

Decision No: C/89/99

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of applications for a declaration
under section 311 of the Act and
an enforcement order under section
316 of the Act

BETWEEN NATIONAL INVESTMENT
TRUST

ENF: 87/99

Applicant

AND

CHRISTCHURCH CITY
COUNCIL

First Respondent

AND

CHRISTCHURCH
INTERNATIONAL AIRPORT
LIMITED

Second Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (sitting alone under section 279 of the Act)

HEARING at CHRISTCHURCH on 4 November 1999

APPEARANCES

Ms P Steven for National Investment Trust

Mr A Prebble for Christchurch City Council

Ms J Chesterman for Christchurch International Airport Limited

Mr A Hearn QC for Waimakariri District Council



DECISION

Introduction

1. This is an application for a declaration under section 311 of the Resource Management Act 1991 (“the Act” or “the RMA”) and for an enforcement order under section 316 of the Act. The applicant - National Investment Trust (“the NIT”) - is concerned that certain changes made by the Christchurch City Council (“the City Council”) to its notified proposed plan¹ (“the notified plan”) and included in the proposed plan (“the revised plan”) as decided after the submission and hearing process are *ultra vires* the Council:

Background

2. To understand the applicant’s concerns - shared by the Waimakariri District Council (“the WCC”) - one has to look at four resource management documents relating to policies 6.3.7 and 6.3.9 of the notified plan:
 - (a) policies 6.3.7 and 6.3.9² in the notified plan together with the relevant “explanation and reasons”;
 - (b) the relevant submissions³ by CIAL;
 - (c) the City Council’s summary of submissions⁴;
 - (d) policies 6.3.7 and 6.3.9 of the revised plan.



¹ Notified 24/6/95.

² Notified plan pp.6/9 and 6/10.

³ Under clause 6 of the First Schedule to the RMA.

⁴ Under clause 7 of the First Schedule to the RMA.

The notified plan

3. Paragraphs 6.3.7 and 6.3.9 of the notified plan state (relevantly)

Policy : Airport operations

6.3.7 To ensure that urban growth does not occur in a manner that could adversely affect the operations of City airports.

Explanation and reasons

The International Airport is a facility of major significance to the regional economy. Domestic and international passenger movements, freight and Antarctic operations utilise this airport which is not curfewed as to hours of operation. It is unrealistic not to expect noise beyond its boundaries, potentially at levels that would adversely impact people living nearby. Urbanisation in close proximity to the airport could generate complaints and pressures for curfewed operations, with serious impacts on airport operations and the regional economy.

In order to ensure the International Airport's operations can continue without undue restriction, urbanisation will be prevented where noise impacts are expected to be quieter by the year 2000, movements are anticipated to be more frequent. As a result of projections and noise investigations, residential development will not be allowed to occur within the 65 LdN noise contours new residential development will be discouraged and all additions to existing dwellings will be required to be insulated. Insulation against noise will be required for all new development between the 50 and 55 LdN noise contours. This policy is expected to protect both airport operations, and future residents from adverse noise impacts ...



Policy : Urban extensions

6.3.9 To promote smaller incremental extensions to the urban area distributed over a number of peripheral locations, rather than major extensions in any one area.

Explanation and reasons

The policy seeks to achieve a pattern of small incremental additions distributed around the urban edge, consistent with the consolidation strategy, and recognising the presence of constraints (such as the International Airport in the north-west).

In order to retain a compact city form, and provide a choice of housing locations and environments (and a range of land prices), it is preferable to have a distribution of growth options. Major extensions confined to particular sectors (e.g. the north-east) may exacerbate problems with the cost and staging of services, while limiting choice. The policy recognises however, that not all choices can be accommodated, and there are distinct limits to growth in some sectors (e.g. towards the International Airport). Small, incremental extensions also reduce the additional demand on facilities and services in any particular area, such as demand associated with added traffic.

CIAL submissions

4. CIAL sought to change policy 6.3.7 to read (with the changes underlined):

To ensure that urban growth does not occur in a manner that could adversely affect the future growth and operations of Christchurch International Airport.



The substitution of “Christchurch International Airport” was because Wigram airport is to close, and so there is only one airport to consider.

5. CIAL sought amendments to the *explanation and reasons* for policy 6.3.7 of the notified plan so that the third sentence of paragraph two would read as follows (I have underlined the words to be added and put a line through those proposed to be deleted):

....

As a result of projections and noise investigations, residential development will not be allowed to occur within the LdN 65dBA noise contour or within the SEL 95dBA contour for a Boeing 747-200 Aircraft. The Air Noise Boundary shown on the Planning Maps is a composite line formed by the outer extremity of the SEL 95dBA and LdN 65 dBA noise contours.

Between the 55 LdN contour and [65 LdN noise contours] the Air Noise Boundary, new residential development will be discouraged and all additions to existing dwellings will be required to be insulated. Insulation against noise will be required for all new developments between the 50 LdN [contour] and [55 LdN noise contours] the Air Noise Boundary. This policy is expected to protect both airport operations ...

6. In summary, CIAL submissions on policy 6.3.7 sought:
- (a) discouragement of new residential development between the 55 LdN contour and the air noise boundary; and
 - (b) insulation for all new development between the 50 LdN contour and the Air Noise Boundary.



7. Two parties made further submissions⁵ to the City Council. The National Environmental Noise Service supported CIAL's submission. WCC opposed the CIAL submission on policy 6.3.7.
8. The CIAL submission to policy 6.3.9 did not seek any amendment to the text of 6.3.9 but sought changes to the explanation and reasons to the policy. The relief sought was to:

Include in the explanation and reasons for Policy 6.3.9 a reference to the desirability of keeping extensions to urban residential zones outside the 50 dBA LdN contour.

Summary of Decisions

9. The "Summary of Submissions Requested" produced by the city council summarised the CIAL submissions with direct quotes from the submissions.

The revised plan

10. No one questions the change to the wording of policy 6.3.7 itself. The challenge is to its *explanation and reasons*. The new text of the explanation and reasons reads as follows (the emphasized words were not sought by CIAL) in its submission:

This also recognises future growth of the Airport through intensified activities, particularly growth in airport movements. It is important that there be no extensions to urban residential zones within the 50 dBA LdN contour to avoid disturbance from aircraft noise.

Under clause 8 of the First Schedule to the RMA.



*Between the 50 dBA LdN noise contour and the Air Noise Boundary, new **urban residential development and other noise sensitive uses and development** will be discouraged (except for limited development in the Living 1C zone).*

11. It is the NIT case that there are two important changes to policies 6.3.7's explanations and reasons:

- (1) they expand the area where extensions to the residential zone and other noise sensitive uses are now to be discouraged up to **50 dBA LdN** contour whereas the terms of the publicly notified Plan set that boundary at 55 dBA LdN;
- (2) they expand the categories of activities that are discouraged on land within this area from "new residential development" so as to include "other noise sensitive uses and development".

NIT argues that the amendments also have significant implications for occupants of existing residential areas as it increases the activities which will be 'discouraged' by the revised plan. Because both the 50 and 55 dBA LdN contours penetrate deeply into the existing urban area (the 55 dBA LdN contour reaches Puriri Street and the 50 dBA LdN contour reaches Hagley Park), the implications of this are far reaching in that noise sensitive development includes activities such as schools, hospitals, childcare centres and kindergartens.

Consideration

12. The proceedings were set down for hearing on Thursday 4 November 1999. At the hearing no party opposed NIT's application for a declaration. I am satisfied on the basis of the application, the

supporting affidavits, Ms Steven's memorandum, and the consent of the Waimakariri District Council that I should make a declaration as sought by the applicant. I hope an explanation and reasons within jurisdiction can be resolved by the parties by agreement. If not, I will consider whether any further orders are necessary.

13. Accordingly I make the following orders:

1. I declare under section 313 of the RMA that the Christchurch City Council's "reasons and explanation" for policy 6.3.7 in the revised plan are invalid because they are not within the scope of any submission made under clause 6 of the First Schedule to the Resource Management Act 1991.
2. The application for an enforcement order is adjourned *sine die*, and may be brought on by any party upon giving 8 working days notice.
3. Costs are reserved.

DATED at CHRISTCHURCH this 5th day of November 1999.

J R Jackson
Environment Judge

