

Waimakariri District Council Proposed Waimakariri District Plan

Recommendations of the IHP Hearings Panel

Recommendation Report 29

Hearing Stream 10A – Christchurch International Airport Ltd: Noise Contour and Bird Strike – PDP and Variation 1

This report should be read in conjunction with **Report 1** and **Recommendation Reports 2, 3, 18, 22 and 36**.

Report 1 contains an explanation of how the recommendations in all subsequent reports have been developed and presented, along with a glossary of terms used throughout the reports, a record of all Panel Minutes, a record of the recommendation reports and a summary of overarching recommendations. It does not contain any recommendations per se.

Recommendation Report 2 contains the PDP Panel's recommendations on the PDP's Part 2: District-wide Matters – Strategic directions - SD Strategic directions objectives and policies.

Recommendation Report 3 contains the PDP Panel's recommendations on the PDP's Part 2: District-wide Matters – Strategic directions - UFD Urban Form and Development objectives and policies.

Recommendation report 18 contains the PDP Panel's recommendations on the PDP's TRAN- Transport.

Recommendation report 22 contains the IHP Panel's recommendations on the PDP's Variation 1- Intensification Chapters and Rezoning Residential.

Recommendation report 36 contains the PDP Panel's recommendations on the PDP's Rezoning- Residential.

Appendix 1: Schedule of attendances

Appendix 2: Recommended amendments to the Proposed Plan - Tracked from notified version (provisions not consequentially renumbered).

The Hearings Panel for the purposes of **Hearing Stream 10A** comprised Commissioners Gina Sweetman (Chair), Allan Cubitt, Gary Rae and Megan McKay.

1. Introduction: Report outline and approach

1. This is Report 29 of 37 Recommendation Reports prepared by the Hearings Panels appointed to hear and make recommendations on submissions on the Proposed Waimakariri District Plan (PDP) and Variation 1 to the PDP (Var 1). This report addresses the submissions on the PDP and Variation 1 relating to submissions made by and relevant to the Christchurch International Airport Ltd, related noise contour provisions and their requested bird-strike provisions.
2. One of the key issues to be addressed in the context of airport provisions, is the “Kaiapoi growth issue” where the land identified for future development in that town falls under the airport noise contour. Momentum Land Limited requested that the Panel change its approach to the Hearings Streams to allow for this issue to be dealt with in a more comprehensive manner. We raised this matter with the Council staff on Day 1 of Hearing Streams 1 and 2. Their initial advice was that the crux of the matter was the application and interpretation of the Airport Noise Contour and growth-related policies in the Canterbury Regional Policy Statement (RPS), and that it may be appropriate to hear all submissions relating to the Airport Noise Contour in one Hearing Stream. During these hearings, it was identified that it may also be appropriate for bird-strike submissions to be heard in this Hearing Stream.
3. The Panel sought feedback from the Council, Horticulture NZ, Kāinga Ora, Christchurch International Airport Ltd, and Environment Canterbury on how and when such a hearing could occur. All but Kāinga Ora supported the approach of hearing all airport related matters at one time. In response to Kāinga Ora’s concern about the process being different for Variation 1, the Panel noted that it would be issuing an integrated set of recommendations at the conclusion of all the hearings, and that these recommendations will distinguish between those made on the PDP and those made on Variation 1. However, we agreed it was appropriate to hear these issues together for the sake of efficiency.
4. Christchurch International Airport Ltd also responded to the Panel with a memo identifying which of its submission points they intended to address at this Hearing.¹ This recommendation report addresses the 118 submission points from CHRISTCHURCH INTERNATIONAL AIRPORT LTD identified in that memorandum, which essentially address their concern on the potential for Airport operations to experience reverse sensitivity effects from noise sensitive activities located within the Airport noise contours, and from activities that can potentially exacerbate bird strike.
5. Of these submissions, 79 submission points relate to the Airport noise contours, 30 submission points relate to bird strike, and nine submission points raise matters applicable to both the Airport noise contours, and bird strike. These 118 submission points received eight further submissions, raising 285 further submission points. Two-hundred and eighty-two further submission points opposed, and three supported,

¹ Memorandum of counsel on behalf of Christchurch International Airport Ltd dated 14 August 2023.

Christchurch International Airport Ltd's submission points. These submissions were assessed in a s42A Report by Mr Neil Sheerin.

6. The submissions received in relation to the Variation 1/Intensification Planning Instrument (IPI) were assessed in a s42A Report prepared by Mr Peter Wilson. His report sits alongside the s42A report on the PDP authored by Mr Neil Sheerin. We also note that Mr Wilson provided further comment and analysis on the matters addressed here in his s42A report for Hearing Stream 12E, which addressed a number of zoning requests that are affected by the Airport noise contours.
7. Because of the nature of this particular hearing, we have structured our report slightly differently to our other Recommendation Reports. We focus on the two main issues rather than the specific provisions they relate to. That is simply because the changes sought by the individual submissions are repeated across many provisions but essentially seek the same outcome. This Recommendation Report does however contain the usual appendices as follows:
 - (a) **Appendix 1: Schedule of attendances** at the hearing on this topic. We refer to the parties concerned and the evidence they presented throughout this Recommendation Report, where relevant.
 - (b) **Appendix 2: Recommended amendments to the Proposed Plan – Tracked from notified version.** This sets out the final amendments we recommend be made to the PDP provisions relating to this topic. The amendments show the specific wording of the amendments we have recommended and are shown in a 'tracked change' format showing changes from the notified version of the PDP for ease of reference. Where whole provisions have been deleted or added, we have not shown any consequential renumbering, as this method maintains the integrity of how the submitters and s42A Report authors have referred to specific provisions, and our analysis of these in the Recommendation Reports. New whole provisions are prefaced with the term 'new' and deleted provisions are shown as struck out, with no subsequential renumbering in either case.
8. In accordance with the approach set out in Report 1, our Reports generally focus only on 'exceptions', where we do not agree fully or in part with the s42A report authors' final recommendations and/or reasons, and/or have additional discussion and reasons in respect to a particular submission point, evidence at the hearing, or another matter. We have applied that approach for the most part in this recommendation report. However, the two key issues were subject to considerable contested evidence and legal submissions, culminating in four Joint Witness Statements from the planning, acoustic and bird strike experts involved in the process. While we agree with the final recommendations of the Council's report authors on these matters, subject to some refinements, we have provided a relatively brief (given the volume of evidence) overview of the concerns in this report, structured around the JWSs with added commentary where necessary.
9. In coming to our recommendation on these matters, we reiterate that all submissions and further submissions identified in the s42A reports listed above have been taken into

account in our deliberations. More detailed descriptions of the submissions and key issues can be found in the relevant s42A Reports, Responses to Preliminary Questions, Joint Witness Statements and written Reply Reports, which are available on the Council's website. Original submissions have been accepted or rejected as recommended by the s42A report author unless otherwise stated in our Recommendation Reports. Further submissions are either accepted or rejected in conformance with our recommendations on the original submission to which the further submission relates.

10. The requirements in clause 10 of the First Schedule of the Act and s32AA are relevant to our considerations of the PDP provisions and the submissions received on those provisions. These are outlined in full in Report 1. In summary, these provisions require among other things:
 - (a) our evaluation to be focussed on changes to the proposed provisions arising since the notification of the PDP and its s32 reports;
 - (b) the provisions to be examined as to whether they are the most appropriate way to achieve the objectives; and
 - (c) as part of that examination, that:
 - i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
 - ii. the efficiency and effectiveness of the provisions is assessed;
 - iii. the reasons for our recommendations are summarised; and
 - iv. our report contains a level of detail commensurate with the scale and significance of the changes recommended.
11. We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of Council's s42A report authors, we have adopted their reasoning, unless expressly stated otherwise. This includes the s32AA assessments attached to the relevant s42A Reports and/or Reply Reports. Those reports are part of the public record and are available on the Council website. Where our recommendation differs from the s42A report authors' recommendations, we have incorporated our s32AA evaluation into the body of our report as part of our reasons for recommended amendments, as opposed to including this in a separate table or appendix.
12. A fuller discussion of our approach in this respect is set out in Report 1.

2. Noise Sensitive Development under the 50dB Airport Noise Contour

The Kaiapoi growth issue

13. The issue that consumed the majority of time at the hearing, and which was the main focus of the evidence presented, related to the "Kaiapoi growth issue". Much of the land identified for future development in Kaiapoi falls under the airport noise contour. The Christchurch International Airport Ltd submission² sought amendments to policies

² 254.21

within the Urban Form and Development chapter to avoid noise sensitive activities within the Air Noise Contour at Kaiapoi, except at densities provided for by the Operative Waimakariri District Plan (operative District Plan) in existing residential zones. Momentum Land Ltd opposed this submission on the basis that it essentially means that no further growth of Kaiapoi can occur, as the only new development area in Kaiapoi is partially beneath the contour.

14. Associated submissions from Christchurch International Airport Ltd sought amendments which would achieve the same outcome, as follows:
 - Amend the Subdivision provisions to restrict density in Residential Zones to the operative District Plan minimum lot sizes.³ This would restrict growth at Kaiapoi, including areas identified for future urban development where Christchurch International Airport Ltd consider no growth should occur. Momentum Land Ltd opposes this as they propose to rezone and develop the land within the future development area at Kaiapoi;
 - Amend the Noise Chapter introduction, and objectives and policies, to avoid noise sensitive activities in areas of Kaiapoi that are not currently in the residential zone, and to restrict densities in existing residential zones;⁴
 - Amend residential provisions to restrict all noise sensitive activities beneath the 50 dBA Ldn Airport Noise Contour.⁵
15. In relation to Variation 1, Christchurch International Airport Ltd sought the retention of the proposed Airport Noise qualifying matter and alignment with the operative 50dBA contour across all operative zones, recognition of the remodelled annual average and outer envelope contours, and changes to the minimum allotment size for subdivision underneath the contour.⁶ Other submitters sought the deletion of all the aircraft/airport noise provisions, including any mapped noise overlays and contour maps,⁷ while others sought a reduction of its spatial extent.⁸

Policy 6.3.5(4) of the RPS

16. Critical in determining this issue is the interpretation of the Airport Noise Contour and growth-related policies in the RPS, in particular Policy 6.3.5(4) and what was referred to as the 'Kaiapoi Exemption'. The relevant part of that policy is:

6.3.5 Integration of land use and infrastructure

Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by:

...

³ 254.44

⁴ 254.55 and [254.57

⁵ 254.71 and [254.72

⁶ 81.1 and 81.11

⁷ Kāinga Ora [80.21] supported in a further submission by Momentum Land Ltd [FS 23]

⁸ Momentum Land Ltd [43.4], David Lawry [44.2], Helen Mary Sparrow [52.3]

4. *Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 6-28) and enabling commercial Christchurch International Airport Ltd film or video production activities within the noise contours as a compatible use of this land; and [our emphasis]*
- ...

17. The interpretation of this policy, and its relationship with higher order documents and recent court decisions, was the subject of much debate. The planning experts were asked to address this issue in their JWS. Several different views were expressed in relation to the construction of this policy, with Mr Kyle, planner for Christchurch International Airport Ltd, opining that the inclusion of the words *‘including by avoiding noise sensitive activities’* is clear and directive. In terms of the ‘material harm’ test from the *Port Otago* decision, he believed *“the policy is drafted [as] such that the decision-maker has already set out that material harm would occur if noise-sensitive activities are not avoided”*. In his view, *“the key means to achieve its outcome is to avoid noise sensitive activities in the area subject to the contour.”* Ms Mitten for ECan agreed with Mr Kyle, while Mr Walsh⁹ favoured Mr Kyle’s and Ms Mitten’s interpretation *“but considers it odd that a future development area would be included in Map A, CRPS if residential development within that area was not possible”*.
18. Both Mr Sheerin and Ms Harte for Momentum Land Ltd considered the policy badly written and open to differing interpretations. Mr Sheerin considered *“the use of ‘including’ after the first part of the policy, implies ‘avoidance’ of new noise sensitive activities within the Airport noise contour may not be an exclusive position.”* Mr Lindenberg, for Kāinga Ora, agreed it was directive but considered the ‘exclusions’ the key to the ‘avoid’ directive.
19. The planners also addressed the ‘Kaiapoi Exemption’ question directly and were again divided on its interpretation. Mr Kyle and Ms Mitten were of the view that the exemption does not cover the future development area in Kaiapoi while Mr Walsh favoured this position but considers that the drafting is not clear or helpful. Mr Kyle addressed the issue comprehensively at paragraphs 67-73 of his HS10A evidence. In his view *“the Kaiapoi Development Area, ... is not the same as “an existing residentially zoned urban area”, “a residential greenfield area identified for Kaiapoi” or “a residential greenfield priority area”. It is a distinct and different construct and, based on my interpretation, does not find any support for conversion to residential use or intensification via Policy 6.3.5 (4).”*

⁹ Rolleston Industrial Developments Ltd [160] and Carter Group Property Limited [237]

20. On the opposite side of the ledger were the two s42A report authors (Mr Wilson and Mr Sheerin), along with Ms Harte and Mr Lindenberg. Their position was that Policy 6.3.5(4) does provide an exemption for 'future development land' in Kaiapoi. Mr Sheerin considered that the reference to 'residential greenfield area' in the policy *"is a generic term that would include existing and future greenfield areas including future development areas."*
21. The Panel tends to agree with the planners who consider the policy to be unclear and ambiguous thus making it open to interpretation. We acknowledge the comments of Ms Mitten around what she says the policy drafters had intended and Mr Kyle's observation regarding the 'recommendation with respect to Plan Change 1' (which is not referenced) at paragraph 69 of his EIC. However, we agree with Mr Fowler, legal counsel for Momentum Land Ltd¹⁰, where he said at his paragraph 56, that *"meaning must be derived from its text and in the light of its purpose and context"* and that *"Interpretation should be undertaken in a manner that avoids absurdity, is consistent with the expectations of property owners and consistent with the practical administration of the relevant provision."* He went on to submit:

57. Taking all relevant matters into account, there is a strong argument to support a "purposive" approach to interpretation of the Policy 6.3.5(4) rather than the "literal" approach advanced by CHRISTCHURCH INTERNATIONAL AIRPORT LTD. A purposive approach would enable Policy 6.3.5(4) to be read and applied in a manner that allows for residential development within the Kaiapoi Growth Area and the FDA at Kaiapoi whilst mitigating as far as practicable potential reverse sensitivity effects on the airport.

22. Viewed in this light, we accept the position of Mr Sheerin and Mr Wilson in relation to the interpretation of this policy, which is supported by Ms Harte. The outcome sought by this policy is that development does 'not affect the efficient operation' of the airport. Mr Kyle says the 'key means to achieve that is to avoid', a turn of phrase which does not suggest that 'avoiding' is the 'only means. We agree with Mr Sheerin that use of the word 'including' provides other options which would include mitigation if it achieved the 'outcome of not affecting the efficient operation' of the airport. Mr Wilson also came to this conclusion in what he called the 'second test' in his response to the Panel's questions in Hearing Stream 10A when he said:

"In this context, 'avoid' is not a direct prohibition on residential activities, it requires a test of the noise sensitive activity back on its effects on the efficient operation of the airport - a consideration of level of risk. That then leads to a consideration of necessary measures to turn noise-sensitive activities into something that is not noise-sensitive or less noise sensitive. This could include density controls or building design standards."

23. Essentially what Mr Wilson discusses here is the 'material harm' consideration that the *Port Otago* case highlights. We disagree with Mr Kyle's view on this matter. We go back

¹⁰ Hearing Stream 12E

to the thing that must not be materially harmed – *the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure*. Having heard extensive evidence on this matter, we consider there have always been a range of management options in resource management to avoid ‘material harm’ on a resource, which in this case could well be ‘mitigation’ to ensure there is no ‘material harm’ in relation to the efficient operation of the airport. We come back to this issue later in this discussion when considering whether development within the contour can be provided for without causing the material harm in question.

24. Mr Wilson’s ‘first test’ from that same response to the Panel’s questions addressed the issue of the ‘*Kaiapoi exemption*’. He carried out a comprehensive review of the RPS to understand what the term ‘residential greenfield area identified for Kaiapoi’ actually means. He concluded that *“It is clear to me from the context of how this terminology is used in the other CRPS policies that the term “greenfields” in its various forms, describes both greenfield priority areas and Future Development Areas (as set out in Map A). It encompasses both.”*
25. We largely agree with his conclusions. In terms of the three exceptions listed in Policy 6.3.5(4), Kaiapoi has ‘existing residential zoned land’ which is covered by the first exemption, and ‘greenfield priority areas’ which are covered by the third exemption. The question then becomes what does the ‘residential greenfield area identified for Kaiapoi’ provided for in the second exemption apply to? It is clearly not an existing residential zone, and it is not a ‘greenfield priority’ area either, as they are mapped. The logical answer is that it applies to the Future Development Areas, which are greenfield areas identified for future residential development. As Mr Walsh opined, it would be odd that a future development area would be included in Map A if residential development within that area was not possible. Accepting that the second exemption applies to the FDU’s avoids the ‘absurdity’ Mr Fowler spoke of and is consistent with both the expectations of property owners and the practical administration of the provision.
26. Even if we are wrong on this, we have found in our recommendation report for the UFD chapter that the responsive planning provisions of the NPS-UD allows decision makers to set aside the restrictions and limitations of lower-level planning documents where they have not been updated to reflect the requirements of the higher order document. However, to do so the development would still need to provide significant development capacity and contribute to well-functioning environment as defined by the other provisions of the RPS and NPS-UD. Part of that will be ensuring the effects of new development on the airport are managed in accordance with Policy 6.3.5(5). We discuss this in relation to restrictions proposed on the density provisions by Variation 1 below.
27. We therefore agree with the s42A report authors, Ms Harte and Mr Lindenberg that the development of the Kaiapoi FDAs is provided for under the *“residential greenfield area identified for Kaiapoi”* exemption in Policy 6.3.5(4).

The ‘Existing Residential Zones’ Exemption

28. We address here Mr Kyle’s position that the exemption for ‘existing residential’ zones is somehow locked into the ‘status quo’ density of those zones as of the time the plan was notified. The s42A report authors did not agree with this interpretation. Both Mr Wilson and Mr Fowler (as did Ms Perpick in Hearing Stream 7B) introduced the recommendation report of the Independent Hearings Panel on Plan Change 14 Housing and Business Choice for Christchurch City.¹¹ That recommendation report considered many of the issues that are in front of us. On this issue, it concluded that:

“The policy does not go so far as to freeze in time the intensification that was allowed in those zoned areas as at that date. If the land was residentially zoned as at 6 December 2013, then any new development is not subject to the avoidance direction in Policy 6.3.5(4).”

29. We agree. There is no such qualification expressed within the exception in Policy 6.3.5(4) of the RPS.

Noise Effects on Residential Development under the Contour

30. The conclusion we have reached above is important in the context of not only Christchurch International Airport Ltd’s submission to maintain the densities provided for by the Operative Waimakariri District Plan (operative District Plan) in existing residential zones but also in terms of the airport noise qualifying matter provisions within Variation 1, which limits the application of the MDRS underneath that contour.
31. In his reply report for the Hearing Stream 12E residential rezonings, Mr Wilson was asked to respond to any relevant issues that arise from the PC14 IHP’s recommendations. He noted that the PC14 IHP’s recommendation is *“a more recent decision and considered the airport noise matters in substantially more depth”* than other plan change recommendations referred to us (such as PC71 for the Selwyn District). He advised that the PC14 IHP made the following recommendations:
- *Apply the MDRS and rezone all relevant residential zones within the 50, 55, and 65 dB Ldn Noise Contours to MRZ and HRZ.*
 - *Provide for 1 to 3 new residential units on a site within the 50 dB noise contour, with a requirement that each residential unit be insulated and provided with ventilation.*
 - *For the 55 dB and 65 dB contours, retain the qualifying matter for residential activities in these locations, as non-complying and prohibited activities. This in turn means removing the qualifying matter for the 50 dB contour.*
32. In terms of the consistency between the PC14 recommendations and the PDP, he commented as follows:
- *There is no Kaiapoi exemption equivalent for Christchurch City in CRPS policy 6.3.5.*
 - *The Selwyn 50 dB contours cover only a small portion of their current and proposed residential zones, whereas they cover most of Kaiapoi.*

¹¹ Dated 29 July 2024

- *The proposed airport noise qualifying matter for airport noise (with the 1 unit and 200m² allotment size limitation) is now inconsistent with the PC 14 IHP recommendation, which removes this qualifying matter from relevant residential zones under the 50 dB contour.*
 - *The PC14 IHP considers that insulation and ventilation standards within buildings is more appropriate than a blanket withholding of intensification. This is consistent with my recommendations on the PDP and V1 to date.*
 - *The proposed airport noise qualifying matter was intended to maintain the status quo development pattern in Kaiapoi in response to the intensification enabled by the MDRS.*
 - *It may be inconsistent with the Kaiapoi exemption in the CRPS, although as I stated in stream 10A, the qualifying matter does not technically need to be consistent with the CRPS provisions.*
33. Mr Wilson went on to summarise this in his conclusion as follows:
- *There is no barrier to rezoning the Kaiapoi FDA from previous decisions by other Councils. I consider the PC14 decision to be the most relevant in a Kaiapoi context, as it was also dealing with the 50 dB contour in a built-up existing urban area.*
 - *The removal of the 50 dB airport noise qualifying matter for Kaiapoi, provided that the relevant PDP noise standards are appropriate, may be needed if consistency is to be achieved with PC 14, although this could similarly wait until the outcome of the CRPS review.*
 - *Pathways to consider the airport noise matter and the flooding matter are available under the CRPS on its own and under the NPSUD.*
34. We agree with Mr Wilson’s final position on this matter, as we have come to very similar conclusions to that of the PC14 IHP in relation to the threat that residential development within the 50dB contour poses to the safe and efficient operation of the Airport. The acoustic experts¹² all agreed *“that houses between the 50 dB Ldn contour and 55 dB Ldn contour will achieve the indoor design noise level of 40 dB Ldn with windows closed and with windows ajar.”* While the experts agreed *“that annoyance and complaints are not tightly correlated”*, they also agreed *“that the distribution of complaints and their location is a useful consideration in understanding how the airport and its operations are perceived by the community.”* We were not presented with any evidence that indicated that the community of Kaiapoi perceives the operation of the airport as a concern.
35. Dr Clarke, an acoustic expert for Momentum Land Limited and Mike Greer Homes, gave evidence that most countries have imposed a regulatory threshold on aircraft noise exposure at around 55dB Ldn, which was accepted by all the other experts in the JWS. His opinion was that outside of the 55dB Ldn contour very few people will be affected, and that only sporadic noise complaints will be registered. On that basis, he considered that 55dB Ldn is the appropriate threshold in this case, which was again agreed by the experts in the JWS, with the exception of Ms Smith for Christchurch International Airport Ltd. Dr Clarke noted that below this exposure level (i.e. the 50dB Ldn contour) the number of complaints will remain relatively stable as there will always be a small

¹² Joint Witness Statement -Acoustics – HS10A

percentage of people who will complain no matter how low the limit exposure level is defined.

36. Dr Clarke's evidence was supported by Mr Reeve, also an acoustic expert for Momentum Land Ltd and Mike Greer Homes. His evidence addressed NZS 6805:1992 which provides guidance relating to the appropriate land use planning controls to protect community health and amenity values without unduly restricting the operation of airports. He advised that the standard *"requires the modelling of future projected aircraft noise to establish an Air Noise Boundary (ANB) and Outer Control Boundary (OCB), defined by 65 dBA Ldn and 55 dBA Ldn noise contours respectively."* He said that the 50dB Ldn contour is not mentioned in the standard. Because they use the 50dB Ldn contour, both Mr Reeve and Dr Clarke consider the Christchurch International Airport to be an outlier, both nationally and internationally.

Outdoor Amenity and Health Effects

37. While the experts agree that houses under the 50dB L_{dn} contour will achieve the appropriate indoor design noise level, Christchurch International Airport Ltd was also concerned with annoyance levels experienced in outdoor areas, along with health effects. We did not receive any direct evidence in relation to health effects¹³ and very limited evidence on outdoor effects. We agree with the PC14 IHP view on this matter when they said, *"any suggestion that more people living within the noise contours wishing to enjoy their outdoor living areas would be subject to either inappropriate health effects or give rise to CIAL reverse sensitivity effects is purely speculative."*¹⁴
38. We note that three of the acoustic experts involved in the JWS (Mr Styles, Mr Reeve and Dr Clarke) all considered that *"the background noise environment should be considered when setting regulatory noise thresholds. This might result in higher noise thresholds for aircraft noise in areas already exposed to other higher noise levels (e.g. in urban areas and close to busy roads)."* Ms Smith agreed that the background noise environment is a relevant consideration for noise effects assessment and stated that while it may be relevant for regulatory thresholds, it is not always practicable to account for background noise on a macroscale.
39. Our observation above, that we were not presented with any evidence that indicated that the community of Kaiapoi perceives the operation of the airport as a concern, is just as valid to outdoor living as it is to effects on indoor living and sleep. Unlike the environment in the *Robinson Bay Trust*¹⁵ decision (that Ms Appleyard asked us to place significant weight on) which has little, if any, current urban development, the township of Kaiapoi was established well before the airport was, and the FDAs are either located within the town or are attached to it. We would not expect any change in the community's perception of the airport as a consequence of the town expanding into these areas, as they are not geographically distinct.

¹³ Ms Appleyard sought to introduce evidence on health effects via another hearing stream, but the Panel did not accept this as the hearing on airport matters had been concluded

¹⁴ Independent Hearings Panel - Plan Change 14 Housing and Business Choice Recommendations Report – Part 4 of 8, paragraph 344

¹⁵ *Robinsons Bay Trust & Ors v Christchurch CC*, C 60/2004, 13 May 2004, Smith J (EnvC) (Interim decision).

40. The Panel also highlight the evidence we received from Dr Chiles, an acoustics expert who appeared at Hearing Stream 5 for KiwiRail and the New Zealand Transport Agency (NZTA). He referred us to NZTA's 'Assessment of Plan Provisions to Provide for Human Health and Amenity in accordance with Section 32 of the Resource Management Act', Version 8, October 2021. He said that the aim of this document is to assist NZTA in achieving a gradual reduction in health and amenity effects on activities in close proximity to the state highway network. That report promotes a permitted activity rule in district plans for outdoor living areas that is based on a maximum road noise level of 57 db_{L_{Aeq}}(24). We observe that this is a higher level of noise than will be experienced from aircraft under the 50dB contour and will be noise that is generated for longer durations than noise generated by air traffic in that contour air space.

The Remodelled Contour

41. The planners were divided in the JWS with respect to the remodelled contour, and whether or not it should be included in the PDP through our recommendations,. While Mr Walsh, Mr Kyle and Mr Phillips considered significant weight should be ascribed to the 2023 amended contours, they acknowledged that the amended contours need to go through a statutory process associated with the RPS review. As a consequence, they recommended that decisions on rezonings affected by the contours should be deferred until this matter is resolved. Mr Wilson, Mr Sheerin, Mr Lindenberg and Ms Mitten considered that the draft remodelled contours have no weight and that the only contour that should be applied is the 50dB Ldn contour on Map A. Ms Mitten considered that this contour is the operative contour in the RPS, and that the PDP must give effect to it.
42. We agree with Mr Wilson, Mr Sheerin, Mr Lindenberg and Ms Mitten on this point. We also acknowledged the evidence of Dr Clarke who had significant concerns with the noise modelling assumptions made by Christchurch International Airport Ltd in establishing the new contours. His evidence was that *"by assuming that aircraft source noise characteristics as well as the air traffic management procedures and thus the resulting flight tracks will not change over the next 60 years, the modelers have ensured that the contours will be significantly larger than they should be."* He went on to say that *"in 60 years, when the demand is forecast by CHRISTCHURCH INTERNATIONAL AIRPORT LTD to be near the practical capacity, single-aisle aircraft will likely be at least 5dB quieter than the current generation of single-aisle aircraft, and the variability in flight tracks will be much lower"*. This suggests to us that the new contours will be subject to much debate when they are considered in the coming RPS review.
43. The Court in *Robinson Bay Trust* decision were alive to this issue when it said:
"the 50 dBA Ldn line does not foreclose future options. It enables the parties in the sense of conserving options for the future (and future generations). These options apply to both the landowner and the airport. If the 50 dBA Ldn noise contour restrains the landowner at all it does so only in a temporary sense. The policy could be changed in the future to realise the potential for any appropriate development. We conclude that the 50 dBA Ldn line preserves the potential of land for future generations."

Conclusion and Recommendation

44. We conclude, on the evidence, that the exception in Policy 6.3.5(4) of the RPS does apply to the FDUs on Map A for Kaiapoi. Even if our interpretation is incorrect, we also conclude that the responsive planning provisions of the NPS-UD enable us to step aside from any limitations or restrictions imposed by the relevant planning documents when they have not been updated to account for the direction of that higher order document. We address the relationship between the NPS-UD and the PDP in greater depth in our UFD Chapter Recommendation Report.
45. We acknowledge the importance of the Christchurch International Airport; however, we are not satisfied that the evidence provides sufficient nexus between residential development under the 50dB Ldn contour leading to restrictions on the operation of the airport. In fact, the evidence indicates to the Panel that allowing development under the 50dB Ldn contour will not cause 'material harm' to the safe and efficient operation of the airport at all. Accordingly, the Panel do not consider density controls within the contour are necessary particularly given the requirement for indoor design levels to be achieved under the contour (Rule NOISE-R17).
46. As a consequence, we recommend that the 50 dB Ldn airport noise qualifying matter for Kaiapoi be removed as recommended by Mr Wilson for consistency purposes and to align with the approach of Christchurch City Council.
47. Accordingly, we recommend the following changes to the PDP and Variation 1:
- Delete the qualifying matter - airport noise and the associated matter of discretion RES- MD15 from MRZ-BFS1 (Variation 1)¹⁶
 - Delete RES-MD15 from the 'Matters of Discretion for all Residential Zones' Variation 1)¹⁷
 - Delete 'Medium Density Residential Zone (with qualifying matter – airport noise) from Table SUB-1 (Variation 1)¹⁸
 - Delete 'Airport noise – Christchurch International Airport' from Table RSL-1 Qualifying matters.¹⁹

3. Bird Strike

Overview

48. Christchurch International Airport Ltd lodged 30 submission points seeking a range of amendments to the PDP specific to the issue of bird strike. These are listed in Table A3 in Appendix A of Mr Sheerin's s42A report. In summary, the submission requested the following:

¹⁶ Kāinga Ora [80.21] supported in a further submission by Momentum Land Ltd [FS 23]

¹⁷ Kāinga Ora [80.21] supported in a further submission by Momentum Land Ltd [FS 23]

¹⁸ Kāinga Ora [80.21] supported in a further submission by Momentum Land Ltd [FS 23]

¹⁹ Kāinga Ora [80.21] supported in a further submission by Momentum Land Ltd [FS 23]

- Include new definitions for the terms ‘bird strike’ and ‘bird strike risk activity’²⁰
 - Include new rules and standards relating to the types of vegetation able to be planted within freshwater body setbacks, for the purpose of ‘minimising potential habitat for bird strike risk species’²¹
 - Include new rules in various zones to provide for ‘appropriate regulation’ of ‘bird strike risk activities’ within an 8km radius and a 13km radius of the Airport runways, including for ‘the creation of new temporary or permanent waterbodies or stormwater basins’ and ‘any waste management facility’²²
 - Amend Rural Zone rules to regulate quarrying within a 13km radius of the Airport runways as a potential ‘bird strike risk activity’, with clauses seeking to require applications for such quarrying to be notified directly to Christchurch International Airport Ltd;²³
 - Add a new matter of discretion relating to ‘bird strike risk’ into various zones²⁴
 - Amend Rural Zone rules to make any new ‘waste management facility’ within a 13km radius of the Airport runways a non-complying activity, along with clauses seeking to require applications for such facilities to be notified to Christchurch International Airport Ltd;²⁵
 - Include within the PDP Planning maps ‘bird strike risk management areas’ within an 8km radius and a 13km radius of the Airport runways as a new overlay.²⁶
49. Christchurch International Airport Ltd’s submissions on this issue attracted 81 further submission points from five further submitters, all in opposition. Kāinga Ora²⁷ opposed the whole Christchurch International Airport Ltd submission, while Momentum Land Ltd²⁸ opposed all submissions to the extent that the relief sought by Christchurch International Airport Ltd conflicts with or impedes the relief sought by them in their original submission. Hort NZ,²⁹ NZ Pork,³⁰ and Fulton Hogan Ltd³¹ all opposed submissions that impacted on their particular industry (horticulture, pig farming, and quarrying respectively).

Reasons and amendments

50. In summary, the Panel accepts the evidence of Dr Rachel McClellan, an independent ecologist who reviewed Christchurch International Airport Ltd’s submission on this issue for Council, and the recommendations from the s42A report author, Mr Sheerin, that reflect that evidence, with two exceptions discussed below.

²⁰ 254.4

²¹ 254.41 and 254.42

²² 254.132 to 254.143

²³ 254.101, 254.102, 254.112 and 254.113

²⁴ 254.119 and 254.144 to 254.148

²⁵ 254.103 and 254.114

²⁶ 254.150

²⁷ FS 88

²⁸ FS 63

²⁹ FS 47

³⁰ FS 49

³¹ FS 118

51. This matter was subject to both ecological and planning expert conferencing. The only matter that the ecologists (Dr McClellan for Council, and Dr Bull for Christchurch International Airport Ltd) agreed upon that required amendments to the PDP, was that any waste management facility in the district needs to have a bird strike management plan. Their reasoning was *“because any facility that deals with organic waste has the potential to attract black-backed gulls, and act as a significant food source.”* They noted that this *“also includes sewage facilities due to the management of human waste.”*
52. On the basis of that agreement, Mr Sheerin recommended a new matter of discretion/control for the rural and industrial zones. That reads as follows:
“Whether any proposed new waste management facility or composting facility has a bird strike risk management plan prepared by a suitably qualified and experienced ecologist with experience in bird strike issues to demonstrate the activity will be designed, operated and managed to minimise the attraction of bird species (such as black-backed gulls) that may pose a bird strike risk to aircraft”
53. Mr Kyle agreed that this was appropriate.
54. The difficulty the Panel has with this recommendation is that waste management facilities and composting facilities are, for the most part, ‘discretionary’ activities within the Rural and Industrial Zones, not restricted discretionary activities to which the proposed provision would apply to. We recommend instead a solution to the issue that is reasonably simple with respect to the Rural Zones, as explained below.
55. Christchurch International Airport Ltd requested amendments to RURZ-P8 that included inserting “managing the risk of bird strike to aircraft using Christchurch International Airport”. Our recommendation in our Rural Chapter report breaks this policy into two separate policies, with one addressing reverse sensitivity and the other addressing adverse effects on sensitive effects. We do not see this as a reverse sensitivity matter – it is a direct environmental effect. However, the recommended RURZ-P9 manages effects on sensitive activities, which are defined and do not include the international airport. Hence, we recommend that a new policy be included in the general rural policy provisions that addresses the matter. In association with that, we also recommend the introduction of a ‘Bird Strike Management Overlay’ on the planning maps. The overlay will reflect a 13km radius of the Christchurch International Airport runway thresholds, as shown on the Christchurch City District Plan.
56. With respect to the Industrial zone provisions, INZ-P6 deals with managing adverse effects within Industrial zones. However, the structure of this policy is such that it is again difficult to retrofit the policy to address this issue. Hence, we again recommend a new policy be added to the general industrial policy provisions, similar to that recommended for the rural zones.
57. The Panel also notes the ecological experts had assumed that this amendment would also apply to *“sewage facilities due to the management of human waste”* but this was not addressed by Mr Sheerin. Mr Kyle considered that the control should also be

extended to *“sewage treatment and disposal facilities”*, along with a range of other activities such as *“fish and commercial food processing activities with external food storage or waste areas accessible to birds”* and *“abattoirs and freezing works”*.

58. The Panel agrees with Mr Kyle as we cannot distinguish the effects of these activities from those of waste management and composting facilities. As a consequence, we recommend that a definition of ‘bird strike risk activity’ be included in the PDP and that these activities become restricted discretionary activities, where they are located within the Bird Strike Management Overlay.
59. The rules to give effect to this recommendation will be slightly different in each zone due to how such activities are currently addressed in the various zones. Food processing and abattoir activities fall within the definition of ‘heavy industry’ in the PDP. That is a permitted activity in the Heavy Industrial zone (HIZ) but is discretionary in General Industrial zones (GIZ). Hence, ‘bird strike risk activities’ currently permitted in the HIZ will now become restricted discretionary activities when located within the Bird Strike Management Overlay.
60. All industrial activities, with the exception of rural industrial activities, are discretionary within the Rural zone. It is probable that *“abattoirs and freezing works”* fall within the definition of Rural Industry, which “means an industry or business undertaken in a rural environment that directly supports, services, or is dependent on primary production.” Hence, an amendment is required to both RLZ-R11 and GRUZ-R11 to identify any rural industry that is a bird strike risk activity as restricted discretionary activities.
61. In terms of *“sewage treatment and disposal facilities”*, we note these are provided for in the EI chapter by EI-R46. This rule permits the ‘construction of new, or renewal or upgrading of existing wastewater systems’ in zones other than ‘Residential Zones, Commercial and Mixed-Use Zones, Special Purpose Zones, or Open Space and Recreation Zones’. Hence, they are permitted in the Industrial and Rural Zones. However, we again recommend that these activities become restricted discretionary within the ‘Bird Strike Risk Management Overlay’.
62. This change is complicated by the INZ provisions, where there is an integration issue with the EI chapter. As discussed in our EI report, all provisions relating to infrastructure are generally to be located within the EI chapter. However, the definition of ‘Heavy Industry’ also includes ‘storage and disposal of sewage, septic tank sludge or refuse’ while we note that “Land based sewage disposal and/or wastewater disposal, and/or treatment areas for sewage or wastewater, including oxidation ponds” are controlled activities under HIZ-R12 in the HIZ.
63. These activities fall under the definition of a ‘wastewater system’ so there is both an internal conflict within the HIZ and an integration issue with the EI chapter. However, we do not have scope to resolve this in our recommendations but recommend that Council address this issue in the next plan change. We have, however, recommended an advice note to the new bird strike rule in the HIZ zone that clarifies that other rules may also apply to such activities (which would include HIZ-R12).

64. Associated with the recommended changes is the 'bird strike risk management matter of discretion. Except for some minor amendments, we have largely adopted the provision proposed by Mr Sherin.

65. The final form of the changes we recommend are as follows:

(a) Add the following definition to the definition section of the PDP:

Bird Strike Risk Activity

means the following activities:

- a) *waste management facilities;*
- b) *composting facilities;*
- c) *fish and commercial food processing activities with external food storage or waste areas accessible to birds;*
- d) *abattoirs and freezing works; and*
- e) *the treatment plants, canals, wetlands, lagoons, infiltration basins, and irrigated land of wastewater systems.*

(b) Add new policy RURZ-P10 to the General Objectives and Policies for the Rural Zones chapter and add new policy INZ-P7 to the General Objectives and Policies for the Industrial Zones chapter, as follows:

RURZ- P10 Management of Bird Strike Risk Activities

Manage the risk of bird strike to aircraft from new or upgraded bird strike risk activities that are to be located within the 'Bird Strike Risk Management Overlay'.

³²

INZ- P7 Management of Bird Strike Risk Activities

Manage the risk of bird strike to aircraft from new or upgraded bird strike risk activities that are to be located within the 'Bird Strike Risk Management Overlay'.

³³

(c) Add the following to the conditions attached to GRUZ-R11 and RLZ-R11:

"Activity status: PER

Where:

....

x. the rural industry is not a new or upgraded bird strike risk activity located within the 'Bird Strike Risk Management Overlay'.

³² Christchurch International Airport Ltd 254.135 and 148

³³ Christchurch International Airport Ltd 254.135 and 148

Activity status when compliance with x is not achieved: RDIS

- (d) Add a new rule to the Heavy industrial Zone as follows:

HIZ-R13 Bird Strike Risk Activities

This rule applies in addition to the other rules in this table.

Activity status: PER

Where:

1. *any new or upgraded bird strike risk activity is not within the 'Bird Strike Risk Management Overlay'.*

Activity status when compliance is not achieved: RDIS

Matters of discretion are restricted to:

INZ-MCD13- New Waste Management Facilities or Composting Facilities

- (e) Add to EI-R46 (5):

(i) within the 'Bird Strike Risk Management Overlay'³⁴;

Activity status when compliance with 5(i) not achieved: RDIS

- (f) Add a new matter of discretion to the matters of control and discretion for the Rural, Industrial, and Energy and Infrastructure Chapters, which applies to the above policies and rules:

Bird Strike Risk Management

The extent to which the activity has a bird strike risk management plan prepared by a suitably qualified and experienced ecologist with experience in bird strike issues to demonstrate the activity will be designed, operated and managed to minimise the attraction of bird species (such as black-backed gulls) that may pose a bird strike risk to aircraft.

- (g) Amend the Planning Maps to include a 'Bird Strike Risk Management Overlay' within a 13km radius measured from the Christchurch International Airport runway thresholds shown on the Christchurch City District Plan.

66. These recommended changes do not change the recommendation on the relevant Christchurch International Airport Ltd submissions. They remain an 'accept in part'.

³⁴ Christchurch International Airport Ltd 254.135 and 148

Conclusion and s32AA Evaluation

67. For the reasons summarised above, we recommend the adoption of a set of changes to the PDP provisions relating to the Rural and Industrial Zone chapters, along with the EI chapter. Our recommended amendments are shown in Appendix 2.
68. In terms of the further evaluation required under s32AA of the Act, we consider that the changes we have recommended are more efficient and effective in achieving the objectives of the PDP and will ensure that the PDP better achieves the statutory requirements, national and regional direction, and our recommended Strategic Directions. We also consider the changes will improve the useability of the plan.

Appendix 1: Submitter attendance and tabled evidence for Airport Noise Contours and Bird Strike - PDP - Hearing Stream 10A

Attendee	Speaker	Submitter No.
Council reporting officer	<ul style="list-style-type: none"> • Neil Sheerin • Rachel McClellan 	N/A
Momentum Land Limited & Mike Greer Homes	<ul style="list-style-type: none"> • Margo Perpick (Legal) • John-Paul Clarke – Airport Noise Expert • William Reeve – Acoustic Engineer • Fraser Colegrave – Economist • Patricia Harte – Planner • Brian Putt - Planner 	FS 63
Kainga Ora	<ul style="list-style-type: none"> • Brendon Liggett – Corporate • Nick Whittington - Legal • Jon Styles – Noise Consultant • Lance Jimmieson – Ventilation MD Jacksons Engineering Advisers • Matt Lindenberg – Principal Planner - Becca 	FS 88
CIAL	<ul style="list-style-type: none"> • Jo Appleyard (Legal – Chapman Tripp) • Natalie Hampson – Economics Director Savy Consulting (Evidence on PDP and V1) • Gary Sellars – Housing Capacity, Consultant Colliers Valuation • Dr Leigh Bull – Bird Strike – Director BlueGreen Ecology • Laurel Smith – Acoustics Consultant Marshall Day • Sebastian Hawken – Airport Safeguarding – Manager Airbiz • John Kyle – Planning – Director Mitchell Daysh • Felicity Hayman – Environmental & Planning Manager (CIAL) 	254
Tabled Evidence		
BP Oil NZ Ltd, Mobil Oil NZ Ltd, and Z Energy Ltd (the Fuel Companies)	<ul style="list-style-type: none"> • Jarrod Dixon, SLR Consulting 	FS 104
Horticulture NZ	<ul style="list-style-type: none"> • Sarah Cameron, Senior Environmental Policy Advisor 	FS 47
NZ Pork	<ul style="list-style-type: none"> • Hannah Ritchie, Environment and Planning Manager 	FS 49
Fulton Hogan	<ul style="list-style-type: none"> • Helen Caley, National Resource Consents Planner 	FS 118