BEFORE THE CHRISTCHURCH CITY COUNCIL

UNDER the Resource Management Act 1991

IN THE MATTER Plan Change 4 to the Christchurch District Plan

---

SUBMISSIONS ON BEHALF OF CLEARWATER LAND HOLDINGS LIMITED

Anthony Harper
Solicitor Acting: Gerard Cleary
Level 9, Anthony Harper Tower
62 Worcester Boulevard,
PO Box 2646, Christchurch
Tel +64 3 379 0920
Email: gerard.cleary@ah.co.nz

---

1 INTRODUCTION

1.1 Clearwater Land Holdings Limited (CLHL) lodged a further submission in opposition to the submission by CIAL on Plan Change 4 (PC4).

1.2 CLHL owns land within the Special Purpose Golf Resort (Clearwater Resort) Zone ("the Clearwater Zone or the Zone). Because of its land ownership within the Zone, CLHL has a contractual entitlement or right to develop its land for a hotel or resort hotel bedrooms, subject of course to the provisions of the District Plan.

1.3 There are multiple other landowners within the Clearwater Zone who currently either occupy a residence, or who have established resort hotel accommodation in accordance with that term as defined in the City Plan, or its predecessor.

1.4 "Resort Hotel" is currently defined in the District Plan as follows:

Resort hotel

in relation to Sub-chapter 13.9 Specific Purpose (Golf Resort) Zone, means a hotel including any land and/or buildings associated with facilities or amenities that operate and are serviced regularly under a hotel management agreement or hotel lease, having for their primary purpose the attraction to, and/or accommodation of people for, conferences, visits or stays.

1.5 There are several differences between resort hotels and "residential activities", not least of which is the requirement for resort hotels to incorporate servicing requirements and a hotel management agreement or hotel lease. Further, the primary purpose of resort hotels is to accommodate people wishing to stay at the Resort for conferences, visits or stays.

1.6 Ms. McLaughlin's s 42A Report further discusses the differences between a golf resort environment and a residential suburban environment: *in terms of expectations of residential amenity and coherence because the majority of occupants are on holiday rather than permanent residents and because the sites are managed by the resort.* This analysis is supported.

CIAL's Submission

1.7 CIAL seeks that the Clearwater Zone be brought within the ambit of Plan Change 4. The particular changes it seeks are:

(a) An amendment to the definition of "Residential Activities" to include "Resort Hotels"; and

(b) An amendment to Rule 13.9.4.1 P9, which seeks that the maximum period of owner occupancy of resort hotel bedrooms be reduced from three months to 28 days in total per calendar year.

1.8 The net effect of the above amendments, if allowed, will be significant.

1.9 Should resort hotels be incorporated within the definition of "residential activities" it would then be included in the definition of "sensitive activities". In turn, this would trigger the avoidance policies of the District Plan which relate to the development of "noise sensitive activities" underneath the 50 DBA Ldn Contour. This of course could have potentially very significant implications for any consents which sought to develop resort hotel bedrooms at Clearwater Resort.

1.10 Embedding resort hotels in these definitions would also have significant implications for any future changes to the Clearwater Zone provisions, including a further plan change specific to the Zone or a review of the District Plan, due in approximately 5 years.

1.11 In addition, a further implication is that the relief sought would significantly restrict the maximum amount of time an owner (as opposed to a visitor) would be able to occupy a resort hotel from three months to 28 days in each calendar year.

1.12 CLHL opposes the relief sought by CIAL, essentially because its submission is not "on" Plan Change 4. Ms McLaughlin's s 42A report agrees. Accordingly, these submissions address the key issue of when a submission is to be considered "on" a plan change. In addition, the submissions traverse other issues raised by CIAL's submission, including the absence of any evidential basis for seeking to bring "resort hotels" within the definition of residential and sensitive activities, and the rationale for exempting the Clearwater Zone from PC4.

1.13 Finally, the submissions also address an amendment to the definition of "visitor accommodation" in the S 42A Report Addendum, which proposes to incorporate the term "resorts". This amendment, it is submitted, is also lacking in jurisdiction.

2 APPLICABLE CASE LAW

Whether a submission is "on" a proposed change

2.1 The bi-partite approach endorsed by the Courts to this question is essentially settled by the leading cases of *Clearwater Resort Limited v Christchurch City Council*[1] and *Palmerston North City Council v Motor Machinists Ltd*[2].

2.2 A useful summary of *Clearwater* and *Motor Machinists* can be found in *Palmerston North Industrial and Residential Developments*[3]

> *[35] In Clearwater, William Young J identified the preferred approach to determining whether or not a submission was on a plan as comprising two considerations:*
>
> *1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.*

[1] High Court Christchurch, AP34/02 and AP35/02, 14 March 2003
[2] [2013] NZHC 1290
[3] (2014) 17 ELRNZ 501

2. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.

[36] In Motor Machinists, Kós J adopted the approach contained in Clearwater and added (inter alia) the following observations:

[80] For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in Clearwater serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself 2 aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration.

[81] In other words, the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change … Yet the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no further s 32 analysis is required to inform affected persons of the comparative merits of that change.…

2.3 The High Court in *Motor Machinists* took a relatively strict approach to the above analysis[4], holding the submission process in Schedule 1 of the RMA "*is not designed as a vehicle to make significant changes to the management regime applying to a resource not already addressed by the plan change*[5]

2.4 In the present context, the above can be distilled to the following questions:

(a) What is the breadth of the alteration to the status quo in PC4? Is the management regime for the Clearwater Zone altered by PC4?

(b) Does the submission by CIAL address that alteration?

[4] A more liberal approach was taken by Whata J in *Albany North Landowners v Auckland Counc*il [2016] NZHC 138, where the High Court accepted that more wide-ranging changes to the Proposed Auckland Unitary Plan (PAUP) provisions, and flow-on amendments, were within scope of the relevant plan-making process. However, the key distinction was that Albany North Landowners concerned an entirely new, comprehensive proposed plan, as opposed to a discrete, limited plan change process (as Whata J made clear in that decision at [129]).
[5] *Motor Machinists* at para [79].

(c) Does the submission raise matters that should have been addressed in the s 32 analysis? If it does raise such matters, then it is **not** on the plan change.

(d) Are there parties not before the Panel who have been deprived of a real opportunity to participate in the PC4 process?

3 PLAN CHANGE 4 -SCOPE

3.1 Plan Change 4 (PC4) is intended to regularise the provision of short-term accommodation within a range of identified Zones. The Explanation to PC4 states:

Explanation

The purpose of Plan Change 4 is to: a. include provisions that more specifically and appropriately respond to demand for visitor accommodation in residential units. This affects zones that generally enable residential activities at present (including residential, rural and commercial zones and the Papakāinga/Kāinga Nohoanga Zone). The changes apply to both hosted accommodation ("bed and breakfasts" and "farmstays") and unhosted accommodation ("guest accommodation") in the current Plan; b. clarify the extent to which different types of visitor accommodation activities are subject to objectives and policies to primarily locate in commercial centres; c. better differentiate between residential and visitor accommodation activities including clarifying the activity status of activities like serviced apartments and other forms of short-term accommodation.

This Plan Change does not address the standards for visitor accommodation activities in the Specific Purpose (Golf Resort) Zone.

In parallel with this Plan Change, the Council is implementing the National Planning Standards definition of "visitor accommodation". This will replace the current definitions for "guest accommodation", "bed and breakfast" and "farmstay" in the District Plan. Consequential amendments from this change are noted in the text below for reference only. They are not proposed to have legal effect until the Plan Change becomes operative.

In summary, the Plan Change:

1. combines the definitions for "guest accommodation", "farm stay" and "bed and breakfast" into one definition ("visitor accommodation", relying on the National Planning Standards definition) and uses activity specific standards in the rules to differentiate between these activities;

2. amends the definitions of "residential activity" and "residential unit" to better differentiate these activities from visitor accommodation and to clarify the status of other types of short-term accommodation which may not be captured as "living accommodation" in the current definition including serviced apartments, house-sitting and home-exchanges.

3. includes amendments resulting from the broader scope of the "visitor accommodation" definition (which includes farm stays and bed and breakfasts whereas "guest

accommodation" specifically excluded them). Replacing the term means that definitions like "sensitive activities" that rely on the "guest accommodation" definition previously did not apply to farm stays and bed and breakfasts but now do, as do some of the transport standards.

3.2 And, in the s 32 Assessment, the scope of the Plan Change is described in the following terms:

Objective/Scope of the Plan Change

The Plan Change primarily seeks to clarify the provisions relating to visitor accommodation activities in residential units in zones that generally enable residential activities at present (including residential, rural, Papakāinga/Kāinga Nohoanga and commercial zones). It also seeks to clarify the extent to which different types of visitor accommodation activities are subject to objectives and policies to primarily locate in commercial centres. ***It does not address the standards for visitor accommodation activities in the Specific Purpose (Golf Resort) Zone .*** [Emphasis added]

3.3 The above Objective/Scope includes the following footnote:

6 The airport noise contours are anticipated to be reviewed in the near future and it would be more appropriate to assess the provisions for visitor accommodation in the Specific Purpose (Golf Resort) Zones in light of any changes arising from that review.

3.4 And again at section 2.5.3 of the s 32 Assessment:

The proposed Plan Change ***does not include changes to the provisions related to visitor accommodation in the Specific Purpose (Golf Resort) Zone****. These will be subject to the outcome of a review of the airport noise contours and can be reassessed in light of that review and the outcomes of this Plan Change.* [Emphasis added]

3.5 In my submission, the underlined extracts below clearly define the scope of PC4 as specifically and unequivocally excluding the Clearwater Zone. No changes to the management regime i.e. the objectives, policies or rules as they apply to Clearwater Zone are contemplated.

3.6 There can be no ambiguity therefore that the plain and deliberate intention of the Council was to exclude from PC4's consideration the provisions of the Clearwater Zone that relate to the use of resort hotels either for visitor accommodation or for the limited annual owner occupancy of these facilities.

3.7 In other words, the pre-exiting status quo as it relates to the Clearwater Zone is to remain unchanged under PC4. Accordingly, CIAL's submissions which seek to amend the Zone's management regime cannot logically be considered as "on" PC4.

3.8 Further, in my submission, there is no case law to support CIAL's apparent proposition that the scope of a plan change should be extended on the basis that limiting the effect of a

change to a specific zone or zones is unprincipled. That would be to introduce a new test which cannot be distilled from the cases outlined above.

3.9 In addition, the relief sought by CIAL includes an amendment to the Clearwater Zone provisions that is entirely unrelated to the provision of short–term accommodation. That is, by seeking to reduce the maximum time in which an owner can occupy a resort hotel has no connection with a plan change that seeks to both provide for, and regulate, the provision of short term visitor accommodation in specified Zones. The distinction between the two is obvious, as indeed should the distinction noted above between residential activities and resort hotels.

3.10 It is readily apparent from Ms Blackmore's evidence (para 71) that CIAL takes particular issue with a development at Clearwater which advertises the potential for a particular development at Clearwater to be used for both owner occupancy and visitor accommodation.

3.11 Indeed, this is the same development CIAL referred to in the Replacement District Plan process where it supported a three month limit on owner occupancy within the Clearwater Zone. That aside, Ms Blackmore does not clarify that this particular development was consented prior to the Replacement District Plan process i.e. where the different provisions of the City Plan applied, provisions that did not include the current three month limit on owner occupancy.

3.12 Accordingly, it is submitted that PC4 is not the appropriate forum for CIAL to raise compliance issues that arose many years ago.

3.13 In respect of the requirements under s 32 of the Act, for quite obvious reasons the s 32 analysis to date does not address the provisions of the Clearwater Zone, as they relate to "resort hotels" or otherwise.

3.14 The amendments to the Clearwater Zone sought by CIAL are not: *Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no further s 32 analysis is required to inform affected persons of the comparative merits of that change.…*

3.15 Rather they are changes which profoundly affect the owners of resort hotels. Accordingly, in order to effect the changes sought by CIAL, further s 32 analysis would have been required to inform property owners within the Clearwater Zone in order to enable them to be properly informed. That no such analysis has been undertaken further supports a submission that CIAL's submission is not on PC4

3.16 This leads to the final, natural justice, consideration set out in the case law i.e. the position of parties who may have been deprived of the opportunity to participate in PC4 process.

3.17 In my submission, the Panel can readily conclude that a property owner within the Clearwater Zone who had read the provisions of PC4 as notified would form a very clear view that because of the express exemption for the Clearwater Zone, PC4 would not affect

them in any way whatsoever. Logically, this would explain why no Clearwater property owners lodged a submission on PC4.

3.18 The only advice to Clearwater owners who were not submitters to PC4, but whose interests could be affected by the CIAL submission, was public notification that they could obtain a summary of the submissions made on PC4. There was nothing to advise potentially affected Clearwater owners that the submission by CIAL would affect their interests.

3.19 It is fanciful to suggest that a reasonable Clearwater owner would have thought it necessary to review the summary of submissions on PC4. The specific exemption for the Clearwater Zone is such that a Clearwater owner could not have fairly or reasonably anticipated a submission such as that lodged by CIAL.

3.20 From this author's experience, after advising CLHL that the Clearwater Zone was exempt from PC4, it was purely by chance that CIAL's submission was discovered just prior to the close of the further submission period. Limited time was available to alert clients and to obtain instructions to analyse the potential consequences of CIAL's submission, and to prepare a further submission. Another client, Eros Clearwater was also advised of CIAL's submission and chose to lodge its own submission.

3.21 Chance aside, the position for the vast majority of Clearwater owners is similar to the extent that they simply could not have reasonably expected the "out of left field" submission by CIAL, and therefore did not have any realistic opportunity to participate. Indeed, as non-submitters, they have no rights whatsoever to participate in any aspect of the process. They have no right to appear before you, and as a consequence, have no standing to appeal any decision you make to the Environment Court.

3.22 Accordingly, in my submission, depriving the majority of landowners at Clearwater this opportunity to participate is a further factor which strongly weighs in favour of a conclusion that CIAL's submission is not on PC4.

4 THE EVIDENTIAL BASIS FOR RESTRICTIONS ON RESORT HOTEL BEDROOMS WITHIN 50 DBA LDN CONTOUR?

4.1 Without prejudice to the primary submissions above, the following sections of these submissions address the lack of evidential basis for the relief sought by CIAL.

4.2 To begin, Issue 8 – *Infrastructure impacts* of the s 32 Assessment discusses very briefly some potential issues associated with visitor accommodation and strategic infrastructure.

Strategic Infrastructure

2.2.145 The District Plan includes a number of provisions to manage potential reverse sensitivity effects on the efficient operations of strategic infrastructure including Christchurch Airport, Lyttelton Port, and the National Grid and electricity distribution lines. This includes objectives, policies and rules managing the location of "sensitive activities"

(including residential activities and guest accommodation) and in some cases, requirements for noise attenuation or setbacks.

2.2.146 For example:

a. [Not quoted]

b. avoid new noise sensitive activities within the 50dB Ldn Air Noise Contour and the 50dB Ldn Engine Testing Contour for Christchurch International Airport except within existing residentially zoned urban areas or Greenfield Priority Areas (Strategic Directions Objective 3.3.12(b)(iii); Policy 17.2.2.10(c)(i));

c. prohibiting new noise sensitive activities within the Air Noise Boundary and within the 65 dB Ldn engine testing contour (Policy 6.1.2.1.5(b)(i)); and

d. requiring noise mitigation for new sensitive activities within the 55 dB Ldn air noise contour and within the 55 dB Ldn engine testing contour (Policy 6.1.2.1.5(b)(ii)).

e. [not quoted]

2.2.147 The purpose of these provisions for the noise contours and overlays is to manage the health and safety impacts including sleep disturbance for residents and visitors and to manage the risk that the operations of strategic infrastructure will be constrained by complaints about the noise levels.

2.2.148 While each individual visitor is staying on the site for a more limited time period than a long term resident, loss of sleep even in the short-term can impact on health and safety and visitors may be less accustomed to the noise than longer term residents. There is also a risk that a number of different guests complaining may lead to hosts lodging complaints about the noise levels.

4.3 The underlined statements apply to strategic infrastructure generally, and specifically reference the potential for health and safety impacts, including sleep disturbance. No further elaboration is provided within the s 32 document as to the level of noise from strategic infrastructure which may cause health and safety effects.

4.4 Moving from the general to the specific, where in the s32 analysis is the acoustic, psychoacoustic, or social impact evidence to support an application of these statements to visitor accommodation uses underneath the 50 dBA Ldn Contour?

4.5 As submitted above, given that the Clearwater Zone is exempted from PC4, there is no such evidence or analysis in respect of resort hotels. Indeed, there is a complete evidential vacuum in respect of all hosted or unhosted visitor accommodation options which may seek to establish within the 50 dBA Ldn Contour.

4.6 So, it is instructive to briefly consider the evidential context or background behind the evolution of the District Plan objectives and policies that seek the avoidance of "noise

sensitive activities" within the 50 dBA Ldn Contour. This background is gleaned from, amongst others, *Robinsons Bay Trust v Christchurch City Council* C128/07, as well as evidence presented during the Replacement District Plan hearings process.

4.7 New Zealand Standard NZS 6805:1992*: Airport noise management and land use planning* is an oft referenced starting point, its principal direction being that noise sensitive activities should be avoided underneath the 65 dBA Contour, and acoustic mitigation provided for noise sensitive activities under the 55 dBA contour. NZS6805 also provides that individual local authorities can introduce stricter land use provisions. It is this proviso which has provided the springboard for CIAL to promote the globally unique avoidance policies in the District Plan in respect of the 50 dBA Ldn Contour.

4.8 Over the years, including within the Replacement District Plan process, the overwhelming majority of the evidence supporting an avoidance approach has been on the impact of air noise on residential activities within the 50 dBA Contour. More particularly, the key focus has been on the potential amenity, as opposed to health effects of aircraft noise on residents within this particular Contour.

4.9 The evidence in support of avoiding residential development under the 50dBA Contour included overseas studies which indicated that approximately 10% of residents could be highly annoyed by exposure to aircraft noise at a level between 50-55dBA Ldn. A local social impact assessment undertaken by Taylor Baines in December 2002 (https://chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Exhibit-15-863-CIAL-2002-December-Taylor-Baines-Report-K-McAnergney-14-04-15.pdf) concluded that the equivalent percentage of residents in Christchurch might be higher (12%) than the global average, noting the average length of residence of those surveyed was 12.3 years[6]. Importantly however, no social impact assessment was undertaken in 2002 to assess potential levels of annoyance associated with visitor accommodation options located underneath the Contour.

4.10 In seeking therefore to incorporate resort hotels[7] into the definition of "residential activities", thereby triggering an avoidance approach from a policy sense, it is submitted as incumbent that the Panel has before it independent expert evidence of probative value which demonstrates an equivalent level of amenity effects associated with the transient use of resort hotels.

4.11 In terms of s 32 of the Act, in the absence of such evidence, the costs associated with imposing a policy of avoidance simply cannot be justified. The same logically can be stated in respect of *"farm stay",* "*visitor accommodation accessory to farming"* and "*visitor accommodation accessory to a conservation activity or rural tourism activity"*, all of which CIAL submits are sensitive to aircraft noise within the 50 dBA Ldn Contour simply because people may occupy such facilities for 28 days per annum.

---

[6] *Report on the Survey of Christchurch Residents' Experience of Environmental Noise, December 2002, at Para 9.*

4.12 In my submission, there is a clear potential for PC4 to result in an unintended consequence. That is, the overarching purpose of PC4 was to enable and regulate activities whose environmental effects, in particular noise, traffic movements and residential coherence are, as the Court found in *Archibald*[8], similar to residential activities.

4.13 One obvious enabling solution therefore was to incorporate limited use of short term accommodation into the definition of "residential activities", and to provide for the same as permitted activities. It is however an extremely long bow to draw to say that simply to define this limited use as a residential activity, it should necessarily be accepted that it is an activity which is sensitive to predicted future noise at the level that may at some future stage be subject to air noise levels of between 50 – 55 dBA. Evidence is required, as is a fulsome analysis under s 32 of the Act, none of which is before the Panel.

5 BASIS FOR THE CLEARWATER EXEMPTION

5.1 As noted above, the Council has made an explicit decision to exempt the Clearwater Zone from falling within the ambit of PC4, on the basis that:

The proposed Plan Change does not include changes to the provisions related to visitor accommodation in the Specific Purpose (Golf Resort) Zone. These will be subject to the outcome of a review of the airport noise contours and can be reassessed in light of that review and the outcomes of this Plan Change.

5.2 CIAL submits that this is unprincipled, and goes on to say that the plan change has no relationship to a review of the airport noise contours, nor do the rules in the Specific Purpose (Golf Resort). This latter statement should perhaps acknowledge the fact that the provisions of the District Plan for the Zone include limits on the quantum of resort hotel bedrooms that can be established as of right in the Zone, with a split between those which seek to establish underneath the 50 or 55 dBA Ldn Contours.

5.3 CIAL's submission on PC4 states that there is no basis for waiting to reassess the provisions applicable to the Specific Purpose (Golf Resort) Zone until the outcome of a review of the noise contours. CLHL's position is that there is a very clear basis for so doing, that being the inherent inaccuracy of the contours which, on the evidence available, are in dire need of review, and have been for some time.

5.4 In this respect, I refer to, the growth forecasts document prepared by Ailevon Pacific, and attached to Mr. Lawry's 24 September 2021 evidence: https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2020/PC4/Evidence-Sept/David-Lawry-CHC-noise-contour-traffic-forecast-considerations.pdf. I also refer to CIAL's own noise monitoring reports (https://www.christchurchairport.co.nz/about-us/sustainability/noise/noise-reporting/), which illustrate a marked decline in commercial aircraft movements at Christchurch Airport since 2004.

[8] *Archibald v Christchurch City Council* [2019] NZEnvC 207

5.5 The above documents can be contrasted with the growth projections on which the present contours are based i.e. Christchurch Airport was expected to reach its maximum capacity of 175,000 aircraft movements by 2040. These growth projections are indisputably inaccurate, and accordingly so are the contours on which they rely.

5.6 Indeed, this is confirmed by Ms Blackmore in her evidence at Paragraph 10.2, where she refers to the expected growth levels Airport Master Plan (2016) in the following terms:

10.2 Passenger Aircraft Movements to grow from 2018 levels of 72,000 movements … to 111,000 in 2040

5.7 Ms Blackmore omits to reference the following statement in the Master Plan 2016, at p.7:

It must be noted that the growth forecasts used are conservatively positive to make sure that long lead time infrastructure and land use changes are investigated in time for delivery.

5.8 The Alivion Pacific analysis essentially concludes that the conservatively positive growth forecasts in the 2016 Master Plan are not being, and will not be, achieved.

5.9 Accordingly, before imposing further costs, including opportunity and consenting costs, on landowners such as my clients (and indeed all other affected landowners wishing to provide accommodation options on properties within the 50 DBA Ldn Contour), it is submitted that there is no proper resource management justification for granting the relief sought by CIAL.

Reverse Sensitivity

5.10 It must also be remembered of course that the outward looking basis of the contours and associated provisions is said to be to protect the Airport from future reverse sensitivity effects associated with noise sensitive activities.

5.11 Reverse sensitivity is a product of the Courts, as opposed to being specifically recognised by the RMA itself. Reverse sensitivity has been defined as follows[9]:

Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: If the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

5.12 Applying the above definition, reverse sensitivity is therefore dependent on the following factors:

(a) There must be an existing established use which **is** causing an adverse environmental impact on nearby land;

[9] Bruce Tardy & Janine Kerr: *Reverse sensitivity – the Common Law Giveth and the RMA Taketh Away.* New Zealand Journal of Environmental Law, Vol. 3, 1999: 93-107

(b) There is an intended, benign use for this nearby land; and

(c) This benign use may lodge complaints, which may result in restrictions on the existing established use.

5.13 Applied to the circumstances of the Airport, we are not therefore dealing with reverse sensitivity of the type described above. Instead, we are dealing with air noise which **may** at some stage in the future cause an adverse amenity effect on land in proximity to the Airport.

5.14 The contour lines illustrated on planning maps identify where this potential air noise is predicted to occur by 2040.

5.15 If these lines are self-evidently inaccurate, it is submitted as unprincipled and unjustified to seek to further regulate or restrict activities that may **never** be exposed to amenity effects associated with air noise between 50-54 dBA Ldn. This is particularly the case where, as submitted above, there is no evidential basis before the Panel to support an assertion that activities such as resort hotel bedrooms are sensitive to noise amenity effects within the 50 dBA Ldn Contour, even if they were ever to occur.

6 S 42 OFFICERS REPORT – ADDENDUM

6.1 Mr Bayliss's addendum evidence includes the following definition of Visitor Accommodation:

Visitor accommodation includes hotels, resorts, motels, farmstays, bed and breakfasts, Motor and tourist lodges, backpackers, hostels, camping grounds, hosted visitor accommodation ~~in a residential unit~~ and unhosted visitor accommodation in a residential unit.

6.2 Given that the Clearwater Zone is explicitly exempt from PC4, there is no jurisdiction to include the (undefined) term *"resorts"* within this definition.

6.3 That fundamental submission aside, a foreseeable consequence for the inclusion of resorts in the definition of visitor accommodation is that future accommodation development at the Resort is likely to be assessed as to whether or not it meets exclusion (j) of the proposed definition of "Sensitive Activities", this being:

Visitor accommodation .. which is designed, constructed and operated to a standard to mitigate the effects of aircraft noise on occupants.

6.4 It is unclear how this exclusion is to be met.

6.5 Partial guidance as to the design and construction components of the Definition can be gleaned from Rule 6.1.7.2.2 *Activities near Christchurch Airport*, a rule which incorporates insulation requirements for buildings in order to achieve maximum indoor design sound levels. However, this Rule does **not** apply to the 50 dBA Ldn Contour and, as such, does

not impose any requirements for those resort hotels within the Clearwater Zone that are to be located within that particular Contour.

6.6 Further, there is no guidance as to what is meant by *"operated"*, although in her Paragraph 32, Ms. Blackmore appears to say that for buildings, *"designed, constructed and operated* means buildings which meet: "…*those acoustic standards.*

6.7 Given that all future resort hotels will be built to modern day standards of design and construction one could readily expect that any potential future noise effects will be mitigated. if the Panel find that the amendment to the definition of Visitor Accommodation is within scope, which is denied, certainty could be provided by inclusion of objective standards which resolve the meaning of: *designed constructed and operated"*.

6.8 That is on the further proviso that the Panel accepts that there is an appropriate evidence basis for concluding that visitor accommodation is sensitive to future noise that may occur within the 50 dBA Ldn Contour. To repeat however, no expert evidence has been filed to support such a conclusion.

G J Cleary

08 October 2021.