Supplementary Statement under Section 41 RMA

In Opposition to RC246049

Submitted to the Commissioner

From: Andrew and Louise Stalker, [redacted]

Date: 28 July 2025

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1. Introduction and HAIL Status

This supplementary statement is submitted according to **section 41 of the Resource Management Act 1991 (RMA)**. It addresses serious procedural errors, evidentiary failures, and breaches of national environmental regulation that materially affect the validity of RC246049, which seeks residential development on **Lot 2 DP 588081** (the Campbell property, RES 3537).

The site is a confirmed **HAIL (Hazardous Activities and Industries List)** location (G3 – contaminated fill), listed on Environment Canterbury's **Listed Land Use Register (LLUR)**(see Appendix A). Despite this classification, no **Preliminary Site Investigation (PSI)** or **Detailed Site Investigation (DSI)** was completed before the placement of two containers and construction of a 216m² shed in 2018 - 2023 period, or the commencement of residential occupation on or around 18 April 2024, as per Tristen Snells ' letter from the Compliance team at Selwyn District Council (see letter in Appendix B).

This failure constitutes a breach of the **National Environmental Standard for Assessing and Managing Contaminants in Soil (NES-CS)**, specifically Regulations **5(1), 6(1), and 8(3)-(4)**, which require a full site investigation for any change in land use to residential on HAIL-registered land. In Carter Holt Harvey Ltd v North Shore City Council [2015] NZCA 321. The Court held that a council cannot avoid liability where it **permits development without NES-CS compliance**.

Further, we are now aware that Eliot Sinclair, on behalf of the applicants, proposes to conduct a Detailed Site Investigation (DSI) after the fact, despite the shed already being built,

containers being present, and the land being actively used for residential purposes. This approach is not only procedurally irregular, but it also undermines the core protections of the NES-CS. As held in Royal Forest & Bird Protection Society Inc v Buller District Council [2013] NZHC 1346, decision-makers must act on complete and accurate information at the time of consent assessment, not rely on speculative or retrospective justifications. The NES-CS does not permit retrospective compliance when the risk to human health and the environment is ongoing. Conducting a DSI now, after non-compliant development has occurred, is not mitigation—it is evidence of a breach.

We also attach, as part of our evidence, the 2023 Geotechnical Report by Eliot Sinclair, relating to the shed construction (see Appendix C). This document confirms that earthworks were undertaken and foundations constructed without PSI or DSI clearance. It provides clear evidence that soil disturbance occurred on a HAIL-registered site without first establishing contamination risk or compliance with NES-CS. This omission placed workers, neighbours, and the environment at risk, representing a direct procedural and legal failure.

Moreover, we call on the Commissioner to investigate whether SDC and Eliot Sinclair have engaged in conduct intended to conceal or minimise the HAIL status of the site during the planning process. This includes the late addition of overlays, inconsistent references to site use, and the absence of trigger mechanisms such as PSI/DSI reports in the original assessment documentation. The systematic omission of HAIL risks raises legitimate questions under section 39 of the RMA concerning fairness, transparency, and good faith in the administration of planning duties.

We submit that this attempt to legitimise unlawful occupation and development post hoc further disqualifies RC246049 from proceeding under either limb of section 104D.

2. Misleading LIM and Manual GIS Overlays – Procedural and Evidentiary Failure

The Council-issued **LIM L250505** for the Campbell property is procedurally flawed. On 14th March 2025, **new GIS overlays** were inserted into the LIM by SDC staff without notification and a proper legend or explanation. These include a **blue triangle** indicating servicing infrastructure that extends into our boundary, and a **grey stormwater node** located on our grass berm (See Appendix D).

In a correspondence dated July 9, 2025, from **SDC CEO Sharon Mason** acknowledged that these overlays were manually added for internal buffer searches and do not reflect the legal infrastructure or easements (Appendix E). However, this is debated as their presence on a legal LIM falsely implies that our GRUZ-zoned, off-grid property is constrained or reticulated by the applicant's property. This would, of course, be misleading to a normal layperson who was to view it.

Hence, the overlays were added four days after we formally requested a copy of the Campbell LIM in March 2025, suggesting intentional manipulation. This procedural failure is contrary to principles of natural justice and creates the risk of planning bias. This raises a legitimate question as to whether Council staff exercised appropriate neutrality in their duties. The sudden appearance of overlays following our LIM request, the continued use of our address on public planning documents, and inconsistent statements from Council officers undermine confidence in the reliability of SDC's planning assessments.

As held in Royal Forest & Bird Protection Society Inc v Buller District Council [2013] NZHC 1346, decision-makers are expected to act on complete and accurate information, free from institutional bias or manipulation. Therefore, we call for their immediate removal and for SDC to recognise this procedural failure.

The Court in Willis v Auckland Council [2021] NZEnvC 97 declined an application to establish residential dwellings in a rural (GRUZ) zone due to a lack of infrastructure and reticulated services, finding it inconsistent with planning policy. That case demonstrates the importance of **accurately disclosing infrastructure constraints**.

In contrast, the overlays inserted into LIM L250505 and planning documents appear to have been created specifically to assist the RC246049 application by giving a false impression of **existing** infrastructure. Had these overlays been omitted, as in the Willis case, the lack of servicing would have justified declining the application outright. This further supports the conclusion that SDC introduced the overlays to manipulate planning perception in favour of the applicants. Finally, these failures may also breach:

- Section 44A(3) of the Local Government Official Information and Meetings Act 1987 (for discretionary information placed without verification),
- Sections 7 and 66 of the Privacy Act 2020 (if personal/address details were wrongly used to trigger planning assumptions),

- Sections 95A–95E of the RMA (for failure to notify affected parties in light of environmental and legal overlays).

3. Illegal Structures Approved Under False Information – Request for Review Under s128 RMA

The 2018 **Certificate of Acceptance (COA 180748) was issued for two second-hand twenty-foot container structures located** on the Campbell property (See Appendix D & F). These were falsely recorded on **Form 7 using our legal address (**[redacted]**)**, without our knowledge or consent. This error remained uncorrected for more than seven years by SDC and was actively relied upon during the 2022 sale of the HAIL land, for which Whalan Real Estate were the advertising agent. This public misrepresentation linked our clean land to contaminated HAIL structures, affecting our planning credibility and personal reputation, not to mention our privacy.

Additionally, our front shed, which directly faces the Campbell containers, is GPS registered at [redacted]. Our address is an even number. This raises a serious concern as to why the number '[redacted] appears to have become a point of interest for Council planners, the Campbells, and legal advisors, given that it is tied to land that is neither HAIL-registered nor reticulated. The targeting of this identifier suggests a deeper issue with how boundaries and address data are being manipulated in planning documentation and decisions.

While it remains unclear whether our address on the Form 7 certificate of compliance for the containers facilitated the 2023 **shed consent**, we are concerned that it may have contributed to **compliance shortcuts** — especially since our property is not HAIL-registered. Therefore, the misuse of our address **may have enabled the** bypassed notification triggers under **section 95E of the RMA**. It would nevertheless be appropriate for the Commissioner to look into this further, as the rights of our affected parties to voice their concerns have been bypassed.

Finally, it is argued that the application fails the **gateway test under Section 104D RMA**:

- The effects on the environment are **more than minor** (s104D(1)(a) and the proposal is **inconsistent with the objectives and policies** of relevant plans (s104D(1)(b)).

As clarified in *Southpark Corporation Ltd v Auckland City Council [2001] NZRMA 350*, both limbs must be satisfied for a non-complying activity to proceed — **this proposal satisfies neither.**

We therefore request a review **under Section 128 of the RMA** as affected parties. Most importantly, we argue that the land and building consents for Lot 2DP 588081 were obtained under false or misleading information, and in breach of Part 2 of the RMA (Sections 5–8).

In particular, we request that the Commissioner formally review all documents, including **Form 7 and Form 9 documents, submitted** for the 2018 container structures and the 2023 pole shed. Also, the acceptance of IBC tanks by SDC and Ecan for sewage disposal on contaminated land registered as Hail, in the absence of a PSI or DSI, has been permitted by SDC and Ecan, further increasing the risk of environmental contamination and public health harm.

Notwithstanding, the **LIM L250505** states:

> "Any new or replacement of a domestic onsite wastewater treatment system will need to meet the requirements of Rule 5.8 of the Canterbury Land and Water Regional Plan to be considered a permitted activity and will require a building consent from Selwyn District Council prior to installation", LIM L250505.

Furthermore, the LIM also notes:

> "Any onsite wastewater treatment or changes to it will require Environment Canterbury consent", and warns that such systems "may have or require consent… [and] could have an adverse effect on the neighbouring property in relation to odour, potable water supply quality, or be of a general nuisance factor" LIM L250505.

Despite these clear and concise requirements, the applicants have used plastic IBC tanks on-site since April 2024 to store and dispose of human sewage. This arrangement:

- Lacks a building consent from Selwyn District Council;
- Lacks a discharge consent from Environment Canterbury.
- Was established on HAIL-designated land without a Detailed Site Investigation (DSI);

- Exposes us, other affected parties, the public, and the environment to potential contamination risk, not including contaminating waterways behind and alongside their property;
- and violates Rule 5.8 of the Canterbury Land and Water Regional Plan.

This situation demonstrates an ongoing disregard for the NES-CS, the Building Act 2004, and regional planning regulations, and warrants immediate enforcement and remedy.

> Likewise, Campbell's **declared in the AEE Application (Section 3.1 & 6.3.2): Para 21 & 74:**
>
> "The Applicant proposes to install a new on-site wastewater system in accordance with New Zealand Standard **AS/NZS 1547:2012** to treat and discharge domestic wastewater. The wastewater system will be appropriately located, and **resource consent will be obtained from Environment Canterbury** to authorise its installation and ongoing use under **Rule 5.8** of the Canterbury Land and Water Regional Plan."

This failure undermines the intended protections of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS), the Building Act 2004, and the Resource Management Act 1991.

Moreover, the applicants' Form 7 documents classify the structures solely as **"industrial" or "outbuildings"**, despite the 2024 planner letter from Tristen Snell (SDC) identifying the use as a **"non-complying residential dwelling"**. The applicant has not applied for a change of use and now seeks to circumvent this requirement via a backdoor approach, thereby undermining planning laws and legislation designed to protect New Zealanders and their environment. Noteworthy is the fact that the applicants are still in full-time **residential occupation as of July 28, which continues to raise concerns about the ongoing risk of contamination to our established land and waterways, as well as to our health.**

At present, as affected parties, we are still waiting for adequate responses from Selwyn District Council (SDC) to the following critical questions:

- Where is the documentation demonstrating our written approval or any evidence that we were notified as affected parties concerning the 2018 container structures?

- Why was public or limited notification under section 95E of the RMA not triggered for the 2023 shed, particularly considering the improper use of our legal address, the confirmed HAIL status of the land, and the immediate proximity to our property?
- On what grounds have both SDC and Environment Canterbury deemed the use of IBC tanks for sewage disposal to be acceptable on a contaminated HAIL-registered site, especially in the absence of any Preliminary or Detailed Site Investigation (PSI/DSI), and despite the elevated risk this poses to public health and the surrounding environment?

We seek clear, documented answers to these unresolved matters, which go to the heart of due process, environmental safety, and our statutory rights as affected parties.

Case Law:

- *Fleetwing Farms Ltd v Marlborough DC [1997] 3 NZLR 257* – misrepresentation warrants review.
- *Royal Forest & Bird v Buller DC [2013] NZHC 1346* – accurate information is a duty.

4. Floodwater runoff - not addressed since May 20025

We observed **floodwater runoff in May 2025** flowing from the Campbell site onto our land. Thus, **ESR scientist** Maiya Sadler has warned of the risk of off-site HAIL contaminant exposure to our waterways, farmland, and households. However, no remediation has been undertaken by the applicants. Under **Regulation 6(1)(b)(ii) and 6(2) of NES-CS**, floodwater constitutes a **pathway of exposure** that must be assessed. Yet, no investigation or remediation has occurred. The applicants' AEE omits this risk entirely, and there has been no follow-up since the report was released.

Section 104(1)(a) of the RMA requires the Commissioner to consider actual and potential effects on the environment. The omission of the flood pathway and the IBC tank disposal system renders the assessment invalid. A full DSI is required under NES-CS, and the LLUR status, currently listed as “pending”, must be reviewed by Environment Canterbury in light of the confirmed HAIL use, unconsented sewage disposal, and floodwater migration risk. If a DSI confirms elevated contaminant risk, the listing should be updated to “verified” or “contaminated” as per ECan’s LLUR guidance.

This is directly supported by Day v Manawatu-Wanganui Regional Council [2012] NZEnvC 182, where the Environment Court confirmed that off-site migration of contaminants, including via floodwater, constitutes a pathway of exposure that triggers NES-CS obligations.

The Court said at [84]:

> *"If there is any realistic possibility of contaminants being disturbed or made accessible to human health receptors... the NES applies."*

Furthermore*, at [77] and [103], the Court emphasised:*

> *"Migration of contaminants through flooding or stormwater is a known pathway of exposure."*

Therefore, the Court ruled that the council failed in its duty by not ensuring a proper assessment was undertaken before authorising activities that risked contaminant spread beyond the site. In our case, supported by flood photographs from May 2025, we argue that this ruling applies directly here and that the same breach has occurred.

Case Law:

- Canterbury RC v Doug Hood Ltd [2003] NZRMA 241 – migration of contaminants via water is an effect.
- Day v Manawatu-Wanganui RC [2012] NZEnvC 182 – off-site contamination risk triggers NES-CS obligations.
- Carter Holt Harvey Ltd v North Shore CC [2015] NZCA 321 – liability arises when councils permit development without NES-CS compliance.

5. <u>Relief Sought</u>

- **Decline RC246049 in full,** as the application fails the s104D gateway test and is inconsistent with the purpose and principles of the RMA and NES-CS; We respectfully request the Commissioner, furthermore, to;
- Invalidate the applicants ' current building consents issued under **false or misleading information**, particularly the containers (COA180748) and the 2023 pole shed;
- Recognise **NES-CS breaches and procedural bias towards affected parties**;

- Order a **review under s128 RMA**;
- And, formally acknowledge that **the effects of the activities on neighbouring properties are more than minor**, especially in terms of public health risk and environmental exposure, as demonstrated throughout our opposition documentation.
- Refer the matter to **Environment Canterbury** to update the **LLUR**.
- Uphold our **affected party status**, which was denied due to SDC error, more than once, as demonstrated with the 2018 container form 7 and pole shed 2023, and reverse sensitivity harm and more importantly, acknowledgement by Johnathan Gregg misuse of our address that has enabled the ongoing non compliance of two containers, a security camera placed on one facing our front gate and the the pole shed being built without triggering NCES rules. All generating reverse sensitivity and privacy, amenity and wellbeing harm, which the RMA stands for.
- Refer this matter to ECan and the Building Consent Authority for enforcement under **s314(1)(a)(i), (da), and (d)** of the RMA;
- All subsequent development by the applicants should be treated as non-complying under section 104D of the Resource Management Act 1991, unless and until they demonstrate full compliance with legal requirements and actively engage in good faith with affected parties, refraining from further harm or adverse effects on neighbouring properties.
- We expressly reserve our right to pursue enforcement action to remove illegal structures and seek damages under relevant statutory and common law provisions.

  This statement should be considered notice of our intention to take further civil action if harm continues or is not remedied by the regulatory bodies and applicants.

Appendices

Appendix A: The LLUR Hail register still shows 'pending' when two containers and a shed, as well as residential use, have been noted.

Appendix B: 12 June 2024 - Tristen Snell, Compliance Team Lead - recognising Change of Use for the pole shed.

Appendix C. 2023 Geotechnical Report by Eliot Sinclair relating to the shed construction

Appendix D: LIM L250505 (with overlays blue triangle and grey water services nodes). COA180748 and BC231329 (Shed/Containers) with our address at [redacted] on Form 7, Container Structure, stating **notified. Additionally, there are no PSI/DSI or hail reports on the LIM earthworks for the driveway-road.**

Appendix F. Pictures of two containers (2018 LIM certified) and Pole Shed are attached, showing substantial earthworks that are left uncovered and exposed to air, wind drift, rain and stormwater runoff.. Adjacent to our property at [redacted]. Exposing Elliot and Sinclair Technicians, tradespeople, neighbours and the public for long periods.