

**TO:** Resource Management Review Panel ("**Panel**")

**SUBMISSION ON:** Transforming the resource management system: Issues and options paper ("**Paper**")

**FROM:** New Zealand Airports Association ("**NZ Airports**")

**ADDRESS FOR SERVICE:** See address for service below

**DATE:** 3 February 2020

### **SUMMARY**

1. NZ Airports is the industry association for New Zealand's airports and related businesses. Airports are significant users of the Resource Management Act 1991 ("**RMA**"), and rely on robust planning provisions to protect the nationally and regionally significant infrastructure we provide. As such, the development or transformation of New Zealand's resource management system is of critical importance to our members, and we welcome the opportunity to comment on the Paper.
2. The predominant challenge for New Zealand's airports under the current resource management system is managing reverse sensitivity effects. Managing the interface between airports and land uses around airports has become even more acute more recently, with the national and regional political focus on urban development and residential intensification.
3. The establishment of sensitive activities like housing near airports is problematic. It threatens the ongoing use and development of New Zealand's airports, while also exposing sensitive users to the effects of aircraft noise. Legislative and planning frameworks that do not provide appropriate tools to properly manage or avoid this issue threaten to undermine the current and future operation of airports.
4. In any restructure of New Zealand's resource management system, NZ Airports seeks:
  - (a) nation-wide spatial planning, implementing the use of land use controls which clearly delineate the areas subject to adverse effects generated by infrastructure as inappropriate for sensitive use development, in recognition of the need to protect infrastructure from reverse sensitivity and promote positive and healthy development of communities;
  - (b) protection for the safe and efficient operation of nationally or regionally significant infrastructure like airports, in recognition of their local, regional and national benefits for New Zealand's economic and social wellbeing;
  - (c) robust notification and appeal processes, which enable stakeholders to identify and address core issues in the planning and consenting process; and
  - (d) improved compliance, monitoring and enforcement processes to ensure plan provisions and consent conditions are adequately monitored by local authorities (or national bodies).
5. We address these matters in response to the specific issues raised by the Paper below.

## WHO WE ARE

6. NZ Airports members<sup>1</sup> operate 41 airports across the country, including the international gateways to New Zealand and the domestic airports making up the national air transport network. NZ Airports' members have extensive experience dealing with resource management processes and issues, and in particular with managing the environmental effects that can arise from the operation, maintenance and development of New Zealand's airports.
7. Airports are essential infrastructure, and play a crucial role in the social and economic well-being of our communities. Safeguarding the long-term growth of air travel and freight is a critical factor for many regions. If airport operations are unduly constrained (through, for example, poor planning of the land uses around airports), this can limit an airport's ability to contribute to local and regional economies, which can then have negative flow-on economic effects for those communities and regions. As such, it is critical that any new or altered resource management system ensures the ongoing and effective operation and development of New Zealand's airports.
8. NZ Airports has provided feedback on several recent resource management and related reforms, including the Resource Management Amendment Bill, Action for Healthy Waterways, the Kāinga Ora – Homes and Communities Bill and the proposed National Policy Statement for Urban Development. Our members have also been closely involved in extensive plan review processes in Auckland, Christchurch, and Queenstown, along with other regions and districts throughout New Zealand.

## REVERSE SENSITIVITY

9. Reverse sensitivity is a key issue for New Zealand's airports. It is a well-established resource management concept, referring to the susceptibility of established, effects-generating activities (which often cannot internalise all of their effects) to complaints or objections arising from the location of new sensitive activities nearby. Such complaints can place significant constraints on the operation of established activities, like airports, as well as their potential for growth and development in the future.
10. Certain effects that are lawfully generated by airport operations, such as aircraft noise, cannot be reasonably internalised. Acoustic insulation and other mitigation measures are not sufficient in themselves to address potential noise effects on residents or reverse sensitivity effects on airports. For example, such measures are only effective where windows and external doors are not opened. It is also not possible to mitigate effects of aircraft noise on outdoor spaces. Instead, robust planning controls, which restrict inappropriate development within areas affected by these effects are necessary to ensure these are managed appropriately. We expand on this at paragraphs 25 to 27 below.

### The cost of reverse sensitivity to airports

11. Reverse sensitivity effects pose a substantial threat to the ongoing efficient operation of New Zealand's airport infrastructure. Many of New Zealand's airports already operate in urban

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<sup>1</sup> Our member airports include Ardmore Airport, Ashburton Airport, Auckland Airport, Chatham Islands Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke's Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikohe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, Nelson Airport, New Plymouth Airport, Oamaru Airport, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Timaru Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Wairoa Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, West Auckland Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.

environments. Development of sensitive activities in proximity to airports has materially constrained airport infrastructure in the past because it is impossible to internalise some of the effects of airport operations. For example, the location of sensitive residential development near airports, and/or the zoning of land near airports to enable such development, have resulted in operational restrictions and curfews at Wellington, Queenstown and Auckland Airports.

12. The Environment Court's 2019 decision to uphold a noise complaint in relation to aircraft engine testing at Whenuapai Airport illustrates that reverse sensitivity remains very much a live and significant issue for airports.<sup>2</sup> In a case brought by a residential development company, the Court considered the potential impact of existing and established engine testing noise on the residential neighbours including those whose houses were built after the airbase was developed. The Court recognised that its decision could mean that "the Minister may not have the same ability to operate aircraft at Whenuapai Airbase as other requiring authorities do at other airports".<sup>3</sup> This decision is a recent illustration of the way in which reverse sensitivity effects can and do lead to constraints on airport operators and other infrastructure providers.<sup>4</sup>
13. Costs incurred by New Zealand airport operators in relation to monitoring, recording and responding to reverse sensitivity complaints from sensitive / residential neighbours are significant. Airport operators throughout New Zealand must be involved in plan-making, designation, and resource consenting processes to ensure that airports are protected from reverse sensitivity effects. This includes making sure their growth and development is managed appropriately, and that local authorities are educated on the tension between residential intensification and the need to protect airports' lawful operation and planned development.

#### Inappropriate housing locations – the cost to communities

14. Avoiding housing within areas affected by aircraft noise is a significant planning concern for local communities. The location of urban development is key to the provision of good quality and healthy housing for the well-being of residents. It is well recognised that developments placed within areas subject to the effects of aircraft noise may not achieve good quality or healthy housing.<sup>5</sup> This is because exposure to high levels of aircraft noise can cause adverse health and well-being effects.
15. The impacts of reverse sensitivity and inappropriate housing within areas affected by aircraft noise are not just on the operations of airports. Good urban planning and development demands residential development to occur in appropriate locations. Planning controls that enable increased intensification in areas affected by aircraft noise or other infrastructure effects should be avoided.

#### **PURPOSE AND PRINCIPLES OF THE RMA (ISSUE 2)**

16. From NZ Airport's experience, the application of the RMA's sustainable management purpose has been inconsistent, and unhelpful to users or developers seeking clear direction.

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<sup>2</sup> *Neil Construction Ltd v Auckland Council* [2019] NZEnvC 154.

<sup>3</sup> At [50].

<sup>4</sup> The Minister for Defence ultimately used his certification powers per s 4(2) of the RMA to override the Court's decision for reasons of national security, an avenue not otherwise available to most airport operators. See Ron Mark "Minister ensures continued Whenuapai flight operations" (press release, 16 October 2019).

<sup>5</sup> See for example the discussion by Gendall J in relation to special housing areas in *Ayrburn Farm Developments Ltd v Queenstown Lakes District Council* [2016] NZHC 693 at [57].

We also consider its silence on the integral role that infrastructure plays in enabling successful communities and their ongoing well-being has contributed to ongoing infrastructure deficits and lack of appropriate spatial planning taking infrastructure and its effects into account. There is currently no explicit recognition of infrastructure in Part 2 of the RMA. This has to change, regardless of whether the Panel recommends that Part 2 be retained or recommends an alternative purposes and principles section. Specifically, NZ Airports supports changes to provide:

- (a) *Greater balancing of local effects with the regional and national benefits of proposals.*

Airports are increasingly restricted in their proposals by the potential effects on local environments. While the management of local effects is important, in the case of major infrastructure these need to be considered in light of regional and national benefits it may provide (including, for example, positive impacts on the economic development and civil defence capabilities of the regions they serve).

- (b) *Reduced emphasis on the importance of landscape (visual amenity) values.*

While landscape values should be considered in some cases, particularly when proposals affect areas of national significance, these considerations create significant limitations on infrastructure providers while providing little comparable benefit to more pressing environmental concerns like the protection of New Zealand flora, fauna or freshwater resources.

- (c) *Support for quality urban development in appropriate locations.*

In response to the Paper's suggestion to introduce principles that help enable housing development in urban centres, any such principles must reflect the need for positive, healthy, living environments for New Zealand communities, which do not unreasonably constrain existing infrastructure. As detailed above, inappropriately located urban development poses a significant threat to the ongoing operation of core infrastructure, and needs to be appropriately located to avoid or minimise the potential for such effects. Developing more nuanced principles, which capture these concerns, will help ensure developments provide positive and healthy living environments.

- (d) *Exceptions for nationally significant infrastructure from ecological bottom lines.*

Where the Paper suggests clearer ecological bottom lines, exceptions must be made to protect other nationally significant activities. Specifically, the function of infrastructure necessary for national economic development, core transport systems and other fundamental activities should not be unnecessarily restricted. This approach is consistent with proposed national directions promoting ecological protections over the past year (including the proposed Freshwater Policy Documents and National Policy Statement for Indigenous Biodiversity).

## **ISSUE 5: ADDRESSING CLIMATE CHANGE AND NATURAL HAZARDS (ISSUE 5)**

17. Airports increasingly have to grapple with the efforts to mitigate, and adapt to, the effects of climate change. Our members are also seeing the climate change effects of air travel being raised by some parties in the consenting and planning process for new airport developments. Several key New Zealand airports (including Auckland and Wellington) fall

within the coastal environment, and remain susceptible to future climate change effects such as sea level rise. Despite the risks of these locations, large infrastructure like airports cannot be easily or efficiently relocated.

18. While recent legislative and policy changes (such as amendments to the Climate Change Response Act ("**CCRA**") and Emissions Trading Scheme) have introduced new resource management approaches to the issue, users of the RMA have little guidance on how climate change considerations may impact their operations from the RMA. This historic legislative ambivalence also comes into conflict with the suite of new reforms to New Zealand's climate change legislation.
19. NZ Airports considers the current system could be improved in order to:
  - (a) better amalgamate climate change legislation and policy with the rest of the planning system (as opposed to the RMA's current disconnect with measures under the CCRA);
  - (b) provide clarity on the extent to which decision-makers should consider ancillary climate change effects (such as emissions resulting from air travel to and from airports), while ensuring decision-makers balance any such considerations with the need to protect the operation of fundamental infrastructure, like airports, to connect New Zealanders to each other and to the rest of the world; and
  - (c) recognise that significant infrastructure like airports cannot easily be relocated.

#### **SPATIAL PLANNING TO REDUCE COMPLEXITY (ISSUES 4, 6, 7 AND 14)**

20. NZ Airports has consistently raised a need to reduce system complexity. Most recently, the interaction of the RMA with new national resource management directions (like National Policy Statements ("**NPS**") and Environmental Standards ("**NES**")), as well as other regulatory or legislative changes, has reduced workability for system users. New directions provide little clarity on how they are intended to interrelate with one another, and seek different (and at times conflicting) policy goals. This creates ongoing confusion about the overall policy direction decision-makers are intending to create. It also stretches local government resources and the ability for councils to develop and regulate cogent planning documents.
21. Alongside the complexity driven by national directions, the complexity and uncertainty stemming from the length of time taken to redevelop regional and district plans under the RMA is problematic. The time taken for the submissions, hearings, decisions and appeal processes for these plans makes it difficult for plan users to navigate which elements of plans are operative and to be applied in relation to their activities. In addition, while participation in plan review processes can often be time consuming and costly for submitters, the significance of these processes to the ongoing safe and efficient operation of airport infrastructure means that our members are required to be heavily involved.
22. While retaining the ability to "target" specific resource management issues, NZ Airports calls for a system that more cohesively connects policies and legislation, and promotes efficient, timely and simple plan making to reduce these complexities. Specifically, NZ Airports is supportive of the Panel's proposal to more extensively utilise spatial planning principles to address these issues in a clear and straightforward way.

23. Airport operators already spatially plan their own airports through masterplanning processes. These master plans provide clear direction and encourage collaboration with stakeholders on key issues early on in the planning process so that they can feed into the planning framework developed. Masterplanning is also done with long term horizons in mind (on average, 30 years). Long term planning is critical to airport planning.
24. NZ Airports supports a system that introduces standardised spatial planning, which is:
- (a) clearly defined and focused on issues closely related to land use, in particular the provision of water and transport infrastructure and community facilities (eg green space, reserves, conservation areas, and libraries), protection of high value ecological sites, and natural hazard management. Any spatial planning relating to the provision of transport must include provision for airports. While spatial plans to address housing (as suggested by the Panel) may be useful, these will need to interact with the other key land use concerns noted above to avoid raising similar issues to those facing the current system in terms of a lack of cohesiveness and difficulties in interpretation; and
  - (b) inclusive not just of the RMA, but the Local Government Act 2002 and the Land Transport Management Act 2003 (as suggested by the Panel) as well as a broader range of legislation. In particular, there needs to be greater clarity for users as to what role Kāinga Ora and recent climate change legislative changes would take in spatial planning.

*Standardised "effects areas"*

25. Most airports in New Zealand rely heavily on district planning controls to avoid or manage adverse effects on their operations by sensitive activities locating in proximity to airports. These "effects areas", defined around their airports in existing district plans, include noise boundaries and obstacle limitation surfaces, which control the type and scale of activities that can locate near airports. These are often not designated areas, but rather spatially defined areas that control land uses. Such measures are necessary because airports, by their nature, have effects (such as aircraft noise) that extend beyond the boundaries of their designations or landholdings, and cannot be internalised. Effects areas have been developed and maintained over many years, with extensive public and community consultation and input.
26. These effects areas are based on extensive modelling, empirical analysis and case law, all of which demonstrate that high aircraft noise effects areas are not appropriate areas to establish sensitive activities such as housing developments. Exposure to noise levels at or above 65 dB  $L_{dn}$  can cause adverse health and wellbeing effects. The high levels of aircraft noise experienced in these areas also means that the location of sensitive activities has the very real potential to give rise to reverse sensitivity effects on airports. This approach is also consistent with New Zealand Standard 6805:1992 Airport Noise Management and Land Use Planning, which provides guidance to local authorities in relation to airport planning.
27. NZ Airports recommends the new system builds upon the efforts so far to standardise plans across the country (such as through the National Planning Standards) to include useful spatial planning tools like "effects areas". These are a useful tool alongside other mechanisms (such as designations and resource consents) to manage the development of quality housing and infrastructure in appropriate locations, in a way that is simple and effective. They also exemplify the need for ongoing and improved collaboration between

councils and infrastructure providers, like airports, who are experts in the expected growth and future needs of their assets.

### **GOVERNMENT INTERVENTION IN PLANNING PROCESSES (ISSUE 7)**

28. NZ Airports has consistently raised concerns regarding proposals for directive intervention by central government in local authority plans to enable or require urban intensification in areas where it is currently restricted. These often propose streamlining rules and processes that some may consider "unnecessarily" constrain intensification but, if removed, could significantly undermine existing planning protections for airports.
29. For example, several of the changes proposed under the Urban Development Bill set out streamlined planning and development tools, which enable Kāinga Ora to override elements of plans and acquire land to fast-track development. Similarly, the proposed NPS for Urban Development seeks to override intensification restrictions in locations proximate to employment opportunities and urban amenities and services. Both of these developments could enable housing intensification in airport effects areas despite existing protections under district plans, raising potential reverse sensitivity issues for airports.
30. NZ Airports opposes the ongoing use of such "fast-track" processes, which undermine quality decision-making and ignore the existing planning knowledge held by councils. NZ Airports also strongly encourages a balanced approach to planning issues, as opposed to a fixation on housing at the expense of thoughtful planning.

### **CONSENTS / APPROVALS (ISSUE 8)**

#### *Resource consents*

31. NZ Airports has concerns about changes focused on creating "faster and easier" consenting processes. Any change needs to adequately address the need for quality decision making, and the involvement of interested stakeholders. Airports experience this aspect of the consenting process through two perspectives:
  - (a) Airports are involved in consenting processes for developments within their effects areas, in order to address reverse sensitivity issues as early (and effectively) as possible. Any reduction in the notification process for the sake of efficiency can therefore reduce the ability of infrastructure like airports to ensure consents capture the issues extending from their effects.
  - (b) Airports also engage with the consenting process through their own developments and projects. In our experience, notification and the existing two-stage consenting and appeal process provide an effective way to manage public expectations for a development and involve key stakeholders. This process has led to better outcomes for various airport-related projects.
32. From both perspectives, as developers and interested stakeholders, NZ Airport supports the retention of robust notification and appeal rights in any new system.
33. NZ Airports also supports an enhanced system to equip and inform decision makers on key resource management problems like reverse sensitivity. Reverse sensitivity effects are often overlooked by councils in deciding whether to grant consent for development. There is a risk that new, targeted consenting authorities may not fully appreciate all of the key considerations that should be taken into account in their decision-making.

*Designations*

34. Designations are a critical tool for many airports to enable them to manage their operations effectively. NZ Airports is concerned about any changes to the way in which designations enable infrastructure providers to manage, operate and develop in a flexible way, with long term planning in mind.
35. A common challenge for airports in managing the potential for reverse sensitivity, transport or other effects on airport operations is a misunderstanding by decision-makers (or neighbours) that airports can simply rely on their designations to control these issues. Airport designations only control land use activities within their designation boundaries, and cannot be relied upon to ensure that the development of sensitive activities in proximity to airports (outside of those boundaries) as appropriately managed. Land use controls (like "effects areas" discussed above) must be included in district plans, as controls on other landowners (not the airport itself).
36. NZ Airports generally supports the design of the current process under the RMA for the approval and management of designations and as noted above, would be greatly concerned if changes were proposed to designations that reduced their ability to provide and plan for infrastructure over a long period. However, the growing complexity and evidential standard of the designation process is increasingly burdensome on requiring authorities including airports. Regulators are increasingly treating the designation process to the same depth as the resource consenting process.
37. NZ Airports considers this has moved away from the original intention for designations to act as "higher level" planning tools, with the Outline Plan of Works process sitting underneath it. We consider that decision makers should be provided with greater clarity and direction on the standard of evidence and hearing required for the different elements of the designation process. Specifically, we consider designation hearings should require a lower level of detailed design information, with the focus being on the requiring authority's objectives, the reasonable necessity of the designation being sought, and the level of effects. This would appropriately reflect the route protection status of designations, with detailed designs required as part of the Outline Plan of Works stage, or any additional resource consents as a result of design changes.

**COMPLIANCE, MONITORING AND ENFORCEMENT (ISSUE 12)**

38. Our members have experienced the disconnect in the current system between complex planning and consenting tools, and the ability of local authorities to ensure they are complied with and enforced. For example, our members have experienced several instances where local authorities have failed to implement their own planning rules and restrictions on new consents in aircraft noise effects areas, or have failed to monitor the development of housing occurring without the necessary consents within these areas.
39. The uncertainty of whether local authorities will adequately ensure compliance, monitoring and enforcement ("**CME**"), and the need to avoid sensitive activities within their effects areas, creates significant additional costs for airports to monitor the application of their own effects areas and designations. Many of our members are therefore acting as "de facto" CME officers in respect of these activities.
40. As such, NZ Airports supports the improvement of local authority capacity and capability to undertake effective CME, and related changes giving local authorities greater guidance on

how they carry out their CME functions. Specific changes which may support CME improvement include:

- (a) increased spatial planning, as discussed above, to assist in the proper identification of necessary resourcing;
- (b) reduced complexity and greater standardisation of plans and consent conditions, to assist local authorities in accurately and easily monitoring and enforcing them; and
- (c) regional or national oversight of enforcement functions, or escalation to central enforcement agencies.

### **CONCLUSION**

41. NZ Airports would welcome the opportunity to work further with the Resource Management Review Panel on any aspect of the resource management review.

### **NZ AIRPORTS ASSOCIATION**

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