

**IN THE MATTER OF** section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

**AND**

**IN THE MATTER OF** proposals notified for incorporation into a Christchurch Replacement District Plan

Date of decision: 29 September 2017

Hearing Panel: Environment Judge John Hassan (Deputy Chair), Ms Sarah Dawson, Ms Jane Huria, Mr Stephen Daysh

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**MINOR CORRECTIONS TO DECISIONS REGARDING CHAPTERS 6 AND 14**

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**Outcomes:** Proposals changed as set out in Schedule 1

## Background

[1] The Panel received a joint memorandum ('joint memorandum') from Counsel for Christchurch City Council ('the Council') and Christchurch International Airport Limited ('CIAL') seeking minor corrections to Chapter 6 and Chapter 14<sup>1</sup> of the Christchurch Replacement District Plan ('CRDP'). The minor corrections sought in the joint memorandum relate to:

- (a) the 65 dB Ldn Air Noise Contour ('noise contour');
- (b) the dates for the Chapter 6 Airport Rules to become operative; and
- (c) Chapter 14 minimum building setbacks.

[2] CIAL is party to, and consents to, the amendments sought in relation to (a) and (b) above. The Council is the proponent of the correction to matter (c).

[3] Given the nature of the request, in particular those matters relating to airport noise, by way of a minute<sup>2</sup> we directed the joint memorandum be served on Submitter 2514, David Lawry and others<sup>3</sup> ('submitter group'). We provided the submitter group with an opportunity to file a memorandum in response (if they wished), limited only to matters raised in the joint memorandum, by no later than 4pm Monday 4 September.

[4] Consequently, on 4 September 2017, we received a memorandum from the submitter group ('submitter group memorandum').<sup>4</sup> In its memorandum the submitter group advised that:

- (a) They have had extreme difficulty in determining which version of the composite 65dB Ldn / 95 dB LAe contour ('composite contour') that is 'alleged to have been incorrectly used', is being referred.

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<sup>1</sup> Joint memo of CCC and CIAL seeking minor corrections to Chapters 6 and 14 dated 17 August 2017.

<sup>2</sup> Minute as to joint memorandum filed by CCC and CIAL seeking minor corrections to Chapter 6 and Chapter 14, dated 21 August 2017.

<sup>3</sup> 2489 Campbell, 2054 Marra, 2191 Payne, 2567 Sugrue, 2091 Venema.

<sup>4</sup> Memorandum of 'Submitter Group' In reply to joint memorandum filed by CCC and CIAL seeking minor corrections to Chapter 6 and Chapter 14.

- (b) They were supportive of the proposed clarification of the commencement dates for the Chapter 6 Airport Rules; and
- (c) They have no comment to make with regards to the changes requested to Chapter 14 minimum building setback; and

[5] The submitter group requested further time to fully understand and respond to the requested correction to the noise contour. The submitter group also raised a concern regarding the definition of ‘airport operator’ used in the Chapter 6 Airport Rules. Further, to enable a better understanding of the corrections sought, an attachment to the submitter group memorandum directed a number of questions at counsel for the Council and CIAL.

[6] We granted the submitter group an extension until Monday 18 September 2017 to complete their response. Through the Secretariat, we encouraged CCC and CIAL to engage with the submitter group to provide clarification on the matters raised. The submitter group subsequently requested a further extension of time, which we granted.<sup>5</sup> The submitter group filed a final response on Tuesday 26 September (‘submitter group final response’).<sup>6</sup>

### **Jurisdiction to make minor corrections**

[7] The jurisdiction and statutory authority to make minor corrections has been set out in a number of memoranda and in previous decisions and we do not repeat them here.

### **Decision on corrections sought**

#### *Correction to Chapter 6 – Commencement of Airport Noise Standards*

[8] The joint memorandum requests corrections to rules in sub-Chapter 6.1 relating to the dates by which airport operations and engine testing reports are required to be provided to the Council. The joint memorandum states that the corrections are:

necessary so that the date for completion of the actions required in these rules is generally consistent with the date for the beginning of the timeframes for the establishment of the Airport Noise Liaison Committee and the completion of

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<sup>5</sup> Minute regarding memo filed by submitter group seeking an extension of time, 18 September 2017.

<sup>6</sup> Memorandum by submitter group in reply to joint memorandum filed by CCC and CIAL seeking minor corrections to chapter 6 and 14, 26 September 2017.

the Airport Noise Management Plan and the Acoustic Treatment Programme and Advice.<sup>7</sup>

[9] Paragraphs [14] to [19] of the joint memorandum set out the specific reasons for the corrections sought. The specific changes to the rules are shown as tracked changed under paragraph [20]. We do not repeat them here.

[10] We acknowledge that it was the intention of the Council and CIAL for there to be a sequential and practical timeline for CIAL to complete the actions required by the rules. As such, it is obvious that the current drafting of the rules creates practical difficulties.

[11] For these reasons, we agree to the corrections set out in [20] of the joint memorandum. For completeness, we note that the submitters group agree to this correction.<sup>8</sup>

[12] In respect of the submitter group's concern regarding the use of the term 'airport operator', we note that this defined term was confirmed in our Decision 57 (Chapter 6 General Rules – Noise, Airport matters and Hagley Park) and a minor correction was made for clarity in Decision 63.<sup>9</sup> For reference, the definition is set out below.

#### Airport operator

in relation to Sub-chapter 6.1 and Appendices 6.11.14 and 6.11.15 of Chapter 6 General Rules and Procedures, means the operator of Christchurch International Airport.

#### Correction to Chapter 14 – Minimum building setback

[13] We confirmed minor corrections to Rules 14.4.2.7 a.iii, 14.7.2.5 a.iii., and 14.9.2.5 a. in our minor corrections decision dated 19 June 2017. Council now advises that:

In finalising the memorandum<sup>10</sup> an error occurred in that the word 'floor' was accidentally marked as text sought to be deleted. The deletion of the word 'floor' was subsequently confirmed in the Further Minor Corrections decision dated 18 June 2017.

<sup>7</sup> Paragraph [14]

<sup>8</sup> Page 1 of the attachment to the submitter group memorandum.

<sup>9</sup> Decision 58 – Chapter 2 Definitions (Part) – Stage 2 and 3, 25 November 2016 and Decision 63 Supplementary Definitions Decision and minor corrections to Decision 58, 16 December 2016.

<sup>10</sup> The Council's memorandum seeking minor corrections dated 19 May 2017

[14] Consequently, the Council requests the rule be corrected as set out in paragraph [23] of the joint memorandum.

[15] In addition, in paragraph [24] the Council requests that the underlining of the word ‘terraces’ in Rule 14.4.2.7 a. iii. be removed as it is a typographical error.

[16] We accept the requests for minor corrections to Chapter 14 for the reasons set out in the joint memorandum. Again, for completeness, we note that the submitters group had ‘no comment to make’ with regards to this correction.<sup>11</sup>

Correction to Chapter 6 – Air Noise Compliance Contour

[17] A correction is requested to Figure 1 in Rule 6.1.6.2.5 on the basis that it:

incorrectly shows the composite 65dB Ldn / 95dB LAe contour (65/95dB Contour), rather than the 65dB Ldn Air Noise Compliance Contour (65dB Contour), which is the focus of Rule 6.1.6.2.5.<sup>12</sup>

[18] Paragraphs [9] to [13] of the joint memorandum set out the background and reasons for corrections sought.

[19] In the submitter group final response, Mr Lawry, for the submitter group, sets out a concern that CIAL and CCC have not correctly explained the origins of the mapped 65/95dB Contour and, in the submitter groups view, the various instances where the Panel may have been misled as to the accuracy of information put to it during various stages of the hearing process. We wish to make it clear that our jurisdiction at this stage of the process is limited to making minor corrections in accordance with the OIC, sch3, cl16. The substance of the matters raised in the submitter group final response are not matters for the Panel in its consideration of the application for minor correction under the OIC. We simply record this as a limit to our jurisdictional role in this respect, not as a comment on the substance or validity or otherwise of the allegations.

[20] In this case all that has occurred is that Figure 1, which is referenced in Rule 6.1.6.2.5, whilst correctly titled ‘Map of 65dB Ldn Air Noise Compliance Contour’, incorrectly

<sup>11</sup> Page 1 of the attachment to the submitter group memorandum.

<sup>12</sup> Paragraph [8] of the joint memorandum.

illustrates the 65/95dB Contour rather than the 65dB Contour. The error was made by the Council when updating planning maps and figures to reflect Decision 57, which was overlooked by the Panel when confirming those updates.

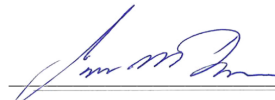
[21] We are satisfied that the correction is necessary for the proper application of Rule 6.1.6.2.5 and gives effect to what was clearly intended in Decision 57.

[22] Overall, we are satisfied the corrections fall within our jurisdiction for the reasons set out in the joint memorandum. As such, we accept the requests for minor corrections. For completeness, we reattach the joint memorandum as **Schedule 1**.

For the Hearings Panel:



Environment Judge John Hassan  
Deputy Chair



Sarah Dawson  
Panel Member



Jane Huria  
Panel Member



Stephen Daysh  
Panel Member

**Schedule 1**

**BEFORE THE CHRISTCHURCH REPLACEMENT  
DISTRICT PLAN INDEPENDENT HEARINGS PANEL**

**IN THE MATTER** of the Resource  
Management Act 1991  
and the Canterbury  
Earthquake  
(Christchurch  
Replacement District  
Plan) Order 2014

**AND**

**IN THE MATTER** the General Rules and  
Residential Chapters of  
the Christchurch  
Replacement District  
Plan

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**JOINT MEMORANDUM OF COUNSEL FOR CHRISTCHURCH CITY COUNCIL AND  
CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED SEEKING MINOR  
CORRECTIONS TO CHAPTER SIX AND CHAPTER 14 OF THE CHRISTCHURCH  
REPLACEMENT DISTRICT PLAN**

**17 August 2017**

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CHRISTCHURCH



## MAY IT PLEASE THE PANEL:

1. The purpose of this memorandum, filed on behalf of the Christchurch City Council (**Council**), is to seek three minor corrections to Chapter 6 and Chapter 14 of the Christchurch Replacement District Plan (**CRDP**), relating to:
  - (a) the 65 dB Ldn Air Noise Compliance Contour;
  - (b) the dates for the Chapter 6 Airport Rules to become operative; and
  - (c) Minimum Building Setbacks.
2. The corrections in 1(a) and 1(b) above are consented to by Christchurch International Airport Limited (**CIAL**) whose counsel has signed this memorandum.

## Minor Corrections

3. As the Panel is aware, it has a power under clause 16 of Schedule 3 of the Order in Council to make minor corrections to its decisions and proposals. For ease of reference, clause 16 states:

### **16 Minor corrections**

- (1) *The hearings panel may, at any time, issue an amendment to a decision to correct a minor mistake or defect in a decision of the panel.*
- (2) *This power includes the power to amend or correct a proposal, provided that the amendment or correction is made before the proposal becomes operative in accordance with clause 16 of this order.*

4. The Panel discussed the scope of this power in its decision to make minor corrections to Decision 9 Temporary Activities 6A, 6B and 6C.<sup>1</sup> The Panel also confirmed that it has retained its limited jurisdiction to attend to minor corrections under the Order in Council, Schedule 3, cl 16(1) and (2) in Decision 63.<sup>2</sup>

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1 Decision to Make Minor Corrections to Decision on Temporary Activities, dated 22 October 2015, at paragraphs [3] to [9]. The Panel also discussed what changes of "no more than minor effect" are for the purposes of clause 13(6) in its Decision 9 Temporary Activities 6A, 6B and 6C at para [19] to [25].

2 Decision 63 at paragraph 75.

5. Because the Panel's jurisdiction has been canvassed previously, we do not repeat that discussion in detail here. In summary, clause 16 of Schedule 3 of the Order in Council is similar to, but not exactly the same as, clauses 16 and 20A of Schedule 1 of the RMA. Clauses 16 and 20A of Schedule 1 of the RMA use the words "*minor error*" rather than "*minor mistake or defect*". The Environment Court in *Re an application by Christchurch City Council*<sup>3</sup> said:

*An error is simply a mistake or inaccuracy which has crept into the plan. The obvious example is a spelling mistake or reference to a wrong paragraph number where there can be no doubt what number is intended. It is analogous to the use of the slip rule in other Court Proceedings. Thus rule 12 of the District Courts Rules 1992 make provisions for correction of a judgment which contains a clerical mistake or error arising from an accidental slip or omission. The fundamental principle applicable to the use of the slip rule is that it may only be used to correct a slip in the "expression" of a judgment not the "content".*

6. The Environment Court determined a change would be within clause 16 of Schedule 1 of the RMA if "*the draftsman seeks only to clarify what is clearly intended by the document and does not in any way make a change to it which alters its meaning*".<sup>4</sup>
7. The Council would be happy to provide further submissions on the Panel's jurisdiction if that would assist.

#### **Correction to Chapter 6 – Air Noise Compliance Contour**

8. Figure 1 in Rule 6.1.6.2.5<sup>5</sup> requires correction as it incorrectly shows the composite 65dB L<sub>dn</sub> / 95dB L<sub>Ae</sub> contour (**65/95dB Contour**), rather than the 65dB L<sub>dn</sub> Air Noise Compliance Contour (**65dB Contour**), which is the focus of Rule 6.1.6.2.5.
9. Figure 1 was notified as part of Stage 2 in May 2015 and showed the correct 65dB Contour. This Figure was submitted on by CIAL in submission 2348.56, seeking wording amendments to the notified title, but there was no request to

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<sup>3</sup> *Re an application by Christchurch City Council* [1996] NZEnvC 97.

<sup>4</sup> At page 11.

<sup>5</sup> Numbering as per Minor Corrections to Decisions as a result of renumbering/restructuring undertaken by the Christchurch City Council dated 17 March 2017, at Schedule 1.

change the location of the 65dB Contour. The Panel agreed to amend the title of Figure 1 in Decision 57.<sup>6</sup>

10. On a separate matter, CIAL filed a submission (2348.171) that sought amendments (in 4 inner corners) to the 65/95dB Contour, stating that the correct contour as modelled in 2007 had not been included in the Stage 2 Planning Maps.
11. This submission point was also accepted by the Panel in Decision 57<sup>7</sup> and consequently the 65/95dB Contour was amended in the updated Planning Maps. Unfortunately, when producing the updated Figure 1 with the amended title, the Council inadvertently used the 65/95dB Contour instead of the 65dB Contour. This version of Figure 1 was then supplied to the Secretariat and confirmed (along with the updated Planning Maps showing the amended 65/95dB Contour) through the Minor Corrections and Consistency Changes to Decisions 11, 23, 24 and 57 dated 15 December 2016.<sup>8</sup>
12. The Council has contacted CIAL who have agreed that the current Figure 1 is incorrect. CIAL have therefore signed this memorandum.
13. A current (incorrect) and corrected Figure 1 are both included in **Appendix 1** to clearly show the implications of the corrected 65/95dB Contour. The key in Figure 1 has also been amended to match the title as amended by the decision, which is a minor correction to ensure consistency and coherency of the rule and figure. The Council respectfully seeks that the Panel corrects its Minor Corrections and Consistency Changes to Decisions 11, 23, 24 and 57 decision to include the corrected Figure 1, as this is an error mistakenly included in the CRDP.

#### **Correction to Chapter 6 – Commencement of Airport Noise Standards**

14. Minor corrections to Rules 6.1.6.2.5(iv), 6.1.6.2.6 a.(v)B., (vi) and (vii) and 6.1.6.2.7.3(d) relating to the dates by which airport operations and engine testing reports are required to be provided to Council, are also considered necessary so that the date for completion of the actions required in these rules

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6 Decision 57, Chapter 6: General Rules and Procedures (Part) - Noise, Airport matters and Hagley Park dated 10 November 2016 (**Decision 57**), at Schedule 4.

7 Decision 57.

8 Minor Corrections and Consistency changes to Decisions 11, 23, 24 and 57, Chapter 6 General Rules and Procedures - Noise, Airport matters, and Hagley Park and Chapters 15 (Commercial) and 16 (Industrial) dated 15 December 2016.



is generally consistent with the date for the beginning of the timeframes for the establishment of the Airport Noise Liaison Committee and the completion of the Airport Noise Management Plan and the Acoustic Treatment Programme and Advice.

15. Chapter 6 of the CRDP contains a suite of rules requiring CIAL to undertake certain actions. These include:
  - (a) Rule 6.1.6.2.5(iv) - provision of an Aircraft Operations Noise Monitoring Report annually;
  - (b) Rule 6.1.6.2.6a.(v)B. - verification of measurements for initial period of 6 months, then once every 2 years;
  - (c) Rule 6.1.6.2.6a.(vi) - provision of an On-Aircraft Engine Testing Report quarterly;
  - (d) Rule 6.1.6.2.6a.(vii) - provision of an On-Aircraft Engine Testing Noise Monitoring Report annually;
  - (e) Rule 6.1.6.2.7.1 - preparation of an Airport Noise Management Plan within 12 months;
  - (f) Rule 6.1.6.2.7.2 - provision of Acoustic Treatment Programme and Advice within 12 and 24 months;
  - (g) Rule 6.1.6.2.7.3(a) - establishment of an Airport Noise Liaison Committee within 6 months; and
  - (h) Rule 6.1.6.2.7.3(d) - provision of a report on Committee annually.
16. The intention of the Council and CIAL was for there to be a sequential and practical timeline by which CIAL would undertake the steps, all generally running from one commencement date. The rules operate as a package. For example, the Airport Noise Management Plan under Rule 6.1.6.2.7.1 is required to incorporate a procedure for transparently and expediently presenting in a publicly accessible forum, the noise monitoring reports and on-aircraft engine testing reports required by Rule 6.1.6.2.5 and 6.1.6.2.6.
17. A difficulty has arisen in the inconsistent way that the rules have been drafted through the various iterations emerging at various stages of the hearing process and through outputs from mediation. Some of the rules have timeframes which run from the date that they became operative on 6 March 2017 whereas other rules run from the date the provisions took legal effect under section 86B. This means the overall timetable is inconsistent with what

was presented to the Panel in CIAL's evidence and legal submissions and creates practical difficulties.

18. In order to regularise the timetable in a practical way and to ensure that the various reports arrive in a manner consistent with the timeframe under which the Airport Noise Management Plan is to be prepared and the Airport Liaison Committee meets, CIAL and CCC seek a minor correction so that most rules requiring the first of an ongoing series of reports to be produced or verification monitoring to begin, refer to a common date, being the date the airport noise provisions in Chapter 6 of the CRDP became operative i.e. 6 March 2017. Or, in the case of annual reports, to be required one year from that date.
19. CCC and CIAL therefore seek minor amendment to Rules 6.1.6.2.5 (iv) and 6.1.6.2.6a.(v), (vi) and (vii) and 6.1.6.2.7.3(d) so that the dates for commencement of the rules are 6 March 2017 to be consistent with the timeframes set out in Rules 6.1.6.2.7.1 and 6.1.6.7.2 and 6.1.6.2.7.3.
20. The corrections sought are shown below using underlined text (the base text is sourced from the 17 March 2017 decision version of the CRDP):

PROVISION	CORRECTION
6.1.6.2.5 iv.	An Aircraft Operations Noise Monitoring Report shall be provided annually by the <u>airport operator</u> to the <u>Council</u> , with the first required by the <u>6 March 2018</u> . The report shall include:
6.1.6.2.6 a. v. B.	...Verification measurements shall be carried out for an initial period of 6 months <u>from 6 March 2017</u> and subsequently be undertaken at least once every two years.
6.1.6.2.6 a.vi.	An On-aircraft Engine Testing Report shall be provided quarterly by the <u>airport operator</u> to the <u>Council</u> , with the first <u>covering the period ending the 30 June 2017 and provided to the Council by the 15 July 2017</u> . The report shall include...
6.1.6.2.6 a. vii.	An On-aircraft Engine Testing Monitoring Report shall be provided by the <u>airport operator</u> to the <u>Council</u> <u>by 6 March 2018, and annually thereafter</u> .. The report shall include...
6.1.6.2.7.3 d.	The <u>airport operator</u> shall provide <u>by 6 March 2018, and annually thereafter</u> , <del>an annual</del> a report to the <u>Council</u> regarding the following: ...

## Correction to Chapter 14 – minimum building setback

21. In the Council's Memorandum seeking minor corrections to the CRDP dated 19 May 2017, it sought corrections to Rules 14.4.2.7 a, 14.7.2.5 a, and 14.9.2.5 a. The extract from that memorandum showing the correction sought is set out in **Appendix 2** for ease of reference. This correction was confirmed by the Panel through its Further Minor Corrections decision dated 18 June 2017, at pages 71-72.
22. In preparing the memorandum seeking minor corrections the Council considered various options to correcting Rules 14.4.2.7 a, 14.7.2.5 a, and 14.9.2.5 a. In finalising the memorandum an error occurred in that the word "floor" was accidentally marked as text sought to be deleted. The deletion of the word "floor" was subsequently confirmed in the Further Minor Corrections decision dated 18 June 2017. This minor typographical error has the effect of making the rules unworkable. The rule is clearly intended to allow decks and terraces to be up to 300mm above ground level", but the rule currently requires that it apply only to decks and terraces "at or below ground level. So the rules cannot be applied.
23. Consequently, the Council respectfully seeks that the rules be amended as shown below as this error was mistakenly included in the CRDP:

PROVISION	CORRECTION		
14.4.2.7 a.	iii.	Decks and terraces at or below ground <b>floor</b> level to a maximum height of 300mm above ground level within 1m of the boundary.	Nil
14.7.2.5 a.	iii.	Decks and terraces at or below ground <b>floor</b> level to a maximum height of 300mm above ground level within 1m of the boundary.	Nil



14.9.2.5 a.			
v.	Decks and terraces at or below ground <u>floor</u> level to a maximum height of 300mm above ground level within 1m of the boundary.	Nil	

24. The Council also seeks that the underlining of the word "terraces" in Rule 14.4.2.7 a. iii. be removed as it is a typographical error. This change has been made to the rule in the paragraph above.

**DATED** this 17<sup>th</sup> day of August 2017




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S J Scott / C J McCallum  
Counsel for Christchurch City Council

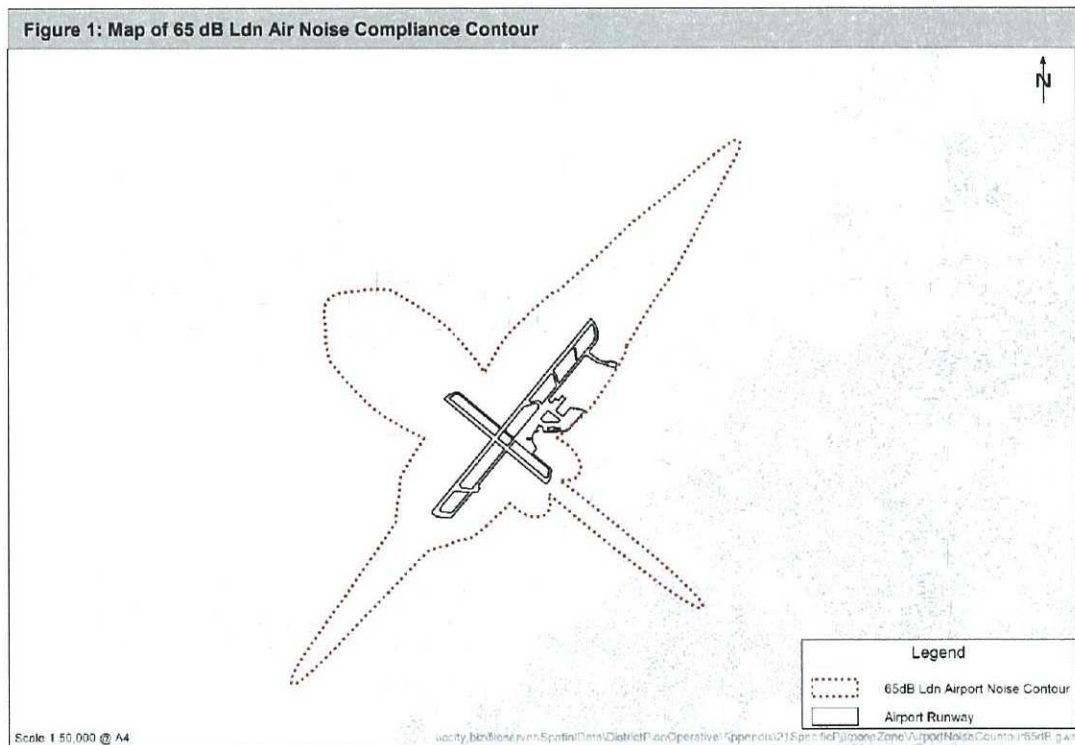



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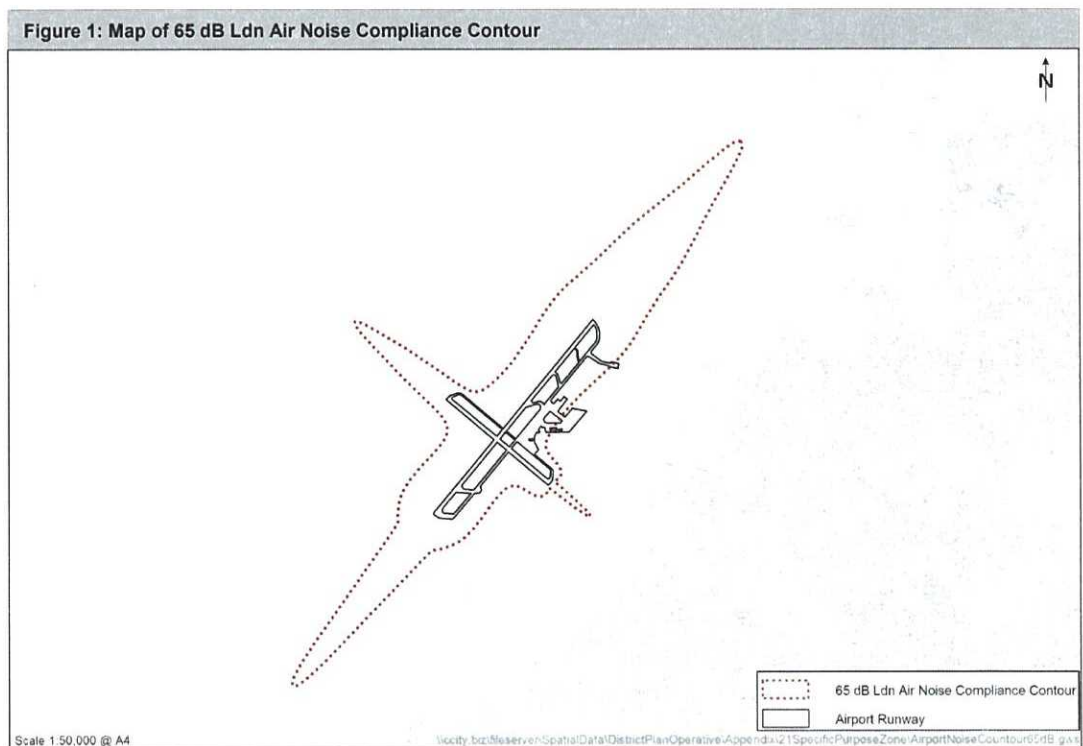
J M Appleyard  
Counsel for Christchurch International Airport  
Limited

## APPENDIX 1

### Current (incorrect) Figure 1 in Rule 6.1.6.2.5



### Corrected Figure 1 in Rule 6.1.6.2.5





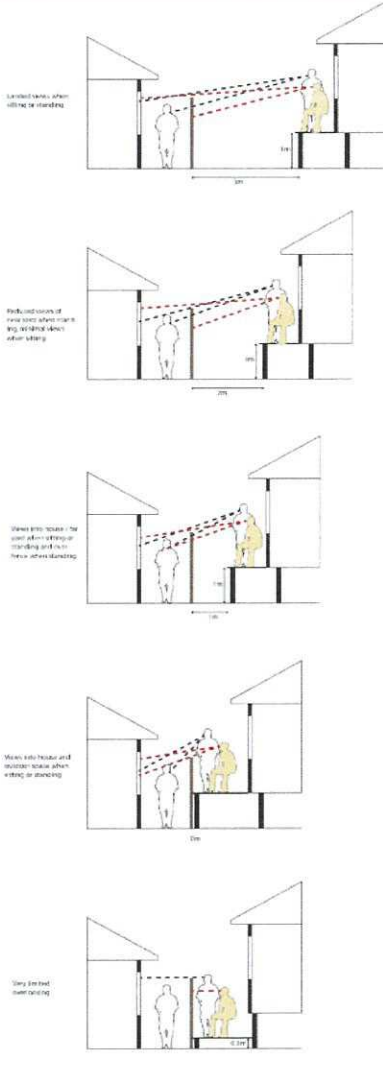
## APPENDIX 2

Extract from Council's Memorandum seeking minor corrections to the CRDP dated 19 May 2017 showing the corrections sought to Rules 14.4.2.7 a, 14.7.2.5 a, and 14.9.2.5 a

PROVISION	CORRECTION		REASON THE CORRECTION IS MINOR
14.4.2.7 a.	iii.	Decks and <u>terraces</u> at or below ground <del>floor</del> level <u>to a maximum height of 300mm above ground level within 1m of the boundary.</u>	Nil
14.7.2.5 a.	iii.	Decks and terraces at or below ground <del>floor</del> level <u>to a maximum height of 300mm above ground level within 1m of the boundary.</u>	Nil
14.9.2.5 a.	v.	Decks and terraces at or below ground <del>floor</del> level <u>to a maximum height of 300mm above ground level within 1m of the boundary.</u>	Nil

Provision was provided for buildings to be raised to reduce risks from flooding. In some cases this could result in a residential building being raised to have a ground floor level of 1.5m (or higher). As a consequence an adjoining deck or terrace may need to be raised to provide ease of access from indoors to outdoors. The rule on internal boundary setbacks was however never reconsidered, specifically the zero setback allowance for decks and terraces at ground floor level (which the Council has established could be as high as 1.5m or greater under the current rule).

The illustrations below depict the impact the current rule has on the adjoining resident's privacy. It is recommended that decks and terraces should be able to extend from ground floor level, however within a 1m building setback, should not exceed a height of 300mm above ground level. As demonstrated in the illustrations below, this will ensure a reasonable level of privacy is maintained by the adjoining neighbour, whilst still ensuring the plan user is not disadvantaged in any way, i.e. is able to build a feasible and compliant deck or terrace.

PROVISION	CORRECTION	REASON THE CORRECTION IS MINOR
		 <p>Limited noise when sitting or standing</p> <p>Predicted noise at noise level when standing</p> <p>Direct noise - the level when sitting or standing and noise when sitting</p> <p>Noise level when sitting or standing</p> <p>Very limited noise level</p>