

Appendix Five – Caselaw extracts

This Appendix provides extracts from relevant case law in which the Environment Court was required to consider land use planning rules under Air Noise Contours, and gave specific consideration to the importance of density controls.

| CASE NAME | BACKGROUND | RELEVANT EXTRACTS |
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| <p><i>BD Gargiulo v Christchurch CC</i>, C 137/2000, 17 August 2000, Jackson J (EnvC)</p> | <p>Appeal against Christchurch City Council’s refusal to grant a subdivision and land use consent over land which was within the 50dBA Ldn noise contour.</p> <p>The Environment Court declined the appeal as the proposed plan implements a coherent pattern of objectives and policies which is consistent with the RPS in protecting the airport. The applicant’s aspirations were outweighed by the public benefit of protecting the airport.</p> | <p>“[31] ... We draw two conclusions from this uncontroverted evidence:</p> <p>(a) There is a 10% chance that whoever lives on Lot 1 of Mr Gargiulo’s subdivision will be highly annoyed by noise of aircraft movements (quite apart from other noise from the airport); and</p> <p>(b) Moving the house on Lot 1 to the back will not change (a); nor will it mitigate the annoyance outside the house.”</p> <p>“[51] ... All we can say here is that different objectives and policies in a district plan should be given different weights. Some should, under some plans, be given so much weight that they come close to prohibited activities (while always leaving it open for exceptional cases). We find that is the position here: the cumulative effect of the objectives and policies we have quoted show that the density provisions of the proposed plan should be given considerable weight.”</p> <p>“[63]... In any event on the facts of this case we find that the density of dwellings (which is controlled by subdivision size) is so important around the Christchurch International Airport that it is a dominating factor in terms of weight.”</p> |

Robinsons Bay Trust & Ors v Christchurch CC, C 60/2004, 13 May 2004, Smith J (EnvC) (Interim decision)

Decision on how much land (either land within the 50dBA contour line or 55dBA contour line) should be covered by a policy in the proposed Christchurch City Plan restraining noise sensitive urban development.

The Environment Court concluded that the 50dBA Ldn line would be better for inclusion in the policy.

"[24] We have concluded that below 55 dBA Ldn the major known effect of noise is annoyance (an amenity effect)..."

"[49] The major argument for adopting the 50 dBA Ldn noise contour in Policy 6.3.7 relates to providing an additional control to reduce the potential for residents to become highly annoyed with aircraft traffic. We accept the clear evidence given to us that noise can create impacts on amenity and some people will become highly annoyed. We also accept that there would be some benefit to the airport in future-proofing its operation. **That benefit is one that has local, regional and national significance.** It was not clear to us what alternative means would produce this outcome. We conclude that in these circumstances alternative means are not appropriate."

"[58] ... **We do accept that there are likely to be a percentage of persons highly annoyed even below the 50 dBA Ldn noise contour.** Although that percentage is significantly less than at the 55 dBA Ldn contour, we accept this may lead to an increased level of complaints. In our view such complaints are going to be inevitable in any event as the noise levels for airport activity within the existing urban area moves towards the 50 and 55 dBA Ldn contours in the next twenty to thirty years."

"[59] **We have concluded as a fact that a greater number of dwellings between the 50 and 55 dBA Ldn contour will lead to an increased number of persons being highly annoyed by aircraft traffic.** That effect is one on the amenity of the persons who may reside under the flight path and accordingly is an effect which we should properly take into account, particularly under section 5 of the Act. However, it is also an effect which has a cost (in the wider meaning of that term) in terms of its effect on the local amenity. It is an effect which is not internalised to the airport and its land and is therefore shifted to the owners of land under the flight path. Thus, although there is no prospect

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| | | <p>of curfew on the airport at this time, there is likely to be an adverse effect on amenity of persons living within the 50 dBA Ldn contour line and thus an environmental cost imposed."</p> <p>"[63] ... Effectively, with the adoption of a 55 Ldn contour the Court would be accepting that there are areas where residential development is not discouraged that would have amenity levels lower than those generally anticipated in terms of the Proposed Plan in respect of noise. Disregarding noise from roads, it could be argued that many development areas of the city may be subject to noise in excess of that proposed under the Proposed Plan. However, in setting the noise level for this area, we take into account that the Proposed Plan has set out a general expectation in residential areas of 50 dBA Ldn. This provision is not critical because these standards are set for new activities to achieve compliance or to be dealt with as discretionary activities. However it is indicative as to the expectation in respect of noise amenity generally."</p> <p>"[64] ... We have concluded that the 50 dBA Ldn line is better for the following reasons:</p> <ul style="list-style-type: none">(1) the airport has significance in terms of the Proposed Plan, recognising its local, regional and national importance;(2) high individual SEL levels can have more impact at lower Ldns (under 55 dBA), suggesting a conservative line to avoid amenity impacts;(3) there is an amenity impact below 55 dBA Ldn and the Proposed Plan reflects a general expectation of lower Ldn levels in residential and rural areas; <p>..."</p> |
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National Investment Trust v Christchurch CC, C
41/2005, 30 March 2005
(EC)

Decision relating to the urban growth and zoning provisions of the Proposed Christchurch City Plan. The Trust sought to re zone land within the 50 dBA contour.

The Environment Court upheld the council's zoning decision.

"[45] We have concluded that any urban growth Increasing residential densities between the 50 dBA and the 65 dBA contours is discouraged by virtue of policy 6.3.7..."

"[48] We agree with the Court's summary in *Gargiulo v Christchurch City Council* which summarises the objectives and policies of the City Plan as *inter alia*:

- " ...
- (c) keeping the density of dwellings within the 50 dBA Ldn contour to a level so that the number of people living within the noise affected area is kept to reasonable minimum."

We conclude a Living 1 zone within the 50 dBA contour would increase the number of people living within the contour without any necessity for such zoning being demonstrated."

"[109] The Court has previously considered the Living I zone as a lower density form of development and sees other Living densities such as 3 and 4 as being higher densities. In this case we must also consider whether the general policies relating to the airport may be of more importance than the policy of the City Plan relating to higher densities. **To the extent that such policies are in conflict, it is clear that the airport policies are more significant than the policies seeking higher densities for major extensions. This would in our view be a proper basis on which the Court could consider lower density because of the requirements to take into account the impact on the airport.** In the circumstances of this case we need not explore this possibility further because of our general conclusion."

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| <p><i>Independent News Auckland Ltd & Anor v Manukau City Council</i>, (2003) 10 ELRNZ 16</p> | <p>Proposal for 349 household units on a Business 5 zoned site, identified in the District Plan as being subject to aircraft noise from operations Auckland Airport.</p> <p>The Environment Court declined to grant consent. It held that positive effects were outweighed by the likely reverse sensitivity effects which could affect an airport, which is the most important international gateway for New Zealand.</p> | <p>“[52] On analysis, we are satisfied that the issues, objectives, polices and rules of the district plan demonstrate that generally, high density residential accommodation within the high noise areas should be avoided. The reason for such an approach is to avoid actual and potential effects on the airport, including the adverse effect of reverse sensitivity.”</p> <p>“[122] Of particular significance is the emphasis in issue 17.6.2.7, which explicitly recognises the importance of limiting the amount of residential development in areas affected or potentially affected by high aircraft noise (aircraft noise levels greater than Ldn 65) because it is not possible to mitigate the effects of aircraft noise on the external environment. As Mr G J Osborne stated, this issue applies directly to the circumstances of the current case, where an acoustically insulated internal environment is proposed to be created, but nothing can be done to protect the residents from the effects of high aircraft noise when enjoying the outdoor recreational areas provided for in the development. This proposal can be contrasted with other examples of sensitive activities such as hospitals and, perhaps, aged care facilities where patients and inhabitants are bed-ridden and immobile and have no expectation of enjoying the external environment.”</p> <p>“[124] ... We found that aircraft noise will have an adverse effect on the residents. We also found that when the effect of allowing this proposal are compared with the baseline, the adverse effects remain significant. Further, we found there to be a clear relationship to the number of people exposed to high aircraft noise and the introduction of, or increase in, the strength of opposition to airport operations.”</p> |
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| <p><i>Ardmore Airfield Tenants and Users Committee & Ors v Ardmore Airport Ltd & Ors</i>, A 23/2005, 23 February 2005, Whiting J (EC) – Interim decision</p> | <p>Proposed plan change to introduce a planning framework for the airfield. One of the grounds of appeal was the absence of land use controls within identified noise boundaries.</p> <p>The Environment Court found, and the Council accepted, that it was a serious omission to not make provision for land use controls. The Court awaited these controls to be introduced via a plan change within 9 months.</p> | <p>“[111] Importantly, as we have said, NZS 6805:1992 provides for a two-pronged approach — noise management controls on the one hand and land use planning controls on the other. The two need to be considered as a composite package for reasons we will elaborate on in discussing Issue 3.”</p> <p>“[136] We are satisfied that the Papakura District Council has been remiss and guilty of a serious omission is not making provision for land use controls as part of the package. The Council now accepts its responsibility and proposes to initiate a further plan change to introduce land use controls within a period of nine months....”</p> |
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