

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

Legal submissions on behalf of Christchurch International Airport
Limited

Dated: 30 July 2021

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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 Strategic Directions Chapter of the proposed Selwyn District Plan (*proposed Plan*).
- 3 These submissions provide a high level overview of CIAL's key submission points and requested relief with regards to the Strategic Directions proposal.
- 4 In addition, CIAL is calling evidence from:
 - 4.1 **Ms Felicity Blackmore** – in relation to CIAL operations;
 - 4.2 **Mr Phil Osborne** – in relation to economics;
 - 4.3 **Mr Sebastian Hawken** – in relation to aviation and airport safeguarding; and
 - 4.4 **Mr Matthew Bonis** – in relation to planning.

BACKGROUND TO CIAL'S INTEREST IN THE SELWYN DISTRICT PLAN

- 5 CIAL operates Christchurch International Airport.
- 6 Christchurch International Airport (*the Airport*) is important infrastructure of regional and national significance, as demonstrated in the evidence of **Ms Blackmore, Mr Hawken** and **Mr Osborne**.
 - 6.1 The Airport is the second-largest airport in the country and it connects the South Island to the world. It is the key gateway for the community in Selwyn District to connect to destinations internationally, nationally, and within the South Island;
 - 6.2 CIA is a connectivity hub for passengers (for both business and leisure) – as **Ms Blackmore** notes, just under 7 million travelling passengers and their associated meeters and greeters pass through the Airport each year. The Airport is a key conduit for tourists and travellers to the South Island – which generates multiplier effects for the regional and South Island economy;
 - 6.3 Over \$1.6 billion of freight cargo is transported to or from the Airport every year, with the average per tonne value of cargo through CIA being 15% higher than that of Auckland International Airport and 12x greater than the average tonne of cargo exported internationally through Lyttelton Harbour. Since the emergence of Covid-19 there are now dedicated airfreight flights arriving to and departing from the Airport;
 - 6.4 CIA provides essential resilience in the transport network – the importance of this resilience has been demonstrated repeatedly in recent years when floods

and earthquakes have severely compromised the road and rail networks in the region, requiring passengers and cargo to be diverted via air through CIA;

- 6.5 CIAL is a lifeline utility and must be able to continue operating the Airport, to the fullest extent possible, during and after an emergency;¹
- 6.6 The Airport campus is a significant employment hub and the Airport generates substantial wider regional economic benefits.
- 7 This should be recognised explicitly in the overarching Strategic Directions chapter in the proposed Plan, because the need ensure protection and enable provision for this important infrastructure (including protection from reverse sensitivity effects) infuses all other parts of the Plan and is a key strategic matter for the District.
- 8 While the Airport is not physically located in the Selwyn District, land use activities in the District affect, and may be affected by, Airport operations. This is a “cross-boundary” issue which requires a joined-up approach to planning provisions that apply in each affected district. Section 74(2)(c) of the RMA requires the council to have regard to the extent to which the proposed district plan needs to be consistent with those of adjacent territorial authorities. In light of the cross-boundary issues and regional significance of the Airport, this is a highly relevant matter in this case. There is a clear need for consistency between adjacent district plans in this instance. CIAL therefore seeks continuity and consistency with the planning framework in Christchurch, where the Airport is the subject of Strategic Objective 3.3.12 and an associated framework of provisions in various chapters which address reverse sensitivity and incompatible activities effects.
- 9 It is critical that CIAL is protected against inappropriate development in the vicinity of the Airport, including noise-sensitive land uses within the 50Ldn dBA Air Noise Contour and bird strike risk activities. The importance of airport safeguarding to ensure the continued efficient and safe operation of the Airport is discussed by **Ms Blackmore** and **Mr Hawken**.

RELIEF SOUGHT

- 10 The Strategic Directions chapter is critical for guiding the interpretation and application of all other provisions of the proposed District Plan.
- 11 The Section 32 Report explains that the Strategic Directions should provide:
 - 11.1 the overall context for the District Plan;
 - 11.2 direction for other chapters;
 - 11.3 an integrated policy framework for the whole District.
- 12 The Report also explains that there is no hierarchy for the strategic objectives, which are read as a whole, but there is a clear hierarchy between the Strategic Directions and all other District Plan provisions.

¹ Civil Defence Emergency Management Act 2002.

- 13 Getting the Strategic Directions right is therefore essential for:
 - 13.1 a well-functioning District Plan; and
 - 13.2 Important Infrastructure operators who are heavily reliant on District Plan provisions for both protecting and enabling their operations.
- 14 CIAL seeks that the Strategic Directions are amended to provide clearer guidance to subsequent objectives and policies (and rules and definitions) and reconcile conflicts between provisions. In particular, CIAL considers that amendments are required to more clearly:
 - 14.1 recognise the benefits of Important Infrastructure and provide for appropriate development;
 - 14.2 manage the effects of Important Infrastructure, including through recognising that not all adverse effects can be internalised; and
 - 14.3 manage effects on Important Infrastructure, including reverse sensitivity effects.
- 15 CIAL has concerns with the drafting of the strategic objective related to important infrastructure that is currently recommended by the s42A Report:
 - 15.1 It is generalised and does not adequately address either the significance of certain types of infrastructure to the District, nor adverse effects affecting important infrastructure.
 - 15.2 It should identify the need to avoid adverse reverse sensitivity effects affecting important infrastructure.
 - 15.3 Provisions should specifically mention the need to avoid noise sensitive activities within the 50 dB Ldn Air Noise Contour and also the need to address the avoidance of bird strike risk.
 - 15.4 There are more specific policies and objectives located in the Energy, Infrastructure and Transport and Noise chapters. This detail should be brought into the strategic direction provisions.

National Planning Standards

- 16 The National Planning Standards require a 'strategic directions' heading to be included in district plans, with chapters underneath that heading relating to key strategic or significant resource management matters.² The National Planning Standards (Standard 7) state that:³
 - 16.1 The following matters **must** be located under a 'strategic directions' heading:

² National Planning Standards 2019, District Plan Structure Standard (Standard 4) and District-wide Matters Standard (Standard 7), directions 1 to 4; see also Ministry for the Environment "Guidance for District Plans Structure and Chapter Standards" April 2019, available at <http://www.mfe.govt.nz/sites/default/files/media/RMA/guidance-for-district-plans-structure-and-chapters-standards.pdf>

³ Ibid.

- (a) Outline of key strategic or significant resource management matters for the district;
- (b) Issues and objectives that address key strategic or significant matters for the district and guide decision making;
- (c) Policies that address those matters, unless those policies are better located in other more specific chapters; and
- (d) How resource management issues of significance to iwi authorities are addressed in the plan.

16.2 Rules must not be included under the 'strategic directions' heading; and

16.3 Each strategic direction matter must be its own chapter under the 'strategic directions' heading, and an 'urban form and development' chapter must be included.

- 17 The protection, functioning, and future development of the Airport falls squarely within the matters that must be located under a 'strategic directions' heading⁴ as a key strategic and significant resource management matter for the Selwyn District.
- 18 A strategic objective that supports the continued safe and efficient operation, use and development of Christchurch International Airport is essential and should be included in the proposed Plan. The avoidance of reverse sensitivity effects is a key part of this, as incompatible land uses may impact the operation of the Airport, despite the infrastructure itself not being located in the Selwyn District.
- 19 We note that in its decision on the Strategic Directions chapter in the Christchurch District Plan the Independent Hearings Panel, including retired High Court Judge Hansen and current Environment Court Judge Hassan, decided that strategic directions should explicitly have primacy, providing 'overarching direction' for other chapters in the Plan.⁵ The Panel held that objectives and policies in the rest of the plan are to be expressed and achieved in a manner consistent with the objectives in the Strategic Directions chapter. Further, the Panel went on to say that strategic directions should be designed to identify and give overarching direction on district-wide sustainable management priorities. This reasoning on the function of strategic directions foreshadowed the formal acknowledgement of this approach in the National Planning Standards and provides valuable guidance in the development of the proposed Selwyn District Plan.

Higher order planning documents

- 20 **Mr Bonis** explores the relevant higher order planning documents in his evidence. These submissions highlight particular policies of relevance.

⁴ National Planning Standards (Standard 7)

⁵ Independent Hearings Panel Christchurch Replacement District Plan "Decision 1: Strategic directions and strategic outcomes" 19 March 2015, available at <http://www.chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Strategic-Directions-and-Strategic-Outcomes-Decision.pdf>, at [99]-[107].

NPS Urban Development

- 21 The NPS Urban Development directs that local authority decisions on urban development are integrated with infrastructure planning decisions,⁶ and that planning decisions contribute to well-functioning urban environments.⁷
- 22 CIAL submits a well-functioning urban environment is one in which:
- 22.1 infrastructure – particularly infrastructure such as the Airport – is not adversely affected by incompatible activities; and
- 22.2 urban growth is planned with infrastructure provisions in mind, recognising that the two run hand in hand.

Canterbury Regional Policy Statement

- 23 The efficient use and development of the Airport as a significant physical regional infrastructure resource is provided for in the Canterbury Regional Policy Statement (CRPS), in both Chapter 5 (Land use and Infrastructure) and Chapter 6 (Recovery and Rebuilding of Greater Christchurch).
- 24 Policy 6.3.5 in the CRPS provides for:
- 24.1 the continued safe, efficient and effective use of regionally significant infrastructure⁸;
- 24.2 the provision for efficient and effectively functioning infrastructure⁹; and
- 24.3 seek to ensure that land use activities¹⁰ and new development¹¹ are managed including avoiding activities that have the potential to limit the efficient and effective, *'provision, operation, maintenance or upgrade of strategic infrastructure and freight hubs'*.
- 25 Policy 6.3.9(5) requires that the location and design of rural residential development shall avoid noise sensitive activities occurring within the 50 dB Ldn Air Noise Contour.
- 26 Objective 5.2.1(f) requires that *'development is located so that it functions in a way that ... is compatible with, and will result in the continued safe, efficient and effective use of regionally significant infrastructure'*.

Incompatible activities and reverse sensitivity

- 27 A number of submitters have opposed the Strategic Directions being amended to direct that reverse sensitivity effects are avoided. The adverse effect of establishing sensitive/incompatible activities in the vicinity of existing lawful uses, and the potential for that establishment to lead to restraints on the carrying out of the existing uses, is known as a "reverse sensitivity" effect. The Court has stated that *"it is the effect of*

⁶ Objective 6.

⁷ Policy 1.

⁸ CRPS. Objective 5.2.1(2)(g). Definitions: Regionally Significant Infrastructure includes Christchurch International Airport.

⁹ CRPS. Policy 6.3.5(3)

¹⁰ CRPS. Policy 6.3.5(5)

¹¹ CRPS. Policy 6.3.5(4). Definitions: Strategic Infrastructure includes Christchurch International Airport.

the new use on existing uses that is the problem, not because of the direct effects of the new use but because of incompatibility which in turn may lead to pressure for change"¹².

- 28 The proposed District Plan must meet the sustainable management purpose of the RMA. This requires a balance of often competing interests and effects. Reverse sensitivity effects are an adverse effect for the purposes of the RMA. Therefore, the Council has a duty under section 17 of the RMA to avoid, remedy or mitigate those effects so as to achieve the Act's sustainable management purpose.
- 29 The general principle, established in case law, is that activities should internalise effects wherever reasonably possible.¹³ However, total internalisation of effects is not feasible in all cases and there is no requirement under the RMA that this must be achieved.¹⁴
- 30 CIAL internalises its effects wherever reasonably possible. However, total internalisation of effects is not feasible. Aircraft taking off and arriving at the Airport will generate noise effects, and be affected by land use activities beyond CIAL's boundary. The most effective way to avoid incompatible activities, adverse effects on landowners, and reverse sensitivity effects on the Airport is to manage the location of urban growth and sensitive land uses in a pro-active manner.
- 31 To justify imposing any restrictions on the use of land adjoining an effects emitting site, the activity should be of some considerable economic or social significance locally, regionally, or nationally, as is the case for the Airport.¹⁵ It is well recognised that residential occupiers have the greatest potential to generate reverse sensitivity effects, and a greater degree of control outside of the site can be justified in such cases.¹⁶

Sensitive activities and the airport noise contour

- 32 The proposed District Plan contains Air Noise Contours relating to noise produced by planes landing and taking off from the Airport. The 50dB Ldn Contour is the outer boundary used for Greater Christchurch and reflects the point at which land use controls are necessary to manage the establishment of noise sensitive activities in proximity to the Airport. This is required in order to:
 - 32.1 reduce the number of occupants subjected to higher noise levels, and associated amenity effects, associated with aircraft taking off and landing at the Airport; and
 - 32.2 avoid reverse sensitivity effects on the Airport.
- 33 The 55 dB Ldn Air Noise Contour marks the point at which additional land use controls are necessary to ensure that new buildings or extensions to new buildings are insulated sufficiently to mitigate the effects of aircraft noise on occupants.

¹² *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535, para [22].

¹³ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9].

¹⁴ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9] and *Catchpole v Rangitikei District Council*, W35/03.

¹⁵ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [18].

¹⁶ *Ngatarawa Development Trust Ltd v Hastings District Council*, W017/08.

- 34 **Ms Blackmore's** evidence highlights the success of the noise sensitive activities framework through planning documents thus far. It is important that the proposed Plan enables CIAL to continue managing the effects of airport noise in the greater Christchurch area.
- 35 Future hearings will deal with the mechanics and specific provisions seeking to avoid noise sensitive activities and buildings within the 50dB Ldn Contour and regulate development of existing buildings within the 55Ldn Noise Contour. But the core principle of avoidance of sensitive activities within the 50dBLdn Contour should be included in the Strategic Directions chapter.

Bird Strike

- 36 Bird strike (also termed Wildlife Management) is a core airport safeguarding matter – as discussed by **Mr Hawken**. As **Ms Blackmore** explains, CIAL takes the risk of bird strike very seriously, as bird strike risk is a key threat to the safe operation of aircrafts using the Airport and off-airport activities can increase bird strike risk if not appropriately managed. This issue should be appropriately recognised as a strategic matter which requires management in the planning framework in order to protect the operations of important infrastructure.
- 37 Bird strike risk is increased, for example through the creation of water bodies, refuse dumps, landfills, sewage treatment, and disposal, and agricultural activities, in the vicinity of flight paths and these affect the ability of CIAL to provide this safe environment. CIAL is heavily involved in bird management around the Airport and is a regular participant in planning processes which involve the potential creation of waterbodies or other suitable bird habitat.
- 38 As well as the various CRPS objectives and policies discussing the importance of enabling the efficient operation of strategic infrastructure and avoidance of incompatible activities discussed above, the CRPS also recognises bird strike risk specifically as a resource management issue for the region.¹⁷
- 39 CIAL has therefore sought policy recognition of this risk in the Strategic Directions chapter, as discussed by **Mr Bonis**. Provisions relating to bird strike are similar to provisions relating to aircraft noise in that they are difficult to place within the Plan. CIAL suggests that the same approach as that suggested for airport noise should be taken. That is, rules relating to land use for bird strike management should be located in the zone chapters. CIAL will be bringing further evidence on this matter at the hearings dealing with the specific planning provisions and rules that it seeks.

CONCLUSION

- 40 CIAL's principal concern is to ensure that rules managing land use within the Air Noise Contours and managing bird strike risk activities are located in the part of the plan where they will be most visible and clear to landowners and Council planning and enforcement staff. CIAL suggests that the Strategic Directions Chapter is best placed to establish a cohesive framework.
- 41 CIAL has for many years adopted a stance that the most appropriate way to protect the operations of this nationally and regionally significant asset is by robust planning

¹⁷ CRPS Policy 9.3.4 "principal reasons and explanation" and Policy 9.3.5 "principal reasons and explanation".

provisions in regional and district schemes which, in particular, discourage development in areas which will be affected by, or will adversely impact on, Airport operations. In the context of the Strategic Directions setting, the 'higher level' framework for the remainder of the proposed District Plan chapters, it is considered critical that the Strategic Directions chapter adequately safeguards Airport operations.

- 42 CIAL therefore requests the Hearing Panel accepts the relief sought in CIAL's submissions and further submission, as amended in the attachment to **Mr Bonis'** evidence.

Dated: 30 July 2021

A handwritten signature in blue ink, appearing to read 'J Appleyard', is positioned above a horizontal line.

J Appleyard / A Hill
Counsel for Christchurch International Airport Limited