

**Before the Hearings Panel  
At Waimakariri District Council**

**Under** Schedule 1 of the Resource Management Act 1991

**In the matter of** the Proposed Waimakariri District Plan

**Between** **Various**

**Submitters**

**And** **Waimakariri District Council**

**Respondent**

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**Council Officer's Preliminary Response to written questions on Airport Noise  
Contours and Bird Strike on behalf of Waimakariri District Council**

**Date: 15/2/2024**

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**INTRODUCTION:**

- 1 My full name is Neil Lindsay Sheerin. I am employed as a Senior Policy Planner for Waimakariri District Council.
- 2 The purpose of this document is to respond to the list of questions published from the Hearings Panel in response to my s42 report.
- 3 In preparing these responses, I note that I have not had the benefit of hearing evidence presented to the panel at the hearing. For this reason, my response to the questions may alter through the course of the hearing and after consideration of any additional matters raised.
- 4 I also note that given the timing of these questions, my preliminary responses in some instances have not been informed by consideration of evidence or legal submissions lodged with the Council following the issuing of my s42A report. Where I have considered such evidence, I have recorded this within the preliminary answers below.
- 5 Following the conclusion of this hearing, a final right of reply document will be prepared outlining any changes to my recommendations as a result of evidence presented at the hearing, and a complete set of any additions or amendments relevant to the matters covered in my s42A report.
- 6 The format of these responses in the table below follows the format of the questions from the Panel.
- 7 I am authorised to provide this evidence on behalf of the District Council.

**Date:** 15/2/2024



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Paragraph or Plan reference	Question
<p><b>Paras 125, 129, 130 and 137</b></p>	<p><b>To what extent can and should we consider a media article, Joint Witness Statement submitted to a hearings panel or the decision of another council in respect of the consideration of submissions on the PDP, particularly in respect to the Airport Noise Contours? You may wish to seek legal advice and append that to your response.</b></p>
<p>I refer to the legal advice from Buddle Findlay dated 14 February 2024 (paras 4 to 16).</p> <p>There is no legal barrier to the Panel considering these matters, especially if they contained information that may help inform the Panel, however it is a matter of how much weight the Panel is inclined to give such information.</p>	
<p><b>Para 128</b></p>	<p><b>Notwithstanding your opinion that <i>“it will be more efficient to wait until after the RPS review is complete and make any necessary amendments to the District Plan at that stage”</i>, what obligation does the Panel have to make recommendations now, based on the matters and evidence in front of us now?</b></p> <p><b>Is it a valid reason to reject a submission which now includes revised noise contours as a relevant matter for the Panel’s consideration, on the grounds that a review of a Statutory document has not yet taken place?</b></p> <p><b>Notwithstanding the above, will there be any issues of natural justice, fair process and certainty likely to arise if we were to accept CIAL’s submission, which did not include the revised noise contours at the time of public notification and as such were not available to review and make submissions on?</b></p>
<p>With regards the first two parts of the above question:</p> <p>I refer to the legal advice from Buddle Findlay dated 14 February 2024 (paras 17 to 23) which cautions against rejecting a submission outright on the grounds that a review of a statutory document has not yet taken place, and recommends that the merits of the submission are considered as part of a substantive assessment, including in terms of s32 of the RMA.</p> <p>With regards the third part of the question:</p> <p>I refer to the legal advice from Buddle Findlay dated 14 February 2024 (paras 24 to 27).</p> <p>There is potential for issues of natural justice, fair process and certainty to arise if the Panel accepts CIAL’s submission.</p> <p>CIAL’s submission (Nov 2021) included draft remodelled Airport noise contours in Appendix C of its submission, but noted that the draft remodelled Airport noise contours had yet to be confirmed. The draft remodelled 50 dB Ldn Airport noise contours were most recently updated in August 2023. It is difficult to</p>	

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	<p>make a comparison between the most recent draft remodelled Airport noise contours, and those shown in CIAL's submission, due to differences in scale. However, the 'footprint' of the most recent draft remodelled 50 dB Ldn Airport noise contour appears quite different to the contours shown in CIAL's submission, appears quite different to the operative 50 dB Ldn contour (2008), appears to have a greater extent than the operative contour, and appears to affect land not affected by the operative contour.</p> <p>CIAL lodged a further submission opposing Kainga Ora's submission point [325.148]. Kainga Ora had sought the removal of all Airport noise related provisions. The reasons for CIAL's further submission states (emphasis added):</p> <p><i>"The Proposed Plan must contain an overlay for the 50dB Ldn Air Noise Contour (which, at present, must consist of the operative <b>and draft remodelled updated 50dB Ldn contours</b>) with provisions relating to avoiding noise sensitive activities in order to give effect to the CRPS."</i></p> <p>It is not clear from CIAL's further submission which 'draft remodelled updated 50 dB Ldn contours' are being referred to. The above comment might appear to suggest the Proposed Plan should include the most recent draft remodelled updated contours, but in my view this would not be possible as they were not included in CIAL's submission, and a further submission can only support or oppose another submission and cannot introduce anything new.</p> <p>There may therefore be potential for some to feel disenfranchised, if CIAL's submission was accepted, and the land use controls sought by CIAL ended up applying to land within contours different to those in CIAL's submission.</p>
<p><b>Para 134</b></p>	<p><b>Do you think that there is a risk that inclusion of a provision requiring direct notification to CIAL of all applications with elements of non-compliance over a wide range of matters, including for sites located some considerable distance from the Airport, may be seen as the Council stepping down from its functions and responsibilities under the RMA, and for CIAL to be effectively taking on the role of Consent Authority?</b></p> <p><b>Has the CIAL provided a s32 evaluation as to why this is the most appropriate option?</b></p>
	<p>With regards the first part of the question:</p> <p>In my assessment, CIAL has sought to amend 104 provisions in the notified Proposed Plan, including by seeking the inclusion of provisions aimed at avoiding adverse reverse sensitivity effects on the Airport. Where rules are not met the requested consent status is generally non-complying. In 34 instances, or around one-third of those 104 provisions, CIAL has sought consent applications to be limited notified to the Airport for its written approval. As outlined in my speaking notes, CIAL's submission involves provisions in many district-wide and area-specific chapters of the Proposed Plan.</p> <p>By contrast with other infrastructure providers, in my assessment there are only 7 instances where KiwiRail has sought consent applications to be limited notified to it, and there are only 4 instances where</p>

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	<p>Transpower has sought applications to be limited notified to it.</p> <p>Should written approval not be forthcoming, this may have an effect equivalent to declining consent applications as applicants would likely be forced down the route of a notified application and hearing, which many applicants may be unlikely to pursue due to time delays and cost and uncertainty of success.</p> <p>Should CIAL's submission be accepted, then given the relative extent of control CIAL seemingly seeks to weave throughout the Proposed Plan over activities, this could be seen as effectively conferring the equivalent power of a consent authority to approve or decline activities to a body that does not have that statutory power under the RMA. I do not consider that appropriate or reasonable, especially when activities may be proposed in locations some considerable distance from the Airport.</p> <p>With regards the second part of the question:</p> <p>CIAL's submission did not include a s32 evaluation in support of its submission.</p>
<p><b>Para 137</b></p>	<p><b>Please advise who were the parties and planners involved in the JWS for DPC31.</b></p> <p><b>Did the Panel considering DPC31 and the Waimakariri District Council accept the planners' advice in the JWS in making their recommendation/decision? Please provide us with a copy of the JWS and any relevant discussion in the recommendation/decision.</b></p>
	<p>An electronic link to the JWS for PC31 was included in my s42A report. I re-attach the link below:</p> <p><a href="https://www.waimakariri.govt.nz/_data/assets/pdf_file/0017/141641/RCP031-JOINT-WITNESS-STATEMENT-OF-PLANNING-EXPERTS-ON-PLANNING-CONSTRAINTS-230817-Joint-Witness-Statement-of-Planning-Experts-RCP031-signed.pdf">https://www.waimakariri.govt.nz/_data/assets/pdf_file/0017/141641/RCP031-JOINT-WITNESS-STATEMENT-OF-PLANNING-EXPERTS-ON-PLANNING-CONSTRAINTS-230817-Joint-Witness-Statement-of-Planning-Experts-RCP031-signed.pdf</a></p> <p>The planning experts involved were: Mr Timothy Walsh (for Rolleston Industrial Holdings Ltd, the applicant), Mr Andrew Willis (for Waimakariri District Council as territorial authority), Nr Nick Boyes (for Waimakariri District Council as submitter), and Ms Joanne Mitten (for Canterbury Regional Council).</p> <p>An electronic link to the decision on PC31 is attached below:</p> <p><a href="https://www.waimakariri.govt.nz/_data/assets/pdf_file/0025/145816/RCP-WEBSITE-COPY-RCP031-COMMISSIONERS-RECOMMENDED-DECISION-TO-COUNCIL.PDF">https://www.waimakariri.govt.nz/_data/assets/pdf_file/0025/145816/RCP-WEBSITE-COPY-RCP031-COMMISSIONERS-RECOMMENDED-DECISION-TO-COUNCIL.PDF</a></p> <p>The Panel decision on PC31 discusses Airport noise constraints in paras 89 to 92 (p38-39). The advice from the District Council and ECan in the JWS I referred to in paras 129 and 137 of my s42A report is summarised in para 91 of the Panel decision.</p> <p>The Panel decision on PC31 did not explicitly say whether the advice from the District Council and ECan in the JWS was accepted. In its decision the Panel did not make a finding with respect to the relevance of the</p>

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	draft remodelled Airport noise contours (para 92). However the Panel did find that PC31 did not give effect to Chapter 6 of the RPS 'when considered in the round' (para 390, p125).
<b>Para 151</b>	<b>Does the Rangiora Airfield fall within the definition of either regionally significant infrastructure or strategic infrastructure?</b>
	Rangiora Airfield falls within the Proposed Plan definition of 'strategic infrastructure'. Putting aside consideration of whether Rangiora Airfield <i>should</i> be included in this definition, by way of background, the definition of 'strategic infrastructure' stems from the RPS and was included in the Proposed Plan – along with the RPS definitions of 'critical infrastructure' and 'regionally significant infrastructure' - to be consistent with and give effect to the RPS. The three definitions are used extensively in the Energy and Infrastructure chapter as notified.
<b>Para 178</b>	<b>You say that only two of the activities listed in the CIAL proposed definition of 'bird strike risk activity' are defined in the PDP. How difficult would it be, in your opinion, to amend the descriptions of the undefined activities to match some existing definitions in the PDP?</b>
	<p>I consider there would be a range of difficulties in doing this, such as determining exactly what components the activities listed by CIAL might typically involve, permissible scale, whether/how the way they are typically managed with regards bird attraction has an influence on whether they should be provided for, and whether there are suitable existing definitions in the Proposed Plan under which these activities might fall if their descriptions were amended by further defining them.</p> <p>For example, the terms '<i>commercial pig farming, or cattle feed lots</i>' might fall within the Proposed Plan definition of 'primary production'. However, it is not clear what nature or scale of activity is meant by 'commercial' or what is meant by a cattle feed 'lot'. Alternatively, they might fall within the Proposed Plan definitions of 'intensive outdoor primary production' or 'intensive indoor primary production', but that would depend on whether the activities could typically comply with the terms of either definition.</p> <p>As another example, the terms '<i>fish and commercial food processing activities with external food storage or waste areas accessible to birds</i>' and '<i>abattoirs and freezing works</i>' could also fall within the Proposed Plan definition of 'primary production', but equally might be excluded under part (d) of that definition. They might also fall within the Proposed Plan definition of 'rural industry', but that would be conditional on whether they could typically comply with the terms of that definition. There is also, in my view, uncertainty around what exactly is meant by 'waste areas <i>accessible</i> to birds'.</p> <p>The Proposed Plan definitions of 'primary production' and 'intensive indoor primary production' I refer to in the above examples are National Planning Standards definitions and as such cannot themselves be amended.</p> <p>As another example, there do not appear to be any existing Proposed Plan definitions that could encompass the terms 'wildlife refuges', 'conservation areas' or 'recreational areas' and it is unclear exactly what sorts of areas are being referred to, in terms of their nature or size, and whether these are greater</p>

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	<p>bird attractors than compared to, for example, farming (which does not appear in CIAL’s definition), or the Waimakariri River.</p> <p>One potential problem with substituting the activities listed in CIAL’s proposed definition with existing definitions in the Proposed Plan, is that it may create a situation where people who may previously have not considered themselves affected based on the wording in CIAL’s proposed definition, who might then consider themselves potentially affected if different terms are used, but such people would have no recourse through the Proposed Plan submission process. Some activities listed in CIAL’s proposed definition may seem relatively specific, such as those I have referred to above, whereas some existing Proposed Plan definitions may be broader in the activities they may encompass, such as ‘primary production’.</p> <p>In the absence of a suitable definition and corresponding rules, the likely outcome is activities would be subject to the zone ‘catch-all’ rule, which is generally a discretionary activity, which would allow for consideration of any actual or potential effect.</p> <p>In my view, consideration as to whether undefined activity descriptions in CIAL’s definition <i>can</i> be amended to match existing definitions in the Proposed Plan, should occur alongside consideration as to whether they <i>should</i> be so amended, in terms of the extent to which such activities can be demonstrated to be a significant risk of attracting high bird strike risk species to aircraft using the Airport.</p> <p>CIAL’s submission does not provide evidence that the activities listed in CIAL’s proposed definition for ‘bird strike risk activity’ pose a high bird strike risk to the Airport, nor does it quantify the degree of such a risk, particularly given the distance of the District from the Airport, that high bird strike risk species already traverse the area in-between, and key high bird strike risk species are already managed off-Airport. The independent ecological review that forms Appendix C of my s42A report questions, for various reasons, the extent to which activities included in CIAL’s proposed definition for ‘bird strike risk activity’ should be controlled in the District for bird strike risk to the Airport. I, along with the independent ecological review, as I indicated in my s42A report, also consider there are difficulties with the wording of CIAL’s proposed assessment matter for ‘bird strike risk’.</p>