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

Council Officer's Preliminary Response to written questions on Open Space and Recreation Zones on behalf of Waimakariri District Council

Date: 4/10/2023

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: 4/10/2023

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Paragraph or Plan reference	Question
Overarching	**You have both recommended a new Rail Corridor setback. Please explain what effect this setback is seeking to manage. If it is to allow maintenance of a building without encroaching on the rail corridor, please explain how this is any different a situation to allowing maintenance of a building from any other property boundary without encroaching on the adjoining property. Please also address exactly what the safety effects are that are sought to be addressed through this recommended setback, and how this is different to setbacks from any other boundaries, including road boundaries. Has a section 32 evaluation of the costs/benefits of a building set back from Rail corridors been undertaken by any of the reporting officers, or provided by the submitter?**

The 5m building setback is sought by KiwiRail for safety reasons and is sought for all zones adjoining the rail corridor.

With regards the Open Space and Recreation Zones (OSRZ), the setback is only sought in the Natural Open Space Zone (NOSZ) and Open Space Zone (OSZ). The proposed internal boundary setbacks for buildings and other structures in these zones are contained in built form standards NOSZ-BFS4 and OSZ-BFS4. Depending on the type of building, the building setbacks from internal boundaries are (for the most part) 6m in the NOSZ and 10m in the OSZ. These currently only apply where buildings and other structures in the NOSZ and OSZ adjoin Residential-type zones, to maintain amenity where people may expect a higher level of amenity residing on sites adjoining open space and recreation land. NOSZ-BFS4 and OSZ-BFS4 currently do not refer to sites adjoining the rail corridor.

In terms of safety, KiwiRail advise the 5m setback is intended to allow for vehicle access to the rear of buildings for maintenance (e.g. by a cherry picker) and the erection of scaffolding, without the need for access to the rail corridor, and allows for higher structures and the safer use of deck areas at height on buildings adjoining the rail corridor. A s32AA assessment is provided in paragraph 235 of my s42A report. KiwiRail did not provide a s32 analysis for the requested setback. I am unclear why specifically a 5m setback is sought; I assume this may be a standard KiwiRail advocates nationally.

The building setback from the rail corridor requested by KiwiRail is less than those contained in NOSZ-BFS4 and OSZ-BFS4. I am unclear why KiwiRail did not seek to amend these built form standards so that these also applied to sites adjoining the rail corridor. I assume this may be because KiwiRail did not consider the extent of setbacks contained in NOSZ-BFS4 and OSZ-BFS4 to be necessary to meet its safety considerations.

I note that KiwiRail is scheduled to appear at this Hearing (online). The Panel may wish to invite KiwiRail to clarify the two matters I highlighted above.

Section 3.2.4	**You recommend an amendment to the definition of public amenities in response to the Federated Farmers submission. This is inconsistent with Mr Wilson's s42A coastal environment report, where he does not recommend an amendment, also in response to the same Federated Farmers submission**

Paragraph or Plan reference	Question
	point. Can you please address why we should prefer your recommendation to Mr Wilson's, on the same submission point? **Your recommendation seems to be that this amendment 'may clarify' the definition, but given that Mr Wilson has not seen fit to make the same recommendation do you still consider this is necessary?**
By way of brief background, I have been involved in the District Plan Review since July 2017. The Open Space and Recreation Zones (OSRZ) were amongst the first Proposed Plan provisions to be drafted and these zones generally include only public land. I developed the definition of *'public amenities'* for use in the OSRZ, for the reasons set out in paragraph 102 of my s42A report. In this context I dealt with submission points on the definition of *'public amenities'* as I had understood they had been allocated to me to address, which may explain the inadvertent overlap between my s42A report and that of Mr Wilson. Both Mr Wilson and I do not agree with Federated Farmers submission, albeit for different reasons. For the most part, I consider the relief sought by Federated Farmers unnecessary, for the reasons set out in paragraph 109 of my s42A report. Despite this I recommended accepting the amendment sought by Federated Farmers to avoid any potential for the definition to be applied to whatever amenities might exist on private land, as opposed to *'public amenities'* on public land which was the original intent. However, as the Proposed Plan was developed, the term *'public amenities'* was picked up and provided for by other chapter authors in 16 zone and district-wide chapters. Therefore there may be amenities on private land that in certain circumstances do assist the public, in zones other than the OSRZ, and in this context I agree with the comments made by Mr Wilson in paragraphs 68 to 69 of his s42A report on the Coastal Environment chapter. I am therefore prepared to change my recommendation in respect of Federated Farmers submission point [414.15] in paragraph 114.a.i of my s42A report to align with Mr Wilson, and recommend that submission point [414.15] be rejected, with the definition remaining as notified.	
Para 79	**What value is added by including the phrase *"and whether a charge is made for admission or participation or not".* Does that not cover all bases, and therefore is unnecessary wording?**
The phrase *"and whether a charge is made for admission or participation or not"* is requested to be added to the definition of *"equestrian and ancillary activities and facilities"* in submission point [146.2] from the Oxford A&P Association. As I explain in paragraph 77 of my s42A report, this definition was originally developed to reflect activities in the OSRZ, which is why I addressed submissions and further submissions relating to it in my s42A report, but as the definition could be applied district-wide it was subsequently adapted prior to plan notification to suit use in other situations. This is relevant, as Oxford A&P Showgrounds is privately owned and is proposed to be zoned General Residential; included in the activities provided for under General Residential Zone rule GRZ-R18 'Oxford A&P Showground activities' is *"equestrian and ancillary activities and facilities"*. The phrase *"and whether a charge is made for admission or participation or not"* aligns with the Proposed Plan definition of *"recreation activities"* which also includes this phrase. This phrase is also used in the	

Paragraph or Plan reference	Question
definition of *"recreation activities"* in other district plans, such as Christchurch District. I also note there were no submissions on the Proposed Plan definition of *"recreation activities".* The phrase is recommended to be included in the definition of *"equestrian and ancillary activities and facilities"* because although the latter definition refers to a type of recreation, the term *"recreation activities"* is not itself used in the definition of *"equestrian and ancillary activities and facilities"*, and the phrase clarifies that there may be occasions when a charge is made for admission or participation, or not. There can be occasions where members of the public may question whether a charge can be made for admission to or participation in events taking place on open space and recreation land. Inclusion of the phrase in the definition will therefore aid interpretation of the definition and provide clarity and certainty that a charge may or may not be made for admission or participation.	
Para 146	**Please explain how your recommendation in respect to relocatable buildings is consistent with the recommendations in the s42A RURZ report.**
Both my report and the s42A report for the Rural Zones, in summary, recommend the rejection of submission points by House Movers Section of New Zealand Heavy Haulage Association (House Movers) seeking provision in the zones for relocatable buildings, and suggest the matter would be better dealt with in relation to District-wide Temporary Activities rule TEMP-R6 which House Movers has also submitted on.	
Para 164	**Please explain how there is a duplication between NOSZ-R11(2) and NOSZ-BFS1. On the face of it, it appears that NOSZ-R11 is about an activity (i.e. ancillary offices), and it is not subject to NOSZ-BFS1. However, NOSZ-R2 manages buildings, and it is subject to BFS-1.**
The purpose of NOSZ-R2 (and all such rules in all zones) is to ensure that the activity of the construction or alteration of any building or other structure complies with all applicable built form standards. This was to avoid a situation where a building or structure is constructed or altered as a permitted activity, without consideration of the applicable built form standards. While NOSZ-R11 involves the activity of offices ancillary to park management activities or conservation activities, an office is also a building and is therefore subject to NOSZ-BFS1 and any other applicable built form standards. The potential duplication arises as NOSZ-R11(2) and NOSZ-BFS1 both include standards for the maximum permitted gross floor area (GFA) of buildings, albeit different. As notified, NOSZ-R11(2) stipulates a maximum permitted GFA of all ancillary offices on a site of 250m^2 or 10% of the GFA of all buildings on a site, whichever is the lesser. By contrast, as notified, NOSZ-BFS1 stipulates a maximum permitted GFA of any building of 75m^2. As stated in sections 3.5.3 and 3.6.2 of my s42A report, I have recommended removing the potential duplication of two differing standards on maximum permitted GFA, through the deletion of clause (2) in NOSZ-R11, and the deletion of the first part of NOSZ-BFS1 that reads *"Unless otherwise specified in the*	

Paragraph or Plan reference	Question
activity standards", leaving NOSZ-BFS1 containing the only standard on maximum permitted GFA in the NOSZ. I have also recommended NOSZ-BFS1 be amended by increasing the maximum permitted GFA from 75m^2 to 150m^2.	
Para 186	**Please set out which regulation in the NESPF allows a council to make plantation forestry a discretionary activity in an open space zone.**
In summary, with regards district plans, under the NESPF plantation forestry is generally permitted, except in the circumstances set out in clause 6 of the NESPF in which district plans may be more restrictive than the NESPF. As I mentioned in paragraph 189 in my s42A report, the only OSRZ areas where plantation forestry is likely to be most feasible in terms of size of land area, are in the Natural Open Space Zone (NOSZ) in Tūhaitara Coastal Park in the east of the District, where plantation forestry already exists, and in the Puketeraki range in the west of the District. Other, much smaller parts of the OSRZ in-between, are areas where plantation forestry is unlikely to occur, as discussed in paragraphs 189 and 192 of my s42A report. Plantation forestry in the NOSZ in the Puketeraki range is also unlikely to occur, as this part of the NOSZ is comprised of land administered by DoC. If my recommended amendment to rule NOSZ-R13 with regards plantation forestry is accepted, as set out in section 3.5.4 of my s42A report, the NOSZ provisions will not contain any rule on plantation forestry. Rather, the NOSZ will be 'silent' on plantation forestry. By default new plantation forestry in the NOSZ would therefore fall under the general zone 'catch-all' rule NOSZ-R22 under which it would be a discretionary activity. Existing plantation forestry would likely be provided for by way of existing use rights as I explained in paragraphs 194 to 198 of my s42A report. However, the Tūhaitara Coastal Park part of the NOSZ is overlain by the Coastal Environment Overlay, and the Puketeraki range part of the NOSZ is overlain by the Outstanding Natural Landscape Overlay. As discussed in section 3.5.4 of my s42A report, under clause 6 of the NESPF, the Coastal Environment and Outstanding Natural Landscape Overlays are areas where the Proposed Plan can be more restrictive than the NESPF. Under the combination of rule NOSZ-R22 and Coastal Environment rule CE-R4 (as recommended to be amended by Mr Wilson to give effect to the NZCPS), and rule NOSZ-R22 and Natural Features and Landscape rule NFL-R13, new plantation forestry would be a non-complying activity, which I consider appropriate as the purpose of the NOSZ is to retain the natural environment.	
Para 245	**Given the range of site sizes in the NOSZ, did you consider an approach of limiting the GFA as a percentage of the site area, or a combination of both?**
Yes. As outlined above, as notified NOSZ-R11(2) stipulates a maximum permitted GFA of all ancillary offices on a site of 250m^2 or 10% of the GFA of all buildings on a site, whichever is the lesser. However, as outlined above and as explained in section 3.5.3 of my s42A report, I have recommended deletion of clause (2) of NOSZ-R11 in favour of a maximum permitted GFA of any building under NOSZ-BFS1 which I have recommended be increased from 75m^2 to 150m^2.	

Paragraph or Plan reference	Question
In the NOSZ, the potential difficulties with expressing maximum permitted GFA as a percentage of site area, are the sheer size of some sites, clarifying exactly where boundaries in some places lie, and identifying what would be a fair percentage of a large site area. Some parts of the NOSZ, such as Tūhaitara Coastal Park or Puketeraki range, are very large. Tūhaitara Coastal Park, for example, occupies approximately 700ha along an approximately 10.5km length of the District's coast and is of variable width, and in some places the Park boundary can be difficult to define, such as along the dunes or where the Park joins Waikuku in the north or Pines Beach and Kairaki in the south. In its submission, Tūhaitara Trust considered a maximum permitted GFA of all ancillary offices on a site of 250m^2 or 10% of the GFA of all buildings on a site to be an unreasonable constraint in the context of the sheer size of the Park. By contrast, the built form standards for the Open Space Zone (OSZ-BFS1) and Sport and Active Recreation Zone (SARZ-BFS1) include standards for the maximum permitted coverage by buildings and impervious surfaces as a percentage of site area. However, sites in the OSZ and SARZ are generally more discrete with distinct boundaries which allows a percentage of site area to be more easily and precisely defined.	
Para 254	**Our reading of the Hort NZ submission is that they are concerned about potential reverse sensitivity effects arising from buildings in the SARZ on adjoining Rural Zoned sites. Did you consider reverse sensitivity effects in your assessment of their submission point?**
Yes. As I stated in paragraph 254 of my s42A report, the SARZ is a zone where larger built developments are contemplated but for specified purposes and in specified locations. Minimum setbacks from internal boundaries are proposed to be applied where the SARZ adjoins Residential-type zones (or other OSRZ), as Residential-type zones (or other OSRZ) arguably have a greater sensitivity to adverse effects on amenity including from larger buildings on sites in the SARZ adjoining Residential-type zones (or other OSRZ) (i.e. reverse sensitivity effects). Rural zones arguably do not have a type and scale of built development comparable to Residential-type zones, therefore I do not consider the same amenity considerations regarding adverse effects from larger buildings on sites in the SARZ adjoining Rural zones should apply. Unlike Residential-type zones, where people may reside beside Rural zones, the SARZ is not a zone where people are permitted to reside, unless it is a 'residential activity ancillary to park management activities' (SARZ-R10). The SARZ provisions also provide for an 'office ancillary to park management activities, recreation activities or major sports facility' (SARZ-R9). In these situations, I agree there may be a potential for reverse sensitivity effects to arise with respect to potential complaints about the proximity of rural production. Although I am unclear as to why Horticulture NZ sought amendment only to the internal boundary setbacks for the SARZ, and not those in the NOSZ or OSZ where residential activity and offices are also provided for in similar circumstances. I note that Hort NZ are scheduled to appear at this Hearing and the Panel may wish to invite Hort NZ to clarify this point. Notwithstanding, based on the above, I am prepared to change my recommendation with respect to submission point [295.204] in paragraph 256.a of my s42A report, from reject to accept, and that built form standard SARZ-BFS4 be amended by including reference to Rural Zones.	

Paragraph or Plan reference	Question
NOSZ-R14, OSZ-R14	**Does this limitation to District Council land mean that grazing on non-Council land is a discretionary activity? If so, what is the implication of this?**

In response to Federated Farmers submission point [414.40] I recommended matter of control and discretion OSRZ-MCD14 be amended to refer to grazing 'on District Council land', with consequential amendments to related rules NOSZ-R14 and OSZ-R14, as set out in paragraph 283.a of my s42A report, for the reasons explained in paragraphs 276 to 279 of my s42A report.

The third paragraph at the beginning of the OSRZ chapter states the OSRZ generally only include public land.

The District Council only issues grazing licences for grazing on District Council land. In the context of the OSRZ, this only occurs in the Natural Open Space Zone (NOSZ) and Open Space Zone (OSZ).

The OSZ only contains District Council land, therefore the situation of consent being required for grazing on non-District Council land within the OSZ as a discretionary activity will not arise.

However, while the NOSZ contains District Council land, the NOSZ in places also includes land administered by other public agencies, such as ECan or DoC. For example, as mentioned above, the NOSZ in the Puketeraki range in the west of the District is comprised of land administered by DoC.

If rule NOSZ-R14 is amended in the manner recommended in my s42A report, this could have the unintended consequence of these other public agencies needing resource consent from the District Council for grazing on non-District Council land in the NOSZ as a discretionary activity. These other public agencies are likely to have their own internal processes for authorising grazing on land they administer. Therefore, while seeking a grazing licence from the District Council would seem unnecessary, it would be a far less onerous process than seeking a discretionary activity resource consent.

On reflection, I am therefore prepared to change my recommendation in respect of Federated Farmers submission point [414.40] in paragraph 283.a of my s42A report, and instead recommend that submission point [414.40] be rejected with no amendments to OSRZ-MCD14, NOSZ-R14 or OSZ-R14. On this basis, the provisions would remain as notified, with grazing permitted in the NOSZ and OSZ under a grazing licence issued by the District Council.