SUBMISSION

Rebuttal

In the Matter of

The Resource Management Act ("RMA") 1991

And

Christchurch City Council ("CCC")

Proposed Plan Change 4A ("PC4A")

District Plan: Short-Term Accommodation

Expert Rebuttal Evidence

Mr David Michael Lawry - Submitter Number FS1.

I remain compliant with the Environment Court Practice notice re: Expert Witness Code of Conduct and restate I cannot obtain any advantage in trade competition from this Submission.

Rebuttal of CIAL Ms Blackmore SOE

Please may the Commissioners refer to the Statement of Evidence ("SOE") from Ms Felicity Blackmore on behalf of Christchurch International Airport Ltd ("CIAL") dated **7 May 2021.**

I have reviewed the expert evidence given by Ms Blackmore for CIAL - stating CIAL's position on residential un/hosted visitor accommodation and CIALs response to some of S42A Report recommendations.

Noted is that her SOE does not acknowledge the Expert Witness Code of Conduct nor advise CIAL's position on trade competition.

Opportunity to Correct CIAL Expert SOE

On 19th September 2021 I wrote to Mr Malcolm Johns – CEO CIAL, Catherine Drayton (CIAL Board Chair), and Lianne Dalziel CCC Mayor, via email, providing 5 working days right of reply requesting if they had found any errors in the AilevonPacific Aviation Consulting("APAC") , Christchurch Noise Contour Traffic Forecast Considerations document dated July 2021, prior to it being made public?

The 5 working days "right of reply" coincided with the deadline to file evidence for PC4, being Friday 24th September 2021.

At this time CIAL, CCC and New Zealand Government (NZG) Ministers had been provided with the ("APAC") Report, which found that pre-covid CIAL's Aviation business was in serious decline (refer Pg. 10 of my Submission). NZG Ministers are taking the APAC Report findings seriously.

CIAL responded by recommending I engage with Environment Canterbury ("ECAN") through the "prescribed process'. However, as I advised the Panel in my Submission (Page 20), as of 3rd September ECAN had already formally required CIAL to commence contour re-evaluation.

Local Government Official Information and Meetings Act 1987 ("LGOIMA") requests show that CIAL reviewed its ANC with Mr Marshall Day in 2018 (refer my Submission Pg. 22 re Mr Day). I am currently in a 20working day wait for a copy of the CIAL 2018 ANC Review, with this information arriving after the PC4 Hearing.

I submit that the non-disclosure of this ANC Review by CIAL may have significant ramifications for this Plan Change, as well as recently completed or still in progress Plan Changes that should have been informed by this recent ANC Review.

I submit that Commissioners should request a copy of the 2018 ANC Review form CIAL.

In summary, CIAL did not take the opportunity to modify their Expert (Ms Blackmore) SOE evidence on PC4, asserting that CIAL aviation business was in health and growing as per the CIAL Traffic Forecast document. CIAL continues to assert that Ms Blackmore's SOE is current, accurate and factual and can be relied on by the Commissioners - despite strong factual evidence to the contrary.

CIAL would have Commissioners believe that CIAL is on a growth curve despite the Pandemic and opposing credible evidence.

Ms Blackmore states that all projections indicate strongly, that pre-covid levels of activity will return (Ref point 11). At point 15 she asserts that modeling shows tourist demand will be back to 2019 levels by December 2022, assuming unconstrained supply. No modeling has been provided, and the unconstrained supply assumption is not rational.

All citations in support of Ms Blackmore's SOE are pre-pandemic and redundant, such as:

1. BERL May 2014 and December 2017;

2. MBIE 2018;

3. Master Plan 2016 with 2040 projected growth levels.

As indicated, I provided an opportunity to both CCC and CIAL to modify its Expert Evidence in light of the APAC Report and pandemic conditions.

CIAL refused to do so, which in my opinion by continuing to present growth projections to Commissioners is misleading and deceptive. Is this not a disciplinary matter?

In fact CIAL's return on core aviation assets is very poor with CIAL reliant instead on Property Development and Management contributing 65% of revenue (and growing) - hence CIAL's key focus on land planning regulation.

Pre-covid CIAL suffered significant loss of air movements mainly to Queenstown Airport, but also in wide body international movements. The loss of aviation business was so severe CIAL has sought to develop a new Airport at Tarras to try and recover lost market share (note a Tarras Airport is also at risk due to insufficient land purchase and strong local opposition).

Putting aside the worldwide uniqueness of the 50dBA Ldn contour, the current ANC are inaccurate due to both a failure to formally re-evaluate and questionable noise measures. It is my expert opinion that until the ANC are accurate, no further policy action or enforcement should take place pursuant to them.

APAC Report

I refer the Commissioners to the APAC Report in its entirety.

It identifies why CIAL has lower growth rates than projected, and why Christchurch's Regional hub position is being challenged as Airlines seek growth in new direct flights South within New Zealand and from Australia (refer Page 4-5 APAC).

APAC proves that CIAL's aviation business situation is completely different to Ms Blackmore's SOE that CIAL intended for Commissioners to accept and rely on for land planning decisions. Decisions on land planning policy that significantly advantage CIAL based on inaccurate and misleading information.

As Independent Commissioners, I invite you to consider what impression you would have been left with of CIAL's aviation business growth projections if Ms Blackmore's SOE had been presented unchallenged?

It is disgraceful that in order to get to the truth, APAC had to be commissioned by a civilian submitter. I refer again to the CCC/CCHL/CIAL Planning "Regime" explained in my primary PC4A Submission. This is an example of the Regime at work.

Reverse Sensitivity

Under the heading Reverse Sensitivity Ms Blackmore identifies that her role as dealing with proposals for further residential intensification and new noise sensitive activities within the contours.

This refers to CIAL's Air Noise Contour ("ANC") Resource Consent Application Entitlement - explained in my primary Submission Page 17. CCC provides to CIAL all RCA's, such that CIAL may object where in conflict with CIAL's Property Development and Management plans. Ms Blackmore's role as CIAL Environment Planning Manager is to object to these RCA's.

I advise that existing residential zones are exempt from ANC noise sensitivity rules. Despite this exemption CCC still supply CIAL with resource consent applications from these zones and others. Which CIAL then routinely add conditions to or reject. In Ms Blackmore's words her and her team deals to them.

This Regime is a systemic abuse of power based on the false premise that CAIL requires curfew protection from "reverse sensitivity" (refer my Submission pages 9, 11, 22, 26).

Unfortunately, this process denies cross-examination, however the Commissioners may seek to ask Ms Blackmore (on behalf of CIAL) how CIAL has concluded it requires protection from curfew in respect of a long-standing benign farm stay activity?

As CIAL controls the entire noise complaint process (refer my Submission page 22), I fail to see how Ms Blackmore can credibly conclude that CIAL needs protection from farm stays.

To my knowledge, and I stand to be corrected - despite thousands of noise complaints over decades (mainly concerning engine testing), no complaint has ever been upheld or elevated beyond the CIAL controlled noise panel. There has never been any enforcement action taken. This would require CIAL to request CCC to impose a curfew on its operations based on noise complaints.

Despite CIAL claiming "curfew fear" it is not "vulnerable and at risk" - it is instead an aggressor. For example, actively removing accommodation supply posing direct competition to its aspirations to provide similar accommodation in SPAZ (refer my Submission page 14 SPAZ Trade Training Facilities).

CIAL's aggressiveness is all too real for the community of Affected Landowners living under the ANC - their social, economic and well-being needs are repressed in propriety to CIALs Property Development aspirations.

Whilst this process denies Commissioners taking trade competition into consideration in decision making, trade competition is at the heart of the reason for this plan change.

Whilst I agree with Ms Blackmore's points at Page 3, in particular point 18 advocating for the permissive approach discarding complicated regulation that would be negative to Christchurch City's prosperity, Ms Blackmore also makes clear no balancing of needs as required by NZCS 6805:1992 exists. It is intentionally sidestepped by Activity Standard 6.1.6.23.5 (refer my Submission Pg 19).

Apart from this single exception, overall Ms Blackmore's SOE is rejected on the grounds it is based on factually incorrect information, and is therefore misleading and deceptive.

PC4A Changes Specific to CIAL

A wide range of CIAL specific changes have been included into PC4A, and in each case the significantly adversely affected landowners have not been notified as required by the Resource Management Act and natural justice principles.

These changes include:-

Farm Stay Exemption Removal - Exemption Removal from the ANC definition of Farm Stay (refer my Submission Pg 5). Farm Stay enables accommodation for a tariff as an ancillary activity to farm, conservation or rural tourism activities. The removal of the Farm Stay Exemption has significant ramifications for rural landowners living under the ANC. Rural tourism, conservation and farm stay accommodation would all be subjected to enforcement action to desist. The viability of many of these desirable rural activities would be compromised.

This is being sought by CIAL in the absence of any evidence directly related to that community living under these contours, yet has been accepted into PC4.

CIAL indicates its main concern with respect to PC4 is to ensure that the proposal is consistent with the objectives and policies in the Canterbury Regional Policy Statement ("RPS") and District Plan objectives relating to reverse sensitivity and protection of Strategic infrastructure. However, this proposed change if accepted would alter the RPS which currently enables residential activities in conjunction with rural activities that comply with the relevant District Plan as at **23 August 2008.**

There are three (3) major issues:

1. There has been no credible evidence presented by CCC to explain why this change has been

   incorporated into PC4A; and

2. There is no jurisdiction to alter Regional Policy.

3. Affected parties have not been notified of the risk to their land use activities.

Specific Purposes (Golf Resort) Zone Exemption Removal – PC4A seeks to remove the exemption via a "small" but significant definition change. The definition of "Resort Hotel" is proposed to be amended so as to capture this activity within the "residential accommodation" definition by application of the **28day rule** and thereby have the ANC Régime enabled for residential accommodation activity.

Clearwater Resort was not notified of this change by CCC but fortunately was alerted to it in time to submit.

In this example, an entire Specific Purposes (Golf Resort) Zone is being sought to be erased. While Counsel for that party will address those matters, I have been advised Ms Blackmore/CIAL is reneging on its Agreement with Clearwater Resort which permitted the specific purposes zone.

Waimakariri < 20 Hectare Residential Exclusion – This change requires that pursuant to the ANC any Waimakariri Council landowner living under the CIAL ANC must have 20 Hectares to be able to build a new residential dwelling.

The Waimakariri landowners have not been advised of this change. The Waimakariri District Council ("WDC") has advertised a Proposed District Plan change with Submissions closing date of **26 November 2021.**

CIAL have already raised its need for protection from curfew risk in this District Plan change.

In order to ensure that this special community of Waimakariri landowners living under the ANC is given notice, I submit that the WDC Proposed District Plan change is the appropriate place for this proposed change, not PC4A.

I wish to request Commissioners to remove this change from PC4A.

PC4A is designed to close ANC "exemptions" or permissions - pulling all activities under the ANC Regime to ensure CIAL total control.

Ms Blackmore/CIAL asserts CCC has initiated all the changes outlined in PC4A, such as the 28day rule (after which the stay activity becomes a residential accommodation activity), and that CIAL is merely commenting on the arising inconsistences. This assertion is is rejected based on objective assessment of the facts.

In my Submission I explain the Regime that exists that conveys to CIAL the power to access and control CCC planning development, and I further submit that may even go so far as to enable CIAL to directly write plan changes for CCC according to CIAL's requirements.

Section 32 and 42A Author?

CCC asserts that the Original Author of the original Plan Change 4 ("PC4") Section32 and 42A Reports to Plan Change 4 is **Alison McLaughlin.**

The inference CCC gave was that Ms McLaughlin was unavailable to give evidence about PC4 as she was no longer in the employ of CCC. The Commissioners will have better information on the "why" Ms McLaughlin was not available. However this assertion has resulted in CCC being permitted to engage an

external planner Mr Bayliss enabling a planning evidence attempt at recovering from initial Planning submission failures.

I can advise Commissioners that Alison McLaughlin still resides in Christchurch.

She works from her [redacted] home and is available to give evidence. I took the time to speak to her at her home about PC4. She appeared well, and while surprised to meet me, was communicative.

I conclude from our meeting that Alison McLaughlin is not the Author of PC4 in respect of the proposed Farm Stay definition change and thereby ANC Exemption removal.

Consequently, who is the Original Author?

As CCC has possibly misled Commissioners, I have considered two (2) possibilities:

1. **Mr Pizzey - CCC Associate General Counsel** sought legal advice concerning the Bond's Farm Stay case on 3rd November 2020 (refer to my Submission Pg 42), and after some discussion Brookfield's issued the attached legal opinion 4 February 2021 which was attached to the Bond's RMA decision 22 March 2021.

I wish to refer to the following comment from Brookfield's Partner Andrew Green: "…I refer to our discussion on 3 November 2020 regarding the application of noise contour rules in the District Plan….I have revised my preferred interpretation of the way in which the noise contour rules are intended to operate…""

A copy of this Letter is attached. It was relied upon by CCC to justify its enforcement action against the Bonds. Mr Pizzey was active on the Bond Farm Stay matter and took the legal position on behalf of CCC that Bond's Farm Stay was an illegal non-compliant activity despite it being an Exemption.

If PC4 had been implemented as originally intended, it would have validated CCC's enforcement action against the Bonds albeit retrospect fully.

If this is correct a clear indication that this was the case should have been indicated.

2. CIAL - The Regime explained in my Submission outlines CCC Planning dysfunction that CIAL may well be enabled to table Plan Changes directly to CCC Planning Staff to incorporate in Plan Changes.

I remain open minded about who the Original Author is, but it is not Alison McLaughlin.

I request that Commissioners require CCC to produce the Original Author of PC4.

CCC Contract Planner - Mr Bayliss

Mr Bayliss is the Author of Addendum to Section 42A Report. Mr Bayliss has disclosed that he was the CCC delegated representative to the Environment Court mediation for Appeals on Stage 2 Queensland Lakes District. I submit that has represented CCC on numerous other occasions and is well acquainted with the CIAL régime.

I advise that I have no update of outcomes from Expert Conferencing and there is a possibility that matters have been further reduced possibly impacting on the following points.

Neutral Economic Impact

The negative economic impact argument of short-term residential accommodation was initially articulated as the main reason for PC4 initiating the need for this complex and extensive new regulation That evidence has now been totally removed and reduced to neutral at best.

Low Complaints

The original Section 32 document at page 27 point 2.2.48 indicates that between 2018 and 2020 (3 years) only 50 complaints were received directly attributable to home share. The majority of the complaints were about activity and not specific adverse effects arising.

At 2.2.49 please note the following comment:

"However, there may be amenity, coherence or character impacts that are not significant enough to prompt a complaint to Council but which still have an adverse effect on neighbours that justifies intervention through the District Plan. Impacts like not having a neighbour, feeling that one's neighbourhood no longer looks and feels residential or cumulative noise or privacy impacts would also not necessarily prompt a complaint to council but still reduce amenity for residents."

No examples of complaints falling into any of these categories is advanced

The reality is that there are only very low-level complaints about residential short-term accommodation, general; the majority do not raise specific amenity adverse effects.

The number of complaints that are specific about an amenity adverse effect is not identified. No themes are identified or seem to exist. Very vague survey data is commented on again with no ability for any scientific rebuttal due to that vagueness of the evidence in-chief.

There overall is a total lack of evidence to identify a resource issue or purpose based on adverse amenity, let alone justify the level of intervention proposed by PC4.

CBD Not a Priority

CCC assert that part of the purpose of PC4 is to ensure that the enabling policies aimed at ensuring development is directed to the Central Business District and Key Activity Areas as a priority and is an important driver of the changes in PC4. Refer original Section 32 report at 3.3.8.

I address this assertion in my Submission by providing information on PC84 in response, consequently the PC84 information must be reasonably said to within Scope, as per the 2013 High Court decision of Motor Machinists Limited v Palmerston North City Council (NZHC 1290).

As per my Submission (refer pgs 12-13) CCC reasoning for PC4, to support development in the CBD, Key Activity Areas and District Centers is contrary to the CCC/CIAL 2015 PC84 Agreement for CIAL to be able to draw development away from Christchurch CBD to the point of significant adverse effect.

This Agreement has resulted in the District's largest draw of development away from the CBD, Key Activity Areas and District Centers. CIAL is permitted to continue to develop to the point of significantly adversely affecting Christchurch's earthquake recovery, before CCC is required to do anything about it. A walk around the CBD shows that the City has many more years of recovery ahead; this Agreement was permitted to harm the CBD's recovery. Refer PC84 Recommendation Report Final 29 Jan 2015 point 62 pages 20-21.

I strongly submit that PC4 does not assist the CBD, instead PC4 assists CIAL.

Bypass Environment Court

I wish to refer the Commissioners to the Environment Court decision in Archibald v CCC ENV 2019 CHC 00098 **December 2019.** (copy attached).

The Court overturned CCC's rejection of Phillipa Archibald's RCA for an Air BnB at 52A Creyke Road.

Mr Pizzey appeared for CCC on this matter.

The main finding of the decision was that:-

the occupation of a residential dwelling by paying guests is no different in substance to bed and breakfasts, farm stays or boarding houses

The practical effect of this decision is that Air BnB activity does not require regulation. The decision was in favour of a more permissive acceptance of these activities, and they should be enabled due to the economic, social, and cultural well-being benefits.

The Environment Court granted Ms Archibald a Resource Consent.

It appears to me that the proposed PC4 changes are intended to bypass the Environments Courts decision via the plan change process.

What is CCC motivation?

Amenity Value

The NPS UD 2020 is a very clear indication to Planners that in this time of Pandemic and Housing Crisis there needs to be an enabling of accommodation capacity. Nebulous amenity value arguments against are to be relegated behind the need for accommodation capacity increase. Further, prior to this higher-level direction, Plans were in any case required to be less complex and more understandable.

Mr Bayliss is at a loss to articulate any observed or likely effects on amenity in rural areas and accepts that in rural settings amenity effects are even less important with a reduced need for rules, and less justification for constraints (refer Page 30 point 2.5.3).

Mr. Bayliss then at 2.3.6 states:

"It is also important not to over emphasis this high-level direction about urban development in general to this particular situation and context and not to oversimplify the direction as implying that allowing amenity vales to be degraded is implicitly supported by the NPS UD, as this is not the case."

Mr Bayliss's relegation of this very clear direction is baseless. The context of this particular situation is that only a vague amenity basis remains following the unraveling of the poor-quality economic evidence, and it is the sole remaining foundation for PC4/PC4A. Despite this Mr Bayliss recommends continuing on with the entire raft of proposed complex definition changes, activity standards and rules.

I submit that there are no such effects (eg, there is zero evidence relating to rural areas supporting the Farm Stay changes) that could in any way justify the huge regulatory Council interference that is being proposed, especially in rural zones.

I submit that the Commissioners are required by NPS UD 2020 to reject Mr Bayliss's request.

Pursuant to Resource Management Act Section 32 (2) (c) an Evaluation Report required under the Act Must:

"(c) Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions."

The information presented is very weak and does not justify the provisions in PC4, s 32 (2) (c) applies.

For example, there has been a total failure with regards to the specific rural community living under the ANC and Engine Testing Noise Contours (ËTNC") to assess the risk of acting or not acting with regards to Farm Stay. Unintended outcomes in the absence of evaluation are certain, hence this requirement.

It is submitted that this failure alone is fatal to that proposed change. A further Section 32 Report would need to be generated to carry out an evaluation on the risks of acting or not acting as the current documentation is silent on this issue.

There is suggestion that focus group data can be applied – however, this data is uncritiqued, and should be rejected.

I submit that Council has failed to provide any sound amenity evidence at all apart from what can only be described as fluffy comments.

Close The Gap

Mr Bayliss at page 8 point 2.2.1 of the Addendum to Section 42A Report, submits that the purpose of PC4 was and is to address gaps in the operative provisions addressing short term accommodation in the

Christchurch District Plan and a disconnect between the plan methods addressing short-term accommodation and their observed and likely effects on amenity in residential, commercial, rural areas and zones.

He indicates that this purpose is supported on pages 21-50 of the original Section 32 Report.

I submit that those pages do not support this "new" purpose of PC4. CCC has taken the opportunity to engage a new planner to try and shore up the mess. Mr Bayliss/CCC is well aware that the economic data has been debunked, and that there are no significant amenity, coherence, or character impacts.

For example, turning a few lines of what Farm Stay means into 84 pages of new definition and rules is not "gap closing" - it is a re-write, and rewriting of the District Plan by stealth is not permitted especially given the Judge led process that developed the existing Plan that was specifically designed to reduce complexity and increase understandability for the general public.

Mr Bayliss at 2.2.1 of S42A states:

"It is my analysis that the economic evidence is an important consideration for PC4, having regard to the efficiency and effectiveness of policies and methods for achieving the objectives required by the relevant section 32 tests in particular however the main reason for the Council proposing PC4 is not an issue of economic impacts. Consistent with the issues set out on pages 21-50 of the Section 32 report, the purpose was and is to address gaps in the operative provisions addressing short-term accommodation and a disconnect between the plans methods addressing short term accommodation and their observed and likely effects on amenity in residential commercial rural areas and zones."

It is disappointing to read this first statement when the economic data was shown to be neutral at best – but is acknowledged as important to achieving the Section 32 test. Logically therefore the Section 32 test fails.

We are then told **really** the entire purpose of PC4 is to fix loopholes in the District Plan.

In the middle of a housing crisis and pandemic and despite the NPS UD 2020 higher order direction permitting persons adversely affected by these crises to improve their economic social and cultural wellbeing - CCC has decided it's time to fix "loopholes" in the District Plan. Loop hoes that are "enabling" residential short-term accommodation which the CCC legally cannot shut down, (ref Archibald v CCC copy attached), and that are significantly enabling peoples well-being, yet CCC views as their highest propriety to shut down. What more proof of these parties having lost their way is needed?

As indicated in that decision at point {51} Environment Judge Borthwick in allowing the appeal made the following comment.

"A precedent upon which others would seek to rely may well be created based on the court's interpretation. The issue for the City Council; however is not that a precedent is created but that the use of existing dwellings for guest accommodation, including accommodation marketed through Airbnb, was **not** identified in the proposed plan as being a significant resource issue for the district. Consequently,

the plan provisions may not adequately respond to the demand for this activity. Rather than applying a strained application of the plan provisions, the City Council may consider front footing the issue meeting the demand through initiating a plan change that responds directly to any issue created by the same.

What I conclude is that the Christchurch City Council has taken up the Environment Courts offer by producing PC4!

The challenge for CCC is to provide evidence of the resource issue created by Airbnb demand that PC4 is alleged to be directly responding to. As outlined it has failed to provide any quality evidence of any issue.

As it regularly does CCC has then been encouraged to take the opportunity to also advance the CIAL régime as explained. In this case, exhibited by the Farm Stay and Resort hotel definition changes and other changes. All of which are intended to strengthening the air noise and engine testing contour activity avoidance régime based on the concept of noise reverse sensitivity.

A concept, that with regards to Christchurch International airport alleges curfew risk which when distilled amounts to a dishonest assertion for the need for protection. There is zero risk

With economic evidence debunked and no significant amenity evidence presented the wider Airbnb CCC asserted need for regulation fails. There is no evidence to justify the proposed extensive regulation.

With regards to the more seriously adversely impacted Community of persons living under the various Contours they are not even recognised by CCC as a community, there is zero evidence of how farm stays have any adverse RMA issues at all, Mr Bayliss for CCC indicates that amenity issues are negligible in rural zones, agreed. Additionally the required evaluation of the costs and benefits of doing nothing has been ignored with regards to this community. A fatal omission I submit.

An even larger evidential failure to establish any resource issue to justify the proposed changes exists with regards to these largely rural zoned activities.

I submit Commissioners should reject CCC's PC4/PC4A proposal to usurp the Environment Court discussion and ignore the higher order direction in order to close District Plan gaps based on an unsubstantiated unproven and indeed fanciful amenity issue assertion.

Farm Stay should remain as it is an enabled activity recognised as providing some balance between airport and affected land owner needs posing zero resource management threat to CIAL.

PC4 with regards to the identified contour abused community these proposed changes should be seen for what they are. A continuation of the systemic CCC governance failure aimed at furthering a perverse land planning régime that significantly benefits CIAL.

David Lawry