

**BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE
TIMARU DISTRICT COUNCIL**

UNDER the Resource Management Act 1991 (RMA)
IN THE MATTER the Proposed Timaru District Plan
SUBMITTER Aircraft Owners and Pilots Association of New Zealand
and Sid McAuley

**MEMORANDUM ON BEHALF OF THE AIRCRAFT OWNERS AND PILOTS
ASSOCIATION OF NEW ZEALAND AND SID MCAULEY**

Usage and controls for small, fixed wing aircraft

6 December 2024

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Introduction

- 1 The Aircraft Owners and Pilots Association of New Zealand (**AOPA**) and Sid McAuley (the **Submitters**) made submissions (and further submissions) on the Timaru District Council's (**Council**) Proposed District Plan (**PDP**) in opposition to the PDP's proposed rules regulating airstrips.
- 2 The Submitters represent people who fly small non-commercial fixed-wing aircraft recreationally (**Activity**). They have an interest in ensuring they can continue this Activity which benefits the Timaru District through amenity value and having a strong flying community. The Submitters are concerned that any regulation is reasonable, considered, and proportionate to the Activity.
- 3 In Minute 14 following Hearing B the Hearings Panel sought for the Council officer to clarify the following point:

In relation to GRUZ R14 Use of Airstrips and Helicopter Landing Sites, please clarify which objective(s) and policies in the PDP that GRUZ R14 seeks to implement.
- 4 The Hearings Panel further sought clarification from Ms Vella (counsel for the Council) as follows:

Further we ask Counsel for the Council Ms Vella to file a memorandum by 23 August 2024 setting out the background to Rule GRUZ R14 Use of Airstrips and Helicopter Landing Sites in relation to non-commercial fixed wing aircraft, including:

 - (a) Record of complaints and monitoring undertaken under the Operative District Plan (ODP).
 - (b) Evidence that supported proposed change from ODP rules. Please clarify which rules applied in the ODP. In proposing the new rule did the Council have information about the number of private airstrips affected by the rule and percentage of primary production or recreational or other non-commercial flights affected by the rule?
- 5 In response to the Hearing Panel, Ms Vella advised there is a record of "several complaints" in the Rural 5 zone between 2011 – 2013. It is unclear whether these relate to the same site. However, it appears this only relates to one site as the subsequent monitoring appears to be on

one site. Further, it appears the issue was able to be managed so the effects were minor.

- 6 In response to the query related to evidence that supported the proposed change from the ODP rules, Ms Vella provided additional analysis and information about the development of the rules. However, none of the information provided included evidence to support an increase in regulation of the Activity.
- 7 At the hearing Ms Vella indicated the Council would engage with the Submitters to determine whether an alternative rule framework would address the Submitters concerns.

Status Quo

- 8 In discussion following the hearing, it was suggested by Ms Vella a rule which reflected the status quo may be appropriate to address the Council's concern about leaving the Activity unregulated and the Submitter's concern not to unnecessarily regulate the Activity without justification.
- 9 Our clients received a memorandum of counsel on behalf of the Timaru District Council dated 23 August 2024 setting out what Council considered the status quo was under the Operative District Plan (**ODP**). This memorandum was filed with the Hearings Panel.
- 10 In summary, the Council considered that the status quo is that noise must not exceed 50dBA L₁₀ between 7am and 10pm at the notional boundary of the nearest household unit.¹ Measurement of this noise standard relies on New Zealand Standard (**NZS**) 6801:1991 measurement of sound and is assessed in accordance with the provisions in NZS 6802:1991 assessment of environmental sound.
- 11 However, this is only one interpretation of the ODP. There is an alternative interpretation of the ODP based on the framing of the exemptions from the noise rules.

¹ We accept that there are other noise limitations which relate to other times of the day. However, the vast majority, if not all, of the activity we are concerned about would occur between 7am and 10pm. Therefore, we refer to general noise limitation in the rural zones under the ODP as being 50dBA L₁₀.

- 12 The Council's interpretation of the ODP relies on the Activity (the take-off and landing of small non-commercial fixed-wing aircraft) being captured by the general noise performance standard only.
- 13 All activities in the rural zone are subject to the noise performance standards, even if they are a permitted activity. However, the general noise performance standard for the rural zones are "subject to 5.23" of the ODP. Further, 5.22 concludes with the words "unless specific noise limits are provided for the activity elsewhere in this Plan".
- 14 Immediately following 5.22 is section 5.23, which is broken into sections 5.23.1 "Aircraft Engine Testing" and 5.23.2 "Noise from Aircraft Operations". The take-off and landing of small non-commercial fixed-wing aircraft is an aircraft operation and, therefore, is subject to the specific "Noise from Aircraft Operators" performance standard, rather than the general noise performance standards.
- 15 Performance standard 5.23.2 "Noise form Aircraft Operators" only places performance limits on noise from the Timaru Airport and does not impose limitation for other aircraft operations. Under this interpretation of the ODP, there are no noise limitations or regulations for small non-commercial fixed-wing aircraft.
- 16 Depending on which interpretation of the ODP is applied, the status quo for flying small non-commercial fixed-wing aircraft is either:
- (a) No regulation or limitation; or
 - (b) 50dBA L_{10} between 7am – 10pm and applying the NZS 6801:1991 measurement of sound and assessing the noise in accordance with the provisions in NZS 6802:1991 assessment of environmental sound.

Communication following hearing

- 17 The Council proposed to the Submitters regulating small non-commercial fixed-wing aircraft through the general noise standards adopted for the rural zone in the PDP. The general noise standard limit in the rural zone is 50dB L_{Aeq} between 7am and 7pm. This is to be measured in accordance with NZS 6801:2008 Acoustics – Measurement of Environmental Sound and set in accordance with NZS 6802:2008 Acoustics – Environmental Noise.

- 18 Regulating the Activity by applying 50dB L_{Aeq} is clearly more restrictive than imposing no regulation or limitation. Therefore, the Submitters considered how the 50dB L_{Aeq} standard would compare to the 50dBA L_{10} standard to consider whether this standard reflects a “status quo” standard.
- 19 The Submitters rejected using the 50dB L_{Aeq} standard noting that the noise metric is different. The Submitters set out in detail to the Council how they considered the use of a different metric would affect the activity. As the Council did not provide analysis of how this change in metric would affect the Activity, the Submitters had to try to decipher the likely impact themselves.
- 20 From their analysis, the Submitters believe applying the 50dB L_{Aeq} metric proposed by the Council was likely to result in a substantially more restrictive rule than the status quo interpretation due to how the noise will be measured. It may even be more restrictive than that originally proposed in the PDP. The Submitters’ full analysis can be provided to the Hearings Panel if necessary.
- 21 The Submitters responded to the Council’s proposal setting out their position and emphasising their concerns that:
- (a) the proposal to use the 50dB L_{Aeq} metric does not represent the status quo;
 - (b) there was no analysis of how these rules would apply to the Activity (and undertaking analysis at this late stage is not within scope); and
 - (c) there remains no identified issue which requires regulation and therefore the imposition of any rule must be carefully considered and balanced against the lack of issue.
- 22 In response the Council engaged Malcolm Hunt to provide an analysis of the rules and potential noise effects. Mr Hunt analysed the Timaru District with reference to the Queenstown Lakes District and then provided a suggested rule framework attached at **Appendix A**.

Concern with Council approach, lack of problem, and lack of analysis

- 23 The Submitters remain concerned about the Council’s approach to the regulation of the Activity to date. The original PDP sought to regulate

noise to protect amenity values by imposing movement limits and setbacks. However, this was not examined or even set out in the Council's s 32 assessment aside from a note stating:

“there was concern that aircraft noise associated with the rural zone are not adequately provided for”

- 24 Due to the lack of analysis in the s 32 report, there is no link, other than the bald assertion of the Council, between this off-handed comment about aircraft noise and the movement and setback limits. Even the communication between the Council and its planner (obtained through the LGOIMA request) is sparse on detail and analysis linking the control of aircraft noise to the movement and setback limits.
- 25 As set out in our submissions to the Hearings Panel dated 12 July 2024, we consider the s 32 report does not provide a basis for imposing specific movement limits and setbacks. Given the lack of assessment or even identification of a problem, we consider the Council's approach to address the issue through regulation is highly restricted.
- 26 The s 32 report provided no assessment of how the current plan regulates noise, or how NZS 6802:2008 (the general noise standard) or NZS 6801:2008 (the specific noise standard for fixed-wing aircraft) would actually affect and regulate the activity of flying fixed-wing aircraft.
- 27 The Council's engagement of Mr Hunt at such a late stage is concerning and suggests the Council is now attempting to address and undertake analysis which ought to have been undertaken at the s 32 report stage. Although Mr Hunt's report has not been filed with the Hearings Panel, it is incredibly late in the proceedings to be presented with this type of analysis.
- 28 Mr Hunt's analysis was provided after the Submitters had to undertake their own analysis to try and understand how the rules would affect the Activity. An analysis which should never have been necessary for the Submitters to undertake. Despite this, Mr Hunt in his analysis is critical of the Submitter's interpretation of the effect of the 50dB L_{Aeq} metric, however, Mr Hunt does not analyse how the different metric will actually affect the Activity (other than to agree it is a different metric to the ODP).

- 29 Further, Mr Hunt's assessment compares the Timaru District with the Queenstown Lakes District.² In particular Mr Hunt refers to rules 21.10.2 and 21.10.3 of the Queenstown Lakes District Council's proposed plan. Mr Hunt's later recommendations are based heavily on these rules. However, these rules regulate the flight of helicopters from "informal airstrips" under the same rule as small non-commercial fix-wing aircraft. As discussed at the hearing, helicopters have a significantly different noise profile to small non-commercial fixed-wing aircraft. Further, the regulation of helicopters and all small non-commercial fixed-wing aircraft is a significantly wider activity than the Activity in issue in this case and, therefore, any comparison with these rules in the Queenstown Lakes District Council's proposed plan must be treated with caution.
- 30 Understandably, the Submitters have been frustrated by the lack of either timely or appropriate analysis of effects of proposed rules on the Activity, despite persistence from the Council to have a regulatory framework in place for the Activity.

Submitters proposal

- 31 The Submitters consider there are no grounds, as advanced by the Council, which support the imposition of regulation on the Activity. Nonetheless, the Submitters have considered the competing issues. The positions between the Submitters and the Council are now clear:
- (a) The Council considers there must be some form of regulation of the Activity, despite there being no identified issues with the Activity, presumably to protect against any effects caused by an unanticipated sharp increase in the Activity in the future.
 - (b) The Submitters do not accept there is a basis to impose regulation beyond the status quo on the evidence and analysis provided to date. Whether the status quo requires that noise must not exceed 50dBA L₁₀ between 7am and 10pm (as measured by the 1991 standards) or there is no regulation at all is unclear.

² It is noted the comments made at the hearing regarding the comparison between the Timaru District and Waiheke Island are equally apt when comparing the Queenstown Lakes District and the Timaru District. The Queenstown Lakes District has a disproportionately high number of well-off individuals who use helicopters as a frequent form of transport.

- 32 Rather than adopting the noise standard rules, which (as addressed above) are uncertain in their application to this Activity due to the lack of analysis, the Submitters would consent to a rule framework which relies on number of movements and comfortably captures the existing Activity.
- 33 The Submitters would consent to the rules as set out in Appendix B being inserted into the proposed District Plan. In summary, this would permit the flying of non-commercial small non-commercial fixed-wing aircraft:
1. Where an airstrip is located within a 500m of any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership:
 - (a) No more than 20 take offs and 20 landings per month;
 - (b) 'Fly-in' events (where multiple aircraft fly onto a property) are not included in the calculation for (1)(a) and are limited to no more than 12 events per calendar year; and
 - (c) Nighttime movements (between 10pm and 7am) are subject to the permitted activity nighttime noise standard NOISE-S2.
 2. Where an airstrip is located between 500m and 1000m from any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership, no maximum use limitations or noise limits apply between 7am and 10pm but the permitted activity nighttime noise standard NOISE-S2 applies outside of these hours; and
 3. Where an airstrip is located over 1000m from any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership no maximum use limitations or noise limits apply (whether day or night).
- 34 We note that as NOISE-S2 is not confirmed, cross reference to NOISE-S2 relies on NOISE-S2 not undergoing any changes which would meaningfully affect our client's position and interest. If NOISE-S2

meaningfully changes this will need to be amended to a direct reference to the noise standard.

- 35 These proposed rules are similar to the rules proposed by Mr Hunt, the noise expert engaged by the Council, with a few notable changes:
- (a) Rather than having maximum standards per day, week, and month, we have proposed a rule which just sets the limit per month to allow for flexibility in use.
 - (b) We have adapted Mr Hunt's suggestion to better fit into the rest of the rules proposed by GRUZ-R14 and GRUZ-R14A.
 - (c) We have proposed a maximum of 20 take offs and 20 landings per month (rather than 12 take offs and 12 landings) to ensure we properly capture the existing Activity (using a movement limit as a proxy rather than using 50dBA L₁₀ and the 1991 standard).
 - (d) We have proposed a maximum of 12 fly-in events per year to ensure we comprehensively capture the existing Activity through movement rather than noise limits.
 - (e) We have removed the requirement to inform the Council about 'fly-in' events. Fly-ins have been occurring for many decades, including very recently, with no issues raised. Having the notification requirement simply presents an unnecessary overhead for both Council and the pilots. Further, temporary events are provided for in the noise chapter of the PDP, and NZS6802 without the need for notification.
- 36 The rules proposed by the Submitters in Appendix B are the most restrictive regulation the Submitters would consent to. Therefore, this position is presented to the Hearings Panel as the Submitter's final position regarding GRUZ-R14 and GRUZ-R14A.

37 The Submitters consider the proposed rules at Appendix B are a fair and balanced way of addressing both the Council's and the Submitters' concerns.

Dated this 6th day of December 2024

A handwritten signature in blue ink, appearing to read 'P. Maw', is written over a horizontal dotted line.

P A C Maw and E R Pairman

Counsel for the Aircraft Owners and Pilots Association of New Zealand and Sid
McAuley

Appendix A

Noise from movements of fixed-winged light aircraft movements for non-commercial purposes at informal airstrips in the General Rural Zone (GRUZ) are exempted from the permitted activity noise performance standards of NOISE-S2 provided the following are complied with;

A. Number of Aircraft Movements

- 1) Subject to clauses B, C and D, where an informal airstrip is located in the GRUZ within 500m of any existing sensitive receiver site (such as rural dwellings) or sites zoned for residential use, movements of fixed-winged light aircraft taking place for non-commercial purposes shall be managed to comply with each of the following limits;
 - i. Not more than two landings and two take-offs at the informal airstrip per calendar day;
 - ii. Not more than five landings and five take-offs at the informal airstrip per calendar week;
 - iii. Not more than twelve landings and twelve take-offs at the informal airstrip per calendar month.
- 2) None of the above movement limitations apply for aircraft movements at informal airstrips located in the GRUZ at locations 500m or more from any existing sensitive receiver site (such as a rural dwelling) or sites zoned for residential use.

B. Night Time Aircraft Movements

- 1) Where informal airstrips in the GRUZ are located within 1,000m of any existing sensitive receiver site (such as a rural dwelling) or a site zoned for residential purposes, use of the airstrip by non-commercial fixed-wing light aircraft between the hours of 10pm and 7am is not a permitted activity.
- 2) Night time movement restrictions between 10pm and 7am do not apply where an informal airstrip is located 1,000m or more from any existing sensitive receiver site in the GRUZ (such as rural dwellings) or sites zoned for residential use.

C. Aircraft 'Fly-in' Events

Aircraft 'Fly-in' events are limited to not more than 6 events per calendar year per informal airstrip providing;

- 1) No more than 1 event per month; and
- 2) The AOPA has notified the council's planning department of the event.

D. Application

- 1) These provisions apply to the use of informal airstrips in the GRUZ for the landing and taking off of fixed-wing light aircraft for a non-commercial purpose and which has a certified take-off weight for the aeroplane and its contents of 5,700kg or less.
- 2) None of the above restrictions apply to aircraft movements at informal airstrips used for emergency landings, rescues and fire-fighting.

Appendix B

Proposed amendments to GRUZ-R14 as set out in the PDP:

GRUZ-R14: Use of airstrips and helicopter landing sites

Activity status: Permitted

Where:

PER-1 The flights are for emergency purposes such as medical evacuations, search and rescue, firefighting or civil defence; or

PER-2 The use is for primary production including spraying, stock management, fertiliser application or frost protection for:

1. a maximum of seven days within any three month period where the airstrip or helicopter landing site is setback between 500m-1,000m from:
 - a. any Residential zone; and
 - b. the notional boundary of a building containing a noise sensitive activity, not located on the site of the airstrip or helicopter land site; or
2. the airstrip or helicopter landing site is setback greater than 1,000m from:
 - a. any Residential zone; and
 - b. the notional boundary of a building containing a noise sensitive activity, not located on the site of the airstrip or helicopter land site; or

PER-2A Non-commercial small fixed-wing aircraft movements within the following limits:

1. Where an airstrip is located within a 500m of any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership:
 - (a) No more than 20 take offs and 20 landings per month;
 - (b) 'Fly-in' events (where multiple aircraft fly onto a property) are not included in the calculation for (1)(a) and are limited to no more than 12 events per calendar year; and
 - (c) Nighttime movements (between 10pm and 7am) are subject to the permitted activity nighttime noise standard NOISE-S2.
2. Where an airstrip is located between 500m and 1000m from any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership, no maximum use limitations or noise limits apply between 7am and 10pm but the permitted activity nighttime noise standard NOISE-S2 applies outside of these hours; and
3. Where an airstrip is located over 1000m from any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership no maximum use limitations or noise limits apply (whether day or night).

PER-3 Take offs or landings must not exceed 10 per month; and the airstrip or landing site is setback a minimum of 500m from:

1. any Residential zone; and
2. the notional boundary of a building containing a noise sensitive activity not located on the site of the airstrip or helicopter land site.

Insert definition: **Non-commercial small fixed-wing aircraft is an aeroplane that is not being flown for a commercial purpose and has a certified take-off weight for the aeroplane and its contents of 5,700kg or less.**

Proposed amendments to GRUZ-R14 and GRUZ-R14A if the recommended changes in the s 42A report are adopted:

GRUZ-R14: Use of permanent airstrips and helicopter landing sites

Activity status: Permitted

Where:

~~PER-1 The flights are for emergency purposes such as medical evacuations, search and rescue, firefighting or civil defence; or~~

~~PER-2 The permeant airstrip or helicopter landing site is use is for primary production including spraying, stock management, fertiliser application or frost protection for:~~

~~1. used for a maximum of 30 seven days within any 12 three month period where the airstrip or helicopter landing site is setback between 500m-1,000m from:~~

- ~~a. any Residential zone; and~~
- ~~b. the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership not located on the site of the airstrip or helicopter land site; or~~

~~2. the airstrip or helicopter landing site is setback greater than 1,000m from:~~

- ~~a. any Residential zone; and~~
- ~~b. the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership not located on the site of the airstrip or helicopter land site; or~~

3. being used by non-commercial small fixed-wing aircraft as a permitted activity under GRUZ-R14A.

~~PER-3 Take offs or landings must not exceed 10 per month; and the airstrip or landing site is setback a minimum of 500m from:~~

~~1. any Residential zone; and~~

~~2. the notional boundary of a building containing a noise sensitive activity, not located on the site of the airstrip or helicopter land site.~~

GRUZ-R14A: Aircraft and Helicopter Movements

Activity status: Permitted

Where:

PER-1 Aircraft and Helicopter Movements are used for emergency purposes only such as medical emergencies, search and rescue or firefighting; or

PER-2 Aircraft and Helicopter Movements are associated with purposes ancillary to rural production including topdressing, spraying, stock management, fertiliser application, and frost mitigation, including the incidental landing and take-off of helicopters during their normal course of operation, or

PER-2A Non-commercial small fixed-wing aircraft movements within the following limits:

1. Where an airstrip is located within a 500m of any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership:
 - (a) No more than 20 take offs and 20 landings per month;
 - (b) 'Fly-in' events (where multiple aircraft fly onto a property) are not included in the calculation for (1)(a) and are limited to no more than 12 events per calendar year; and
 - (c) Nighttime movements (between 10pm and 7am) are subject to the permitted activity nighttime noise standard NOISE-S2.
2. Where an airstrip is located between 500m and 1000m from any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership, no maximum use limitations or noise limits apply between 7am and 10pm but the permitted activity nighttime noise standard NOISE-S2 applies outside of these hours; and
3. Where an airstrip is located over 1000m from any Residential zone or the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership no maximum use limitations or noise limits apply (whether day or night).

PER-3 All other aircraft and helicopter movements must be setback greater than 100m from:

1. any Residential zone; and
2. the notional boundary of a building containing an existing noise sensitive activity, on a separate site under different ownership.

Insert definition: Non-commercial small fixed-wing aircraft is an aeroplane that is not being flown for a commercial purpose and has a certified take-off weight for the aeroplane and its contents of 5,700kg or less.