Memorandum of David Lawry Seeking Independent Panels Feedback on request to Decline Plan Change 4

Introduction

On 9 May 2021 I submitted to the Independent Panel via Lloyds Scully the Statutory Administration Advisor a memorandum and list of my qualifications seeking that the Panel decline Plan change 4.

At 8.32am on May the 10th I received an email from Scully which stated: "Confirming I received your emails and have forwarded them to Commissioner Dawson."

At 3.18pm on May 10 I received another email from Lloyds Scully, as did all submitters, which had attached my evidence and the Planning evidence of Matt Bonis, Indicating he would add these to the evidence already online on the webpage.

The time line is important in that it is conclusive that Commissioner Dawson had my request to decline the Plan change well before Mr Pizzey's Minute 3 request for hearing Adjournment. Further that the Planning evidence from Mr Bonis had also been filed well before that minute.

Without detailing My Bonis evidence in depth his Part F conclusions at point 208 States:

I have concluded, based on the evidence of Ms. Hampson and Mr. Nolan and taking into account the S32 material and 42A Report, and the (preceding) economic assessment from Property Economics Ltd the proposed home sharing provisions as sought to be introduced by PC4 are not the 'most appropriate' in terms of section 32 of the Act. The provisions sought to be introduced are highly inefficient, and do not appear to be effective, given the scale and significance of the issue, the existing measures, and as considered against the context of a recovery based District Plan.

This therefore is conclusive that there was available to the panel and all other parties expert evidence from a Planning perspective and not just an economic perspective. Witnesses from both perspectives were I submit very critical of, in fact scathing of the section 32 and 42A reports and other aspects of the Councils case as the proponent of (PC4).

The point is that Mr Pizzey Counsel for Christchurch City Council indicates in his Memorandum seeking adjournment, that the economic component of the s32 assessment is likely to be insufficient to allow a Plan change decision to be made on merit. This is another case of CCC offering up their best view of the truth. From any objective independent examination of the facts there was and is ample evidence that there was a far greater number of flaws in not only the section 32 report but also the 42A report and Property Economics high level paper. A total lack of justification for the proposed complex regulatory régime proposed to fix the alleged problems was exhibited. Put bluntly the entire plan change is flawed no resource management issue actually exists.

From my sources I am well aware that my request to decline this plan change generated a significant ripple in the Planning team responsible for PC4. The reality is that there was recognition that there were significant evidential failures. While Mr Pizzey seeks to minimize them to economic issues the reality was that these failures are far broader. I note Mr. Pizzey has listed the failures identified by Ms. Hampson I note he fails to raise the allegation that there has been selective cherry picking of the data. This I submit is a serious allegation, who is going to investigate that matter? I would have expected the Independent Commissioners on behalf of all parties to seek answers.

There is I think now a pretty universal agreement that the RMA is not fit for purpose. There are many motivations for various parties engaged in trying to work with this Act. Motivations to maximize billable hours exist throughout the process is one that comes to mind. I submit there is a perception in the general public that the process is broken.

Surely when there is a total failure on the part of the proponent to identify even one RMA problem ratepayers can expect the nonsense to be stopped. The

proponent has failed to identify any scale issue, any complaint/amenity issue any impact on housing costs, basically zero relevant RMA issues at all. The proponent has largely ignored very obvious benefits and then proposes a highly regulative régime to solve the alleged problem. On any independent assessment a halt should be called on this mess.

I called on the Independent Commissioner's to do just that.

I request feedback on the following.

Following receipt of my request to decline this plan change did the Chair engage other Commissioners into the decision making process considering my request?

If not why not, given the nature and significance of such a request?

Was there actually a considered appreciation of and decision making process entered into with regards to my request. If not, why not?

What are the reasons that my request has been refused? That actual decision is yours to make but was due process actually undertaken and what was that process?

It remains my view that this Plan change is such a mess that it is highly deserving of being declined. The opposing parties at considerable expense should not have to continue fighting against a problem that does not exist.

While Council faces a reputational risk that is of no concern to you the Independent Commissioners.

Why have I not been communicated with?

Why is it that the adjournment request originating from Counsel for Christchurch City Council, has garnished the Commissioners attention and indeed their response before I have even been given any response to my earlier request?

As I have pointed out the Plan Change failures range far wider than the economic evidence failures. In addition to the Planning evidence conclusions I have also raised the failure to even notify the subgroup of land owners who already

represent the most oppressed in the country. Those being land owners living under the Air Noise contours including the 50dBA Ldn air noise sensitive activity avoidance contour that exists nowhere else in the world. This is a failure that repeats in an ongoing manner. When are the various Councils going to be required to personally notify this already highly adversely impacted sub set of land owners whenever further land use rights are attacked? This same issue has arisen in the recent Regional Councils long term plan and in Plan change 5 which I refer you to my submission of yet another shambles.

I remain open minded but suspect that my request to you the Independent Commissioners to decline this plan change has not received proper consideration.

I also submit that in the context of what has transpired there is a significant failure in fully informing all parties of what has transpired. In the Chairs Minute 3 Direction of 12 May 2021 detailing the background that has led to the Adjournment request, under the heading **Introduction** there is no indication that on the 9th of May a Request was made by me to have this Plan change declined. In my view this omission is material.

I have no doubt that this request along with the evidence of Mr. Bonis, Ms. Hampsons and the inappropriate high level blush of the Property Economics Report has motivated **damage control** within Christchurch City Councils Executive. Counsels Memorandum seeking to only focus on economic failure is the result.

Mr. Pizzey submits that on balance the requested adjournment will provide for the most efficient and effective use of all participants time and effort. There has been no balancing of other parties needs something those living under the air noise contours see as systemic from Council.

One role of the Independent Commissioners is to ensure that balance is forthcoming in the process.

I submit that PC4 is a complete nonsense. There is no balancing of anything but Councils desire to regroup from what is an abysmal Plan Change section 32 and 42A reporting process.

This is the very sort of public fund wastage that is driving the Local Government review. Public engagement with these processes is at an all-time low. A bold move to decline this plan change may well have sent the right message at the right time. Sadly I suspect my request to decline the plan change was never afforded due process and that no real consideration was given to it.

Such an outcome would have returned the status quo, a fitting outcome for a non-existing problem that is actually benefiting many hurting few and aiding recovery from many angles.

I also further raise the issue of those at risk of further land use restrictions not being properly notified of that risk in this and indeed other plan changes. The very same issue is exhibited in Plan Change 5 yet another highly problematic plan change which I have submitted too (refer attached submission). There is now several months in which Council could be required to address this ongoing failure. I seek that Council be directed by you to develop an overlay of the land owners details living under the air noise contours. That they be directed to ensure that in future when their company CIAL attempts to slip in land planning changes such as the current suggested definition change of Farm Stays, changes that may appear to be innocuous but are just a continuation of the subjugation of those land owners land use rights, that Council be required to personally notify this sub set of land owners. These land owners have already had their rights to the use of their land largely extinguished by Councils land use rules aimed at protecting their own company CIAL from curfew risk. All by way of a set of noise sensitive activity avoidance rules set at the plainly ridiculous 50dBA Ldn noise level. By doing so some small evidence of a balancing of needs would be exhibited.

Council and CIAL are very careful to never bring the validity of these air noise contours on scope and have refused to re-evaluate the accuracy of the contours which is required to be carried out every ten years, last done 14 years ago. Any objective Independent assessment would see that this situation is unethical and exhibits of a huge conflict of interest. I therefore challenge you to bring these issues on scope.

There is no better way to avoid any of the RMA required balancing than to ensure those adversely impacted are never advised of the proposed changes targeted to impact on their land use rights.

I seek written replies to the questions raised.

David Lawry

13 May 2021

Submission on Plan Change No 5A

Strategic Objectives

<u>Specific Provisions of plan change my submission relates to are as follows</u>

My submission relates directly to the Strategic Commercial Objectives.

It asserts that the Section 32 Evaluation is significantly lacking as a tool to assist in actually prioritizing the Central city and Key Activity Areas future priority for development.

The current evaluation totally fails to research the history or ongoing reasons as to way these already stated development priority goals have failed so badly. The failure is obviously accepted by Christchurch City Council (CCC), and seen as being so sever as to require Plan change 5 in order to provide clarity.

The current Section 32 Evaluation fails to identify let alone seek to remove the real reasons why development is being routinely siphoned away from the Central City and Key Activity Areas and thereby virtually guaranties further policy failure.

Christchurch International Airport (CIA) and its management company (CIAL) has for many years received significant competitive development advantages from Christchurch City Council (CCC). Conflict of interest issues are routinely ignored and CCC refuses to investigate let alone rectify the development advantages that act to defeat development being actually prioritized to Central City and Key Activity Areas.

CCC has as I will outline directly attributed to redirecting major development away from the Christchurch Central City Business District and Key Activity Areas to CIA.

My submission is that:

Christchurch International Airport is not a key activity area; while its aviation business has failed to grow to pre earthquake air movement levels, it has had a huge property development growth, such that it now derives more income from that business than the aviation business.

The most significant enabler of this growth has been CCC.

As is often the case in investigations the devil is in the detail.

Plan Change 84 (PC84) Led by CCC appointed Commissioner Paul Thomas in 2014/15 was a very unusual plan change. It was the last plan change before the Governments required Independent Judge led Replacement Christchurch District Plan. Legal advice, originating from Simpson Grierson, was that any findings from (PC 84) were deemed to automatically become part of that new Replacement Christchurch District Plan and could not, other than for minor changes, be altered in that then yet to be heard Judge led process.

CCC engaged Ms. S Scott of Simpson Grierson, CIAL engaged Ms. J. Appleyard. At the reconvened hearing of Plan Change 84 on the 5th of September 2014 I was present when I witnessed what I consider to be an extraordinary exchange between these legal representatives and the hearing Commissioner.

The specific issue was the detailed wording of Objective 12.12 which sought to enable additional commercial development at Christchurch International Airport (CIA).

While the general facts of this exchange, are outlined at Pages 18-22 of Commissioner Thomas PC84 Recommendation Report under the heading Objective 12.12. , it fails to actually describe what took place on that day.

(Refer PC84 Recommendation Report Appendix 1)

It is important to know that no other Council representatives were present at this last exchange before the end of the hearings process. Ms. O'Callaghan, a planning

consultant employed by GHD Ltd, and who was the author of the section 42A report for this plan change, had strongly warned that the word “significant” should not be inserted in part (d) of 12.12 in relation to adverse distributional effects. She had articulated, that to do so would risk retail growth in the airport location that could erode benefits of those activities occurring in Key Activities and other centers such as the Central City. A prediction, which has certainly come to fruition. None of the development stakeholders for the Central City or any of the Key Activity Areas were present and I am quite sure they had no idea that the development priority they had been advised CCC had put in place was about to be totally negated.

Despite this warning, an as yet unidentified CCC employee obviously had authorized Ms. SCOTT to agree with the CIAL representative Ms. Appleyard that the word “significant” should be included by the Commissioner into Objective 12.12 as a threshold quantifier. Expressed CCC concerns were swept away and the CIAL position to insert the word “significant” into objective 12.12. was presented to the Commissioner as agreed.

A deal had been done, one with huge and I submit well known consequences.

A deal that goes to the very heart of ongoing CCC failures to address conflict of interest issues when approving planning advantages to its own company. This ongoing failure to investigate the extraordinary competitive development advantages CCC grants to CIAL simply reinforces a lack of working Governance leadership at CCC.

The result of this deal is that CCC gave to CIAL a development green light that it would take no action at all in restricting airport development unless such development reached the stage that it “significantly” adversely effected the recovery development in the Central City or Key Activity Areas.

With the addition of one word Christchurch International Airport was enabled by CCC to avoid any concern about the massive development into non airport related activities (property management) that it intended. Even large format retailing in the form a Bunning’s Hardware store was deemed acceptable, a Supermarket and

associate shops, a new hotel, budget accommodation, numerous offices were all enabled with no concern at all about the adverse distribution impact on the Central City or so call Key Activity areas.

At the time I raised with the parties that surely this could not be correct and that at the very least the threshold of “no more than minor adversely distributional effects” was a more appropriate threshold.

I was ignored; it was very obvious that a deal had been reached. The point here is that Solicitor Scott could not have made that concession in the absence of a senior CCC employee advising her to do so. The identity of that employee is important as is that person’s motivation for approving the considerable change in CCC stated position so late in the process.

I am certain other stakeholders were not aware that this change had occurred.

The actual wording at clause (d) 0f Objective 12.12 Role of Special Purpose (Airport) Zone became: **Avoids significant adverse distributional effects on the Central City, key Activity Centers and District Centers.**

Before the change the wording was: Avoids adverse distributional effects on the Central City, Key Activity Centers and District Centers. This wording is far more restrictive would have actually had the effect of reducing the huge shop and office development that has taken place at CIA.

I submit that CIAL commercial development since that change has already resulted in very significant adverse distributional effects on the Central City and Key Activity Centers. It may well be that this adverse impact is the very driving motivation behind the need for this Plan Change 5.

However the level of CCC development assistance to CIAL comes in a number of other forms that are not extended to the Central City or other Key activity areas. They also drive competitive advantages that motivate clients towards CIAL leased land opportunities.

CCC enables CIAL development by way of allowing nearly all of it to be carried out before CCC appointed Commissioners in Out-Line processes that do not require

nor allow public input, nor the normal resource consent scrutiny. This process is based on the CIAL assertion that the Special Purpose (Airport) Zone (SPAZ) is designated "Airport Purposes" and that there are no conditions attached to that designation .

Again despite being provided with conclusive evidence to the contrary CCC refuses to investigate or change this competitive advantage. Thereby further facilitating development away from the Central City and Key Activity the very areas it alleges it is seeking to prioritize development.

During the PC 84 process and indeed in evidence given at the Replacement District Plan I produced the actual Designation decision from Commissioner Collins relating to the designated land now known as Dakota Park. (Refer Commissioner Collins recommendation Report). This conclusive evidence produced at (PC84) resulted in Commissioner Thomas comments at points 33 and 34 at page 12 of his Recommendation report:

The result is that contrary to CIAL assertions, it has been accepted by Commissioner Thomas that the land taken under Requirement now known as Dakota Park is subject to a condition. That condition states "All activities and building development shall comply with the Development and Community Standards specified in the Airport Zone Rules"

Ms. O'Callaghan reported at the (PC84) hearing that the council had either not been aware of or had not been applying this condition to date. At best this is incompetence.

Further that the alleged "Airport Purposes" designation over this land simply does not exist. Commissioner Collins was specific that the land requirement over the land was **specifically for carrying out the developments outlined in the requiring application.**

It is not an "Airport Purposes" designation.

I quote Collins from his designation approval document. " Having considered all the evidence I have come to the view that the Christchurch City Council should

recommend, pursuant to section 171 of the Resource Management Act 1991, that the requirement by Christchurch International Airport Limited for the designation of land for "Airport Purposes", more specifically for the developments set out in clause 1 (c) of the Notice of requirement, in the vicinity of Russley Road, Avonhead Road and Greys Road Christchurch be confirmed for a period of 10 years sought subject to the area designated being reduced to no more than 45 hectares plus any additional area needed for access and that a new plan showing the area to be designated should be prepared."

CIAL had originally requested that 100 hectares be designated but the Commissioner considered that the CIAL led data was exaggerated and reduced the designation to 45 hectares,

These findings given PC84s status now form part of the current Christchurch District Plan, yet CCC continues to allow CIAL to develop the land at Dakota Park under "Airport Purposes" outline processes and continues to fail to apply the designation conditions.

CCC is fully aware of these facts yet ignores them in favour of their company.

Even worse, and as already advised to CCC and Holding Corporation executives that designation was for specific developments that had to be carried out **within 10 years of the designation being made by Commissioner Collins with the expressed direction that failure to do so in the ten years would result in the designation lapsing.**

The designation was approved by Commissioner Collins on 24th November 1997.

Those developments were never carried out in accordance with the requiring development clause 1 (c) inside the 10 year time line and in fact have not been to this day.

As a result the designation should have lapsed.

Despite being aware of my assertions CCC and CIAL solicitors made submissions that there were no impediments to rolling over the designation at the Replacement District Hearings. CCC executives are fully aware of this yet have

failed to investigate and continue to enable commercial development of that land as if these facts did not exist.

As the land was taken under requirement any compulsorily taken land should be offered back to the previous land owner or at least compensation paid. Again Governance and conflict of interest safe guards continue to fail to address this issue.

Refer Airport Designation Issue Dakota Park paper Appendix 2

There is no doubt that the out- line consenting process greatly reduces costs and indeed scrutiny of development proposals. These are critical factors for developer's decision making. This fast tracked consenting process acts to incentivize development away from Central City and Key Activity Areas.

Yet another competitive advantage is provided to CIAL by way of CCC supporting CIAL in establishing what are the harshest noise related development activity avoidance rules in the World. This is done via a series of Air noise contours including a rule avoiding all new noise sensitive activities under a 50dBA noise level contour used nowhere else in the world. 50dBA is a noise level similar to non-elevated normal speech. Over most of the land affected background noise levels already exceed this low noise level

Due to the harsh nature of this activity avoidance policy there is an expectation that the contours would be accurate and that they would be re-evaluated in a timely manner.

On the 15th of October 2007 the Environment Court (Court) commenced a proceeding at Christchurch relating to the remodeling of air noise contours which were viewed as extremely exaggerated by some of the parties to the hearing.

The parties involved in the proceedings, with the exception of Waimakariri District Council (WDC) were all parties to the subsequent agreement dated 17 July 2006. The purpose of the 17 July 2006 agreement was to undertake a remodeling of air noise contours, which were previously remodeled in 1994 and then included within the SDC proposed plan of 2000.

The Parties involved were

Christchurch International Airport Limited (CIAL)

Selwyn District Council (SDC)

Mr. and Mrs. Foster (the Fosters)

Nimbus Consultants Limited (nimbus)

Christchurch City Council (CCC)

Canterbury Regional Council (CRC)

Waimakariri District (WDC)

The lack of agreement between the parties led to the Court proceeding referred to in Appendix 3 taking place (The Experts Agreement). Basically the various parties' experts, chaired by Prof John Paul Clarke an internationally acclaimed airport acoustics expert, agreed to meet in Christchurch between the 23 and 34 of July 2007 in order to determine the methodology for the reevaluation of the contours to be used in an ongoing manner.

I have spoken to Prof Clarke who confirms that the intent was to put the entire remodeling process including the, software to be used and each variable into concrete and that re-evaluation would take place every ten years.

Refer Appendix 3: Agreement Relating to Settlement of An Environment Court Proceeding

Agreement was achieved on the 25th of October

Refer Appendix 4

Note at item 7) District Review the follow is agreed:

It is recommended by the panel of experts that the noise contours be remodeled every ten years and that all parties (e.g. Christchurch City and District Councils,

Regional Council and CIAL) engage a team of experts to review the INM data using the latest version of the INM).

Environment Judge J A SMITH in his orally decision delivered at Christchurch on 23 October included at Appendix D the Modeling Agreement.

This “Panel of Experts Agreement” articulates the entire methodology including the variables to be used and software to be applied and was agreed by all parties’ experts. The agreement was to carry out the contour re-evaluation every ten years using the agreed methodology and software with the next re-evaluation to take place in 2016.

It is known that the existing contours are still exaggerated. The 2016 reevaluation reduced the then extremely exaggerated contours by approximately one third.

That reduction paved the way for significant residential development in Rolleston on land that had been under the 50dBA Air noise contour, no adverse effects on CIAL resulted.

Despite promises from CCC representatives during the Replacement Christchurch District Plan process that this re-evaluation would be carried out in 2016 or 2017 this has not eventuated. It is very clear that CIAL does not want this re-evaluation to take place and certainly not using the agreed methodology.

CCC simply refuses to schedule the reevaluation. As the entire re-evaluation process is agreed and all the data input variables identified this process is able to be carried out very easily a time frame of less than 3 months is likely.

The outcome would be reduction of land effected by such contours while still providing the protection CIAL seems to feel it needs. The entire Region would benefit from increased land able to be utilized for commercial and residential development.

Actually scheduling the required re-evaluation would also indicate some integrity with regards to the Environment Courts Agreement and affected land owners

expectations, following the years of litigation and land planning use restrictions that have reduced land owners development aspirations unnecessarily.

Currently CCC routinely advises CIAL of any proposed development activity under the air noise contours basically allowing CIAL the ability to veto such development. It is submitted that this sharing of development information is yet another conflict of interest issue that has not been properly addressed by CCC.

The combined impact of the above competitive advantages and others that I am aware of conferred on CIAL by CCC, is that developers are routinely drawn away from Central City and Key Activity Areas.

It is noted that even at this Plan 5A change consultation stage one of the initial meetings that took place on 14.8.2020 between CIAL and members of the City Planning Team from CCC where CIAL raised concerns about the draft limitations provided for 3.3.10 (b)(ii) . This has already resulted in a watering down of those proposed limitations with the removal of the limiting provisions from (ii) and to include the word 'primarily' in (i).

My question is who from CCC Governance level attended that meeting in order to address conflict of interest issues?

If the stated goal really is to ensure that commercial development does actually flow to the Central City and Key activity areas then hard enforceable limiting provisions are required.

Why then has CCC backed off their initial "limitations" to 3.3.10 (b)(ii) stance? I submit that the entire goal of prioritizing the Central City and Key Activity Areas has already been defeated by that cozy meeting between CIAL and CCC staff.

How is 'primarily' enforceable?

What notes, making transparent, who made what decision have been kept around this change?

Finally I note that a decision has been made that CIAL will not pay a dividend this year to CCC. Yet it seems that CIAL has sufficient funds to spend approx.

$45million to purchase land in Tarras, Central Otago proposing a new airport there. Again what was done in this decision making process to ensure conflict of interest issues have been properly addressed? The denial to Christchurch ratepayers of that dividend, especially in the knowledge that in excess of 50% of CIAL'S income is from non-aviation property development that is largely unaffected by current virus issues is weak.

It really is about time CCC put rate payers before their own company profits.

If there is any real hope of directing development into the Central City and Key Activity Areas then CCC needs to address its conflict of interest issues and stop favouring its own company?

The limiting threshold that would actually stop development being pushed away from the priority areas needs to be articulated in strong enforceable language.

I seek the Following Decision from the Council

I seek that the Section 32 report be modified to include the history that has resulted in CCC providing the competitive development advantages on its company CIAL.

I seek the identification of the CCC member who gave approval to Solicitor SCOTT to remove CCC opposition to including the "significant" threshold into Objective 12.12 at the PC84 hearings. This change effectively elevated CIA to a Key Activity Area status, to the detriment of the Central City and planned Key Activity Areas that had been given prioritization status for development.

I seek confirmation or otherwise that this approval was sanctioned by CCC executives and the motivation behind it.

I seek CCC Governance level position on my submission that this alteration effectively green lighted CIAL development with little to no CCC oversight

regardless of the impact it has had of pulling development away from the Central City and Key Activity Areas.

I seek CCC confirmation that the issues outlined will be investigated and rectified.

I seek confirmation and a specific date for the re-evaluation of the air noise contours to be carried out that the agreed process for that evaluation will be adhered to by CCC even in face of the screams of aguish from CIAL.

I seek that this submission be brought to the attention of the CCC, CEO immediately so that conflict of interest risks to CCC can be managed from the outset of this plan change. It seems to me that CIAL and other parties have already managed to largely defeat the intended purpose of this plan change by having the intended Limiting provisions at 3.3.10(b) (ii) removed.

My question is who from the executive governance level was supporting the CCC staff when CIAL confronted them on what is a critical success factor to the entire plan change?

In order to remove confusion, what has been removed is the only enforceable limitation encased in the policy. Therefore airport and other development that should be going to the Central city and Key activity areas will continue to be siphoned away as the competitive advantages as already articulated with respect to CIA are to significant.

Why has CCC effectively folded their cards so easily on this critical issue again?

I seek an enforceable wording that actually will deliver the alleged CCC goal of prioritizing development to the Central City and Key Activity Areas.

It is however my view that CCC have actively worked to defeat the goal it alleges it supports. Word adjustments are in play that will ensure this policy will continue to fail. CCC is supporting the ongoing development of its own dividend or in the case of this financial year non dividend paying company CIAL.

D.M. LAWRY