UNDER	**THE RESOURCE MANAGEMENT ACT 1991**
IN THE MATTER	**of SUBMISSIONS TO THE CENTRAL HAWKE'S BAY DISTRICT COUNCIL PROPOSED DISTRICT PLAN**
BETWEEN	**JOSHUA AND SUZIE CALDER**
	Submitters
A N D	**CENTRAL HAWKE'S BAY DISTRICT COUNCIL**
	Consent authority

SYNOPSIS OF LEGAL SUBMISSIONS ON BEHALF OF JOSH AND SUZIE CALDER.

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May it please the Commissioners

1. These submissions are made on behalf of Josh and Suzie Calder (the submitters) who made submissions on the proposed Central Hawke's Bay District plan under submitter number S58.

2. The submitters are the owners of Rural Air Ltd, a small family owned business operating throughout Hawke's Bay as an agricultural top dressing operation. Josh Calder is a top dressing pilot with nearly 30 years experience operating in Hawke's Bay. Suzie Calder is the business manager and undertakes all of the administration and Civil Aviation compliance requirements.

3. The submitters operate their business from their home in Otane where they have developed an airstrip, hangar and refuelling facility. The airstrip and the use of the airstrip by top dressing planes flying from that base to undertake top dressing work throughout Hawke's Bay was the subject of certificates of compliance issued by the Central Hawke's Bay District Council.

4. Those certificates of compliance were the subject of a challenge by Judicial Review, the result of which was the upholding of the certificate of compliance that allowed use of the airstrip Monday to Saturday inclusive.

5. The alternative certificate of compliance which provided for a seven day operation was quashed meaning that use of the airstrip on Sundays for the purposes of the top dressing business can only be undertaken if the submitters comply with the slightly lower permitted activity noise standards in the Operative Plan that apply on Sundays.

6. The operative District plan has adopted a New Zealand standard which, from an acoustic point of view, is not really suitable for measuring noise such as aircraft noise. This is a fact acknowledged by the noise experts for both Council and the submitters in the evidence presented to the High Court. It is, nonetheless, a standard that needs to be complied with under the operative plan for the purposes of ascertaining whether the activity is permitted.

7. The issues surrounding the use of New Zealand Standards for measuring noise and which Standard to use for what purpose is addressed in the proposed District plan with the requirement that aircraft noise be measured in accordance with the appropriate standard NZS 6805:1992 Airport Noise Management and Land Use Planning. The submitters support and endorse that approach as that is consistent with both good planning practice and with best practice in the field of acoustic and noise management.

8. The effect of the High Court decision upholding the Councils certificate of compliance issued to the submitters is that the submitters have a lawfully established airstrip that is able to be used Monday to Saturday inclusive for the purposes of their business. It is also able to be used on Sundays provided it does not exceed the current (inappropriately measured) noise standard.

9. By its nature, the submitters business is both seasonal and highly weather dependent. The peak times for top dressing are in Spring and Autumn and top dressing cannot be undertaken in the rain or during high winds. As a result, while the flexibility of being able to operate Monday to Saturday inclusive is required, it is not the case that top dressing is undertaken six days a week 365 days of the year.

The submissions

GRZ-R5 and RPROZ-R5

10. The submitters support the permitted activity status for the development of new or expansion of existing rural airstrips or helicopter landing areas.

11. However, the submitters oppose the conditions for permitted activity status conditions a-f in rule GRUZ-R5 and RPROZ-R5.

12. **Condition 1a** of these rules provide locational limits requiring a rural airstrip to be 2 km from specified zones, 500 m from the notional boundary of any building associated with a noise sensitive activity or 50m from a State highway. The rationale for these limits is completely arbitrary. They cannot be for Air safety reasons as Air safety is regulated by the Civil Aviation Authority.

13. These locational limits can also not be justified in terms of effects on the environment as the plan already provides adequate and appropriate controls for managing effects in the form of rules.

14. It is submitted that there is no valid Resource Management basis for imposing the restrictions proposed by condition 1a to these rules.

15. **Condition 1b** is completely unworkable. That condition provides an annual limit of 1000 aircraft movements. An aircraft movement is defined in the plan as meaning "***a single flight operation (landing or departure) of any aircraft, excluding helicopters***".

16. There are two problems with this condition. The first is that because the definition of an "***aircraft movement***" excludes movements by helicopters, the 1000 aircraft movement limit would not apply so as to limit helicopters taking off and landing. I'm sure that is not the intention given the focus that appears to have come onto helicopter landing pads in recent Environment Court decisions.

17. From a top dressing perspective, 1000 aircraft movements per year effectively limits the submitters use of a rural airstrip to 500 loads of fertiliser per annum. In an average day Mr Calder will take off and land 100 times a day (200 aircraft movements) meaning that the 1000 aircraft movements per day limits the use of a rural airstrip to 5 days per annum. This effectively means that there will be a proliferation of airstrips (which is undesirable) or vast tracts of Central Hawke's Bay will be unable to be fertilised by air. Most rural airstrips will exceed 1000 aircraft movements per annum and the alternative of requiring a resource consent for virtually every airstrip in Central Hawke's Bay is both unreasonable and unprecedented throughout the country.

18. As noted in the submitters written submission, once a rural airstrip is developed on a farm it is often used for multiple properties within the area. Limiting any rural airstrip to 1000 aircraft movements (and therefore 500 loads of fertiliser) would mean that virtually every property wishing to undertake aerial top dressing would require their own rural airstrip and some large farm properties may well require more than one airstrip in order to meet the fertiliser needs of their farm. This is not an

efficient use of resources and is not a cost-effective or sustainable use of natural land resources.

19. The top dressing industry has undertaken substantial amounts of work with Federated Farmer, Civil Aviation and the Department of Labour/Worksafe to ensure that rural airstrips are developed in appropriate locations that enable their safe and efficient operation. The restrictions imposed by the 1000 aircraft movement limit will mean that airstrips will be constructed in areas that are inappropriate and potentially unsafe.

20. It is submitted that the ability to top dress the land within the rural zones of Central Hawke's Bay is an integral and essential component of farming and Hawke's Bay and therefore an integral and essential component of the sustainable management of natural and physical resources within the district.

21. People with an affiliation and connection to the rural sector living within the rural zones understand the importance of the top dressing industry to primary production.

22. The people who choose to live within the rural zone for lifestyle or other non-rural reasons should accept the existing amenity effects and practices that occur in the rural zone. Condition 1b to rule GRUZ-R5 and RPROZ-R5 enshrines and legitimises the reverse sensitivity effects arising from people living in rural zones but expecting urban amenities. This should be resisted.

23. **Condition 1c** seeks to impose a 100 m² gross floor area for any building ancillary to a rural airstrip. This will mean that the size of fertiliser bins will have to be limited, barnes and implement sheds will have to be limited and for the submitters purposes, their hangar in which they house their aeroplanes would require a resource consent. There is no Resource Management purpose served by the proposed gross floor area limitation.

24. **Condition 1d** requires compliance with standards S2-S11 inclusive in the respective Rural Production Zone and General Rural Zone. These standards relate to total building coverage of 35% or 1500 m² whichever

is the lesser[1], height of buildings[2], height in relation to boundary[3], set back from roads and rail network[4], set back from neighbours[5], shading of land in roads[6], electricity safety distances[7], transport in relation to access, parking and loading,[8] light,[9] and noise.

25. Particular issue is taken with standards S2 and S11 and these will be dealt with separately. For the balance of the standards, there is unlikely to ever be any failure to comply with most of these standards. Indeed, the submitters cannot think of a single rural airstrip that would not comply with these standards.

26. Which really begs the question, What is the Resource Management issue that Council is attempting to address through this regulation. While on one hand there is an argument that if the standards can be readily met then there is no difficulty posed by the imposition of the standard. However the counter; and it is submitted stronger argument; is that if there is no Resource Management issue that is required to be addressed then what is the purpose of attempting to regulated through the imposition of these standards.

27. It is submitted that imposing these performance standards as are necessary.

Standard S2

28. Standard S2 imposes a maximum building coverage of 35% of the net site area or 1500 m² whichever is the lesser. Given that these rural airstrips are sited on rural farm properties, the effective limitation is 1500 m² per site.

29. The problem is that the building coverage is expressed to include "hardstand and sealed areas" which means that an airstrip, which is required to have a flattened and compacted surface to allow for the

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1 Standard S2
2 Standard S3
3 Standard S4
4 Standard S5
5 Standard S6
6 Standard S7
7 Standard S8
8 Standard S9
9 Standard S10

aircraft movements would be a hard stand which word never comply with the limitation of 1500 m². An average airstrip is 400m by 12m or 4800m². So irrespective of whether the airstrip was constructed as a compacted hard stand strip or as a sealed airstrip, it would never comply with the standard meaning that a resource consent would be required for all new or upgraded rural airstrips. This is an unnecessary regulation.

Noise

30. **Condition 1d** requires compliance with the noise provisions of the District Plan. Those provisions are contained in a standalone section of the Plan and all activities are permitted provided that they comply with the specific standards.

31. Specific noise standards for airstrips and agricultural aviation movements are contained in NOISE-S5 and these adopt the use of the appropriate standard NZS 6805:1992 Airport Noise Management and Land Use Planning. The use of this standard is supported as this is the New Zealand standard that has been specifically formulated to address the noise derived from aircraft using airports and airstrips. Adoption of the standard avoids the attempt to shoehorn noise standards into parameters for making standard noise assessments where those standards specifically state that the provisions of that New Zealand Standard should not be used for that purpose.

32. As an example of this, in the certificates of compliance which were the subject of the Judicial Review proceedings already referred to, the noise experts engaged by the Council and the submitters respectively agreed that the submitters' activity on their home airstrip would not comply with the Sunday noise standard in the Operative District Plan but would easily comply with the standards imposed by the appropriate use of NZS 6805:1992 Airport Noise Management and Land Use Planning.

33. However, for other rural airstrips that are used for multiple farming properties, it is possible that those airstrips will be used much more intensively over shorter periods. As already noted, the submitters say that a normal day of applying fertiliser might result in 100 takeoffs and landings (that is, 200 aircraft movements) per day. Should there be a

noise sensitive activities within a short distance this might mean that the noise limits were exceeded, albeit for a short period during daylight hours.

34. This would mean that a resource consent would be necessary to fly on fertiliser if the total number of days that the airstrip is used exceeded 14 days in any calendar year.

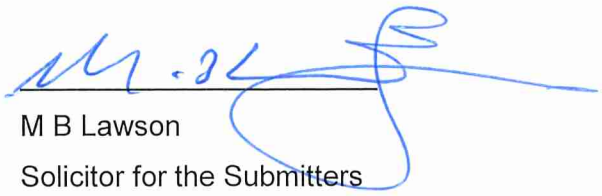
35. It is submitted that the 14 day exemption provided by standard S 5 (11) is arbitrary and unnecessary and will lead to agricultural pilots attempting to cram as much activity into a 14 day period as possible. This gives rise to safety concerns.

36. It is further submitted that the application of fertiliser is both a rural reality and necessity. While the use of rural airstrips may be concentrated in periods of appropriate weather, and largely within the spring and autumn seasons, the actual number of days used in any year is quite limited. It may be more than 14 days per year but it is not a 365 day per annum activity.

37. As a result, the effects of the use of rural airstrips are quite limited and the proposed plan provisions amount to unnecessary regulation. With that regulation comes a need for Council to monitor and enforce the provisions of the plan.

38. The rhetorical question is asked, to what end? What is the Resource Management issue that Council is seeking to address? Other than the judicial review proceedings relating to the submitters rural airstrip on their home property, what purpose is served by this limitation, where is the evidence of complaints regarding noise arising from the use of rural airstrips.

39. We seek the removal of standards S5 (11) and (12) with the effect that agricultural aviation movements are exempt activities with the consequential amendment to standard S5 (13) to remove the reference to "*up to 14 days in any calendar year*". Agricultural aviation movements should simply be exempt.



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