

In the High Court of New Zealand  
Christchurch Registry

CIV-2016-409-

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*under:* the Resource Management Act 1991 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

*in the matter of:* an appeal under clause 19 of the Order

*between:* **Christchurch International Airport Limited**, an airport company  
*Appellant*

*and:* **Christchurch City Council**, a territorial authority constituted by the Local Government (Canterbury Region) Reorganisation Order 1989  
*Respondent*

## Notice of Appeal by Christchurch International Airport Limited

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Dated: 19 December 2016

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**NOTICE OF APPEAL BY CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED**

To: The Registrar of the High Court at Christchurch

And to: The Christchurch City Council

And to: The University of Canterbury

This document notifies you that:

- 1 At the first available sitting after the expiration of 10 working days from the service of this notice, or as soon as Counsel may be heard, Counsel for the appellant will move the High Court at Christchurch on appeal from parts of decision 57 made by the Christchurch Replacement District Plan Independent Hearings Panel and publicly notified on 21 November 2017 (Decision 57) on the grounds that the Independent Hearings Panel made errors of law and upon the further grounds set out below.

**The parts of the decision appealed**

- 2 This appeal relates to parts of decision 57 set out in paragraphs 37 – 77, that deal with submissions by Christchurch International Airport Limited (CIAL), and the University of Canterbury (the University) relating to the activities that can occur within the Special Purpose Tertiary Education Zone (SPTEZ).
- 3 The Appeal does not seek to amend the rules for the SPTEZ but seeks the amendment of Strategic Direction Objective 3.3.12 (or similar relief to add a new Objective or Policy) to justify the rules of the SPTEZ as being an exception to the general part of Strategic Direction Objective 3.3.12.

**Errors in questions of law**

- 4 The appellant alleges that in decision 57 the Panel made errors in law by;
  - (a) Incorrectly interpreting the provisions of the Canterbury Regional Policy Statement (CRPS) and in particular CRPS Policy 6.3.5 (4) by deciding the Policy did not apply to the University.
  - (b) Also incorrectly interpreting the Replacement District Plan's Strategic Directions Objective 3.3.12, which is in similar terms to CRPS Policy 6.3.5(4).
  - (c) Failed to observe the statutory requirement in section 75(3) of the Resource Management Act (RMA) to give

effect to the CRPS and in particular the specific directive in CRPS Policy 6.3.5(4) to avoid noise sensitive activities within the 50 dBA Ldn airport noise contour unless grounds for an exception are made out.

- (d) And having erroneously decided that Policy 6.3.5(4) did not apply to the University by not adopting the relief sought by the University and specifically by not providing for an Objective or Policy to justify the rules in the SPTAZ as an exception to Objective 3.3.12.

### **Grounds of Appeal**

- 5 The grounds of appeal are:

Policy 6.3.5(4) of the CRPS provides:

*"Policy 6.3.5 – Integration of land use and infrastructure*

*Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by:*

*"(4) Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, **including by** avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 64); and"*

- 6 The phrase "Noise Sensitive Activities" used in Policy 6.3.5(4) is defined in the CRPS to mean:

*"Residential activities other than those in conjunction with rural activities that comply with the rules in the relevant district plan as at 23 August 2008;*

*Education activities including pre-school places or premises, but not including flight training, trade training or other industry flight training or other industry related training facilities located within the Special Purpose (Airport) Zone in the Christchurch District Plan;*

*Traveller's accommodation except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants;*

*Hospitals, healthcare facilities and any elderly persons housing or complex."*

7 Activities which the University wishes to carry out include activities which:

- (i) Are "noise sensitive activities" within the definition set out above;
- (ii) Are with the 50 dBA Ldn airport noise contour;
- (iii) Are "new developments".
- (iv) Are therefore to be avoided unless they are provided for as an exception within the Replacement District Plan.

8 Section 75(3) of the RMA provides:

*"(3) A district plan must give effect to-*

*...*

*(b) any regional policy statement."*

9 Strategic Directions Objective 3.3.12 of the Replacement District Plan provides:

*"b. Strategic infrastructure, including its role and function, is protected by avoiding adverse effects from incompatible activities, including reverse sensitivity effects, by, amongst other things:...*

*iii avoiding noise sensitive activities within the 50 dBA Ldn noise contour for Christchurch International Airport, except:"*

10 The University is not listed as an exception in Strategic Direction Objective 3.3.12(b)(iii)

11 In reaching decision 57 the Panel:

- a. At paragraph 38 incorrectly described the relief sought by CIAL;
- b. Incompletely described the relief sought by the University and in particular omitted to record that the University sought to be added as an exception to Strategic Objective Direction 3.3.12 as justification for the rules it sought in the SPTEZ.

- c. Incorrectly characterised the differences in interpretation between CIAL and the University at paragraph 5.1. In particular CIAL's argument primarily focused on the meaning of the phrase ",including by" in policy 6.3.5 (4) which argument is not referred to in the Decision.
- 12 In reaching decision 57 the Panel incorrectly interpreted policy 6.3.5 (4) of the CRPS by;
- a. Placing a meaning on the words "new development" which they cannot bear leading to a finding in paragraph 71(b)(i) that the building of new noise sensitive activities to the University is not "new development" and therefore the first part of CRPS Policy 6.3.5(4) does not apply to the University.
  - b. Incorrectly concluding at paragraph 71 (b) (ii) that the phrase ",including by avoiding noise sensitive activities within the 50 dBA Ldn airport noise contour" does not apply to the University.
  - c. Failing to consider the meaning of the words, "including by" in CRPS policy 6.3.5(4)
  - d. Describing the phrase, ",including by" as a "subordinate phrase" to the general phrase which precedes it.
  - e. Failing to apply the principle of generalia specialibus non-derogant that it is not permissible to use general provisions to derogate from later specific ones.
  - f. Reading down the clear, directive and unambiguous words of Policy 6.3.5(4) that specifically deals with the Christchurch Airport by reference to the preceding general words.

13 The Panel also adopted relief which was not sought by any party and in particular in rejecting the relief sought by CIAL it did not adopt the relief sought by the University that it be added on as an exception to the general part of Strategic Direction Objective 3.3.12.

#### **Relief Sought**

- 14 The appellant seeks that:
- a. Its appeal is allowed;
  - b. That the matter be referred back to the Panel for the insertion of an Objective or a Policy, (or an amendment to

Objective 3.3.12) which provides for noise sensitive activities at the University to be carried out as a specific exception to Objective 3.3.12.

c. Any further or other orders as the Court sees fit.

Dated: 19 December 2016



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**Jo Appleyard**

Counsel for Christchurch International  
Airport Limited

This document is filed by Joanne Maree Appleyard, solicitor for the above named appellant, of the firm Chapman Tripp. The address for service of the interested party is at the offices of Chapman Tripp, Level 5, 60 Cashel Street, Christchurch, 8013.

Documents for service on the interested party may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 2510, Christchurch; or
- (b) left for the solicitor at a document exchange for direction to DX WP21035, Christchurch; or
- (c) transmitted to the solicitor by facsimile to facsimile number +64 3 365 4587; or
- (d) emailed to the solicitor by email at [jo.appleyard@chapmantripp.com](mailto:jo.appleyard@chapmantripp.com).