

29 May 2015

Environment Canterbury
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by email

**LAND USE RECOVERY PLAN REVIEW – COMMENTS FROM CHRISTCHURCH
INTERNATIONAL AIRPORT LIMITED**

- 1 We act for Christchurch International Airport Limited (*CIAL*).
- 2 *CIAL* welcomes the opportunity to provide feedback on the effectiveness of the Canterbury Land Use Recovery Plan (*LURP*) as part of the initial phase in the formal Review of this document.
- 3 *CIAL* participated in the initial consultation and made submissions during the development and drafting of the *LURP* in 2013.
- 4 In general, *CIAL* considers that the *LURP* is operating effectively to provide for the recovery of the Canterbury region following the earthquakes in 2010/2011. *CIAL* supports the recognition in the *LURP* for strategic and transport infrastructure, particularly specific provision for the Airport and also the reverse sensitivity provisions inserted into the relevant planning documents by the *LURP*.
- 5 However, from a review of the final *LURP* and *CIAL*'s experience of its operation so far, particularly at hearings on the Replacement District Plan where the interpretation of documents amended as a result of the *LURP* are being considered, we have identified several drafting matters which are causing difficulty and which we consider are significant enough to potentially undermine the Minister for Earthquake Recovery's overall decision on the *LURP* in respect of the protection of strategic infrastructure.
- 6 These specific concerns have arisen in the course of arguments which have arisen during the hearings regarding the interpretation of amendments directed by the *LURP* to the Canterbury Regional Policy Statement (*CRPS*) and the Operative Christchurch City Plan. The concerns have already led to complex legal and planning arguments over the interpretation of words used in the planning documents and are addressed in the remainder of this letter.
- 7 Because the issues relate to matters of legal interpretation, they could also lead to appeals on points of law from the Replacement Plan Process by parties to the process. A better approach would be for the Minister to now provide clarity over interpretation to assist everyone involved.

Canterbury Regional Policy Statement – Policy 6.3.5(4) and Christchurch City Plan – Policy 6.3A.7

8 The LURP directed changes to the CRPS (Policy 6.3.5(4)) and the Christchurch City Plan (Policy 6.3A.7). Those changes contain the 50dBA aircraft noise contour for Christchurch International Airport (*noise contours*), as well as a general policy framework of avoiding noise sensitive activities within the 50 dBA noise contour.

9 The LURP states:

Development of new residential and other noise sensitive activities must also be avoided within identified airport noise contours to avoid adverse effects on the amenity and health of residents and the ability of Christchurch International Airport to function efficiently. (Executive Summary, page 6); and

Noise from airport operations can have negative health and amenity effects on those that live near the airport even when mitigation measures are used. Further development of housing and noise-sensitive community facilities in the affected area could lead to pressure from residents to curtail airport operations. The Land Use Recovery Plan requires councils to amend RMA instruments to prevent any new noise-sensitive activities establishing within the 50dBA Ldn airport noise contour, avoiding adverse health and amenity effects on residents and enabling the airport to safely and efficiently operate and to continue to develop and expand. [page 32]

10 The LURP directs changes to the CRPS and City Plan which introduce the general policy of avoiding noise sensitive activities within the 50 dBA Ldn contour.

11 The policies however then go on to list exceptions to the general policy and we consider the LURP has unintentionally through the wording of the exceptions provided a policy framework that enables the establishment of additional noise sensitive activities under the noise contours. More specifically, we refer to the second and third bullet points in Policy 6.3.5(4) of the CRPS and 6.3A.7 of the City Plan which sets out exceptions to the general policy.

12 CRPS (Policy 6.3.5(4)) as follows:

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

(1) Identifying priority areas for development to enable reliable forward planning for infrastructure development and delivery;

(2) Ensuring that the nature, timing and sequencing of new development are co-ordinated with the development, funding, implementation and operation of transport and other infrastructure in order to;

(a) optimise the efficient and affordable provision of both the development and the infrastructure;

(b) maintain or enhance the operational effectiveness, viability and safety of existing and planned infrastructure;

(c) protect investment in existing and planned infrastructure; and

(d) ensure new development does not occur until provision for appropriate infrastructure is in place;

(3) Providing that the efficient and effective functioning of infrastructure, including transport corridors, is maintained, and the ability to maintain and upgrade that infrastructure is retained;

(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; and

(5) Managing the effects of land use activities on infrastructure, including avoiding activities that have the potential to limit the efficient and effective, provision, operation, maintenance or upgrade of strategic infrastructure and freight hubs.

13 Christchurch City Plan (Policy 6.3A.7) as follows:

To avoid noise-sensitive activities within the 50 dBA Ldn noise contour around Christchurch International Airport except:

- those permitted in conjunction with rural activities in the rural zones, and
- **activities within the existing Living zones as defined in the city plan**; and
- **activities in the Open Space 3D (Clearwater) zone**.

14 This wording of both the Clearwater exception and the Existing Residentially Zoned exception is now being considered in the context of the proposed Christchurch Replacement District Plan hearings process and it is apparent through that hearing process that the drafting of the exceptions is giving rise to complex interpretation arguments, which is unhelpful to all parties involved in the Replacement District Plan process including submitters, the Council and the Panel.

Intention of the LURP

15 From a review of the Decision Paper, the intention of the LURP was to provide for a general policy of avoiding noise sensitive activities within the 50 dBA contour but with the "**inclusion of a clause to exclude particular activities permitted through previous decisions**" ('Recommendation to the Minister for CER' column, page 30). There are also similar references in the Decision Paper, 'Discussion' column, at pages 37-38. There is similarly no mention in the Decision Paper of allowing **new** activities enabled through the exemptions to be exempted from Policy 6.3A.7.

16 CIAL's understanding of the extent of the exceptions was that, other than in Kaiapoi, the exclusions were intending only to preserve pre-existing permissions authorised

by the operative District Plan or resource consents and not to encourage **new** noise sensitive activities to establish within the 50 dBA contour.

Second exception - Clearwater

- 17 We consider there has been a drafting error as the third bullet point (in particular) in Policy 6.3A.7 of the District Plan now exempts **any activity** within the Open Space 3D (Clearwater) Zone (*Clearwater Zone*) from this Policy. That is, there is no requirement to avoid noise sensitive activities within this Zone, including future noise sensitive activities. This exemption goes further than what is currently permitted in the City Plan in the Clearwater Zone, that is, a permitted limited number of residential units and resort hotel development in the Zone – see *City Plan, Volume 3, Part 6, Appendix 2 (Outline Development Plan – Open Space 3D Zone (Clearwater Resort))*, by providing support for any number of future noise sensitive activities within the Zone.
- 18 Finally, we also note that the exceptions for future noise sensitive activities within the Clearwater Zone in Policy 6.3A.7 in the City Plan is inconsistent with RPS Policy 6.3.5(4). The RPS Policy requires that new development is only provided for 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.”*
- 19 The Clearwater Zone is not provided for in any of these underlined exceptions in RPS Policy 6.3.5(4). It is therefore inconsistent for Policy 6.3A.7 of the City Plan to provide an exception for noise sensitive activities in the Clearwater Zone, as the City Plan should give effect to the RPS.
- 20 To correct the error in Policy 6.3A.7, we consider it would be appropriate for the Minister to use his powers to amend Policy 6.3A.7 in the District Plan amendments directed by the LURP as follows (additions **underlined**):

To avoid noise-sensitive activities within the 50 dBA Ldn noise contour around Christchurch International Airport except:

- *those permitted in conjunction with rural activities in the rural zones, and*
- *activities within the existing Living zones as defined in the city plan; and*
- **existing permitted** *activities in the Open Space 3D (Clearwater) zone.*

Third exception – “Existing Residentially Zoned Urban Area”

- 21 With regards to the CRPS Policy 6.3.5(4) wording, CIAL are concerned that the intent of the exception for activities within an *‘existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A’* has not been properly expressed and is having the

unintended consequence of encouraging the establishment of additional noise sensitive activities (beyond those anticipated by the Minister) under the noise contours.

- 22 In the Decision Paper, 'Discussion' column, at pages 37-38 the paper expresses the intention to exclude "**those activities permitted through previous RMA decisions to avoid restrictions being inadvertently placed on these activities**". This exception is then elaborated on page 38 which explains that there are existing areas (existing being as at the time the Decision Paper was published) of urban development and undeveloped but zoned areas for future urban development within the noise contour. The Paper makes the comment that this pre-existing development within the noise contours is unavoidable as these areas were developed or zoned for development prior to the implementation of the noise contour. There is similarly no mention in the Decision Paper of allowing **new** activities in existing urban areas to be exempted from Policy 6.3.5(4). These exceptions were designed to "replace pre-existing urban land that was within the noise contour" (Decision Paper page 39) and therefore the Decision Paper did not anticipate that the exception would add significantly to the total amount of urban activities located within the contour.
- 23 CIAL therefore understands that the exclusion from the requirement for avoidance of noise sensitive activities within the noise contours for 'Existing Residentially Zoned Urban Areas' was intended to ensure that activities which had already established under the noise contours or were permitted to establish even if not yet developed, did not suffer through new additional restrictions being inadvertently placed on them. CIAL accepts that this exception is necessary and that development established at the time the noise contour provisions were implemented, or introduced as a result of LURP actions even if not yet taken up by landowners, should not be restricted. This is the position CIAL adopted at the Replacement District Plan hearings.
- 24 However, during recent Replacement District Plan hearings, it has become apparent that the exception described in Policy 6.3.5(4) is very unclear in its interpretation and is being taken at least by the Council as a signal that significantly greater intensification is enabled by the exception to Policy 6.3.5(4) beyond that which is permitted already through the amendments to the City Plan made at the time the CRPS was amended.
- 25 Council officers in particular interpret the exception as providing no limit on the amount of new residential development that can establish under the 50 dBA contour provided that new activity is located in existing living zones. This is contrary to CIAL's understanding of the Minister's intention which was to:
- protect permissions given to people through previous RMA decisions; and
 - allow for new noise sensitive activities only at Kaiapoi but not elsewhere.
- 26 The issue is a very real one because, as the transcript of the hearing shows, counsel for other submitters and members of the Panel do not consider that the interpretation of the Policy is clear. There was very extensive cross examination and

Panel questioning of CIAL's planner, Mr Bonis, regarding his interpretation of the Policy which is that the limit to the exception is (or should be) that the exception is limited to protecting permissions which already exist in the City Plan in existing living zones (including those introduced by the LURP). It is clear that there is no one clear interpretation of the Policy.

Decision sought

- 27 CIAL asks the Minister to consider amending the LURP and in particular CRPS Policy 6.3.5(4) to clarify the position that the exception to the Policy was not intended to encourage significant new intensification within the 50 dBA contour but was intended to maintain pre-existing permissions included in the operative District Plan and the ability to develop where the development opportunities provided by those permissions have not yet been exercised.
- 28 We consider it helpful for all concerned for the Minister to use his powers to provide clarity by amending Policy 6.3.5(4) of the CRPS as follows:

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

...

*(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 **permitted** within an existing residentially zoned urban area **as at 31 December 2013**, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A; and*

(5) Managing the effects of land use activities on infrastructure, including avoiding activities that have the potential to limit the efficient and effective, provision, operation, maintenance or upgrade of strategic infrastructure and freight hubs.

General

- 29 We consider the amendments sought are necessary to ensure the Minister's decision making (in terms of the review of the LURP) is consistent with his stated intentions in the Report and Decision Paper. It will assist all parties to the Replacement District Plan process if this could be clarified.
- 30 Please contact the writer if you have any further questions.

Yours faithfully



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