Air NOISE CONTOUR TIME LINE

PC 84

Contour Re-evaluation

ISSUES PAPER

Technical Support for R.B.M.

Contour ARGUMENT

By Dave LAWRY

Air Noise Contour development over-view.

The housing crisis has considerably altered the urgent need for safe land to be made available for development in and around Christchurch.

The land around the Airport is safe, highly desirable for residential, commercial and a wide range of other purposes but is locked out of any reasonable development process, with the major exception of commercial development by CIAL, by the current inefficient protectionist noise contour regime.

This regime is aimed solely at reducing Christchurch International Airport Limited (CIAL) business continuity risk regardless of the detrimental impact on Christchurch's wider development goals.

CIAL's major perceived risk is that of an Airport operational curfew, arising from noise complaints. The actual risk of a curfew ever being imposed by CCC on its owned company is zero.

The loss of ongoing rates revenue to CCC because of this policy is substantial and the social and economic costs to land owners living under the air noise and engine testing contour high. There is a total absence of the balancing of needs required and a very significant power imbalance between CCC, CIAL and these land owners fighting for their land use rights.

The purpose of the District Plan is to assist territorial authorities to carry out their functions in order to achieve the purpose of the Resource Management Act to promote the sustainable management of natural and physical resources.

Sustainable management is defined in Section 5(2) and in summary requires that natural and physical resources are managed in a way that enables people and communities to provide for their social and economic wellbeing. This is to be achieved while sustaining the potential of resources to meet future needs, and addressing adverse effects.

The reality is that land around Christchurch International Airport is being managed in a manner to enable CIAL's commercial property development

aspirations, and to restrict neighbouring land owner's land use rights through extreme "noise sensitive" activity exclusion policies.

The result has been an almost complete lack of residential development on land that is the safest and cheapest to develop in Christchurch.

The Resource Management requires the efficient and effective use of land. It also requires a balancing under sections 9 and 32 of the rights of land owners to be recognized and where regulatory intervention is justified a balancing of these land owners rights with the needs of others to be carefully considered.

As this paper will outline CCC has failed to undertake any balancing and has systemically used its power to ensure significant competitive development advantages upon CIAL.

Sustainable management within Christchurch must be viewed through the earthquake and housing crisis recovery lens and any analysis of whether the purpose of the Act is being met in any particular case must be cognizant of this recovery context. This is supported by Chapter 6 of the Canterbury Regional Policy Statement (CRPS) which together with other CRPS chapters is intended to meet the purpose of the Act. There is the clear intention to enable resource management decisions that are intended as a priority to enable and support earthquake recovery and rebuilding as a key resource management priority. This view is also support by LURP directions.

Region wide recovery priorities should come well before CIAL business continuity risk mitigation needs.

Land Planning Arena

CIAL earn most of their income from property management and development activities, not core aviation activities which are in decline. Through land planning benefits provided by CCC, CIAL aggressively restricts adjacent land owners from carrying out the very same activities they encourage their tenants too. The commercial competitive advantage they gain from restricting supply inside the air

noise contours and supplying the same restricted activities in the Council Approved Special Airport Zone is significant and perverse.

The provision of additional desirable and safe residential or commercial land is a recovery priority; it is also one of the many documented major failings of the Council Replacement District Plan. A plan so flawed that the authors of the 'Review of the development of the Christchurch Replacement District Plan', Peter Winder and Tanya Perrot concluded in August 2015, that, on balance CCC has not produced an effective plan for the Independent Hearings Panel to consider.

Extreme land use restrictions including a 50dBA noise contour that no other approving jurisdiction in the world sees as justifiable are touted by CIAL as being set in concrete.

This assertion is self-serving and incorrect.

Environment Court Decision No.C60/2004 is very clear that it did contemplate and allow for the 50 dBA noise contour to be revisited. At page 22 of that Decision under the heading Conclusion, point [64] (5) it states): "These options apply to both the landowner and the airport. If the 50 dBA Ldn noise contour restrains the land owner at all it does so only in a temporary sense. The policy can be changed in the future to realise the potential for any appropriate development."

The issue is that both CIAL and CCC work to ensure that the actual validity of the air noise contours especially the 50dBA Ldn contour never comes on scope in any plan change. As a result the actual justification for this noise sensitive activity exclusion rule does not get tested. Additionally the second arm of New Zealand Standard NZS 6805: 1992 Airport Noise and Management and land Planning is never been implemented. What is the total noise limit that CIAL can produce? The balancing of Airport and adjacent land owners land use needs is never actually given any real effect too. There is no balancing at all with extreme land use competitive advantages in favour of CIAL being the well-established norm as will be identified.

There is a very significant power imbalance between land owners living under the various contours and CCC, this has led to a high level of arrogance and I submit bullying of land owners seeking to carry out activities on their land.

CCC sets the land planning agenda and the process. Land owners are regularly not even informed of land planning changes, let alone being activity included. CCC routinely expends a large amount of funds on legal opinions as to what activity is or is not noise sensitive. CIAL seems to have an extraordinary ability to influence land plan agendas and content. In my view the use of rate payers funds to ensure further contour activity protection to the disadvantage of those rate payers is yet another conflict of interest and governance matter not being managed.

The Plan change submission process is challenging for most lay persons even if they do become aware of what is proposed to be taken from them. Planning and legal expert assistance is necessary the costs of which are so prohibitive as to exclude most land owners from effectively engaging, all factors well known to CIAL and CCC.

One example exhibits all the above behaviours.

The “Experts Agreement” required air noise contours to be re-evaluation every ten years. CCC is tasked with ensure accurate information informs land planning decisions.

Yet CCC have refused to carry out the required re-evaluation of the air noise contours ensuring inaccurate land planning data continues to drive land use consenting processes to the competitive advantage of property management aspirations of CIAL, and disadvantage of all those land owners living under the grossly inaccurate air noise contours.

CIAL regularly seek definition changes and other plan change requests aimed at reducing any exclusions to the noise sensitive rules. For example the ‘Farm Stay’ residential definition exclusion from the ‘noise sensitive’ definition faces an attempt in Plan change 4 being heard in September 2021 to change it into a Hosts accommodation definition. This activity would then be captured by the noise sensitive activity definition thereby enabling CIAL to have such activities excluded.

As is the norm affected persons were not notified. The Bond example identifies the extent CCC goes to in providing the competitive advantage to CIAL in this case by reducing supply of accommodation refer the Bond example.

CIAL are aggressive in rejecting applications for virtually any activity they deem to be noise sensitive under the air noise contours. More recently increasing their focus on the activities being requested too council by land owners living under the 50dBA Ldn air noise contour.

The process as to how this power is welded is interesting. Land owners requests for land use resource consents are regularly supplied by CCC to CIAL. This is in my view a blatant breach of privacy issue. CIAL then will either outright oppose the requested application or enter into all sorts of deals with the persons making the application. CCC enforcement acts to bully the process. (Refer David Wilson example) and (Monique Bond example)

As already stated CIAL earns more from its property development and management activities than it does from core airport related operations. When viewed from this context significant conflict of interest risks arise when they are regularly provided with land planning resource consent application information and have the power to generate significant costs to those land owners resource consent possibilities should they choose to oppose. The stance is often one of total rejection and then dealing.

Yet their own land developments costs are slashed as is public scrutiny of those developments by CCC provided out-line consenting processes with regards to Dakota Park. All based on the incorrect assertion that land falls under an “Airport Purposes” designation which is factually incorrect (refer Designation Issues paper).

CCC further compounds their conflict of interest failures by refusing to investigate this incorrect designation “activity purpose” challenge, despite repeated requests to do so since 2015.

It has reached the stage where CCC front counter personal advice to land owners is to seek CIAL approval before they even try to progress development under any

of the air noise and engine testing contours. This in my view raises the real risk of corrupt practices and is an abuse of power.

Viable alternatives that allow development under the 50 dBA contour and provide reasonable curfew risk management to CIAL are available. CCC and CIAL again will not facilitate this discussion which never comes on scope.

The reality is that CIAL covets this power position its owner has gifted it.

An agreed legal process of land owners living under the air noise contours "contracting out" of being able to make aircraft noise related complaint is one viable solution; to date it has not been objectively considered as a solution. This option is outlined in more detail later in this paper.

Re-evaluation of Air Noise Contours

Not only does CIAL and CCC take the stance that air noise contours cannot be challenged they also refuse to re-evaluate them as required.

Prior to my investigation into noise contours in 2013, and eventually my obtaining of the 'Experts Agreement' documentation through the use of formal information requests, the actual existence of the agreement to re-evaluate the contours every ten years, was not even hinted at in any Council planning documentation. Initial enquires met denials it even existed. It is my firm belief that CCC's intention was to bury this requirement. CIAL are the only beneficiaries from such an intention.

Council legal representatives initially indicated that the agreement was not binding on them. During the 2016 Judge led Independent Christchurch District Replacement Plan (RDP) hearings both CCC and CIAL indicated to that judge that they envisaged carrying out this re-evaluation in 2017 or 2018 but that they did not wish any commitment to do so, to be included into the RDP.

A certain re-evaluation outcome would be to remove safe desirable land from the 50dBA contour restrictions, presenting an opportunity to further recovery developments.

Yet CCC shows no appetite to progress this matter at all let alone urgently.

In 2015 I raised this re-evaluation topic in Plan Change 84, CIAL legal representatives raised scope issues and it was not progressed.

In 2016-2017 I led a submitter group that submitted to the judge led Replacement District Plan (RDP) on this re-evaluation topic. CCC and CIAL indicated to Judge Hansen they envisaged carrying out the re-evaluation in 2017-18. Misleading and never carried out.

In January 2018 I submitted on the same topic before the Government appointed ECAN Commissioners with no outcome.

In 2021 affected land owners approached ECAN again. We are advised they have required CIAL to carry out this re-evaluation by July 2021 and have budgeted funds to peer review CIALs results time will tell.

The re-evaluation is 5 years overdue and the current contours driving the current Plan are 15 years old and totally inaccurate as I will now prove.

The methodology and required software is fully developed and ready to accept available input data, the independent oversight, that obviously is needed, is available in the form of John Paul Clarke who chaired the original modeling expert panel. Clarke or some other totally independent acoustical expert needs to be engaged. The entire re-evaluation could be completed within several weeks, would undoubtedly free up a large amount of safe land for recovery, and indeed may go some way to addressing Council's reputational failures.

I submit that at the very least, land owners adjacent to the Christchurch International Airport (CIA) impacted by the current air noise contour lines and associated and growing extreme restrictions have the absolute right to have restrictions based on accurate contour data.

Air Noise Contour data input variables

The two major data inputs used in the modeling that generated the current contours are aircraft fleet noise profiles of the planes actually flying into and out of Christchurch International Airport (CIA) and the projected number of commercial aircraft movements assessed at the full capacity of (CIA).

CIAL initially argued that this capacity figure should be set at 225000 air movements, this was seen by the experts as exaggerated. The agreed figure of 175,000 air movements was used in the first modeling process in 2007 as the absolute capacity the Airport runways could cope with. This assessment included assumptions that then indicated runway extensions would be undertaken, and that both runways could be used simultaneously. Some 15 years later the indicated runway extensions have not been completed and for safety reasons simultaneous use of both runways is not permissible. As a result of this and other factors the capacity figure is exaggerated. It needs to be independently evaluated and that new revised down capacity figure inputted into the calculations.

The second major variable is the aircraft fleet noise profiles relating to the current fleet of planes flying into and out of (CIA). Every aircraft that made up that fleet of aircraft that contributed to the noise profile variable that was used in 2007 has been retired from service into CIA and has been for years. They included the 777-300 aircraft as one example. Every plane in that fleet was much nosier by orders of magnitude than the current aircraft fleet flying into and out of CIA. It is also very clear that aircraft will continue to become quieter in the long term as ethical jurisdictions demand adherence to noise pollution reductions.

Inputting current aircraft fleet noise profiles into the model, with no other changes, would significantly reduce the present contours. Using an accurate airport capacity figure would generate even further contour reduction.

Assertions to the contrary are simply self-serving and dishonest.

CIAL repeatedly exaggerate their growth projections.

The question as to way this private company via the existing model is provided with land use contour protection today, at airport total capacity movement levels that will never be achieved, is another question that needs to be objectively asked.

To not do so rejects any balancing of competing needs required in by the RMA.

To continue to have extreme, exclusionary restrictions placed unnecessarily on land is both ineffective and inefficient in terms of the RMA and contrary to the LURP in that such actions actively suppress earthquake and housing crisis recovery opportunities.

CCC and CIAL at the Replacement District Council Plan Hearings submitted that the hearings panel could not make directions that go against Regional Council Policy seeking to further stall this re-evaluation.

All CCC needed to do is simply talk to the other Councils that make up the Regional Council and reach agreement. CIAL business continuity risks concerns are being put ahead of earthquake and housing crisis recovery requirements.

Remember this entire regime is designed to reduce a curfew risk that is on any objective assessment nonexistent.

Plan Change 84

Plan change 84 was to provide a clear policy framework for the Special Airport Zone (SPAZ) and clarity over what activities are anticipated to occur within the zone (not including those provided for by the designation of the land for Airport Purposes. (Para 2.3, s42 report).

In order to provide planning direction for recovery a list of priority development areas had been identified. The Regional Policy Statement Policy 6.2.6 (3) required new commercial activities to be "primarily directed to the Central City, Key Activity Centres and neighbourhood centers" Policy 6.3.1. (6) Under this objective stated "avoid development that adversely effects the function and viability of pubic investment in the Central City, Key Activity Centres".

Development outside of those areas was to be discouraged.

CIA was not identified as a Key Activity Area.

CCC and CIALs challenge therefore became how to circumvent these intended development restriction thresholds to the benefit of CIAL's development aspirations. The CCC engaged consultant MS O'Callaghan who was the author of

the Section 42A report for this plan change, she warned that any outcome qualification if used at all should be set at a low level threshold on the grounds that retail development at CIA if enabled could erode benefits of those activities occurring in the Key Activity Centers and other retail locations. She was ignored by CCC and CIAL.

How this desired change was achieved, played out in the closing, post adjournment hearing stage of Plan change 84, a review of the activities allowed in the Special Purpose Airport Zone; (SPAZ). I just so happened to be present.

For clarity the following background is provided.

Principle Planner for the Canterbury Regional Council Michael RACHLIN at 2.13 of his submission to the initial PC84 hearings had indicated that the restrictive Management regime for the Airport development precinct was **intended**.

“Its aim is to protect the higher order strategic frameworks that inform the recovery of the Central City and key activity centers, and that promoted appropriate distribution of commercial and industrial activity across the city in order to achieve urban consolidation and wider recovery outcomes. It is meant to safeguard development and recovery aspirations of others outside of the CIAL. To try and ensure a more level development arena, one that does consider others.”

The priority areas are the City Centre, Key activity areas, suburban area centres and Greenfield industrial areas. CIAL is not identified as any of these priority development areas.

What actually happened as I witnessed, was a discussion between the CIAL legal representative Appleyard and CCC legal representative Scott who indicating to the Independent Commissioner heading PC84, Paul Thomas that an agreement had been arrived between CCC and CIAL whereby Christchurch International Airport was to be granted a quantifier to the intended development restrictions. Further that CCC and CIAL were in full agreement on this point. No Regional Council representative was present.

This discussion indicated that CIAL was to be enabled to attract and progress development to the level that it "significantly adversely effected" development in the Central City, Key Activity and other prioritized development areas, before their development was to be discouraged.

Comments I raised at the time that time that this threshold was far too high and should be reduced to a minimal adverse impact level were simply ignored.

Given the legal status of PC84 findings this outcome became locked into the Replacement Council Plan in direct contradiction to the Regional Councils intentions and to Ms. O'Callaghan's warnings

The impact of this deal was to totally circumvent the prioritization process effectively elevating CIAL to a Key Activity Status.

I submit this is another example of CCC bias towards delivering extreme competitive advantages to CIAL by way of land planning advantages. The competitive advantage provided to CIAL of this change is huge; it was free to ignore the intended development priorities and was effectively raised to the level of a key activity centre.

Any objective assessment of the resulting developments in Dakota and Spitfire Park would conclude that very significant development was pulled away from the CBD and Key activity areas.

Air Noise Contour Time line

I will articulate how the air noise contour process came into being and why.

CIAL have always had a major fear of curfew constraints to its core aviation business.

This fear was made obvious in submissions made in Council Plan Decision 2 in 1998. This decision document informs the rationale used by CIAL and CCC in adopting the noise contour process that currently exists from a list of six alterative options aimed at ensuring the ongoing development of CIA without any risk of curfew.

I refer you to point 2.18 at page 9 of that decision which states:

2.18 Below this are the "environmental results anticipated" for this zone. These include the following:

(a) The operation of activities within the Rural 5 Airport Influences Zone, in a manner which maintains the continued safe and **uncurfewed** operation and development of the International Airport.

(b) Some adverse environmental noise effects associated with the proximity of aircraft operations and associated activities at the airport, with gradual use of quieter aircraft but with substantially greater numbers of aircraft movements.

(c) A level of intensity of land use and activities future subdivision activities within this zone, so as to ensure that neither of these leads to demands for **curfewed** airport operations.

(d) Recognition of the likely airport noise environment and achievement of noise insulation as a means of ensuring adequate mitigation of adverse environmental effects which might otherwise be experienced by residents in this zone.

Some land in the zone is outside the 50 dBA noise contour.

With regard to Rural 5 land at 2.17 of this document it states.

The zone's purpose is primarily the continuation of farming activities while managing land activities to avoid compromising airport operations and development.

At Point 2.2 of the same document under the heading **Background and context of Plan Provisions- Airport Noise** CIAL representatives stated that in the year to the end of June 1996 there were 83,815 scheduled aircraft movements and 50,670 general aviation movements.

At this time CIAL gave evidence that the number of scheduled aircraft movements were expected to grow very dramatically at Christchurch International Airport (CIA) while acknowledging that the noise from each individual scheduled flight event would decrease significantly.

This expected noise decrease, was due to noise complaints resulting in curfew rules in many of the world's airports that were driving designers and manufacturers to design and build much quieter aircraft. A positive outcome from curfew rules.

The current contour lines where generated in 2007 by an expert panel of noise specialists. This occurred as part of the process in determining several appeals against the proposed Selwyn District Plan. Prior to this the then existing noise contour lines projected by CIAL and adopted by CCC were so large that effectively large parts of what is now Rolleston township fell under the 50 dBA noise contours, thereby totally restricting residential development.

The appellants engaged internationally recognized noise experts to support their argument that no noise harm existed especially at the 50dBA levels and that the CIAL data was simply flawed. This included Prof CLARKE who this submitter group has engaged. CIAL realizing that their previous projections, that had determined the then huge noise contours, were at real risk of being exposed as flawed, reluctantly agreed to a deal. This deal took the form of a three day workshop attended by the high quality internationally recognized noise experts engaged by the appellants and CIAL engaged noise experts. The result was an agreed set of assumptions on which the current contours were modeled and developed. The result was a very significant shortening of the contours with some widening closest to the airport itself. Overall the contours were reduced by approximately 23%.

One outcome was increased residential development in Rolleston. No adverse effects have impacted on CIAL as a result.

As part of that deal the parties including then Regional Council, CCC and CIAL agreed to review the assumptions using the same input types but with the latest accurate data using the latest version of the modeling software originally used, and to do so every ten years.

Hence this is remodeling was due to be carried out 2017. (refer Executive Summary; page 2 Expert Panel Report 31 January 2008 and Appendix D of the

Environment Court decision document headed Expert Panel Agreement on page 2 point 7(a) titled District Plan Review. Note the report is 2018 the experts agreement was signed in 2017.)

It states:

7 a) It is recommended by the panel experts that the noise contours be remodeled every ten years and that all interested parties (e.g. Christchurch City Council and District Councils, Regional Council and CIAL) engage a team of experts to review the INM data using the latest version of the INM.

7 b) between each of the remodeling exercises it is recommended that the City and District Plans contain the previously modeled contours.

This agreement is signed by Chris Gay for CIAL, Kevin Bethwaite for Airways NZ Council representatives and representatives of Fosters and Nimbus the 23rd of October 2007.

Alternative Policy Approaches to Protect CIAL

Council Decision Number 2 titled Christchurch International Airport and Airport Noise Issues heard by Commissioner David W Collins in 1998 looked amongst other things at a range of six options designed to mitigate complaints that could led to curfews that were initially proposed. These options are articulated at points 2.37 to 2.45. On pages 14-17 of this Council Decision

Options ranged from doing nothing, adopting curfew or restricted operations, purchasing land, which CIAL has been active in doing for many years that and requiring further land by way of designation were all submitted and rejected on what could be seen as reasonable grounds .

The fifth option, the imposition of a “non-complaint” clause however caused the presiding Commissioner to make the following comment

“It may well be useful as a technique for individual circumstances but I am not convinced that it is a sufficient permanent safeguard, given the importance of uncurfewed operations and the likelihood that noise will increase.”

Importantly a significant reason for rejecting this **useful option,** "the likelihood that noise will increase" has now some seventeen years later proven to be incorrect. That likelihood was founded on inaccurate data relating to the number of scheduled flights principally and secondly the underestimated reduction of noise generated per flight, as already canvassed in this paper.

Existing case law has established that the imposition of a "non- complaint" clause **is lawful:** refer (AP190/96) and "BC and BK Rowell V Tasman District Council High Court (AP16/95).

Therefore the only remaining impediment to implementing this approach to the management of airport aircraft landing and taking off operations is the question is it a sufficient permanent safeguard against CIAL feared curfews?

The benefits of adopting this option now are overwhelming.

It would remove the entire noise harm debate and costs. Free up the safest land for development. Provide CIAL with curfew protection. Balance land owner land use needs with CIAL needs. Stop pushing development to Rolleston with the associated road congestion outcomes. Remove the noise sensitive activity ongoing legal costs. Address conflict of interest issues. Provide significant rate revenue to CCC. Address the competitive advantages CCC are perversely providing CIAL and be ethically sound and effective and efficient as the RMA requires.

Alleged Noise Harm/Annoyance Justification

The existing process is based on alleged noise harm even at the 50dBA level. Noise harm at these levels is a myth as proven by the existence of the preschool with its open air facilities in what was situated until 2020 in the 65dBA contour within the SPAZ. A preschool attended by the children of many CIAL executives and employees. Not a single child has in anyway been harmed by airport noise at this safe and well run facility.

This harm myth was dishonest. CIAL has moved away from the discredited noise harm assertion to now asserting an outdoor amenity affect risk. Prof CLARKE exposes this is also as being a fatally flawed assertion as the background noise

over much of the land under the 50 dBA already exceeds 50 dBA, again with no adverse harm effects. The argument seems to be that person doing outside activities will be sufficiently annoyed by aircraft noise in the 50dBA so as to be motivated to complain in such numbers that CCC would be motivated to generate a curfew. As the background noise already exceeds 50 dBA and has not generated a land slide or even minor number of complaints the validity of the outdoor amenity risk argument fails

Adoption of the “no complaint” process eliminates the need for perpetuating this myth. While I accept that following numerous Court decisions the curfew risk argument initially submitted by CIAL has morphed into a noise harm mitigation debate both are inherently dishonest and can be managed in far less restrictive and more transparent policy model that enables land use not restricts it.

Interestingly airport noise impacts widely over existing intensive urban residential properties; no call for curfews from these potential complainants has resulted. The air noise contours go down Memorial Avenue to the University of Canterbury just west of Hagley Park.

Why is it that the restrictions are totally focused on restricting rural intensification of activities when existing intensive urban development has not generated the feared land slide of complaints that could led to curfews.

Strong evidence I submit that current processes are myth based but one that suits CIAL and CCC business development aspirations.

The existing process has led to huge levels of litigation, which will simply be ongoing. The “no complaint” option would remove the need for litigation it would be seen as fair. It would provide clarity with regards to development around the airport while completely changing what is fast becoming a volatile relationship between adjacent land owners and CIAL and CCC.

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