

Legal Submissions to Proposed Plan Change 4A from David Lawry Submitter FS1

- 1) CCC can and has delegated its duty to ensure bias and due process failures are not impacting on this Council initiated process. The panel once delegated this duty must make that assessment for itself before proceeding. The panel has been supplied a wide range of detail alleging bias and governance failures have and do exist in past and this process. The latest is outlined in my report to the Chair dated 15/10/202. Failures that have led to an extreme land planning and pollution enabling régime. It is asserted that PC4 seeks to reinforce and extend that perverse régime. The sought remedy is requiring a 42A report on these assertions. Past behaviours do predict future behaviours in my expert opinion there is a clear modus operandi of bias with CCC enabling CIAL.
- 2) The original Purpose of the Plan change as advertised indicated it was a plan change relating to short term accommodation not residential accommodation. This is acknowledge in Ms Appleyard's legal submissions dated 8 October at: 13.1 where she states "... in substance the activity is residential in nature albeit that the proposal is for transient accommodation". The Specific Purpose (Golf Resort) Zone (Golf Zone) was specifically excluded from Plan change 4 when advertised. Yet has been included. Mr Bayliss at point 2.2.1 of his S 42A report states that PC4 "is and always has been to address gaps in the Christchurch District Plan addressing short term accommodation". If that was the case why was this not clearly advertised as the Purpose?
- 3) As a direct result of the misinformation about the purpose of PC4, persons who reasonably should have been put on notice and motivated to submit to PC4 have been rendered unaware or able to reasonably assess the risk of potential adverse impacts on them arising from this Plan change. As a result many significantly adversely affected persons have been blindsided have not submitted, and are therefore excluded. This fails not only natural justice but the RMA requirements. Transparency, affected person input has been intentionally avoided.
- 4) Residential activities and the Golf Zone have by way of "manipulated" definition changes been sought to now be on Plan change 4, as have the air noise, engine testing contours and reverse noise sensitive régime. CIAL noise sensitive activity removal now dominates PC4 for the community living under those contours. The latest activity to be excluded, with no previous announcement nor supporting RMA relevant evidence as to why that activity would be likely to increase curfew risk is "visitor accommodation in a heritage item". (Bayliss Rebuttal evidence at points 7.11.) It is submitted that this and the other CIAL régime enabling changes in Rebuttal evidence late in the process are in breach of the process rules and must be rejected.
- 5) Purpose confusion is compounded by a total evidential failure to provide certainty about the subject matter of the provisions. In such circumstances RMA Section 32 (2) dictates that an evaluation report **MUST** assess the risk of acting or not acting. With regards to the impact on the community of persons being drawn into the reverse sensitivity regime the Section 32 evaluation report is silent on Farm Stays. Using the current definition. This required risk assessment has not been carried out. Unintended outcomes as a result of this failure are certain. It is submitted this is a fatal omission that negates the Farm Stay provisions being progressed in the absence of a further section 32 evaluation addressing this specific risk assessment. Either drop Farm Stay or carry out the required evaluation.

- 6) The CIAL/CCC assertion is that because of the definition changes and the Archibald ratio these factors alone equate to the logical presumption that the Farm Stay activities are then captured by the reverse noise sensitivity régime. This is flawed logic. There is no evidence at all supporting any increased risk of complaints arising from the three activity exemptions contained in the Farm Stay definition that are brought on simply by that activity being viewed as residential in nature. How they are defined in this context does not alter the need to provide evidence of some RMA adverse impact it does not change the amenity or character expected. As accepted amenity has less impact in rural settings. NPS-UD 2020 requires enabling not exclusion.
- 7) No, coherence or character evidence is presented at all. The evidence of amenity affects is so poorly presented as to be negligible especially in the Farm Stay rural context. NPS UD took effect from 20 August 2020 it requires the Panel to relegate amenity road blocks behind directed goals of enabling and enhancing diverse accommodation supply. As a result weak amenity evidence, the last remaining pillar being used to try and justify PC4 and the raft of complex new definitions and provisions is in direct contravention of the NPS- UD. Canterbury Regional Council and CCC is a tier one local authority it must give effect to the provisions by changing their regional policy statements and district plans to give effect to the NPS-UD as soon as practicable and by 20 August 2022 have notified plan changes implementing intensification polices. The very clear direction is to enable accommodation capacity the very activities Farm Stay provides. It requires Councils to remove overly restrictive rules which PC4 is trying to introduce. Specifically relegating amenity road blocks behind the enabling goals. The standard also sits inside the wellbeing framework which is to enable economic social cultural activities to assist the housing and pandemic recovery. The remedy sought is that PC4 which is aiming to do the opposite be rejected not only on this breach but also the total lack of RMA evidence to justify the regulatory intervention. Even strong amenity evidence is subjected to relegation but in this case the evidence is so weak as even CIAL has failed to find an expert witness to support it exists at any level.
- 8) Attached is the Treasury SOE direction specific to CIAL Board Chair Catherine Drayton dated August 2021. Enabling small businesses enhancing social and economic recovery and abiding by the wellbeing focus are all directed to the Board as being required. Under the **Tarras Investment Project** heading the direction is crystal clear: “in developing the proposal we expect CIAL to engage and work closely with affected communities and stakeholders, treating them with respect and understanding and listening carefully considering the issues they raise.” CIAL are told to uphold the social license and reputation of the company as an important firm. The owner’s expectations are clear and I submit apply equally to our affected community. Plan change 4 and for that matter the indefinitely adjourned Plan change 5 and evidence of the régime indicates a radical departure from what is expected.
- 9) Legal manipulation of definitions seeking to evoke the lawyer generated reverse noise sensitivity context alleging the need for CIAL curfew protection at 50/55 dBA Ldn levels **is dishonest**. This hearing has a balance of probability evidential threshold. I submit the evidence before you achieves a beyond reasonable doubt threshold in asserting there is no need for operational continuity protection. CIAL control the complaints process and as a direct result of that perverse process there is zero possibility of a curfew. CCC and CIAL are lying to you!

The Treasury

Letters of Expectation Information Release

August 2021

This document has been proactively released by the Treasury on the Treasury website at

<https://www.treasury.govt.nz/publications/information-release/shareholder-expectations-letters-2021-22-information-release>

Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

[23] 9(2)(a) - to protect the privacy of natural persons, including deceased people

[39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

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Hon Dr David Clark

MP for Dunedin

Minister of Commerce and Consumer Affairs
Minister for the Digital Economy and Communications
Minister for State Owned Enterprises
Minister of Statistics
Minister Responsible for the Earthquake Commission



Ms Catherine Drayton
Chair
Christchurch International Airport Ltd
[23]

Dear Ms Drayton

2021/22 OWNER EXPECTATIONS FOR CHRISTCHURCH INTERNATIONAL AIRPORT LTD (CIAL)

I am writing to outline the matters that we expect your board to address in the 2021/22 business planning round.

Government priorities and the response to COVID-19

The COVID-19 pandemic brought unexpected challenges for all New Zealanders. The response to COVID-19 will be of central importance in the coming year. The Government has three overarching objectives: continuing our health response to keep New Zealanders safe from the virus, accelerating the economic recovery from COVID-19 and laying the foundations for a more sustainable and equitable future.

Investing in critical infrastructure and public services will be important to our economic recovery, along with a focus on renewable energy, waste reduction, sustainability and pursuing carbon neutrality in light of the challenges caused by climate change. The Government will also be focused on supporting small businesses, training and job creation opportunities for workers and businesses, and delivering programmes to bolster New Zealand's exports.

Companies and entities that are owned by the Crown will play a role in supporting the response to COVID-19 and social and economic recovery. During 2020 Crown entity and company boards outlined the challenges that they have faced and the strategies that boards have adopted to respond. We expect that you will continue to advise Ministers this year, well in advance of any emerging issues.

The responsible management of Crown-owned company assets and finances, including sound investment and careful control of debt, can also make an important contribution to the COVID-19 recovery ambitions of New Zealanders.

Through the evolving and uncertain COVID-19 environment, we expect that you will continue to focus on your ongoing viability and provision of goods and services. In doing so, we ask that you consider the impact of your decisions on your staff and suppliers.

This letter contains the following information:

- Ministers' specific expectations for CIAL;
- general expectations for companies and entities that the Crown has a shareholding in; and
- timeline for the 2021/22 business planning process and governance information (Annex 1).

Entity-specific expectations

Prudent Fiscal Management

Shareholding Ministers note CIAL's focus to ensure the airport not only survives the effects of COVID-19, but also thrives from it. We endorse your focus on restarting your core airport operation in the current year and recovering profitability by increasing air traffic volumes in the next financial years.

We expect you will make prudent fiscal management decisions to ensure CIAL achieves its strategy. Should the recovery of the airport's financial situation is more positive than expected, we expect the Board to give proper consideration to returning any surplus funds through a dividend process.

We also confirm the previous Government's long standing expectation to be informed prior to any material changes that affect the financial performance of CIAL and announcements being made public.

Tarras Investment Project

We acknowledge CIAL's operational decision to invest in land purchases in Tarras with the intention of establishing an international airport in Central Otago. We expect CIAL to keep its shareholders fully informed, so that we can clearly understand CIAL's plans, including the next steps it intends to take at each stage of this proposal, and the likely timetable for those steps.

We expect CIAL to not only make financially prudent decisions with regard to this significant proposal, but also, throughout the development of the proposal, to uphold the social license and reputation of the company as an important New Zealand firm and one of New Zealand's key transport gateways. In developing the proposal, we expect CIAL to engage and work closely with affected communities and stakeholders, treating them with respect and understanding and listening to and carefully considering the issues that they raise.

General expectations

The Treasury released an updated Owner's Expectations document in April 2020 (www.treasury.govt.nz/publications/guide/owners-expectations). The document sets out Ministers' expectations on matters such as information-sharing and engagement with the Treasury, board evaluations, thresholds for consultation or approvals for significant investments, and timeframes for reporting and business planning documents. Some key expectations are reiterated in this letter below.

We ask that you circulate this document to all directors on your board so that they are aware of and understand the frameworks and expectations unique to Crown companies and entities.

Well-being focus

Ministers expect all boards to be cognisant of the Government's focus on well-being. The Government's wellbeing approach is based on a balance of the four capitals in the Treasury Living Standards Framework – Financial, Human, Natural and Social Capital. Boards should consider and reflect the broader impact of their decisions and initiatives in planning and performance reporting. In this respect, some important aspects include corporate social responsibility and acting as a good employer, particularly if boards need to make decisions to respond to commercial or financial challenges such as the impact of COVID-19.

Capital structure and dividends

Where appropriate, boards are expected to return any surplus capital to the Crown so that it may be used to fund other government priorities. Boards should consider Ministers' comments during the annual business planning round when setting their dividend policy, desired capital structure, level of future reinvestment, and capital expenditure.

Valuations

Ministers place significant reliance on the board's estimate of the company's commercial value. We expect these valuations to be robust, and either prepared or reviewed independently, where appropriate. The review should refer to the key assumptions included in the model.

Disclosure of senior management remuneration

Ministers acknowledge that the board is involved in setting the remuneration for the executive team. We expect that remuneration will be appropriately linked to performance and set at a level sufficient to attract and retain the necessary skills within the executive to enable Crown companies and entities to operate successfully.

At the same time, we expect boards to adopt good practice disclosure when reporting on senior management remuneration and, if required, to be able to justify publicly the remuneration decisions that they have made. Shareholding Ministers remain focused on executive remuneration being communicated transparently, and we expect to see this reflected in detailed disclosures in your annual report. We intend to give feedback on the disclosures in your 2019/20 annual report soon.

Supporting diversity

Consistent with the Government's support for diversity and gender balance on boards, boards are encouraged to support diversity and inclusion in the workplace and in leadership teams.

Board performance evaluations

Performance evaluations help boards to improve performance and contribute to the Treasury's advice to Ministers on board composition. We expect that evaluations will now take place annually and should ideally be conducted by an independent evaluator.

No surprises

Ministers expect to be informed well in advance of any material or significant events relating to your company, whether positive or negative. The Owner's Expectations document provides some examples of matters that could fall within the 'no surprises' policy.

In particular, boards should inform Ministers' offices before the announcement of all financial results, and before appearances in front of select committees.

Further information

Your Treasury relationship managers will be in contact shortly after you receive this letter to discuss Ministers' expectations in more detail. If you have any questions please contact Maruta Kanepa (on [39]) Alternatively, you can contact Juston Anderson, Acting Manager, Commercial Performance (on [39])

Yours sincerely

A handwritten signature in black ink, appearing to be 'D Clark', enclosed within a hand-drawn oval.

Hon Dr David Clark
Minister for State Owned Enterprises
on behalf of shareholding Ministers

cc: Mr Malcolm Johns, CEO, CIAL, [23]
Mr Paul Munro, CEO, Christchurch City Holdings Ltd, [23]

Annex 1

Timetable for the Business Planning Process for 2021/22

Table 1: Summary timetable for the Business Planning Process

<i>Due by</i>	<i>Key Action</i>
January / February	The Treasury to discuss the Letter of Expectations with the Chair
26 February	Board sends Strategic Issues letter to Ministers
30 April	Board submits draft Statement of Intent (SOI)
30 June	Board delivers final SOI to shareholding Ministers
As soon as practicable after delivery of the final SOI to Ministers, but no later 30 July	SOI made available to the public by the board on its website

All entities are expected to provide shareholding Ministers with a **Strategic Issues letter**, by **26 February 2021** in response to the Letter of Expectations. Should your entity wish to engage with shareholding Ministers to seek clarification around their expectations, we would ask that you advise the Treasury as early as possible of such intentions.

Entities are expected to provide shareholding Ministers with a draft SOI, consistent with the expectations as detailed in this letter, by no later than **30 April 2021**.

The final SOI should be delivered to shareholding Ministers on or before **30 June 2021**.

Shareholding Ministers should be alerted as soon as possible if any of these deadlines cannot be met.

Further information is available in the Owner's Expectations document (<https://www.treasury.govt.nz/publications/guide/owners-expectations>).