

Before the Independent Hearings Panel
at Rolleston

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the
proposed Selwyn District Plan

and: Strategic Directions Proposal

and: **Christchurch International Airport Limited**
Submitter DPR-0371

Supplementary legal submissions on behalf of Christchurch
International Airport Limited

Dated: 3 September 2021

Reference: JM Appleyard (jo.appleyard@chapmantripp.com)
A Hill (amy.hill@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 3 365 4587

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



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 (#0371) and further submitter (#0371 FS) on the proposed Selwyn District Plan (*proposed Plan*).
- 3 These submissions are filed in response to the Panel's minute 5 dated 26 August 2021, allowing parties the opportunity to respond to the matters set out in paragraphs [18] to [53] of the memorandum filed on behalf of the 'Carter Group' submitters.

CIAL'S POSITION WITH RESPECT TO INTERPRETATION OF NPS URBAN DEVELOPMENT

- 4 CIAL supports the position set out in [18]-[53]. It wishes to make the following additional submissions.
- 5 The NPS Urban Development directs that local authority decisions on urban development are integrated with infrastructure planning decisions,¹ and that planning decisions contribute to well-functioning urban environments.²
- 6 CIAL submits a well-functioning urban environment is one in which:³
 - 6.1 infrastructure – particularly infrastructure such as the Airport – is not adversely affected by incompatible activities; and
 - 6.2 urban growth is planned with infrastructure provisions in mind, recognising that the two run hand in hand.
- 7 Policy 8 requires councils to "be responsive" to plan changes for unanticipated or out of sequence development that will provide significant development capacity and contribute to well-functioning urban environments. Policy 8 does not require councils to grant a plan change but does provide an avenue for plan changes which are out of sequence or unanticipated to be granted if they meet the requisite criteria. Councils are not able to dismiss such plan changes purely because they propose out of sequence or unplanned development.

Policy 8 interpretation in light of other policies in the NPSUD and Regional Policy Statement

- 8 Policy 8 must be read in the context of the other policies in the NPSUD. It is one of many policies which must all be given effect to by ECan.

¹ Objective 6.

² Policy 1.

³ Noting that the definition provided in Policy 1 is expressed as a 'minimum'

- 9 The NPS provides for a balance between the need to provide for urban development capacity and other important countervailing issues such as protection of significant infrastructure.
- 10 Policy 4 acts as a caveat on the application of Policy 3, which provides the core direction in the NPSUD.⁴
- 11 Policy 4 requires that "*regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements only to the extent necessary to accommodate a qualifying matter*".
- 12 Qualifying matters include, relevantly:⁵

any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure
- 13 The provisions in the Canterbury Regional Policy Statement (RPS) applicable to the 50dB Ldn Air Noise Contour (such as Policy 6.3.5(4)) are in place for the purpose of ensuring safe and efficient operation of the Airport. This squarely meets the definition of a qualifying matter.⁶ The NPSUD requires councils to account for that requirement to avoid development of new noise sensitive activities within the Contour when implementing the NPS and identifying areas for urban development.⁷
- 14 The NPS does not specifically state that Policy 4 is applicable to a situation in which Policy 8 applies. However, Policy 3 and 4 demonstrate the overall context and thrust of the NPS and so, CIAL submits, are relevant to the application of Policy 8.
- 15 When considering a plan change to rezone a particular area of land in a district plan, a territorial authority is required to ensure it will give effect to both the NPSUD and the RPS.⁸
- 16 The NPSUD will be highly relevant to any proposed rezoning for urban development. However it will not be the sole consideration. Territorial authorities must also give effect to relevant provisions in the RPS, which would include Policy 6.3.5(4) if the plan change related to areas within the Air Noise Contour.
- 17 A territorial authority presented with a proposed plan change to provide for urban development in an unplanned way or in a way that was out of step with the provision

⁴ Policy 3 directs councils to enable building heights and urban densities in city centres, metropolitan centres zones to release as much development capacity as possible. In all other areas, Policy 3 directs that building height and density requirements are set commensurate to the level of demand for housing and business use in that location or the level of public transport accessibility to commercial activities and community services.

⁵ Clause 3.32.

⁶ The definition of "nationally significant infrastructure" in the NPS includes: "(h) any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers."

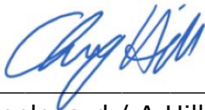
⁷ See clauses 3.31 and 3.33. If the territorial authority considers that it is necessary to modify the building height or densities in order to provide for a qualifying matter (as permitted under Policy 4), it must identify where the qualifying matter applies and specify the alternate building heights and densities proposed for those areas. If a qualifying matter applies, the s32 report prepared in relation to the amendments to a plan must assess the importance of the qualifying matter and impact that limiting development capacity, building height, or density would have on the provision of development capacity.

⁸ Resource Management Act 1991, s75.

in planning documents would need to apply NPS Policy 8 and have particular regard to the significance of the development capacity provided, and whether it contributed to a well-functioning urban environment (and other relevant matters required by NPSUD). As noted above, CIAL submits that a plan change which proposed urban development or intensification in an area within the 50dB Ldn Air Noise Contour would not contribute to a well-functioning urban environment.

- 18 The territorial authority must still give effect to the strong policy direction in the RPS Policy 6.3.5(4) if the land subject to a plan change is within the Air Noise Contour or similar overlay relating to the protection of regionally significant infrastructure. The RPS and NPS must be read and applied together.

Dated: 3 September 2021



J Appleyard / A Hill
Counsel for Christchurch International Airport Limited