity of Christchurch Airport, including noise-sensitive land uses within the 50dBA Ldn Air Noise Contour and bird strike risk activities. The importance of safeguarding to ensure the continued efficient and safe operation of Christchurch Airport is discussed by **Ms Hayman** and **Mr Page**.

RELIEF SOUGHT

- 12 The Strategic Directions chapter is critical for guiding the interpretation and application of all other provisions of the proposed Plan.
- 13 The Section 32 report states that the Strategic Directions and Urban Form and Development Chapters provide the overarching direction for the proposed Plan and its implementation and interpretation.² While high level, these chapters are significant as they set out the key strategic matters for the district that the remainder of the proposed Plan must address.³
- 14 The Report also explains that that there is no hierarchy for the strategic objectives, which are read as a whole, but there is a clear

² Page 3.

³ Page 5.

hierarchy between the Strategic Directions and all other district plan provisions.⁴

- 15 Getting the Strategic Directions chapter right is therefore essential for:
- 15.1 A well-functioning district plan; and
 - 15.2 Infrastructure operators, particularly of regionally and nationally significant infrastructure, who are heavily reliant on district plan provisions for both protecting and enabling their operations.
- 16 CIAL seeks amendments to the Strategic Directions chapter as set out in its submission to ensure that objectives and policies appropriately highlight the significance of strategic infrastructure (specifically identifying Christchurch Airport) and providing for its protection from incompatible land uses and reverse sensitivity effects. In our submission, this high level direction is most appropriately placed upfront in the Strategic Directions chapter.
- 17 CIAL's relief on Part 1 matters is to be addressed in future chapters alongside more specific submission points.⁵ This approach is supported and CIAL's evidence for subsequent hearings will be commensurate with this approach; below we simply set out CIAL's high level position with regards to the proposed Plan.

PLAN STRUCTURE

- 18 Provisions relating to land use constraints to manage effects associated with aircraft noise and bird strike do not fall easily into the National Planning Standards framework because there are several places where these rules could validly be incorporated into the proposed Plan (for example the noise, energy and infrastructure, and relevant zone chapters).
- 19 CIAL's principal concern is to ensure that rules managing land use within the 50dBA Ldn and 55dBA Ldn Air Noise Contours and managing bird strike risk activities are located in the part of the proposed Plan where they will be most visible and clear.
- 20 It is also essential that, wherever these rules are located, clear cross-references are inserted to other parts of the proposed Plan.

⁴ Page 6.

⁵ Mr Wilson's Officer's Report: *Overarching and Part 1 Matters* dated 13 April 2023 at [47].

National Planning Standards

- 21 As the Panel will be well aware, the National Planning Standards require a 'strategic directions' heading to be included in district plans, with chapters underneath that heading relating to key strategic or significant resource management matters.⁶ The National Planning Standards (Standard 7) state that:⁷
- 21.1 The following matters must be located under a 'strategic directions' heading:
- (a) Outline of key strategic or significant resource management matters for the district;
 - (b) Issues and objectives that address key strategic or significant matters for the district and guide decision making;
 - (c) Policies that address those matters, unless those policies are better located in other more specific chapters; and
 - (d) How resource management issues of significance to iwi authorities are addressed in the plan.
- 21.2 Rules must not be included under the 'strategic directions' heading; and
- 21.3 Each strategic direction matter must be its own chapter under the 'strategic directions' heading, and an 'urban form and development' chapter must be included.
- 22 The protection, functioning and future development of Christchurch Airport falls squarely within the matters that must be located under a 'strategic directions' heading⁸ as a key strategic and significant resource management matter for the Waimakariri district.
- 23 A strategic objective that supports the continued safe and effective operation, use and development of Christchurch Airport is essential and should be included in the proposed Plan. The avoidance of reverse sensitivity effects is a key part of this, as incompatible land

⁶ National Planning Standards 2019, District Plan Structure Standard (Standard 4) and District-wide Matters Standard (Standard 7), directions 1 to 4; see also Ministry for the Environment "Guidance for District Plans Structure and Chapter Standards" April 2019, available at <http://www.mfe.govt.nz/sites/default/files/media/RMA/guidance-for-district-plans-structure-andchapters-standards.pdf>

⁷ Ibid.

⁸ National Planning Standards (Standard 7).

uses may impact the operation of Christchurch Airport, despite the infrastructure itself not being located in the Waimakariri district.

- 24 We note that in its decision on the Strategic Directions chapter in the Christchurch District Plan the Independent Hearings Panel, including retired High Court Judge Hansen and current Environment Court Judge Hassan, decided that strategic directions should explicitly have primacy, providing 'overarching direction' for other chapters in the plan.⁹ The Panel held that objectives and policies in the rest of the plan are to be expressed and achieved in a manner consistent with the objectives in the Strategic Directions chapter. Further, that Panel went on to say that strategic directions should be designed to identify and give overarching direction on district-wide sustainable management priorities. This reasoning on the function of strategic directions foreshadowed the formal acknowledgement of this approach in the National Planning Standards and provides valuable guidance in the development of the proposed Plan.

Higher order planning documents

- 25 Below we summarise higher order planning documents which inform the Strategic Directions chapter and are specifically relevant to Christchurch Airport. **Mr Millar's** evidence explores these provisions in more detail.

National Policy Statement on Urban Development (NPS UD)

- 26 Christchurch Airport is defined as nationally significant infrastructure in the NPS UD.¹⁰
- 27 The NPS UD directs that local authority decisions on urban development are integrated with infrastructure planning decisions,¹¹ and that planning decisions contribute to well-functioning urban environments.¹²
- 28 In our submission, a well-functioning urban environment is one in which:
- 28.1 infrastructure – particularly infrastructure such as Christchurch Airport – is not adversely affected by incompatible activities; and

⁹ Independent Hearings Panel Christchurch Replacement District Plan "Decision 1: Strategic directions and strategic outcomes" 19 March 2015, available at <http://www.chchplan.ihp.govt.nz/wpcontent/uploads/2015/03/Strategic-Directions-and-Strategic-Outcomes-Decision.pdf>, at [99]-[107].

¹⁰ Section 1.4 - Interpretation.

¹¹ Objective 6.

¹² Policy 1.

28.2 urban growth is planned with infrastructure provisions in mind, recognising that the two run hand-in-hand.

Canterbury Regional Policy Statement (CRPS)

- 29 The efficient use and development of Christchurch Airport as a significant physical regional infrastructure resource is provided for in the CRPS, in both Chapter 5 (Land use and Infrastructure) and Chapter 6 (Recovery and Rebuilding of Greater Christchurch). **Mr Millar's** evidence outlines relevant CRPS provisions in detail.

Incompatible activities and reverse sensitivity

- 30 The adverse effect of establishing sensitive/incompatible activities in the vicinity of existing lawful uses, and the potential for that establishment to lead to restraints on the carrying out of the existing uses, is known as a "reverse sensitivity" effect. The Court has stated that "*it is the effect of the new use on existing uses that is the problem, not because of the direct effects of the new use but because of incompatibility which in turn may lead to pressure for change*"¹³.
- 31 The proposed Plan must meet the statutory requirements contained in the RMA, including in sections 72-77. This requires a balance of often competing interests and effects. Reverse sensitivity effects are an adverse effect for the purposes of the RMA.
- 32 The general principle, established in case law, is that activities should internalise effects wherever reasonably possible.¹⁴ However, total internalisation of effects is not feasible in all cases and there is no requirement under the RMA that this must be achieved.¹⁵
- 33 CIAL internalises its effects wherever reasonably possible. However, total internalisation of effects is not feasible. Aircraft taking off and arriving at Christchurch Airport will generate noise effects, and it will therefore be affected by reverse sensitivity effects as a result of land use activities beyond CIAL's boundary. The most effective way to avoid incompatible activities, adverse effects on landowners, and reverse sensitivity effects on Christchurch Airport is to manage the location of urban growth and sensitive land uses in a pro-active manner.
- 34 To justify imposing any restrictions on the use of land beyond an effects emitting site, the activity should be of some considerable economic or social significance locally, regionally, or nationally, as is

¹³ *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535, para [22]

¹⁴ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9].

¹⁵ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9] and *Catchpole v Rangitikei District Council*, W35/03.

the case for Christchurch Airport.¹⁶ It is well recognised that residential occupiers have the greatest potential to generate reverse sensitivity effects, and a greater degree of control outside of the site (i.e. Christchurch Airport) can be justified in such cases.¹⁷

Sensitive activities and the 50dBA Ldn Air Noise Contour

- 35 The proposed Plan contains Air Noise Contours relating to noise produced by aircraft landing and taking off from Christchurch Airport. The 50dBA Ldn Contour is the outer boundary used for Greater Christchurch and reflects the point at which land use controls are necessary to manage the establishment of noise sensitive activities in proximity to Christchurch Airport. This is required in order to:
- 35.1 reduce the number of occupants subjected to higher noise levels, and associated amenity effects, associated with aircraft taking off and landing at Christchurch Airport; and
- 35.2 avoid reverse sensitivity effects on Christchurch Airport.
- 36 The 55dBA Ldn Air Noise Contour marks the point at which additional land use controls are necessary to ensure that new buildings or extensions to new buildings are insulated sufficiently to mitigate the effects of aircraft noise on occupants.
- 37 CIAL has, to date, seen success with planning frameworks which addresses noise sensitive activities. It is important that the proposed Plan enables CIAL to continue managing the effects of aircraft noise in the greater Christchurch area, including the Waimakariri District.
- 38 CIAL's submission on the proposed Plan is not seeking to wind the clock back on residential development previously enabled in the operative Plan.
- Air Noise Contour remodelling***
- 39 As explained by **Ms Hayman**, Policy 6.3.11(3) in the CRPS requires certain processes with respect to remodelling the Air Noise Contours (*Updated Contours*). CIAL's expert team completed the modelling work required as the first stage in this process and have since been working through Environment Canterbury's independent expert peer review.
- 40 As CIAL's witnesses explain, this has been a highly detailed process to ensure the Air Noise Contours are based on the best technical information. At the time of filing evidence and legal submissions for

¹⁶ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [18].

¹⁷ *Ngatarawa Development Trust Ltd v Hastings District Council*, W017/08.

this hearing, the final updated contours had not been confirmed by Environment Canterbury, however CIAL will likely be in a position to present the peer reviewed updated contours at a future hearing stream. The updated contours will supersede the draft updated contours included in CIAL's submission on the proposed Plan. They will represent the most up to date information as to where airport noise effects will be experienced in the Waimakariri District and are relevant information for the Panel to take into account when deciding on associated land-use provisions.

- 41 Future hearings will deal with the mechanics and specific provisions seeking to avoid noise sensitive activities and buildings within the 50dBA Ldn Air Noise Contour and to regulate development of existing buildings within the 55dBA Ldn Air Noise Contour. They will also deal with the most up-to-date information on where levels of noise measured at 50dBA Ldn and 55dBA Ldn are expected to be felt. But the core principle of avoiding noise sensitive activities within the 50dBA Ldn Air Noise Contour should be included in the Strategic Directions chapter.

Kaiapoi

- 42 We acknowledge that CIAL's relief in relation to residential development at Kaiapoi will be considered at a future hearing. Nevertheless, CIAL wish to highlight its position that enabling new residential development is not appropriate anywhere within the 50dBA Ldn Air Noise Contour including Kaiapoi. **Mr Millar's** evidence also addresses this issue.
- 43 The short point is that the only relevant (and limited) exception to the strict "avoid noise sensitive activities in the 50dBA Ldn Air Noise Contour" policy in the CRPS is where "*...the activity is within an existing [at the time that this policy was made operative] residential greenfield area identified for Kaiapoi...*".¹⁸
- 44 The CRPS goes onto explain (our emphasis underlined):¹⁹
- "Within Kaiapoi land within the 50dBA Ldn airport noise contour has been provided to offset the displacement of residences as a result of the 2010/2011 earthquakes. This exception is unique to Kaiapoi and also allows for a contiguous and consolidated development of Kaiapoi."*
- 45 In our submission, it is clear that the provision for residential development at Kaiapoi is a limited carve out to the CRPS policy. Firstly, it only applies to some land which was greenfields at the time the policy was introduced. It does not apply to existing residential zones to allow further intensification. Moreover the

¹⁸ CRPS. Policy 6.3.5(4).

¹⁹ Canterbury Regional Policy Statement; Policy 6.3.5 *Principal reasons and explanation*

exception was explicitly introduced only for the creation of some new residential areas to offset displaced residences as a result of the Canterbury earthquake sequence. These areas were identified by changes to the operative Waimakariri District Plan (*operative Plan*) after the policy was introduced and which have been carried through into the proposed Plan.

- 46 The CRPS exception was for defined areas of Kaiapoi and does not extend beyond residential land which has already been provided for by way of rezoning in the operative Plan. This is stated plainly in the CRPS and is a matter of logic; aircraft noise effects within 50dBA Ldn are not experienced differently at Kaiapoi compared to elsewhere in the region.
- 47 This interpretation, that the wording of the CRPS is limited and clearly directed at the recovery of Kaiapoi, has been considered and confirmed by the Court of Appeal in *Canterbury Regional Council v Independent Fisheries*.²⁰ The Canterbury Earthquake Recovery Authority advised the Minister for Earthquake Recovery that:²¹

"...Our assessment is that exempting either the north-eastern Kaiapoi or all of the Kaiapoi township can be justified on the basis of displacement of residential properties from the Red Zone. However, the larger the area exempted the greater the risk that the air noise contour will be undermined and others will also seek to be exempted from the restriction of noise sensitive activities under the contour".

- 48 The Court of Appeal then observed:²²

"... the exception to the restrictions imposed by the noise level contour for residential development in Kaiapoi was clearly designed to assist the recovery of Kaiapoi...".

- 49 The outer bounds of this exception are already provided for in the residential zonings (and associated densities) in the operative Plan.²³ CIAL's submission on the proposed Plan is not seeking to wind the clock back on residential development previously enabled in Kaiapoi through the operative Plan. Instead, CIAL's firm position is that the limited exception does not allow for new and/or further intensification within the 50dBA Ldn Air Noise Contour where occupants would be exposed to inappropriate levels of noise.

²⁰ [2012] NZCA 601, [2013] NZLR 57.

²¹ At [96].

²² At [99].

²³ See Policy 12.1.1.12 which explains the Kaiapoi exception. The residential zones and associated densities already provided for in areas contemplated by the exemption.

Bird Strike

- 50 Bird strike is also a core airport safeguarding matter as discussed by **Ms Hayman** and it will be the subject of more detailed evidence in future hearing streams. CIAL takes the risk of bird strike very seriously, as bird strike risk is a key threat to the safe operation of aircraft using Christchurch Airport and off-airport activities can increase bird strike risk if not appropriately managed. This issue should be appropriately recognised as a strategic matter which requires management in the planning framework in order to protect the operations of Christchurch Airport as regionally and nationally significant infrastructure.
- 51 As well as the various CRPS objectives and policies discussing the importance of enabling the efficient operation of strategic infrastructure and avoidance of incompatible activities discussed above, the CRPS also recognises bird strike risk specifically as a resource management issue for the region.²⁴
- 52 CIAL has therefore sought policy recognition of this risk in the Strategic Directions chapter. Provisions relating to bird strike are similar to provisions relating to aircraft noise in that they are difficult to place within the proposed Plan. CIAL suggests the same approach as that suggested for airport noise should be taken. That is, rules relating to land use for bird strike management should be located in the zone chapters. CIAL will be bringing further evidence on this matter, including relevant definitions, at the hearings dealing with the specific planning provisions and rules that it seeks.

CONCLUSION

- 53 CIAL's principal concern is to ensure that rules managing land use within the Air Noise Contours and managing bird strike risk activities are located in the part of the plan where they will be most visible and clear to plan users. CIAL suggests that the Strategic Directions chapter is best placed to establish a cohesive framework that permeates the remainder of the proposed Plan.
- 54 CIAL has for many years adopted a stance that the most appropriate way to protect the operations of this nationally and regionally significant asset is by robust planning provisions in regional and district planning regimes which, in particular, discourage development in areas which will be affected by, or will adversely impact on, Christchurch Airport operations. In the context of the Strategic Directions setting, the 'higher level' framework for the remainder of the proposed Plan chapters, it is considered critical

²⁴ CRPS Policy 9.3.4 "principal reasons and explanation" and Policy 9.3.5 "principal reasons and explanation".

that the Strategic Directions chapter adequately safeguards Christchurch Airport operations.

- 55 CIAL therefore requests the Panel accepts the relief sought in CIAL's submissions and further submissions.

5 May 2023

A handwritten signature in blue ink, appearing to read 'J M Appleyard'.

J M Appleyard / A M Lee
Counsel for Christchurch International Airport Limited