

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
WAIMAKARIRI DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on the Proposed Waimakariri
District Plan (**PWDP** or **the Proposed Plan**)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Waimakariri District Plan by
McAlpines Ltd

AND

IN THE MATTER OF

Hearing Stream 5 – Noise

**MEMORANDUM FOR MCALPINES REQUESTING LEAVE TO FILE LEGAL
SUBMISSIONS IN RESPONSE LEGAL ADVICE INCLUDED IN COUNCIL S42A REPLY
REPORT ON NOISE CHAPTER**

Dated: 6 October 2023

Presented for filing by:
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MEMORANDUM FOR MCALPINES REQUESTING LEAVE TO FILE LEGAL SUBMISSIONS IN RESPONSE LEGAL ADVICE INCLUDED IN COUNCIL S42A REPLY REPORT ON NOISE CHAPTER

1. This memorandum is filed on behalf of McAlpines Ltd (**McAlpines**) in response to the s42A Reply Report dated 28 September 2023 following Hearing Stream 5 regarding the Noise Chapter (**Reply Report**).
2. Counsel respectfully requests leave for McAlpines to file legal submissions in response to the legal advice included in the Reply Report regarding whether there is scope for the relief sought by McAlpines at Hearing Stream 5.
3. This request is made on the following grounds:
 - (a) That the additional material that McAlpines seeks to provide to the Hearing Panel is highly relevant to determination of the McAlpines submission on the Proposed District Plan (**PDP**);
 - (b) That granting the request will not result in any prejudice to other participants in the hearing process, including other submitters, section 42A officers and other Council staff; and
 - (c) That granting the request will not result in any disruption to the efficient completion of Hearing Stream 5.

Relevance of the additional material

4. Following Hearing Stream 5 the Hearing Panel issued Minute 9 which included the following questions to the section 42A writer regarding the evidence and submissions of the North Canterbury Clay Target Association (NCCTA) and McAlpines:¹

o Mr Camp is to respond to the acoustic merits of the noise contours approach proposed by each submitter.

o Ms Manhire is to respond to the planning merits of the two submissions and relief sought by each submitter. In doing so, please address whether there is scope in each instance for the relief sought by each submitter, and whether any issues of natural justice or fair process arise for those to whom the requested noise contour and provisions would apply. Ms Manhire may wish to seek legal advice in preparing her final position.

¹ Minute 9 at [14]

5. The Reply Report includes legal advice from Buddle Findlay in response to the above question regarding scope of the relief requested by McAlpines (**Buddle Findlay advice**).²
6. In summary, the Buddle Findlay advice is that:³
 - (a) The relief sought by McAlpines is to amend the PDP to provide protection to McAlpines existing operations from potential reverse sensitivity effects, and that prima facie there is scope to make the changes sought by McAlpines to the noise chapter; and
 - (b) However it would be unfair to grant the relief sought by McAlpines because a non-expert reader of the McAlpines submission may not have fairly and reasonably foreseen that the McAlpines submission would result in the rule proposed by McAlpines at Hearing Stream 5.
7. It is noteworthy that Mr Camp, the Council acoustic expert, considers that McAlpine's request for a noise contour has merit and that it would largely serve as a reverse sensitivity control.⁴
8. Even so, the Reply Report recommendation is to reject the McAlpines submission on the basis of the advice from Buddle Findlay.⁵ Accordingly, this advice is pivotal to the Reply Report recommendation to decline the relief sought by McAlpines.
9. The Buddle Finlay advice is not accepted by McAlpines because, among other matters, at face value the conclusions reached at (a) and (b) above are logically inconsistent.
10. McAlpines seeks an opportunity to respond to the Buddle Findlay advice. It is considered that this additional information is highly relevant and will assist the Hearings Panel to determine the McAlpines submission regarding potential reverse sensitivity effects on the McAlpines' operation at Southbrook.

² Buddle Finlay letter dated 26 September 2023 at [20]-[33]

³ Supra at [31] and [32]

⁴ Memo to Council from Stuart Camp/Jon Farren dated 20 September 2023 at page 1

⁵ Reply report at [50] and Appendix 3 – recommended responses to submission and further submissions at [69]

Prejudice to other participants in the hearing process

11. Granting McAlpines' request to submit additional information will not result in prejudice to other participants in the hearing process for the following reasons:
 - (a) The additional information is narrow in scope and confined to a response to the Buddle Findlay advice;
 - (b) There are no other submitters or further submitters that have an interest in the McAlpines submission regarding potential reverse sensitivity effects on the McAlpines operation at Southbrook that might be potentially prejudiced by admission of the additional information;
 - (c) The Reply Report writer would have opportunity to comment on the additional information in the Council officers final Right of Reply, which has been requested by the Hearing Panel by 30 November 2023;⁶ and
 - (d) The additional information should not cause any prejudice to other Council staff.

Disruption to the efficient completion of Hearing Stream 5

12. The additional information from McAlpines should not cause disruption to the efficient completion of Hearing Stream 5 nor extension of the duration of the hearing.
13. The hearing has not yet closed as the Panel is still awaiting provision of the Council officers final Right of Reply, which will include the outcome of expert conferencing between McAlpines' experts and the Council reporting officers.

Proposed directions

14. If the Hearings Panel is minded to grant the leave requested by McAlpines, it is respectfully proposed that the Panel direct that McAlpines file legal submissions in response to the Buddle Findlay advice by Thursday 19 October 2023. This would allow the Council reporting officer six clear working days to consider and respond to same in the Council officers final Right of Reply.

⁶ Minute 9, Appendix 1 – Expert Conferencing Table at [9]

Dated: 6 October 2023

A handwritten signature in black ink, appearing to read 'Chris Fowler', written in a cursive style.

Chris Fowler
Counsel for McAlpines Ltd