BEFORE INDEPENDENT HEARING COMMISSIONERS
AT RANGIORA / WAIMAKARIRI

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI RANGIORA / WAIMAKARIRI

IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions and further submissions on the Proposed Waimakariri District Plan**
HEARING TOPIC:	**Te orooro – Noise**

LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES

NOISE

15 AUGUST 2023

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1. SUBMISSIONS REGARDING NOISE

1.1 These submissions are filed on behalf of Kāinga Ora and relate to the noise aspects of Hearing Stream 5. Other matters are addressed in the submissions filed by Mr Cameron.

1.2 Evidence relating to noise aspects has been filed on behalf of:

(a) Jon Styles (Noise);

(b) Lance Jimmieson (Ventilation);

(c) Matt Lindenberg (Planning – Noise);

(d) Brendon Liggett (Corporate).

1.3 Kāinga Ora appears to have had a different understanding than Christchurch International Airport Limited of the Panel's determination that matters related to the Airport Noise Contour should be removed into a specific hearing stream. The Council's request to provide a memorandum identifying what will be addressed in that hearing stream at the commencement of this hearing is noted, though the timing is rather unhelpful.

1.4 Given that Mr Millar appears to understand that most of the noise-related matters (and not just the contour) will be addressed in the later specific hearing,[1] these submissions do not address airport-related noise matters at length. Leave may be sought to address the Panel should that understanding not be correct.

1.5 These submissions address two of the remaining points in contention, the basis for both of which is said to be reverse sensitivity:

(a) The availability and appropriateness of the blanket setback approach to noise sensitive activities in the road and rail corridors (NOISE-R16); and

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[1] Evidence of Darryl Millar (Planning) on behalf of CIAL at para 8 and footnotes 1, 2 and 3.

(b) The proposed limited notification clause in favour of Christchurch International Airport Limited (NOISE-R17).[2]

2. REVERSE SENSITIVITY

2.1 A key theme underlying the Kāinga Ora submission is a request that the evidence put forward in support of there being a reverse sensitivity effect arising from the potential intensification of residential uses around transport (road and rail) corridors and within the 50dBA Ldn Noise Contour is properly interrogated.

2.2 Kāinga Ora accepts, of course, that:

(a) areas close to transport corridors and airports experience higher noise; and

(b) at sufficiently high levels, noise can cause adverse health effects for their inhabitants.

2.3 But that does not – and cannot – justify shifting the burden of mitigating noise effects entirely on to the occupants of the receiving environment on the basis of reverse sensitivity.

2.4 Reverse sensitivity is a conceptual reasoning tool – a way of thinking about the compatibility of different activities. As a judge-made concept, it must be applied consistently with the express provisions of the RMA. Accordingly, where it relates to noise matters, reverse sensitivity must be applied consistently with the s 16 duty to adopt the best practicable option to avoid unreasonable noise. There is no evidence before the Panel that intensification around transport corridors or within the 50dB contour will impose operational constraints on these infrastructure providers beyond having to adopt best practicable options to avoid unreasonable noise. Even if it is debateable at this stage whether noise being emitted would be unreasonable, the issue highlights the superficiality of using reverse sensitivity as a crutch to support limiting other development without compensation.

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[2] While matters relating to the Airport Noise Contour are intended to be addressed in a future hearing stream, it was not clear to Kāinga Ora whether this matter was also in that category.

3. BLANKET APPROACH INAPPROPRIATE

3.1 This leads to Kāinga Ora's concerns about the blanket approach promoted by the infrastructure providers and the Council. In the context of its wide mandate with respect to urban development, Kāinga Ora is concerned to avoid the undue discouragement or restriction of existing and future urban activities by a planning framework that overly emphasises reverse sensitivity effects and that imposes obligations on receivers of effects rather than the generators in the context of these infrastructure networks.

3.2 Kāinga Ora says that the Council and the transport authorities have failed to provide a sufficient basis for this Panel to conclude that provisions are the most appropriate to manage this issue. It is of course a fundamental planning principle that the use of land should be constrained to the least extent possible, while still achieving relevant objectives of the District Plan and, in this case, the objectives of the higher order instruments such as the NPS-UD.

3.3 The controls will impact on the rights of landowners and occupiers and in practice will both restrict and add cost to the activities that can be undertaken on land. That land has not been designated and, despite vague promises of improvements over time, the transport authorities are not proposing to mitigate effects at source or through funding improvements to existing dwellings.

3.4 Given that the transport authorities have elected not to acquire the land in proximity to their networks that they say is affected, it is appropriate for any regulation to be applied only where there is an evidential basis that establishes a need for that regulation. That is not satisfied by a blanket control proposed over a substantial amount of land within a specified distance of the road and rail corridor, where that specified distance is not supported by adequate evidence, or any attempt to quantify the costs to be imposed on individual landowners to subsidise the failure by the transport authorities to better internalise their noise effects, consistent with s 16 of the RMA.

3.5 Mr Styles' evidence refers to noise level contours developed for the State Highway network across the country which have been used to provide a more accurate overlay within which to control any noise sensitive activities compared to the blanket approach sought here. Dr Chiles refers to that project in [7.5] of his evidence, noting that while in some places in the district the modelled noise contour extends beyond 100m along SH1 and SH71, it is lower than 100m where there are lower speeds (ie, where there are more urban environments) and screening by buildings in Kaiapoi, Woodend and Waikuku.

3.6 Of course, this evidence relates only to the State Highway network, but the proposed rule, NOISE-R16, purports to apply also to arterial roads (including local roads under the control of the Council), which by and large will have lower speeds. Kiwirail's legal submissions[3] cite a recent Environment Court decision[4] as suggesting that setbacks for activities sensitive to noise ensure that consideration is given both to the receiving activities and also ensure the noise generating activities are not unduly constrained. But the submissions fail to note that the decision related to a consent order, not a fully argued and reasoned decision, and the agreed setback from arterial roads being confirmed by the Court was 40m – nothing like the 100m now being proposed, and substantially less than the 80m in the plan as notified.

3.7 The purpose of s 32 is to provide a check on the necessity of including policies and rules in a plan, to ensure that over-regulation does not occur, and costs and benefits are properly considered. The proliferation of such regulation was highlighted by the Productivity Commission in an inquiry report which led, ultimately, to the development of the NPS-UD, and the introduction of the concept of qualifying matters into the RMA.[5] It found that "[i]nadequate underpinning analysis for District Plan rules and provisions is a key source of unnecessary regulatory costs for developers."[6]

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3 Kiwirail Legal Submissions at [2.3].
4 *Kāinga Ora-Homes and Communities v Auckland Council* [2022] NZEnvC 218 at [77] (not [74] as cited).
5 Productivity Commission *Using land for housing* (2015).
6 Productivity Commission *Using land for housing* (2015) at [FS.19].

3.8 The blanket approach is a textbook example of an inadequate s 32 analysis being used to justify unnecessary rules and costs on landowners because the infrastructure providers, the noise emitters, do not appear willing to do the work necessary to justify more appropriate rules.

4. LIMITED NOTIFICATION CLAUSE

4.1 NOISE-R17 provides for Christchurch International Airport Limited to be limited notified in the event that the permitted activity standard is not met. Mr Lindenberg considers that there is no reason to depart from the usual notification tests where a resource consent is required under NOISE-R17. Requiring notification to Christchurch International Airport Limited as an affected party would create uncertainty for landowners (as it offers an opportunity to oppose the proposal, require a hearing and potentially appeal a decision), generate additional workload for Airport staff, and potentially lead to an inefficient process.

Date: 15 August 2023

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Nick Whittington