Before the Independent Commissioners appointed by the Waimakariri District Council

In the matter of	the Resource Management Act 1991 (**the Act**)
and	
In the matter of	Proposed Waimakariri District Plan: Rangiora Airfield (Hearing Stream 12F)
and	
In the matter of	Submission #10 Daniel Smith seeking rezoning or Rangiora Airfield and surrounding land as a Special Purpose: Airfield Zone.

Submissions in support of Submission 10 – Daniel Smith, re Rangiora Airfield (HS12F)

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To the Independent hearing Panel (Panel):

Introduction

1. These legal submissions relate to the original submission by Daniel Smith for a rezoning of the land containing and surrounding Rangiora Airfield (**Airfield**) to a Special Purpose Airfield Zone (**SPZ-RA**).

2. As the evidence presented details, what is proposed is a rezoning that enables the establishment of Airfield related or Airfield adjacent activity, while ensuring that actual Airfield operations are not adversely impacted and will continue to comply with all Civil Aviation requirements.

3. The submitter has provided evidence on planning, noise effects, landscape effects, transport effects, the proposed future development and future proofing of the Airfield, access to services, and the Waimakariri District Council's (**Council**) involvement with prior planning for the proposal.

4. That evidence indicates that the proposal can and would fit within the Proposed Waimakariri District Plan's (**PWDP**) framework and can address any potential adverse effects. The evidence also makes clear that the nature of the proposal places it outside other rezoning proposals under the PWDP, making the creation of a special purpose zone the best option.

5. The proposal will also assist the Council in carrying out an important part of its function under the RMA. Namely, the protection of a strategic community asset from inappropriate development, while ensuring the long-term viability of that asset.

6. In doing so the proposal provides a comprehensive treatment of the land that is adjacent to the Airfield, essentially setting it aside for Airfield related activities. Those activities will include commercial activities that support or rely on Airfield operations, as well as opportunities for residential activity, to accommodate persons engaged in Airfield related activities.

7. The Proposal represents an ideal opportunity to achieve the various goals for the Airfield including future proofing, enabling further needed development and space to do so, and securing additional revenue streams (re: access etc.), in a way that will be enduring and self-contained.

Issues

8. These submissions are not intended to be exhaustive. The evidence, and proposed provisions, ably illustrate that the merits of the proposal can be supported. However, there are some matters, for which concerns have been expressed in the s.42A report, that are commented on below. These include:

    8.1. Scope

    8.2. The Airfield as a strategic asset – how to view the proposal

    8.3. Water service requirements

    8.4. Legal instruments to be registered against titles:

        8.4.1. Residential activity must be associated with an airfield related activity on the same site

        8.4.2. No complaints covenants for all new noise sensitive land uses in favour of the WDC

        8.4.3. Guaranteed access to airfield via planned taxiways

    8.5. Legal agreements between WDC and Daniel Smith re services

Scope

9. Included with the s.42A report for HS12F is a legal opinion that concludes (in summary) that:

> …we consider that there are aspects of the relief now being pursued… that could be considered to be reasonably and fairly to be within scope of the submission. However, there are other aspects… that go beyond what was fairly and reasonably raised… including allowing residential development in Area A, removing the minimum allotment size for Area A and changing the minimum allotment size for Area B and the provisions enabling and/or protecting the airfield.

10. At the outset, I note that these aspects are considered consequential (which the advice acknowledges they could be) for reasons set out further below.

11. Mr Chrystal has commented in his supplementary evidence on the issue of scope. His view, with which I concur, is that the simple relief sought in the submission provides for a wide range of scope. He notes,

supported by Environment Court authority[1] that, an original submission provides a spectrum of outcomes.

12. In this case, while Mr Chrystal does not identify it himself, that spectrum would be from what the operative plan allows through rural zoning, through the proposed Rural Lifestyle Zoning (RLZ), to what is sought in the submission, a Special Purpose Zone (SPZ-RA). The outer limits of that zoning are not specified in the submission beyond commercial and residential uses. They can therefore be inferred to an extent and are specified in the evidence.

13. Mr Chystal also raises the difference in the present context that the submission may be constrained by the plans attached to the submission. He also indicates his experience that it is what is sought in the end that presides.

14. In actuality, it is whether what is sought in the end can be seen as a reasonable and fairly consequential result in light of what was sought that matters. In this case that does not seem a huge leap.

15. In terms of the issues identified as potentially problematic in the s.42A legal advice, the following comments can be made:

    15.1. Where residential activity was to be allowed was not specified in the submission, just that residential as well as commercial activity was sought for the SPZ-RA. That is in addition to Mr Chrystal's point that Airfield related residential activity is already allowed in Area A;

    15.2. As the precise locations for residential areas was not specified, and the plan -002 indicated a variety of lot sizes, it isn't that a minimum allotment size was removed, it was simply never stated. It is noted that a minimum allotment size has now been suggested (300m^2), though obviously that remains a 'minimum' and still subject to the except regarding minimum lots created per hectare.

    15.3. Similarly, the lot sizes shown on the submission plan -002, do not specify a minimum allotment size for Area B. The minimum allotment size proposed in the evidence in chief is consistent with the Large Lot Residential Zone minimum lot size (compared with the smallest rural minimum lot size is 4ha in

[1] Beresford and Ors v Queenstown Lakes DC [2024] NZEnvC 182. https://www.nzlii.org/nz/cases/NZEnvC/2024/182.html

the Rural Lifestyle Zone, which is notified zoning for the relevant land). Therefore, a person seeing that an urban residential/commercial zone was being sought and having compared the minimum lot sizes in other proposed residential zones, would be unlikely to be surprised by the LLRZ minimum lot size being imposed.

The fact is, the minimum lot size is unlikely to be attainable on the proposed lots, due to the need for access to a taxiway and the minimum dimensions necessary. So regardless of the minimum lot size, this is another factor making that outcome less likely that the allotments shown in the submission plan -002.

Again, even if there was a potential scope issues caused by a the minimum lot size (5000m^2), that has been amended (to 7000m^2) in the latest iteration of the proposal to be consistent with the lot sizes in plan -002, in case that consistency is considered necessary.

15.4. As for the inclusion of provisions enabling or benefiting the Airfield, this 'concern' appears to miss the point of the entire SPZ-AR. The reason for the proposed zone, which may be inferred by the idea that the new zone is intended to 'accommodate residential and commercial activities', is to enable those activities in proximity with the airfield. They are not intended to replace the Airfield, which is a designated activity.

The establishment of the SPZ-RA also means (and always meant) that the Airfield, which currently does not require added protections to ensure its operation owning to the surrounding zoning, would need to also be protected to some degree. In other words, the SPZ-RA would be entirely self-defeating if the activities it enabled (being Airfield related commercial and residential activities) could, in time, become a reason to curtail the Airfield's Activities.

Therefore, the provisions described as enabling and benefiting the Airfield, are merely preserving the status quo, in so far as Airfield operations are concerned.

16. These changes/proposals, along with those proposed to other sections of the plan that only relate to the Airfield and the new zone and do not

otherwise affect the application on those rules (e.g. the specific Strategic objective and the noise rules), are therefore considered fairly and reasonably consequential to the creation of the SPZ-RA.

17. And, while the issue of scope involves a judgement, and a decision maker must be careful to ensure that what is sought is fairly and reasonably raised (approaching the issue in a realistic matter and not from the perspective of a legal nicety), there is an expectation that so long as what is sought can be seen as a consequence of what was submitted, then it is likely to be within scope.

18. That does not mean that any relief that is with scope will succeed on the merits, but the issues are not the same and should not be confused. To say that a submission is out of scope, is to say there is no jurisdiction to consider the merits. In a District Plan context, where anyone in the community who is concerned about an issue and can be reasonably inferred to have been made aware of what is proposed, and can get involved by submitting, it is not acceptable to determine scope by suspicion[2].

19. The 'surprise' as to the lack of further submissions 'from landowners and beyond' is not relevant. Such an approach suggests that the merits of the change and what may happen as a result, are the focus of the enquiry. Especially where, as the advice accepts, the summary of submissions was fair and the purpose of the submission - to create a mixed special zone for residential, commercial and Airfield activities - was apparent.

20. Had the summary misrepresented what was proposed then there might be an issue, but it did not. Anyone who saw the summary and had an interest in the development of the Airfield, would have been put on notice. As indicated in my original advice on scope, the absence of detail would just as likely have made a further submission more likely had someone had a concern, or even been unsure about what was proposed.

21. A particular case in point is the apparent surprise that the Council, as Airfield owner did not lodge a submission. In the circumstances, it should now be reasonably clear that the Council has indicated a level of support for the submission, but again that is a matter of merit. The point is that the absence of a submission does not equate to an absence of

[2] It is noted that there are many instances where a submission is clear but, for whatever reason, people chose not to submit. That is not a scope issue, and even if those people may have raised a merits issue the decision maker is unable to consider it.

scope. Again, it may be more of an issue if the summary of submissions is inaccurate, but that is not the case here.

22. In all the circumstances, it is considered open to the Panel, on a fair and reasonable basis, to conclude that the submission seeking the SPZ-RA created a broad scope to consider the specifics of such a zone. There is no real basis for any concern that affected persons who had concerns over the level of development proposed for the zone would have been misled by the submission. If anything, the proposed rules constrain the potential activities in order to reduce potential effects, including effects on the Airfield itself.

Strategic nature of the zoning outcome

23. Rangiora Airfield is recognised as a strategic asset for Waimakariri District. It also requires improvements. Not to increase the total permitted level of aircraft activity (a level which exceeds what is currently occurring and is provided for in terms of the existing provisions including the noise contours) but to ensure safety, and the ability of the Airfield to continue to fulfil its purpose.

24. The status of the Airfield, and the nature of the activities that rely on it, means that the proposed zoning (which will, after all, be a special purpose zone) is unapologetically bespoke. That does not mean that common planning conventions can be ignored but that the specialised nature of what it intended and expected to occur within the needs to also be considered. In fact, it is central to the proposed rezoning. Mr Chrystal's evidence explains why a special purpose zone is justified in the circumstances at Rangiora Airfield.

25. So, while the s.42A report raises concerns about how residential activity can operate within the proposed special zone, those who will seek to utilise the ability to provide for residential activity, will not share those concerns. Or, if they do, they will need to reconsider whether an Airfield Special Zone is the right place for them.

26. Meanwhile, the zoning itself is seen as a pragmatic and cost-effective means of providing for the future viability of the Airfield. This is shown by the time and effort that has been spent by the Council and the adjoining landowner (who is also the submitter) to consider options and prepare plans including the Airfield Masterplan and its revisions to account for the proposal now before the Panel, which has been afforded some Council support.

27. However, at all times, the central focus has remained on ensuring that whatever is developed within the zone is complementary to the Airfield and Airfield related activities, and does not impact on the safe operation of Airfield.

28. In this respect, the designations for the Airfield which include the identification of the noise contours, and the status of activities on the Airfield, still play a role. It is a role that will be complemented by the proposed zoning. The two are designed to work in concert and reinforce one another.

29. It must also be remembered, despite the apparent concern that the certain Airfield matters aren't 'provided for' under the zoning, matters such as improvements to the Airfield itself must be carried out in accordance with Civil Aviation regulations. Meanwhile aspects, such as the eventual extensions to the runways (a significant driver of the negotiations with the submitter as the adjoining landowner), are also subject to the designation and can therefore be kept separate from the consideration of the rezoning.

30. In other words, while the zoning and the designation are designed to complement one another, they can be dealt with as separate processes, in part because the Master Plan that has been developed provides for that to occur.

31. Accordingly, the rezoning, in particular the residential component, needs to be looked at through an Airfield focused lens. As has been provided for at other airfields in New Zealand, the residential component will be part of, not separate from, the Airfields activities. The methods that have been suggested to reinforce this alignment, in addition to the rezoning itself, make this abundantly clear.

32. Given the strategic nature of the asset to the Council and Community, and the stated intentions of the submitter, it would make no sense for the issue to be approached in any other way. This is not a rezoning to simply provide for increased residential (and commercial) development around an Airfield, rather it is intended to enable Airfield adjacent activities, including a residential component for participants in those activities, to co-locate with the Airfield.

33. In this way the means to develop the utility and role of the Airfield, and to reflect and safeguard its strategic importance, can be provided for and partially funded by the further development which will be linked with, and provided access to, the Airfield.

Water service requirements

34. The evidence of Grant McLeod and Chris Brown refer to the provision of water supplies and wastewater services to any development in the vicinity of the Airfield. They note that the Airfield itself, as it is a supplier of water services and as a result of the New Zealand Drinking Water Standards, under the Water Services Act 2021, needs to be supplied with water and wastewater services.

35. This requirement was recognised in reports and recommendations to the Council in February 2022. At that time the current proposal for the Airfield was already being investigated, and funding was allocated to enable works over the following 2-3 years to further the supply of water and wastewater services. Those would be sized to accommodate potential future development. The outcome was the best and most efficient way to provide for the Airfield supplies, supplies to consumers along the route that would also be able to connect to it and to supply the proposed development, should it be able to proceed.

36. At the time the decision was made, the involvement of Mr Smith and the benefit of securing cost sharing agreements was also identified. It is suspected that the need for the decision on Mr Smith's submission and, therefore, the extent of any development to be finalised, has impacted the implementation of actual works. Mr Smith's involvement in the provision of co-funding for those works is not in doubt as is discussed below.

37. The fact will remain however, that as the law is currently still understood to apply, the Council is required to provide enhanced water supply and wastewater services to the Airfield. Those services will still be required even if the proposal does not proceed.

Legal instruments to be registered against titles

38. As a key part of the proposal is the provision for the continued operation of the Airfield and a desire to regulate what activities can locate within the zone, the proposed provisions utilise a number of methods, as follows:

    38.1. Residential activity must be associated with an airfield related activity on the same site

    38.2. No complaints covenants for all new noise sensitive land uses in favour of the WDC

38.3. Guaranteed access to airfield via planned taxiways

39. The means of ensuring that these outcomes eventuate are discussing in Mr Chrystal's supplementary evidence and are based on the example of the Dairy Flat Precinct connected to North Shore Airport.

40. These standards are considered enforceable as bespoke responses to the issues that arise from enabling development that includes some sensitive activities at the Airfield.

41. The provisions are also self-reinforcing. The fact that residential activity must be associated with an Airfield related activity immediately signals the close relationship expected between potential residents and the use of the Airfield. It is clear that this is a key rationale for the proposal. It is not intended to enable unrestricted residential use within the zone but rather to limit that use and reserve it primarily for persons who are otherwise going to be using the Airfield. Clearly any effects of the proximity of the activity to the Airfield will be well understood, thereby reducing the opportunities for conflict.

42. But even where people with different expectations are present, the entering into on no-complaints covenants, and their registration on tiles, is an effective means of limiting the potential impacts on the Airfield. Restrictive covenants of this nature have been acknowledged as being effective in preventing complaints, especially where they are volunteered. The situation has been clarified to some extent by the allowance under the Land Transfer Act 2017 for the registration of restrictive covenants, which can be applied to land use consents, in addition to consent notices for subdivision consents.

43. The guaranteeing of access by way of legally enforceable agreement that could also involve a restrictive or positive covenant (depending on whose benefit the covenant favours), also serves dual purposes. It not only confirms is clear terms the attachment of the use to the Airfield, but also means that the physical requirements enabling such access need to be available. That requirement means that the ability to subdivide sites further is restricted based on the ability to access the taxiways.

44. The fact that such agreements and restrictions have been and are being applied in other similar circumstances around New Zealand also provides confirmation that they are workable and practical.

Legal agreements between WDC and Daniel Smith re services

45. Mr Smith has directly answered the concern raised in the s.42A report over the ability to be confident that the agreements as to services and so on to service the proposal, including the Airfield itself with water supplies and wastewater services.

46. Mr Smith clarifies the situation as follows:

> A funding agreement has been developed with WDC. In particular I provided a notice to WDC dated 7 December 2023 of my acceptance and commitment to pay WDC for the supply of water and sewer services/connections to the DASI Rangiora Airfield development. This was based on the cost report for the supply of services water and sewer to the Rangiora Airfield prepared by WDC's Don Young, Senior Engineering Advisor in the Project Delivery Unit. Specifically, the cost for the supply of 69 water and sewer connections for the airfield development was $2,621,141m. DASI have the financial resources and ability to finance this cost. WDC have already been proactive on the servicing and have installed Water and Wastewater to the junction of Priors Road and Merton's Road subdivision. They have also already installed services, with pipes sized accordingly to service my development alongside the holiday park, the Waimakariri District Council Airfield lots and Rangiora Airfield.

47. Mr Smith also confirms agreements with service providers for the provision of electricity and telecommunications.

48. Accordingly, the provision of services is not an impediment to the proposal being developed if the SPZ-RA is confirmed.

49. Thank you for the Panel's consideration of these issues.

Date: 12 August 2024

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