

Before the Hearing Panel
Appointed by the Timaru District Council

Under the Resource Management Act 1991 (**RMA**)

In the matter of the Proposed Timaru District Plan

Memorandum of Counsel on behalf of Timaru District Council

Proposed amendments to provide for non-commercial fixed-wing aircraft

28 February 2024

Council's solicitors:

Michael Garbett | Jen Vella

Anderson Lloyd

Level 12, Otago House, 477 Moray Place, Dunedin 9016

Private Bag 1959, Dunedin 9054

DX Box YX10107 Dunedin

p: + 64 3 477 3973

michael.garbett@al.nz | jen.vella@al.nz

May it please the Hearing Panel:

Introduction

- 1 This memorandum is filed by counsel for the Timaru District Council (Council) in relation to provisions for small, non-commercial fixed wing aircraft in accordance with Minute 20, which requires the Council to report back to the Panel by 28 February 2025 on the position set out in the memorandum of counsel for the Aircraft Owners and Pilots Association of New Zealand (**AOPA**) and Sid McAuley (**the submitters**) dated 6 December 2024.
- 2 The purpose of this memorandum is to:
 - (a) Briefly outline the steps taken by the Council to address the concerns raised by the submitters at Hearing B; and
 - (b) Address Mr MacLennan's (section 42A officer) recommendations in light of the submitters' position and advice from Council's noise expert, Mr Hunt.
- 3 At the outset, counsel advises that the Council largely agrees with the proposal set out in the 6 December 2025 memorandum filed on behalf of submitters, subject to minor amendments which are addressed below. In order to assist the Panel to make findings as to the appropriateness of the provisions being proposed, the Council has filed the following statements of evidence concurrently with this memorandum:
 - (a) Evidence of Mr Malcolm Hunt – noise consultant - which addresses the rationale for the proposed provisions; and
 - (b) Evidence of Mr Andrew MacLennan – section 42A officer – which makes further section 42A recommendations and provides a section 32AA analysis.

Background

- 4 Submissions seeking changes to GRUZ provisions for the purposes of providing for small, non-commercial fixed-wing aircraft were addressed in Mr MacLennan's section 42A report on the General Rural Zone for Hearing B.¹ The submitters filed evidence and legal submissions

¹ Section 42A Report: Rural Zones, at 10.25.

seeking that the use of small, non-commercial fixed wing aircraft be exempt from any controls in the PDP.²

- 5 Mr MacLennan had engaged with AOPA on its submission prior to the section 42A report being issued, although had not come to a final resolution of the issues raised. His section 42A summary acknowledged that the use of small fixed-wing aircraft for non-commercial flights should not be subject to the same constraints as aircraft used more frequently for commercial purposes, but considered that there should be regulation at an appropriate level to ensure the noise effects from those activities are appropriately managed.³
- 6 The Council therefore sought the opportunity to continue discussions with those submitters following the hearing, with a view to agreeing a set of provisions that could be presented jointly to the Panel.

Steps taken by the Council to address submitter's concerns

- 7 The Council's position is that the starting point for the PDP must be the Council's function to control the emission of noise and the mitigation of the effects of noise, in terms of section 31(d). It does not accept that it should necessarily maintain the status quo as set out in the Operative District Plan, that the provisions need to capture existing uses governed by section 10, or that reliance on the general duty under section 16 is an appropriate or reliable means of fulfilling those functions.
- 8 The Council's intention has been to recognise the nature of the non-commercial flights by small fixed-wing aircraft, particularly in terms of their infrequency, the small size of the planes, and the benefits that arise (such as recreation and training) while ensuring that potential noise effects of future activities are appropriately managed.
- 9 Mr MacLennan initially proposed amendments based the standard noise levels required to be met by other activities in the GRUZ. However, following concerns raised by the submitters that that approach would be overly restrictive, the Council engaged environmental noise and acoustic expert, Mr Malcolm Hunt (principal of Malcolm Hunt Associates), to consider tailored provisions based on his expertise and his experience of other district plans. The Council also offered to make Mr Hunt available for discussions with submitters and/ or to engage in expert witness conferencing.

² Legal submissions on behalf of AOPA and Sid McAuley (12 July 2024), at [68].

³ Section 42A summary statement – Andrew MacLennan (12 July 2024), at [27] – [30].

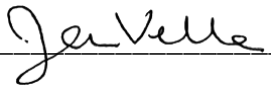
- 10 Mr Hunt advised that there is no commonly accepted means of regulating the usage of small, non-commercial fixed-wing aircraft and that district plans adopted a variety of approaches. He developed a proposed framework based on the Queenstown-Lakes District Plan, but which acknowledged the nature of the Timaru District, particularly in terms of the potential for the use of such aircraft to be some distance from sensitive receivers.
- 11 Counsel for the submitters subsequently filed the 6 December 2024 memorandum with the Hearing Panel setting out the submitters' response to the Council's proposed amendments. The submitters largely accepted Mr Hunt's recommended approach, subject to amendments to:
- (a) The number of take-offs and landings; and
 - (b) Frequency and provision of notice relating to "fly-in" events.
- 12 The submitters note that their position is subject to any amendments to NOISE-S2 (which links to noise limits in Table 24) having no meaningful impact on the operation of the proposed provisions.

Section 42A recommendations

- 13 Mr MacLennan has considered the amendments proposed in the memorandum of counsel for the submitters dated 6 December 2024 in consultation with both Mr Hunt and Ms White, who is the section 42A officer for the NOISE chapter (to be heard in Hearing F).
- 14 Mr MacLennan's view, having regard to the advice of Mr Hunt, is that:
- (a) the provisions proposed should sit in GRUZ-R14 – which is the recommended rule that would govern movements on permanent airstrips - rather than GRUZ-R14A which would govern ad hoc aircraft flights;⁴
 - (b) with this amendment, the provisions are appropriate to enable the use of non-commercial small fixed-wing aircraft as a permitted activity, while also ensuring that the effects of the activity are managed to ensure the amenity of the GRUZ is maintained.

⁴ See discussion in Section 42A Report: Rural Zones (from 10.25.17 onwards) re the use of permanent airstrips versus single aircraft flights, recommendations re different rules for each, and recommendations to include a definition of "permanent airstrip".

- 15 Mr MacLennan recommends minor drafting changes to accommodate the above, which are set out in his evidence. Both Mr MacLennan and Ms White are aware of the potential issue for recommended amendments to Noise-S2 and Table 24 to affect the proposed provisions and will advise the Panel if that becomes an issue.
- 16 The Council is grateful to the Panel for its attention to these matters.



Jen Vella
Counsel for Timaru District Council