

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT RANGIORA / WAIMAKARIRI**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI RANGIORA / WAIMAKARIRI**

**IN THE MATTER
AND**

of the Resource Management Act 1991

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**

AIRPORT RELATED MATTERS

9 FEBRUARY 2024

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1. AIRPORT NOISE

- 1.1 Kāinga Ora agrees generally with the reasoning and conclusions of the Council's s 42A reports. It proposes a small number of amendments that Mr Lindenberg and Mr Styles consider will produce greater alignment with the NPS-UD and RMA. It fundamentally opposes the attempt by CIAL to impose restrictions and costs on urban development in residential zones within the 50 dB contour, and denies that CIAL may use draft and untested new contours by way of qualifying matter.
- 1.2 Evidence relating to these aspects has been filed by:
- (a) Jon Styles (Noise);
 - (b) Lance Jimmieson (Ventilation);
 - (c) Matt Lindenberg (Planning – Noise);
 - (d) Brendon Liggett (Corporate).
- 1.3 The same witnesses provided evidence on noise matters in HS5. It may assist the Panel to reconsider that evidence and the submissions filed for Kāinga Ora in that hearing stream. The key theme of the legal submissions in particular was the need for the Panel to properly interrogate reliance on “reverse sensitivity”. That theme is significant also for this hearing stream, given CIAL's position.

2. REVERSE SENSITIVITY

- 2.1 Underlying the Kāinga Ora submission is a request that the evidence put forward in support of there being a reverse sensitivity effect within the 50dB L_{dn} Noise Contour is properly interrogated. That is because the effect of imposing greater regulation of land use within the 50 dB contour has the effect of transferring an economic cost of operation from the Airport onto those landowners, increasing the cost of urban development, reducing the pace at which that urban development will occur, and its likelihood.

- 2.2 Effectively, those landowners end up subsidising CIAL's operating costs, instead of CIAL internalising its adverse environmental effects.
- 2.3 Kāinga Ora accepts that it is necessary to balance the interests of landowners and CIAL. There may be good social reasons for ensuring that CIAL is not unduly restricted in its operation as a result of incompatible land uses. But there are also good social reasons to ensure that existing residential areas may be developed without imposing an undue cost burden on those landowners. CIAL's economic evidence does not bring into the assessment the social benefits of housing to the economy. CIAL also relies on surveys undertaken relating to annoyance from aircraft noise which, as Mr Barrington Clarke highlights, do not support the conclusions that CIAL seeks to draw from them.
- 2.4 The proposed restrictions are substantial – Mr Styles considers them to be more onerous than any similar provisions he is aware of within New Zealand (at [1.4]). Mr Barrington Clarke takes a similar position by reference to most countries in the world (at [100]). Both consider that land use restrictions should begin to apply at 55 dB L_{dn}.
- 2.5 Mr Kyle's evidence sets out what he considers to be the key policy documents, focusing as you would expect on policies protecting regionally significant infrastructure from incompatible land uses. However, he then makes a substantial leap from that policy background to suggesting that imposing restrictions on land use within a 50 dBA contour is a "key measure" (at [23]), without identifying any evidential basis at all for that suggestion.
- 2.6 Further, Mr Kyle ignores, or places inadequate weight, on Objective 5.2.1 of the CRPS, particularly 5.2.1.2(b). Kāinga Ora considers that Mr Lindenberg's analysis of the relevant CRPS objectives and policies in Part 4 of his evidence should be preferred. In particular, I repeat paragraph 4.6, which contains the following policy reconciliation:

I consider that the key policy framework for preparing and shaping any response through the PDP in relation to the management of sensitive activities in proximity to the Airport can be summarised as follows:

- (a) Development is provided for:
 - (i) Which enables people and communities, including future generations, to provide for the social, economic and cultural well-being and health and safety – including the provision of sufficient housing choice to meet the Region’s housing needs;
 - (ii) which avoids adverse effects on significant natural and physical resources including regionally significant infrastructure, **and where avoidance is impracticable, remedies ormitigates those effects** on those resources and infrastructure;
 - (iii) which **avoids or mitigates** reverse sensitivity effects and conflicts between incompatible activities;
- (b) Specifically in relation to the Airport, and the use of airport noise contours as a method to manage land use and development:
 - (i) 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 L_{dn} 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 92 of the CRPS).

2.7 Mr Kyle’s approach fails to account for the clear distinction in Policy 6.3.5(4) of the CRPS which provides that noise sensitive activities within the 50dBA L_{dn} airport noise contour for the Airport should generally be avoided, unless the activity is within an existing residentially zoned urban area.

3. APPROACH TO QUALIFYING MATTERS

- 3.1 Mr Kyle suggests that the airport noise qualifying matter is “more appropriately delineated by the remodelled noise contours.” He would be happy to provide an “updated Qualifying Matter report that addresses the remodelled extent”. Such an approach would be a substantial breach of natural justice – if the airport was going to seek to justify its position under s 77J and 77L (since the remodelled contours are plainly not an “existing” qualifying matter), it ought to have done so in its evidence. It cannot do so now and should not be invited to.
- 3.2 As Mr Sheerin for the Council considers (with the agreement of Mr Lindenberg), the appropriate forum within which to update the spatial extent of any airport noise contours is within the forthcoming review of the CRPS.

4. PROPOSED AMENDMENTS

- 4.1 In HS5, Kāinga Ora’s legal submissions referred to the fact that reverse sensitivity is a judicially developed conceptual tool used to address the (in)compatibility of different activities. It is not a type of effect recognised by the definition of “effect” in s 2 of the RMA. This means that Mr Lindenberg is right to consider its use within NOISE-O2 to be problematic. It can conceal what the objective is seeking to achieve, and – as perfectly demonstrated by CIAL’s corruption of the concept to support its remarkable overreach here – leave too much scope for downstream interpretive arguments. Mr Lindenberg’s proposed amendment is better. The same reasoning applies to his proposed amendment to NOISE-P2.

5. LIMITED NOTIFICATION CLAUSE IN NOISE-R17

- 5.1 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: 12 February 2024



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Nick Whittington